UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Duke Energy Oakland, LLC Docket No. ER05-115-001

ORDER ACCEPTING REFUND REPORT

(Issued March 15, 2007)

1. In this order, the Commission accepts a refund report filed by Duke Energy Oakland, LLC (Duke Energy)[1] in compliance with the Commission's order approving an uncontested settlement between Duke Energy, Pacific Gas and Electric Company (PG&E), the California Independent System Operator Corporation (CAISO), and the California Electricity Oversight Board (CEOB).[2] The settlement resolved issues surrounding a dispute regarding a Reliability Must-Run Agreement (RMR Agreement) between Duke Energy and the CAISO.

Background

2. Duke Energy and other power plant owners in California provide RMR service to the CAISO by dispatching designated units at the direction of the CAISO. Duke Energy's RMR Agreement with the CAISO authorizes the CAISO to call on Duke Energy's generation units to provide specified levels of service and requires the CAISO to make specified payments to Duke Energy. Under section 5.2.8 of the CAISO's Tariff, costs payable by the CAISO under the RMR Agreement are passed through to PG&E, the utility in whose service territory the generating unit is located.

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[1] Subsequent to the instant filing, LS Power Generation, LLC acquired the ownership interests in Duke Energy. The Commission accepted a notice of succession and revised RMR Agreement to reflect the name change from Duke Energy Oakland, LLC to LSP Oakland, LLC. *See LSP Oakland, LLC and LSP South Bay, LLC*, Docket No. ER06-1073-000 (August 23, 2006) (unpublished letter order).

[2] *Duke Energy Oakland, LLC*, 114 FERC ¶ 61,063 (2006) (Settlement Order).

3. On October 29, 2004, in Docket No. ER05-115-000, Duke Energy submitted revisions to its RMR Agreement reflecting updated costs for providing RMR service for 2005. Duke Energy included revisions to the annual fixed revenue requirement and to the depreciation and mortality statistics. By order issued January 6, 2005, the Commission accepted and suspended Duke Energy's filing, made it effective subject to refund, and established hearing and settlement judge procedures.[3] On November 30, 2005, Duke Energy, the CAISO, PG&E, and the CEOB filed a settlement that resolved outstanding issues. On January 23, 2006, the Commission approved the settlement and directed that refunds be made. On May 2, 2006, Duke Energy submitted a refund report that summarizes the amounts that Duke Energy refunded to the CAISO and ultimately to PG&E.

Notice of Filing and Responsive Pleadings

4. Notice of Duke Energy's filing was published in the *Federal Register*, 71 Fed. Reg. 37,930 (2006), with interventions and protests due on or before July 6, 2006. PG&E filed a timely motion to intervene and protest.

5. In its protest, PG&E agrees that Duke Energy correctly calculates the refund amounts for the RMR charges that were at issue in this docket and resolved by the settlement – *i.e.*, the determination of Duke Energy's annual fixed revenue requirement and the depreciation of Duke Energy's units.

6. PG&E argues, however, that Duke Energy's calculation of the total refund due to the CAISO is inaccurate because Duke Energy incorrectly double-counts its startup fuel costs and uses inappropriate market prices to calculate the Scheduling Coordinator credit. According to PG&E, the inaccurate calculation results in a smaller refund to the CAISO and thus to PG&E.

7. PG&E acknowledges that its concerns regarding the refund calculation are not an issue in this docket. In order to permit PG&E the opportunity to resolve these issues with the CAISO, PG&E requests that the Commission find that its acceptance of the refund report does not bar PG&E in any way, including under the filed rate doctrine, from pursuing its existing dispute with Duke Energy and the CAISO with regard to these RMR invoices or the underlying methodology for performing the RMR refund calculations.

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[3] *Duke Energy Oakland, LLC*, 110 FERC ¶ 61,005 (2005).

8. In the alternative, PG&E states that, if the Commission finds that Duke Energy's miscalculation of the RMR refund amount raises issues in this docket and that its acceptance of the refund report would extinguish PG&E's right to obtain correction of the errors,[4] then PG&E requests that the Commission reject Duke Energy's refund report for 2005 and require it to file a revised refund report that properly calculates the total refund due to the CAISO (including use of the appropriate factors for startup fuel costs and Scheduling Coordinator credits).

Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motion to intervene serves to make PG&E a party to this proceeding.

B. Commission Determination

10. The Commission accepts Duke Energy's refund report, as filed. As PG&E concedes, its concerns with the calculation of the RMR invoices due to alleged inappropriate startup fuel costs and Scheduling Coordinator credits are not at issue in this docket. We note, moreover, that PG&E also concedes that Duke Energy otherwise has correctly calculated the refund amounts for the charges that were at issue in this docket and resolved by the settlement.

11. PG&E acknowledges that it is using the dispute resolution procedures provided in the CAISO's Tariff to resolve its concerns with the calculation of the RMR invoices, and startup fuel costs and Scheduling Coordinator credits. We find that is the appropriate venue for resolution of these issues in the first instance. If PG&E is not satisfied with the resolution of these issues upon completion of the dispute resolution procedures, it may file a complaint or pursue such other relief that it believes is appropriate.[5]

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[4] PG&E states that it is currently using the CAISO Tariff's dispute resolution procedures to address its concerns.

[5] We do not pre-judge here whether or not PG&E's claims are correct, and whether or not a PG&E complaint or other request for relief would properly lie.

The Commission orders:

Duke Energy's refund report is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.