

102 FERC ¶ 61, 099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell

Pacific Gas and Electric Company

Docket No. ER03-94-000

ORDER ACCEPTING AND SUSPENDING PROPOSED REVISIONS TO
RELIABILITY MUST-RUN AGREEMENTS AND ESTABLISHING HEARING AND
SETTLEMENT PROCEDURES

(Issued January 30, 2003)

1. In this order, the Commission accepts for filing and suspends for a nominal period proposed revisions by Pacific Gas and Electric Company (PG&E) to its Reliability Must-Run Agreements (RMR Agreements) with the California Independent System Operator Corporation (CAISO).¹ The order also sets the revisions for hearing, but holds the hearing in abeyance, to allow the parties time to press forward with their ongoing settlement discussions. In addition, the order allows the Schedule F and annual update changes to become effective on January 1, 2003, subject to refund. The order benefits customers by allowing PG&E to continue providing must-run generation to CAISO while permitting the parties to resolve their disagreements through settlement negotiations.

¹The RMR Agreements follow a generic, standard form that was agreed to as part of a settlement approved by the Commission in a letter order issued on May 28, 1999. California System Operator Corporation, et al., 87 FERC ¶ 61,250 (1999). The RMR Agreements provide the rates, terms, and conditions for RMR service.

The RMR Settlement requires that, whenever CAISO extends the terms of an RMR Agreement for an additional calendar year, the owner of a designated RMR unit must file with the Commission (in an informational filing and a rate filing) updates to certain rates and terms of service under the RMR Agreement. CAISO has RMR Agreements with PG&E for the Helms Power Plant, the Humboldt Bay Power Plant, the Hunters Point Power Plant, and the San Joaquin Power Plant.

Docket No. ER03-94-000

- 2 -

Background

2. PG&E provides reliability must-run service to CAISO pursuant to its RMR Agreements, which allow CAISO to enhance grid reliability, meet local reliability needs, and manage intra-zonal congestion.
3. On October 30, 2002, PG&E submitted for filing an informational package and annual rate updates to its RMR Agreements with CAISO. PG&E states that the annual rate updates reflect CAISO's renewal of the term of the RMR Agreements for calendar year 2003. Specifically, to comply with Schedule F of the RMR Agreements, PG&E is submitting an informational filing that revises the Annual Fixed Revenue Requirements (AFRRs) and Variable Operation and Maintenance (VOM) rates of the RMR units. Additionally, as contemplated by the RMR Settlement, PG&E is submitting annual updates to: (1) the Contract Service Limits in Schedule A (Humboldt Bay and Hunters Point only); (2) the values in Tables B-1 through B-6 of Schedule B (including the AFRR); and (3) the Pre-paid Start-up Charges in Schedule D (Humboldt Bay only) to the RMR Agreements.
4. PG&E's proposed revisions result in significant rate decreases for RMR costs associated with the Helms Power Plant, the Humboldt Bay Power Plant, and the Hunters Point Power Plant and a small rate increase to the RMR costs for the San Joaquin Power Plant.

Notice, Interventions, and Protests

5. Notice of PG&E's filing was published in the Federal Register, with interventions or protests due on or before November 20, 2002.² A notice of intervention was filed by the California Public Utilities Commission (California Commission) and timely motions to intervene were filed by the California Electricity Oversight Board (CEOB) and CAISO.
6. The California Commission, CAISO, and CEOB (collectively, Joint Protesters) also jointly filed a protest to PG&E's filing. While acknowledging that PG&E's filing proposes significant reductions in its AFRRs for the 2003 calendar year when compared to those in calendar year 2002, the Joint Protesters state that PG&E's filing still overstates PG&E's actual and justified AFRRs. The protest identifies six problems with PG&E's

²67 Fed. Reg. 68,591 (2002). This date subsequently was extended to December 16, 2002.

filing: (1) PG&E's change in accounting basis is improper; (2) PG&E's tax treatment of accumulated deferred income taxes is improper; (3) PG&E does not justify its claimed decommissioning costs for its Hunters Point plant; (4) PG&E has proposed substantial and unjustified increases to its O&M costs for its Hunters Point plant; (5) PG&E has not provided adequate information on its claimed A&G costs for all RMR units; and (6) PG&E has overstated the values of Maximum Net Dependable Capacity for the San Joaquin units.

7. In addition to the substantive concerns, the Joint Protesters also have concerns about the manner in which PG&E has aggregated some of its rates. The Joint Protesters state that the level of aggregation does not match the physical level of aggregation at PG&E's RMR facilities. Therefore, the Joint Protesters state that rates set forth in the rate sheets do not reflect the rates that will be used for PG&E's statements of availability and invoicing but instead must be re-aggregated for invoicing depending on the facility. Thus, they ask the Commission to require PG&E to provide to the Joint Protesters, within ten days of issuance of its order, revised rate sheets with rates set forth at the level of aggregation that is used for the purpose of invoicing.

