

UNITED STATES OF AMERICA 105 FERC ¶ 61,386  
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket Nos. ER04-142-000  
ER04-143-000

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

(Issued December 29, 2003)

1. In this order, the Commission accepts for filing and suspends for a nominal period proposed revisions by Pacific Gas and Electric (PG&E) to its Reliability Must-Run Agreements (RMR Agreements)<sup>1</sup> with the California Independent System Operator Corporation (CAISO) for the Helms Power Plant (Helms), Humbolt Bay Power Plant (Humbolt Bay), Hunters Point Power Plant (Hunters Point), San Joaquin Power Plant, and Kings River Watershed (King's River).<sup>2</sup> The order also sets the matter for hearing but holds the hearing in abeyance, so that the parties may continue their current settlement discussions. This order benefits customers because it allows PG&E to continue providing must-run generation to the CAISO while encouraging the parties to resolve their disagreements through direct settlement negotiations.

**I. Background**

2. RMR Agreements provide the rates, terms, and conditions by which PG&E and other power plant owners in California provide RMR service to the CAISO by

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<sup>1</sup> PG&E's 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. See *California System Operator Corporation, et al.*, 87 FERC ¶ 61,250 (1999) (RMR Settlement Agreement).

<sup>2</sup> Because these facilities must operate at certain times for the reliability of the transmission grid, they are referred to as RMR units.

dispatching designated units at certain power plants at the direction of the CAISO. These agreements require that, whenever the 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 Agreements.

3. The CAISO designated PG&E's facilities for RMR service for the 2004 calendar year (Year 2004). As a result of that designation, on October 31, 2003, pursuant to Schedule F of the RMR Agreements,<sup>3</sup> PG&E submitted, in Docket No. ER04-142-000, an informational filing (Informational Filing) that updates cost information used in determining the Annual Fixed Revenue Requirements (AFRRs) for the Year 2004. On that same day, PG&E filed, in Docket No. ER04-143-000, revised rate schedule sheets to the RMR Agreements, pursuant to Section 205 of the Federal Power Act,<sup>4</sup> (Section 205 Filing) reflecting the updated AFRR values contained in the Informational Filing and certain other annual updates provided for in the RMR Agreements. Specifically, PG&E's Section 205 Filing proposes to amend: (1) Schedule A of the RMR Agreements to reflect updated contract service limits (with regard to only the Humbolt Bay and Hunters Point units); (2) Schedule B to reflect the updated AFRR values and associated rates, charges, and supporting data; and (3) Schedule D to reflect updated prepaid start-up charges (with regard to only the Humbolt Bay unit). PG&E seeks an effective date of January 1, 2004 for the Section 205 Filing.

## **II. Notice of Filing and Responsive Pleadings**

4. Notice of PG&E's Informational Filing and Section 205 Filing were published separately in the Federal Register, 68 Fed. Reg. 64,885 (2003), with interventions and protests due on or before November 21, 2003 in both dockets. The Public Utilities Commission of the State of California (CPUC) filed a notice of intervention, the State of California Electricity Oversight Board (EOB) filed a motion to intervene, and the CAISO filed a motion to intervene and protest to both of PG&E's filings.

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<sup>3</sup> Schedule F establishes the procedures and methodology for determining the AFRRs for generating resources designated as RMR Units. Under the terms of the RMR Settlement Agreement, each RMR owner is required to adjust rates annually, using the rate formula set forth in Schedule F of the RMR Agreements. See supra note 1.

<sup>4</sup> 18 U.S.C. § 824d (2000).

### III. The CAISO's Protest

5. The CAISO argues that, in the Informational Filing, PG&E fails to provide adequate supporting data to allow the CAISO to determine whether PG&E has justified the proposed substantial increases to the AFRRs for the Year 2004.<sup>5</sup> In this regard, the CAISO maintains that PG&E does not supply an adequate comparison of the proposed Year 2004 revenue requirements to the prior year's requirements, as required by Article I, Part B of Schedule F. According to the CAISO, the comparison is necessary for it to understand which elements of the Schedule F formula contribute to the increase in the AFRRs from the year 2003 to 2004. Furthermore, the CAISO argues that PG&E's Informational Filing proposes substantial and unjustified increases in operation and maintenance (O&M) costs for the RMR units.<sup>6</sup>

6. With regard to PG&E's Section 205 Filing, the CAISO argues that PG&E does not provide sufficient data regarding the calculation of the Targeted Available Hours (TAHs), in Table B-5 of Schedule B, for each of the RMR units, which would allow the CAISO to determine the accuracy and reasonableness of the TAHs. The CAISO also notes that the Section 205 filing includes annual rate updates for charges to the CAISO that are calculated using the AFRRs proposed in PG&E's Informational Filing. As discussed above, the CAISO claims that these AFRRs are not properly justified in the Informational Filing. Therefore, to the extent that these costs are used to calculate the proposed rates in the Section 205 Filing, the CAISO states the rates are unjust and unreasonable.

