

**UNITED STATES OF AMERICA 105 FERC ¶ 63,037
FEDERAL ENERGY REGULATORY COMMISSION**

Pacific Gas and Electric Company

**Docket Nos. ER03-94-000 and
ER03-299-000**

**CHIEF JUDGE'S CERTIFICATION
OF UNCONTESTED SETTLEMENT**

(Issued December 10, 2003)

TO THE COMMISSION:

INTRODUCTION

1. On October 10, 2003, Pacific Gas and Electric Company ("PG&E") and the California Independent System Operator ("CAISO"), submitted an Offer of Settlement that resolves all issues in this proceeding. On October 30, 2003, the Commission Trial Staff filed comments not opposing Settlement. On November 20, PG&E filed a supplement to its Explanatory Statement in support of the Offer of Settlement.

CASE SUMMARY

2. This proceeding involves a dispute concerning PG&E's Reliability-Must-Run ("RMR") Agreement. PG&E provides RMR service to the 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, in Docket No. ER03-94-000, PG&E submitted an informational package and annual rate updates to its RMR Agreements with CAISO to renew the terms of its RMR Agreements for calendar year 2003 ("2003 Rate Filing"). Pursuant to Schedule F of the RMR Agreement, PG&E's informational package revised the Annual Fixed Revenue Requirements ("AFRR") and Variable Operation and Maintenance rates of the RMR units for Year 2003. In addition, in the same submission PG&E filed annual updates to certain performance limits and the rates and charges to be effective in the 2003 Contract Year.

4. The Commission in its order establishing settlement and hearing procedures (102 FERC ¶ 61,099) identified a number of unresolved issues raised by the protests filed in Docket No. ER03-94-000, including: (1) the propriety of the change in accounting basis; (2) the propriety of the tax treatment of accumulated deferred income taxes; (3) whether PG&E can justify its claimed decommissioning costs for its Hunters Point plant; (4) whether PG&E has proposed unjustified increases to its Operation and Maintenance (“O&M”) costs for its Hunters Point plant; (5) whether PG&E has provided adequate information on its claimed A&G costs for all RMR units; and (6) whether PG&E has overstated the values of the Maximum Net Dependable Capacity for the San Joaquin Units. Additionally, the Commission noted the protestors’ concerns about the manner in which PG&E has aggregated some of its rates, stating that the level of aggregation does not match the physical level of aggregation at PG&E’s RMR facilities.

5. On January 30, 2003, the Commission issued an Order accepting the 2003 Rate Filing, suspending it for a nominal period, and making it effective January 1, 2003, subject to refund and the outcome of the proceeding in Docket No. EL02-20-000 (102 FERC ¶ 61,099). The January 30 Order directed that a hearing be held to determine whether the 2003 Rate Filing was just and reasonable, but held the hearing in abeyance to allow PG&E and the protestors time to settle the outstanding issues.

6. On December 17, 2002, in Docket No. ER03-299-000, PG&E filed additional revised rate schedule sheets reflecting Year 2003 updates to the RMR Agreements for the Helms and San Joaquin Power Plants. These revised rate schedule sheets reflect proposed revisions to contract service limits, owner’s repair cost obligations, and prepaid start-up costs.

7. On February 14, 2003, the Commission accepted and suspended the revised rate schedule sheets to become effective January 1, 2003, subject to refund (102 FERC ¶ 61,173). The order also consolidated PG&E’s filing in Docket No. ER03-299-000 with Docket No. ER03-94-000. The Commission in its order identified a number of issues raised by protesters: (1) the appropriateness of PG&E’s labor rate used to calculate the prepaid start-up costs; (2) the absence of background data for the values PG&E used to determine contract service limits; (3) inconsistencies in the calculation of the maximum annual service hours; and (4) the non-inclusion of updates to certain start-up costs.

