

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Duke Energy Oakland LLC

Docket No. ER01-3034-005

ORDER ON SETTLEMENT AGREEMENT

(Issued February 14, 2005)

1. In this order, the Commission approves without modification an uncontested Joint Offer of Settlement and a Settlement and Release of Claims Agreement (Settlement)¹ filed in the above-captioned proceedings on October 29, 2004. Approval of the Settlement will eliminate regulatory uncertainty and bring closure to disputes between Duke Energy² and Pacific Gas and Electric Company (PG&E) related to refunds that Duke Energy would owe PG&E pursuant to a Commission Order issued in these proceedings on March 5, 2004.³

Background

2. On February 1, 2002, the Commission issued an order directing DEO to calculate, issue, and submit a refund report itemizing amounts it may owe to PG&E under a revised Reliability Must Run Agreement (RMR Agreement) with the California Independent System Operator Corporation (the CAISO).⁴ The Commission, in its *March 5 Order*,

¹ The Settlement was filed pursuant to Rule 602 of the Rules and Regulations of the Federal Energy Regulatory Commission, 18 C.F.R. § 385.602 (2004).

² Duke Energy Oakland LLC (DEO), Duke Energy Trading and Marketing, L.L.C., and Duke Energy North America, LLC (collectively, Duke Energy).

³ *Duke Energy Oakland, LLC*, 106 FERC ¶ 61,221, *reh'g denied*, 107 FERC ¶ 61,109 (2004) (*March 5 Order*).

⁴ *Duke Energy Oakland, LLC*, 98 FERC ¶ 61,114 (2002) (*February 1 Order*).

rejected the refund report filed by DEO because the Commission found that the amount of refunds owed by DEO to PG&E could not be determined and is dependent upon the outcome of the California Refund Proceeding in Docket No. EL00-95-000, *et al.*⁵ The Commission explained that the market clearing prices for the refund period would remain uncertain until the Commission established the market clearing prices in the California Refund Proceeding. Therefore, the Commission rejected DEO's refund report and ordered DEO to recalculate the refunds owed by applying the market clearing prices established in the California Refund Proceeding.

Description of the Settlement

3. The Settlement resolves all claims and disputes between Duke Energy and PG&E related to amounts owing under the RMR Agreement for the period of July 1, 1998 through December 31, 2001, including DEO's obligation to recalculate refunds and file a refund report in this proceeding, pursuant to the *March 5 Order*.⁶

4. Under the Settlement, Duke Energy will pay PG&E \$18 million dollars, including interest, within 15 days of the issuance of a Commission order approving the Settlement without modification.⁷ The Settlement is conditioned on Commission approval of the Settlement without material modification, and direction by the Commission to the CAISO to implement the provisions of the Settlement, including the releases contained therein.⁸ The Settling Parties further request the Commission to grant approval and authority for the CAISO to close out its RMR invoices and related accounts payable and receivable record for the obligations settled by the Settlement.⁹

Discussion

5. The Settlement is in the public interest and is hereby approved. The Settlement gives closure to long-outstanding RMR disputes and claims and provides regulatory certainty for the Settling Parties and the CAISO.

⁵ *March 5 Order*, 106 FERC at P 17.

⁶ *See* Settlement, Article III, section 3.1.

⁷ *Id.* at section 2.1.

⁸ Settlement at sections 1.1 and 4.1.

⁹ Joint Offer of Settlement at 4.

6. We direct the CAISO to implement the provisions of the Settlement, including the releases and waivers contained therein. We further grant the CAISO authority to close out its RMR invoices and related accounts payable and receivable record for the obligations settled by the Settlement. In addition, we will require the CAISO to be held harmless in its implementation of the Settlement provisions.¹⁰

7. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

8. This order terminates Docket No. ER04-3034-005.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹⁰ Cf. Settlement at section 4.1; *San Diego Gas & Electric Co.*, 109 FERC ¶ 61,257 at P 45 (2004).