8. The Joint Protesters also state that they are working with PG&E to resolve the contested issues. In the absence of a resolution to these issues, however, Joint Protesters request that the revisions be suspended and made effective on January 1, 2003, subject to refund, and that the matter be set for hearing.

Discussion

A. Procedural Matters

9. Under Rule 214 of the Commission's Rules of Practice and Procedure,³ the California Commission's notice of intervention and the timely unopposed motions to intervene of CAISO and CEOB serve to make them parties to this proceeding.

B. Acceptance for Filing and Suspension Period

10. Initially, the Commission notes that the fixed option payment factor (FOPF) contained in Schedule B of the RMR Agreement is the subject of a complaint pending in

³18 C.F.R. § 385.214 (2002).

Docket No. ER03-94-000

- 5 -

Docket No. EL02-20-000⁴ and that the calculation of the hourly availability charges found in Schedule B reflects not only the FOPF, but also the AFFR value. Therefore, any determinations made in this filing are subject to the outcome of Docket No. EL02-20-000.

11. The Joint Protesters' concerns, identified above, raise factual questions that we cannot summarily decide based on the record before us.

12. We also note that the RMR Agreements provide that protests to the informational filing that are not resolved by summary disposition of the Commission should be resolved by Alternative Dispute Resolution procedures in the RMR Agreements.

13. We find that the proposed revisions to the PG&E RMR Agreements have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we accept the proposed revisions to the RMR Agreements for filing, suspend them for a nominal period to be effective January 1, 2003, subject to refund and set the proposed revisions for hearing.

14. The parties have stated that they are engaged in ongoing negotiations to expeditiously resolve the outstanding issues. We, therefore, will hold the hearing in abeyance to permit the parties to continue their settlement negotiations.

C. Aggregation of Rates

15. With respect to the Joint Protesters concern regarding the aggregation of rates, inasmuch as the parties are engaged in ongoing settlement discussions on the various rate issues, we additionally direct PG&E and CAISO to address the data aggregation issue as part of those discussions. If the parties are unable to reach agreement on this issue, we will direct that this issue be addressed at the hearing ordered below.

⁴On November 13, 2001, the California Commission, CEOB, and CAISO filed a complaint under section 206 of the Federal Power Act, 16 U.S.C. § 824e (2002), which is presently pending before the Commission. The complaint asks the Commission to institute a proceeding to investigate the fixed option payment (FOP) payable by the California ISO under certain RMR Agreements between CAISO and PG&E and establish a refund effective date of January 12, 2002. The FOPF is a percentage of a generating unit's AFRR. The FOP is the product of the FOPF and the AFRR.

The Commission orders:

(A) PG&E's revisions to its RMR Agreements with CAISO are hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2003, subject to refund and subject to the outcome of Docket No. EL02-20-000.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed revisions to the RMR Agreements. As discussed in the body of this order, the hearing shall be held in abeyance to provide time for the parties to resolve the outstanding issues.

(C) Within 60 days of the date of this order, the parties shall file a report with the Commission and the Chief Judge on the status of their negotiations and identify the issues that they have resolved through negotiation, and any issues that remain unresolved. Based on this report, the Chief Judge shall provide the parties with additional time to continue their efforts, or if appropriate, provide for a formal hearing by assigning the case to a presiding judge. If the parties are given additional time to continue their efforts, they shall file a report at least every 30 days thereafter, informing the Commission and the Chief Judge of their progress toward resolving the outstanding issues.

(D) If the discussions between the parties fail, and a formal hearing is to be held, a presiding judge to be designated by the Chief Judge shall convene a conference in this proceeding to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is

Docket No. ER03-94-000

- 7 -

authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

(E) PG&E's rate schedule designations are shown on the Attachment.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Docket No. ER03-94-000

- 8 -

Attachment

Pacific Gas and Electric Company
Rate Schedule Designations
Docket No. ER03-94-000

Effective Date: January 1, 2003

<u>Designation</u>	<u>Description</u>
(1) Third Revised Sheet Nos. 123, 125 and 127 to FERC Rate Schedule No. 207 (Supersedes Substitute Second Revised Sheet Nos. 123, 125 and 127)	RMR Rate Sheets - Helms Power Plant
(2) Third Revised Sheet Nos. 123, 125, 128, 129 and 156 to FERC Rate Schedule No. 208 (Supersedes Substitute Second Revised Sheet Nos. 123, 125, 128, 129 and 156)	RMR Rate Sheets - Humboldt Power Plant
(3) Fourth Revised Sheet Nos. 122, 124, 127, and 128 to FERC Rate Schedule No. 209 (Supersedes Substitute Third Revised Sheet Nos. 122, 124, 127 and 128)	RMR Rate Sheets - Hunters Point Power Plant
(4) Third Revised Sheet Nos. 127, 130 and 131 to FERC Rate Schedule No. 211 (Supersedes Substitute Second Revised Sheet Nos. 127, 130, and 131)	RMR Rate Sheets - San Joaquin Power Plant