

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 16, 2002

Magalie Roman Salas
Office of the Secretary
Docket Room
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A, East
Washington, D.C. 20002

Re: **Pacific Gas and Electric Company**, Docket No. ER03-94-000

Dear Ms. Salas:

Enclosed for filing in the above-docketed case, please find an original electronic filing of the attached document entitled "**PROTEST OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION, THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, AND THE CALIFORNIA ELECTRICITY OVERSIGHT BOARD**".

Thank you for your cooperation in this matter.

Sincerely,

/s/ Laurence G. Chaset

Laurence G. Chaset
Staff Counsel

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

Pacific Gas and Electric Company

Docket No. ER03-94-000

**PROTEST OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION, THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION, AND THE
CALIFORNIA ELECTRICITY OVERSIGHT BOARD**

Pursuant to 18 C.F.R. §385.211, the California Public Utilities Commission ("CPUC"), the California Independent System Operator Corporation ("ISO"), and the California Electricity Oversight Board ("EOB") (collectively, "Joint Protesters") jointly protest the October 30, 2002 filing herein. In support thereof, the Joint Protesters state as follows:

I. BACKGROUND

On October 30, 2002, Pacific Gas and Electric Company ("PG&E") submitted an informational rate filing proposing rate revisions under its Reliability Must-Run ("RMR") Service Agreements ("PG&E filing").¹ The PG&E Filing relates to RMR Agreements as to the following power plants: Helms Power Plant ("Helms"); Humboldt Bay Power Plant ("Humboldt"), Hunters Point Power Plant ("Hunters Point"); and San Joaquin Watershed

¹ Because the generating units covered by these agreements must operate at certain times for the reliability of the transmission grid, they are referred to as "reliability must-run" or "RMR" units and the agreements covering them are referred to as "RMR Agreements." Other capitalized terms that are not defined in this filing have the same meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

("San Joaquin"). The PG&E Filing was made in compliance with the terms of a settlement agreement approved by the Commission² under which each RMR Owner is required to adjust rates annually, beginning with calendar year 2002, using the rate formula set forth in Schedule F of the RMR Agreement. Schedule F establishes the procedures and methodology for determining the Annual Fixed Revenue Requirements ("AFRRs") and Variable O&M Rates ("VOMRs") for facilities designated for must-run service. The PG&E filing provided updated cost information used in determining the AFRRs and the VOMRs to be effective January 1, 2003.

In addition, pursuant to Section 205 of the Federal Power Act ("FPA"),³ the PG&E Filing also seeks to make certain updates to rates that either 1) result from the new AFRR and VOMRs, or 2) are otherwise provided for on an annual basis in the RMR Agreements. The updates are made to a number of RMR Agreement Schedules including: the Contract Service Limits and Owner's Repair Cost Obligation in Schedule A, the values in Tables B-1 through B-6 in Schedule B, and the Prepaid Start-up Charges in Schedule D.

On November 4, 2002, the Commission issued a "Notice of Filing" setting November 20, 2002, as the final date for interventions and protests in this matter. On November 20, 2002, the CPUC timely filed its intervention in this matter. On November 13 and 14, 2002, the EOB and the ISO timely filed their respective Motions to Intervene in this matter.

On November 14, 2002, the ISO and EOB jointly moved to extend the protest deadline to December 16, 2002. On November 20, 2002, the ISO filed a Provisional

² *California Independent System Operator Corp.*, 87 FERC ¶ 61,250 (1999).

³ 18 USC § 824d.

Protest to preserve its rights in the event the Commission did not extend the deadline to file protests. On November 21, 2002, the Commission issued a Notice of Extension of Time, extending the time for filing protests in this matter to December 16, 2002.

The Joint Protesters are currently engaged in discovery and hope to be able to resolve the outstanding issues with PG&E once this discovery is completed. However, the Joint Protesters have determined that at this time it is more prudent to file this Joint Protest than to request the Commission for an additional extension of the protest deadline. In this way, the Joint Protesters will preserve their rights to litigate any issues that cannot be promptly resolved, while still affording all of the parties an ample opportunity to move this case toward settlement. In this latter regard, the Joint Protesters would request that the Commission defer taking any action in this matter, including but not limited to setting it for a Pre-hearing Conference, until no earlier than April 1, 2003.