7. According to the CAISO, the Commission's regulations require that a filing for a rate schedule change include supporting information and that such a filing is deficient absent that information or waiver of the Commission's regulations for such information.<sup>7</sup> Therefore, based on PG&E's failure to provide supporting data in the Informational Filing and the Section 205 Filing, the CAISO asks that the Commission issue a deficiency letter requiring PG&E to file such data. In the alternative, the CAISO requests that the Commission suspend the rates subject to hearing. If the

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<sup>5</sup> For example, the CAISO states that there is a 47% (\$5.2 million) increase over the AFRRs for the Year 2004 for Humboldt Bay when compared with the AFRRs for that unit for the 2003 calendar year.

<sup>6</sup> For instance, the CAISO states that O&M costs increased from \$7.0 to \$10.1 million for the Helms unit and from \$5.8 to \$9.8 million for the Humboldt Bay unit.

<sup>7</sup> See CAISO Protest at 5 (citing 18 C.F.R. § 35.5 (2003)).

Commission suspends the rates, the CAISO asks that the hearing be held in abeyance until January 5, 2004 to give the parties time to resolve the outstanding issues.<sup>8</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the CPUC's notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

##### **B. The Commission's Response**

9. The CAISO's concerns, which are identified above, raise factual questions concerning PG&E's Section 205 Filing that we cannot summarily decide on the record before us. Based on our review of that filing, we find that PG&E's proposed revisions to its RMR Agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we accept the proposed revisions to the RMR Agreements for filing, suspend them for a nominal period, to become effective January 1, 2004, subject to refund, and set the proposed revisions for hearing.

10. The parties have stated that they are engaged in ongoing negotiations to expeditiously resolve the outstanding issues.<sup>9</sup> Thus, we will hold the hearing in abeyance to permit the parties to continue their settlement negotiations.

#### **The Commission orders:**

(A) PG&E's Section 205 Filing is hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2004, 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

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<sup>8</sup> According to the CAISO, the EOB and the CAISO have been engaged in informal discovery and discussions with PG&E in order provide them the additional data that they need from PG&E to make a determination that the filings are consistent with the RMR Agreements.

<sup>9</sup> See supra note 8.

Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and 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 the negotiations and identify the issues that they have resolved through negotiations, 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 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) The rate schedule designations are shown in the Enclosure.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

Pacific Gas and Electric Company  
Docket No. ER04-143-000  
Rate Schedule Designations  
Effective Date: January 1, 2004

Designation	Description
(1) First Revised Sheet No. 125A; Third Revised Sheet No. 126; Fourth Revised Sheet Nos. 123 and 127; Fifth Revised Sheet No. 125 First Revised Rate Schedule FERC No. 207	Amendments to the Rate Schedule under the Reliability Must-Run Service Agreement with the California Independent System Operator for the Helms Power Plant
(2) Third Revised Sheet No. 127; Fourth Revised Sheet Nos. 123, 125, 129 and 156; Sixth Revised Sheet No. 128 First Revised Rate Schedule FERC No. 208	Amendments to the Rate Schedule under the Reliability Must-Run Service Agreement with the California Independent System Operator for the Humbolt Bay Power Plant
(3) Second Revised Sheet Nos. 126A and 127A; Fourth Revised Sheet No. 126; Fifth Revised Sheet Nos. 122, 124 and 128; Seventh Revised Sheet No. 127 First Revised Rate Schedule FERC No. 209	Amendments to the Rate Schedule under the Reliability Must-Run Service Agreement with the California Independent System Operator for the Hunters Point Power Plant
(4) First Revised Sheet Nos. 127A, 129A, 130A and 131A; Third Revised Sheet No. 129; Fourth Revised Sheet Nos. 127 and 131; Sixth Revised Sheet No. 130 First Revised Rate Schedule FERC No. 211	Amendments to the Rate Schedule under the Reliability Must-Run Service Agreement with the California Independent System Operator for the San Joaquin Power Plant

(5) Original Sheet No. 136A: First  
Revised Sheet Nos. 136, 138 and  
140  
First Revised Rate Schedule  
FERC No. 226

Amendments to the Rate Schedule under  
the Reliability Must-Run Service  
Agreement with the California  
Independent System Operator for the  
Kings River Power Plant