8. The parties engaged in settlement negotiations to resolve disputed issues in the consolidated proceedings. The Chief Judge continued deferment of hearing procedures on April 4, June 5, July 8, August 20, and September 20, 2003, to allow the parties additional time to continue their settlement discussions. On October 10,

2003, PG&E filed the instant Settlement. On October 14, 2003, the Chief Judge issued an order directing the parties in this case to include in their comments the standard of review applicable in this proceeding. On November 20, 2003, PG&E filed a supplement to its Explanatory Statement complying with the Chief Judge's October 14, 2003 order.

SUMMARY OF THE SETTLEMENT

9. The Settlement consists of: (1) a transmittal letter; (2) an Explanatory Statement; (3) a Settlement, including Exhibit A; and (4) a draft letter order accepting the Settlement. The Settlement terms are described in full in the Settlement and accompanying documents filed by PG&E. The principal provisions of the Settlement are summarized below:

10. The Settlement is comprised of 6 articles:

11. Article I includes background information.

12. Article II describes the key provisions of the Settlement in the consolidated dockets.

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13. Article II A predicates the effectiveness of the Settlement upon its acceptance by the Commission.

14. Article IIB establishes the AFRR values for each of PG&E's RMR Facilities and explains that these values are identical to those in PG&E's 2003 Rate filing. Article IIB states that for the Helms, Humboldt Bay and San Joaquin plants, the information used for dispatching and invoicing Facilities, in which the physical meter grouping is different from RMR Unit designation grouping, has been expanded or consolidated to include the information in a manner that is consistent with the level of metering at the Facility. Article IIB explains that for the Helms, Humboldt Bay and San Joaquin plants, the surcharge rates associated with Capital Items in Docket No. ER03-708-000 also have been expanded to include information on a meter basis and mended to incorporate Target Available Hours (TAH) changes. Moreover, Article IIB reflects that the 2003 Rate Filing's TAH for the Helms, Humboldt Bay, Hunters Point and San Joaquin plants have been changed to address the CAISO's concern about the procedure for identifying historical Long-term Planned Outage Hours ("LTPOH") and removing any LTPOH from Average Other Outage Hours ("AOOH").

15. In addition, Article II B specifies that the changes in TAH had no effect on AFRR values or on the Annual Capital Item Cost values. Article II B points out that the changes in TAH did change hourly Availability Charges, Hourly Capital Item Charges, Hourly Penalty Rates, and Hourly Surcharge Penalty Rates. Article II B also states that the Start-up Lead Times for the Humboldt Bay Mobile Units 2 and 3 have been revised to reflect a previous agreement between PG&E and the CAISO with regard to the calculation of these values. Article II B also reflects language inserted below the Contract Service Limits table and below Table B-5 of the settlement, describing procedures for calculating the Maximum Annual Service Hours and AOOH in future years.

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16. Article II C of the Settlement specifies that the Contract Service Limits for the Helms and San Joaquin plants have been revised to reflect data from new data gathering systems. Article II C also shows updates and corrections to the operational and regulatory limitations for the San Joaquin plant. Article II C states that hydroelectric start-up costs for San Joaquin have been updated to reflect current standard labor costs, and some of the hydro filing's Maximum Net Dependable Capacity values for the San Joaquin plant have been revised.

17. Article II D explains that there are three versions of the rate schedule sheets. The first version reflects only the changes effective January 1, 2003. The second version reflects the changes to the surcharges accepted subject to refund by the Commission's Hearing Order dated June 30, 2003, in Docket No. ER03-708-000 (103 FERC ¶ 61,376), effective July 1, 2003. In this regard, Article II D postulates that upon final settlement of or the Commission's determination regarding the issues in Docket No. ER03-708-000, PG&E will submit revised rate schedule sheets reflecting both the Annual Capital Item Cost and Surcharge Payment Factor as determined in Docket No. ER03-708-000 and will make any requisite refunds. The third version reflects changes to operational data to be effective November 1, 2003.

18. Article III specifies that upon the acceptance by the Commission of the Settlement (Effective Date), PG&E will refund, with interest, the difference between the sum of the amounts actually paid by the CAISO as of the Effective Date, and the sum of the amounts resulting from the Settlement for the period January 1, 2003, to the Effective Date.

