

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Pacific Gas and Electric Company

Docket No. ER03-708-000

**MOTION TO INTERVENE AND PROTEST OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 18 C.F.R. §§385.211 and 385.214 and the Commission's April 9, 2003 Notice of Filing in this matter, the California Independent System Operator Corporation ("CA ISO") hereby files a motion to intervene and protest in this proceeding. The CA ISO protests the inclusion by PG&E of the costs of capital items that have not been properly reviewed and approved by the CA ISO in accordance with the RMR Agreements, into the rates under the agreements.

Further, the Capital Item Filing is so disorganized and lacking in detail in some instances, that the CA ISO cannot adequately identify the projects that provided the basis for the rate increases, and cannot verify whether the projects were in fact properly presented for review, and approved. Thus, the CA ISO also protests the inclusion into rates under the RMR Agreements of the costs for projects that are not sufficiently well identified in the Capital Item Filing, with adequate demonstration of CA ISO review and approval.

The CA ISO does not protest the inclusion of costs for specific capital items, to the extent the specific capital items meet the following three criteria: (i) the capital items were approved by the CA ISO in approval letters contained in the Capital Item Filing, (ii)

the actual costs did not exceed the approved amounts by more than either ten (10) percent of the cost of the project, or 50,000 dollars, whichever is smaller, and (iii) the capital items and their review and approval by the CA ISO are adequately described and documented in the Capital Item Filing, such that the CA ISO can verify that inclusion of the costs in RMR rates is appropriate.

Because the Capital Item Filing is so disorganized, the CA ISO requests that the Commission reject the filing and direct PG&E to re-file or amend its filing such that each capital item is separately listed with a proper Capital Item Project No., and its presentation to the CA ISO and approval by the CA ISO (of the specific project presented) is clearly documented. In the alternative, the CA ISO requests the Commission to set the filing for hearings and provide for discovery so that the CA ISO can obtain the documentation it requires to properly assess the filing. Finally, the CA ISO urges that if the Commission accepts the rates proposed by PG&E it should do so subject to hearing and subject to refund, and it should establish the effective date as the refund date.

In support thereof, the CA ISO states as follows:

I. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

<p>Jeanne M. Solé* Regulatory Counsel Charles Robinson, Vice President and General Counsel The California Independent System Operator Corporation 151 Blue Ravine Road Folsom, CA 95630 Tel: (916) 351-4400 Fax: (916) 608-7222</p>	<p>J. Phillip Jordan* Rebecca A. Blackmer Swidler Berlin Shereff Friedman, LLP 3000 K Street, N.W., Suite 300 Washington, DC 20007 Tel: (202) 424-7500 Fax: (202) 424-7643</p>
<p>Deborah A. Le Vine¹ Director of Contracts The California Independent System Operator Corporation 151 Blue Ravine Road Folsom, CA 95630 Tel: (916) 351-4400 Fax: (916) 608-7222</p>	

* Individuals designated for service pursuant to Rule 203(b)(3), 18 C.F.R. § 203(b)(3).

II. BASIS FOR MOTION TO INTERVENE

The CA ISO is a non-profit public benefit corporation organized under the laws of the State of California and responsible for the reliable operation of a grid comprising the transmission systems of a number of public utilities including Pacific Gas & Electric Company (“PG&E”), as well as for the coordination of the competitive Ancillary Services and real-time electricity markets in California. As the counter party in the Reliability Must Run (“RMR”) Agreements governing PG&E’s provision of RMR services, the CA ISO has a unique interest in any Commission proceeding concerning proposed charges under those RMR Agreements. Accordingly, the CA ISO has a direct and substantial

¹ In addition to Ms. Solé and Mr. Jordan, the CA ISO respectfully requests that Ms. Le Vine be included in the Official Service List. Ms. Solé and Ms. Le Vine work in separate buildings, and it would be of significant assistance to the CA ISO if both were included on the list.

interest in the proposed rate changes and requests that it be permitted to intervene in this proceeding with full rights of a party.

