

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION  
103 FERC ¶ 61,376

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

Pacific Gas and Electric Company

Docket No. ER03-708-000

ORDER ACCEPTING FOR FILING AND SUSPENDING REVISIONS TO  
RELIABILITY MUST-RUN AGREEMENTS AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 30, 2003)

1. On April 4, 2003, Pacific Gas and Electric Company (PG&E) filed revised rate schedule sheets under several Reliability Must-Run Service Agreements (RMR Agreements) with the California Independent System Operator Corporation (CA ISO).<sup>1</sup> We accept PG&E's revisions to these RMR Agreements, suspend them for a nominal period, to be effective July 1, 2003, subject to refund, and establish hearing and settlement judge procedures. This order benefits customers because it ensures that local reliability needs will be met, while permitting the parties an opportunity to resolve their disputes through hearing and settlement judge procedures.

**Background**

2. PG&E, and other RMR plant owners, provide services to the CA ISO on an as-needed basis, pursuant to RMR Agreements on file with the Commission. The terms of these Agreements require updates to capital items costs, among other things.

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<sup>1</sup>The RMR Agreements are contained in the following PG&E Rate Schedules on file with the Commission: Helms Power Plant (Helms), PG&E First Revised Rate Schedule FERC No. 207; Humboldt Power Plant (Humboldt), PG&E First Revised Rate Schedule FERC No. 208; Hunters Point Power Plant (Hunters Point), PG&E First Revised Rate Schedule FERC No. 209; and San Joaquin Power Plant (San Joaquin), PG&E First Revised Rate Schedule FERC No. 211.

3. In the instant filing, PG&E filed revised rate schedule sheets under four separate rate schedules to recover the capital expenditures for various large and small projects on certain generating units that are now constructed and operational. PG&E proposes to recover the total capital costs of these projects, \$33,302,937, by applying a carrying charge rate of 17.45%,<sup>2</sup> for an annual revenue requirement of \$5,811,362,<sup>3</sup> which is billed as a surcharge under each RMR Agreement in addition to the base RMR rates. PG&E acknowledges that, with respect to small projects, PG&E and the CA ISO reached an impasse on whether approval for such projects had been granted by the CA ISO at the proper time. PG&E requests an effective date of July, 1, 2003 for the proposed rate schedule revisions.

### Notice and Pleadings

4. Notice of PG&E's filing was published in the Federal Register, 68 Fed. Reg. 18,611 (2003), with protests or interventions due on or before April 25, 2003. The City and County of San Francisco (San Francisco) filed a timely motion to intervene raising no substantive issues. The California Electricity Oversight Board (California Board) and the CA ISO (collectively, Intervenors) filed timely motions to intervene and protests. On May 12, 2003, PG&E filed an answer to these protests.

5. Intervenors argue that PG&E's filing is so disorganized and lacking in detail that they cannot identify the projects that are the basis for the rate revisions. Specifically, Intervenors find it difficult to verify whether certain small projects were, in fact, presented for review and approved by the CA ISO. Moreover, Intervenors question the appropriateness of certain capital items for which PG&E is requesting rate recovery, as well as PG&E's interpretation and application of certain provisions under the RMR Agreements, the Settlement, and purported resolutions reached at a May 30, 2002

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<sup>2</sup>PG&E states that the 17.45% carrying charge is based on a ten-year depreciable life, as specified in Section A of Article VII of a Settlement Agreement (Settlement) approved in 1999 that, among other things, serves as a basis for implementing rate schedule changes to reflect the recovery of capital expenditures.

<sup>3</sup>The total capital costs (\$33,203,937) are the aggregate amount of capital expenditures for all four plants. This amount is multiplied by the carrying charge (17.45%) and the current Fixed Option Payment Factor, and then divided by either each hydro facility or fossil unit's target available hours to arrive at an hourly capital item charge.

meeting in Folsom, California (Folsom Meeting) between RMR facility owners, California regulators, and the CA ISO.

6. In particular, with respect to the approval process for small projects (*i.e.*, projects less than \$500,000) under Section 7.4 of the RMR Agreement, the California Board raises three substantive issues: (1) whether small projects require justification and approval in the same level of detail as large projects, (2) whether a new small project may be substituted for a previously approved small project, and (3) whether small projects are required to be completed in the Contract Year for which the capital item funds were approved.<sup>4</sup> Accordingly, the California Board argues that PG&E's proposed cost recovery of certain capital expenditures have not been approved by the CA ISO, and thus, are not eligible expenditures for cost recovery.