II. PROTEST

A. Substantive Concerns

When compared to the AFRRs that have been in effect for calendar year 2002, the PG&E Filing proposes significant reductions in its AFRRs for 2003. However, the Joint Protesters have identified the following specific problems with the PG&E Filing that lead the Joint Protesters to conclude that the AFRRs that PG&E has requested in the PG&E Filing have not been shown to be just and reasonable. These problems are as follows:

- (1) PG&E has changed its accounting basis from that used in its 2002 Schedule F filing. Although this change produced significantly lower

AFRRs for 2003, projections of PG&E's AFRRs for 2004 and beyond show unexplained and unjustified increases above the filed 2003 levels.

- (2) PG&E has changed its tax treatment of Accumulated Deferred Income Taxes, as well as the allocation of this component of AFRRs to the various power plants covered in the PG&E Filing, from that used in its 2002 Schedule F filing. This change contributes disproportionately to the significantly lower AFRRs for 2003, which leads us to suspect that there may be significant increases in other components of AFRRs hidden in the fine print of the PG&E Filing.
- (3) The PG&E Filing proposes without justification to charge ratepayers for the costs of decommissioning Hunters Point.
- (4) The PG&E Filing proposes substantial and unjustified increases in Operation and Maintenance ("O&M") costs for Hunters Point (O&M costs increased from \$6.1 to \$17.5 million).
- (5) The PG&E Filing does not itemize Administrative and General costs.
- (6) In the PG&E Filing, the values of Maximum Net Dependable Capacity ("MNDC") for two of the units at San Joaquin (Kerckhoff and Wishon) are not accurate and cannot be dispatched by the ISO, since the values are above the amount which Kerckhoff and Wishon can actually deliver. These inaccuracies affect rates through the cost allocation process. The Commission should require that the values for MNDC accurately reflect the capacity available to the ISO for these units.

For the forgoing reasons, the PG&E Filing overstates PG&E's actual and justified AFRRs. To the extent these unjustified costs are included in rates, those rates would be unjust and unreasonable, and hence illegal.

Although they have not been shown to be just and reasonable, because PG&E's rates have gone down in 2003 from 2002 levels, the Joint Protesters request that the Commission accept the PG&E Filing effective January 1, 2003, subject to hearing and subject to refund. The Commission should establish January 1, 2003 as the refund date, and hold hearings in abeyance until April 1, 2003, to give the parties time to attempt to resolve outstanding issues associated with the PG&E Filing.

B. Formatting Concerns

In addition to the substantive concerns set forth above, as the entity that must administer invoicing for PG&E RMR services, the ISO has concerns about the manner in which PG&E has aggregated the rates as to key values including the Hourly Availability Charges (Table B-1), Penalty Rates (Table B-3), Target Available Hours (Table B-5) and AFRR (Table B-6) for certain facilities. 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. To address it, the ISO and PG&E have had agreements for "translating" the rates approved by the Commission into the rates used for invoicing. However, the 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 ISO to confirm that rates are just and reasonable and to verify the rates used for invoicing against the rates approved by the Commission. Thus, the ISO asks the Commission to require PG&E to provide to the Joint Protesters, within 10 days of its order, the revised rate sheets with rates set forth at the level of aggregation that is used for purposes of invoicing.

III. CONCLUSION

The parties have been engaged in useful discovery, and hope to be able to resolve the outstanding issues in this matter soon. However, since the foregoing issues remain outstanding, the Joint Protesters accordingly protest the PG&E Filing. The Joint Protesters also request that the revised schedules associated with the PG&E Filing be put in effect as of January 1, 2003, but be made subject to refund, and that the matter be set for hearing.

However, in order to provide time to enable the parties to effectuate a settlement of the matter, the Joint Protesters additionally request that the Commission defer taking any action in this matter, including but not limited to setting it for hearing, until no earlier

than April 1, 2003. Finally, the ISO asks the Commission to require PG&E to provide to the Joint Protesters, within 10 days of its order, the revised rate sheets with rates set forth at the level of aggregation that is used for purposes of invoicing.

Date: December 16, 2002

Respectfully submitted,

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Commission
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By: /s/ Lisa V. Wolfe

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CERTIFICATE OF SERVICE

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

Dated at San Francisco, California, on this 16th day of December, 2002.

By: */s/ Laurence G. Chaset*

Laurence G, Chaset