19. Article IV discusses issues related to the waiver of rehearing. Articles V addresses general reservations. Article VI contains miscellaneous provisions.

COMMENTS

20. On October 30, 2003, counsel for the Commission Trial Staff filed comments not opposing the Settlement. The Commission Trial Staff noted in its comments that the Explanatory Statement contains some procedural deficiencies because it fails to address the procedures for certification of uncontested settlements outlined in the Chief Judge's Notice to the Public issued on October 15, 2003. The Commission Trial Staff also pointed out that the draft letter order submitted by PG&E contains no reference to the directive in the Commission's hearing order that this docket is subject to the outcome of Docket No. EL02-20-000. The Chief Judge notes that on November 20, 2003, PG&E filed a supplement to its Explanatory Statement addressing the procedures set forth in the Chief Judge's October 15, 2003, public notice. PG&E also attached a revised draft letter order to its November 20th supplement stating that this docket is subject to the outcome of Docket No. EL02-20-000. No reply comments were filed.

DISCUSSION AND CERTIFICATION

21. After a full consideration of the provisions of the Settlement, the Chief Judge finds that it provides a fair resolution of the all the issues set for hearing and recommends that the Commission approve it.

22. The issues underlying the Settlement present no major implications or raise any policy implications. No pending cases will be affected by the resolution of the instant proceeding, the Settlement does not involve issues of first impression, and there are no previous reversals on the issues involved in this case.

23. PG&E and the CAISO agree the RMR Agreements that are the subject of this proceeding does not have *Mobile-Sierra* language making it the standard of review, but rather, that this proceeding is subject to the just and reasonable standard.

24. Pursuant to 18 C.F.R. § 385.602(g)(1), I hereby certify for the Commission's consideration as an uncontested offer of settlement:

(A) The cover, letter, Explanatory Statement, and Settlement Agreement submitted on October 9, 2003.

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(B) The Supplement to the Explanatory Statement filed on November 20, 2003.

(C) Initial Comments of the Commission Trial Staff filed on October 30, 2003;

(D) All pleadings, orders and other documents of record in this proceeding; and

(E) The attached draft letter order of the Commission approving the Settlement.

Curtis L. Wagner, Jr.
Chief Administrative Law Judge

DRAFT

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

In Reply Refer To:
Docket Nos. ER03-94-000 and
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Pacific Gas and Electric Company
Law Department, Mail Code B30A
Attention: Shiran Kchavi
PO Box 7442
San Francisco, CA 94120

Dear Mr. Kochavi:

1. On October 10, 2003, you filed a Settlement Agreement between Pacific Gas and Electric Company (“PG&E”) and the California Independent System Operator Corporation (the “CAISO”). On October 30, 2003, counsel for the FERC Trial Staff filed comments not opposing the Settlement. No other comments were filed. On November 20, 2003, you filed a supplement to the aforementioned Settlement Agreement. On December 10, 2003, the Chief Judge certified the Offer of Settlement to the Commission as uncontested.

2. The subject settlement is in the public interest and is hereby approved. Any determinations made in this filing are subject to the outcome of Docket No. EL02-20-000. The Commission’s approval of this Settlement does not constitute approval of, or precedent regarding any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms, and conditions under the just and reasonable and not unduly discriminatory or preferential standard of Section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000).

3. The rate schedule sheets submitted with the Settlement are accepted for filing and are made effective as of the date of this letter, as they are properly designated and are in compliance with *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

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4. Any amounts collected in excess of the settlement rates shall be refunded together with interest computed under Section 35.19a of the Commission's Regulations, 18 C.F.R. §35.19a, in accordance with the terms of the settlement. Within fifteen (15) days after making such refunds, PG&E shall file with the Commission a compliance report documenting such refunds. PG&E shall furnish copies of the report to all parties in this proceeding.

5. This letter order terminates Docket Nos. ER03-94-000 and ER03-299-000. A new sub-docket number will be assigned in Docket Nos. ER93-94 and in ER93-299 upon receipt of the required compliance refund report.

By direction of the Commission.

Secretary

cc: All Parties

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