III. BACKGROUND

On April 4, 2003, PG&E tendered for filing revisions to its RMR Agreements with the CA ISO for Helms Power Plant (“Helms”), Humboldt Power Plant (“Humboldt”), Hunters Point Power Plant (“HPPP”) and San Joaquin Water Power Plant (“San Joaquin”) (collectively “Capital Item Filing”). According to PG&E, the filing revises portions of the Rate Schedules related to the RMR Agreements to recognize capital items placed in service pursuant to the terms of the RMR Agreements during the 1999 through 2001 Contract Years. According to PG&E, the filing would adjust values in the Schedule B, “Monthly Option Payment”, as follows: Table B-2, Hourly Capital Item Charges; Table B-4, Hourly Surcharge Penalty Rates. On April 9, 2003, the Commission issued a Notice of Filing setting April 25, 2003 as the comment date.

The RMR Agreements set forth in Article 7 a process for the approval of capital items by the CA ISO. CA ISO approval is required before the cost of capital items can be recovered through the RMR Agreements. Among the capital items that provide the basis for the Capital Item Filing there are some which have been reviewed and approved by the CA ISO and some which have not been reviewed or approved by the CA ISO.

IV. PROTEST

The CA ISO protests the recovery by PG&E under the RMR Agreements for the costs of capital items that have not been properly reviewed and approved by the CA ISO in accordance with the agreements. Further, the Capital Item Filing is so

disorganized and lacking in detail in some instances, that the CA ISO cannot adequately identify the projects that provided the basis for the rate increases, and thus, cannot verify whether the projects were in fact properly presented for review, and approved. Thus, the CA ISO also protests the inclusion into rates under the RMR Agreements of the costs for projects that are not sufficiently well identified in the Capital Item Filing, with adequate demonstration of CA ISO review and approval.

The CA ISO does not protest the inclusion of costs for specific capital items, to the extent the specific capital items meet the following three criteria: (i) the capital items were approved by the CA ISO in approval letters contained in the Capital Item Filing, (ii) the actual costs did not exceed the approved amounts by more than either ten (10) percent of the cost of the project, or 50,000 dollars, whichever is smaller, and (iii) the capital items and their review and approval by the CA ISO are adequately described and documented in the Capital Item Filing, such that the CA ISO can verify that inclusion of the costs in RMR rates is appropriate.

In addition and more specifically, the CA ISO further objects to certain representations and positions by PG&E in the Capital Item Filing as follows:

- 1) PG&E claims that it may use funds approved for certain capital items for other capital items that have not been reviewed or approved by the CA ISO. The CA ISO disagrees that RMR Owners can use funds that have been approved for one capital item for other capital items that have not been reviewed and approved by the CA ISO. There is no basis in the RMR Agreements for this interpretation. PG&E provides as the basis for its position, the notes that Bill Gavelis made following a May 30, 2000, meeting during which various RMR Agreement stakeholders discussed a number of proposals

for implementation of the capital item provisions of the RMR Agreements. PG&E claims, based on these notes, that approved project amounts maybe expended on any capital item even if the CA ISO has not approved it. These notes are simply the PG&E perspective of the May 30, 2000 meeting and they do not reflect the views of all in attendance. Moreover, the RMR Agreement is clear that any amendment to the RMR Agreement must be made in writing, must be duly executed by both Parties, and in the case of RMR Agreements with PG&E, are subject to Commission approval. See section 14.3 of the RMR Agreements. Thus, it is the text of the RMR Agreements, and not PG&E's unilateral notes of a meeting, that govern the rules for the recovery of capital item costs under the RMR Agreements, and the interpretation of these rules. The same comment applies to all other suggestions in the Capital Item Filing that PG&E's failure to comply with the requirements of the RMR Agreements is based on informal meetings or discussions.