7. The CA ISO also generally protests the inclusion of certain capital projects in the rates of these RMR Agreements. The CA ISO states that it cannot discern which of the projects meet the following criteria that, if met, would be acceptable: (1) the capital items were approved by the CA ISO in approval letters, (2) the actual costs of the item did not exceed the approved amount by more than either 10 percent of the cost of the project, or \$50,000, whichever is smaller, and (3) the capital items and their review and approval by the CA ISO are adequately described and documented, such that the CA ISO can verify that inclusion of the costs in the RMR rates is appropriate.<sup>5</sup>

8. Intervenors request that the Commission reject the filing, or in the alternative, set the filing for hearing to provide for discovery and establish a refund effective date.

## **Discussion**

### **Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene of San Francisco, the CA ISO and the California Board serve to make them parties to this proceeding.

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<sup>4</sup>We note that Intervenors did not object to the process itself, as described under the Settlement and the RMR Agreements, or the variables used to compute the surcharge.

<sup>5</sup>In its protest, CA ISO did not provide us with a composite list of approved projects.

10. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,<sup>6</sup> an answer may not be made to a protest unless otherwise permitted by the decisional authority. As we are not persuaded to allow PG&E's answer to the protests of the CA ISO and the California Board, we will reject it.

### **Commission's Findings**

11. Intervenors do not object to the inclusion of capital expenditures that received prior approval from the CA ISO, in accordance with the provisions of the RMR Agreements. However, Intervenors claim that a significant portion of PG&E's filing includes capital expenditures for projects that were not properly approved. For instance, PG&E submitted a request for approval of capital projects to be initiated in 1999 to the CA ISO via email.<sup>7</sup> PG&E claims that all capital projects forecasted to be initiated in 1999 were implicitly approved because the CA ISO did not reply to this email as required by Section 7.4(c) of the RMR Agreement, which states that "[if] the [California] ISO fails to provide notice within such 60 day period, all Capital Items included in the final report shall be deemed approved as proposed by Owner."

12. The CA ISO argues that it did not respond to PG&E's approval request because PG&E sent its email to the wrong person – not the responsible person listed in Schedule J of the RMR Agreement. Additionally, according to the CA ISO, the approval request was not submitted in the appropriate form or at the appropriate location as required by Section 14.1 of the RMR Agreement.

13. In addition, Intervenors object to the conclusions drawn by PG&E after attending a Capital Additions Process Meeting in Folsom, CA, on May 30, 2000, with the CA ISO, other RMR Owners, and representatives from the Public Utilities Commission of California and the California Board. PG&E asserts that a settlement was reached to govern procedures for requesting and obtaining capital item approval, especially as it relates to small projects. Intervenors disagree and argue that, according to the terms of the RMR Agreements, any such settlement would be subject to Commission approval before it could be executed. In a letter to PG&E, dated October 21, 2002, the CA ISO stated that, "[the] ISO is willing to discuss [certain] items further to seek an agreement regarding the appropriate Capital Item Surcharges to include in rates for each facility . . . ."

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<sup>6</sup>See 18 C.F.R. § 385.213 (a)(2)(2002).

<sup>7</sup>See Attachment 4, part A, page 1 of PG&E's filing.

14. PG&E's filing substantially complies with the threshold filing requirements of Section 35.13 of the Commission's regulations and, therefore, the Intervenor's request for summary rejection of the filing is denied.

15. Our preliminary review indicates that PG&E's proposed revisions have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In West Texas Utilities Company, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary review indicates that the proposed rates may be unjust and unreasonable, but not substantially excessive, we would generally impose a nominal suspension. Here, our preliminary review suggests that the proposed rate schedule changes that reflect a surcharge for capital items that have now been completed and placed into service may not yield substantially excessive revenues. Moreover, Intervenor's have not contested the proposed effective date. Accordingly, we will accept the revised rate schedules for filing, suspend them for a nominal period, to become effective on July 1, 2003, subject to refund, and set the matter for hearing.

16. We believe that the issues raised by the Intervenor's may best be resolved between the parties, especially since the CA ISO has expressed a willingness to negotiate. Therefore, in order to assist the parties in resolving this matter, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>8</sup> If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise, the Chief Administrative Law Judge will select a judge for this purpose.<sup>9</sup> The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

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<sup>8</sup>18 C.F.R § 385.603 (2003).

<sup>9</sup>If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. The Commission's website contains a listing of the Commission's judges and a summary of their background and experience ([www.ferc.fed.us](http://www.ferc.fed.us) - click on Office of Administrative Law Judges).

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The Commission orders:

(A) PG&E's revisions to the RMR Agreements are hereby accepted for filing and suspended for a nominal period, to become effective July 1, 2003, subject to refund, as discussed in the body of this order.

(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, we will hold the hearing in abeyance to provide time for settlement judge procedures.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

(D) Within 60 days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If the settlement judge procedures fail, and a trial-type evidentiary 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

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presiding judge is 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.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.