

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

Pacific Gas and Electric Company

Docket No. ER03-299-000

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

Pursuant to 18 C.F.R. §385.211 and 18 C.F.R. §385.212, the California Independent System Operator Corporation (“ISO”), the California Public Utilities Commission (“CPUC”), and the California Electricity Oversight Board (“EOB”) (collectively, “Joint Protesters”) jointly protest the December 17, 2002 filing herein and move that this proceeding be consolidated with Docket ER03-94-000. In support thereof, the Joint Protesters state as follows:

I. BACKGROUND

On December 17, 2002, Pacific Gas and Electric Company (“PG&E”) tendered for filing an annual update filing including revisions to its Reliability Must Run Agreements (“RMR Agreements”) with the ISO for Helms Power Plant (“Helms”) and San Joaquin Water Power Plant (“San Joaquin”)(“PG&E Second Filing”). According to P&E, the filing revises portions of the Rate Schedules to adjust the values for Contract Service Limits, Owner’s Repair Cost Obligation and Prepaid Start-up information. On

December 26, 2002, the Commission issued a Notice of Filing setting January 7, 2003 as the comment date.

On October 30, 2002, PG&E submitted an informational rate filing proposing rate revisions under its RMR Agreements ("PG&E First Filing").¹ The PG&E First Filing was made in Docket No. ER03-94-000 and relates to RMR Agreements as to the following power plants: Helms; Humboldt Bay Power Plant ("Humboldt"), Hunters Point Power Plant ("Hunters Point"); and San Joaquin. The PG&E First 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 First 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 First Filing also sought 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

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.

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

³ 18 USC § 824d.

A, the values in Tables B-1 through B-6 in Schedule B, and the Prepaid Start-up Charges in Schedule D. On December 20, 2002, the CPUC, EOB and ISO timely filed a Protest in Docket ER03-94-000. The Joint Protesters asked that the Commission accept the PG&E First Filing effective January 1, 2003, but subject to hearing and subject to refund. The Joint Protesters also requested 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. The Joint Protesters explained that they were engaged in discovery and hoped that discussions following discovery would narrow or eliminate the problems identified in their protest.

II. PROTEST

A. Substantive Concerns

The Joint Protesters have identified the following specific problems with the PG&E Second Filing that lead the Joint Protesters to conclude that the rates that PG&E has requested in the PG&E Second Filing have not been shown to be just and reasonable. These problems are as follows:

- 1) In the calculation of the Crane Valley Units Prepaid Start-up Cost, a double time labor rate was used. In the calculation of the Kerckhoff Units Prepaid Start-up Cost, a straight time labor rate was used. This difference must be explained and justified.
- 2) PG&E has not provided back-up data or otherwise justified the values for Maximum Monthly MWh used in Table 12: Contract Service Limits.
- 3) While PG&E appears to have made changes to the Other Start-Up Costs - Hydroelectric Units (Table D-2), PG&E has not included these changes in its filing. If changes have been made they must be included in a filing before the Commission before being made effective.
- 4) There are inconsistencies in the way PG&E calculated the Maximum Annual Service Hours, in Table 12, for San Joaquin and for Helms. These inconsistencies must be explained and justified.

For the forgoing reasons, the PG&E Second Filing has not been shown to be just and reasonable, and to the extent rates could consequently be higher than they otherwise would be, rates would be unjust and unreasonable, and hence illegal.

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 in the calculation of Contract Service Limits (Table 12) and Prepaid Start Up Costs (Table D-0). The level of aggregation does not match the physical level of aggregation at PG&E's Helms and San Joaquin 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 invoicing but instead must be disaggregated or re-aggregated for invoicing depending on the facility.

For both the Helms and the San Joaquin facilities, the PG&E Second Filing presents an aggregated number in the calculation of Contract Service Limits and Prepaid Start Up Costs, rather than setting forth unit-by-unit values. Nonetheless, for these facilities some units are metered individually and invoiced individually.

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.

Because the rates have not been shown to be just and reasonable, the Joint Protesters request that the Commission make PG&E's Second Filing subject to hearing and establish a refund date equal to the effective date. The Commission should hold hearings in abeyance until April 1, 2003, to give the parties time to attempt to resolve outstanding issues associated with the PG&E Second Filing.

III. BASIS FOR THE MOTION TO CONSOLIDATE

The PG&E Second Filing involves matters related to the PG&E First Filing. For example, the same RMR Agreements are involved, as are annual updates required by the RMR Agreements. The Joint Parties intend to discuss the problems raised as to the PG&E First Filing along with the issues raised herein. It would be easiest for all concerned to have all the changes to the rates for RMR services from Helms and San Joaquin in 2003 resolved in one consolidated docket.

IV. CONCLUSION

For the reasons set forth herein, the Joint Requesters protest the PG&E Second Filing, and request that the rates, if accepted, be made subject to refund with a refund date equal to the effective date, 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. The ISO in addition 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. Finally, the Joint Protesters request that the Commission consolidate this proceeding with Docket ER03-94-000 so that all the changes to the rates for RMR services from Helms and San Joaquin in 2003 can be resolved in one docket.

Date: January 7, 2003

Respectfully submitted,

Counsel for the California Independent
System Operator Corporation
Jeanne M. Sole
151 Blue Ravine Road
Folsom, California 95630
Phone: (916) 351-4400
Fax: (916) 608-3222

By: */s/ Jeanne M. Solé*

Jeanne M. Solé

Counsel for the California Public Utilities
Commission

By: */s/ Laurence G. Chaset*

Laurence G, Chaset

Counsel for the California Electricity
Oversight Board

By: */s/ Lisa V. Wolfe*

Lisa V. Wolfe



January 7, 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. ER03-299-000**

Dear Secretary Salas:

Enclosed please find an electronic filing in the above-captioned proceeding of the Joint Protest and Motion to Consolidate of the California Independent System Operator Corporation, the California Public Utilities Commission and the California Electricity Oversight Board. 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 7th day of January, 2003.

Jeanne M. Solé