2) PG&E claims that 1999 Contract Year capital additions should be deemed approved because PG&E did not receive a response for these projects from the CA ISO. The CA ISO disagrees. The Capital Item Filing claims that all the capital items presented in 1999 were deemed approved because the CA ISO did not reply to the Capital Item Report as required by Section 7.4 of the RMR Agreement within 60 days of receiving the report. The CA ISO did not reply because the responsible person listed in Schedule J did not receive the report in either the form or at the location as required by Section 14.1 of the RMR Agreement. The proof presented in the filing is a copy of an email sent to 'Tlarson@caiso.com' on May 12, 1999. Email is not an accepted form of delivery according to Section 14.1 and 'Tlarson@caiso.com' has never been a notice

party for the CA ISO under the RMR Agreement. As such, none of the capital items for the 1999 Contract Year are properly approved, and therefore all the 1999 capital item costs included in the Hourly Capital Item Surcharge rates that rely on the deemed approval should be rejected. The CA ISO may be willing to approve these projects, if they are properly presented for approval to the CA ISO and can be justified pursuant to the RMR Agreements.

3) PG&E seeks recovery for several large capital items, and appears to include the cost of additional scope of work in capital item surcharge amounts that were not part of the approved capital items and that were never presented for review and approval by the CA ISO. To the extent additional work and associated costs have not been approved by the CA ISO, the costs should not be included in rates under the RMR Agreements. In fact, the lack of organization and detail in the Capital Item Filing makes it difficult for the CA ISO to verify the scope of work that was approved as to some capital items. Supporting L-1 forms for capital items submitted and approved for the 2000 Contract Year were provided; however, the Capital Item Filing did not contain this important back up documentation for the capital items submitted and approved in 2001. This documentation is required to determine the scope of work associated with the approved amount and to enable a verification of the cost elements that PG&E has included in the capital item surcharge rates. (To make matters even more confusing, PG&E has provided supporting documentation for capital items for plants they no longer own: Attachment 4, part A, pages 8-9, Geysers Power Plant, Unit 14, new drift tower eliminators; Attachment 4, part A, page 22-24, Potrero Power Plant, Unit 3, FGR Retrofit.)

4) PG&E's requests for recovery for Small Projects is deficient in several ways. First, PG&E included items as "Small Projects-Reliability" or "Small Projects-Other" under the notion that the estimates from previous years automatically carry forward into the next Contract Year. There is no basis in the RMR Agreement to automatically carry forward to subsequent years budgets approved for prior years and for different projects. The CA ISO has had difficulties even identifying many of these projects specifically. The Capital Item Filing does not provide adequate documentation to relate the actual projects listed as completed in Attachment 6 of the Capital Item Filing to the projects listed as approved by the CA ISO in Attachment 4. In fact, it appears that in many instances, PG&E has included the cost of projects that were completed prior to any review and approval of any capital items, such as all projects listed in Attachment 6 with operation dates prior to 1999.

Further, PG&E's Small Capital Projects comprise roughly a quarter of PG&E's budget for capital items. While the RMR Agreements could be interpreted to provide for some aggregation for processing of small capital projects costing less than \$50,000, wholesale aggregation is clearly inappropriate for projects costing more than \$50,000 and in any event the significant amount of costs that are comprised by small capital items calls for additional information to verify that the expenditures are appropriate.

5) Even for major projects, PG&E has carried forward unused amounts approved for a particular contract year into future years assuming that if they did not perform a project or portion of a project that the amounts could be expended in future years. However, the RMR Agreements provide in Section 7.4(b) that "proposed Capital

Items for the next Contract Year” are to be submitted by the Owner for review and approval.

6) The CA ISO does not believe that hydro re-licensing costs should be recovered through the capital item Surcharge Payment. The CA ISO did approve hydro re-license projects for many of the hydro electric plants in the San Joaquin Watershed. However, the expenses for these projects should be recovered under Schedule F of the RMR Agreements, unless PG&E proves that these expenses have not been included in Schedule F. License expenses may be recorded in FERC account 404 and included as an amortization expense in Schedule F Schedule F, Part B, Section 2 (B) Depreciation Expenses, item (4) General and Intangible Plant Depreciation. PG&E has not demonstrated that those costs have not been included in the rates through Schedule F; therefore, if the expenses are being recovered through Schedule F, inclusion of the expenses as Capital Items would constitute a double charging and rates that are unjust and unreasonable.

7) The proposed capital item surcharges proposed for the Helms and San Joaquin facilities are presented on an aggregate basis for each facility rather than on a unit-by-unit basis. This presentation is not consistent with the payment basis for each facility that sets forth specific charges for each unit at the facility. Further, in many cases, the capital items are specific to particular units at the facility and PG&E has spread the rates for such capital items to all units at the facility rather than assigning the project cost to the unit to which the capital item is associated.

Moreover, the level of aggregation does not match the physical level of aggregation at PG&E's RMR facilities. Accordingly, the rates as 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 disaggregated or re-aggregated for invoicing depending on the facility. In particular, for both the Helms and the San Joaquin facilities, the PG&E Filing presents an aggregated number for key values, which is labeled "All", rather than setting forth unit-by-unit values. Nonetheless, for these facilities some units are metered individually and invoiced individually, and PG&E states the Availability for the units individually. Conversely, in the case of Humboldt, key values are presented on a unit-by-unit basis whereas the units are metered and invoiced in an aggregated fashion. This circumstance has existed in the past as to the Hourly Availability Charges. To address it, the CA ISO and PG&E have had agreements for "translating" the rates approved by the Commission into the rates used for invoicing. However, the CA ISO considers that the rates as approved by the Commission should be the same as those used for invoicing without the need for "translation" agreements. The fact that the rates as presented to the Commission for approval do not reflect physical reality and must be changed for invoicing purposes makes it difficult for the CA ISO to confirm that rates are just and reasonable and to verify the rates used for invoicing against the rates approved by the Commission. This problem mirrors a problem identified by the CA ISO with PG&E's 2003 rate filings for its RMR Agreements.

8) There are administrative problems with the filing, which makes it even more difficult for the CA ISO to assess the filing and to track CA ISO approved projects and amounts going forward. In particular, PG&E does not provide the Capital Item Project No. in Tables B-2 and B-4 of the revised rate sheets for projects which PG&E is

seeking to place into rates. Further, the filing does not clearly identify the project in-service date.

V. CONCLUSION

For the foregoing reasons, the CA ISO respectfully requests that the Commission permit it to intervene, and that it be accorded full party status in this proceeding.

Further, because the Capital Item Filing is so disorganized, the CA ISO requests that the Commission reject the filing and direct PG&E to re-file or amend its filing such that each capital item is separately listed with a proper Capital Item Project No., and its presentation to the CA ISO and approval by the CA ISO (of the specific project presented) is clearly documented. In the alternative, the CA ISO requests the Commission to set the filing for hearings and provide for discovery so that the CA ISO can obtain the documentation it requires to properly assess the filing. Finally, the CA ISO urges that if the Commission accepts the rates proposed by PG&E it should do so subject to hearing and subject to refund, and it should establish the effective date as the refund date.

Date: April 25, 2003

Respectfully submitted,

Counsel for the California Independent
System Operator Corporation
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By: */s/ Jeanne M. Solé*

Jeanne M. Solé



April 25, 2003

Magalie Roman Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: **Pacific Gas and Electric Company,
Docket No. ER03-708-000**

Dear Secretary Salas:

Enclosed please find an electronic filing in the above-captioned proceeding of the Motion to Intervene and Protest of the California Independent System Operator Corporation. Thank you for your attention to this filing.

Respectfully submitted,

Jeanne M. Solé
Counsel for the California Independent
System Operator Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, CA, on this 25th day of April, 2003.

Jeanne M. Solé