

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

Pacific Gas and Electric Company) Docket No. ER01-1744-000

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

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.214, and the Commission’s April 11, 2001 Notice of Filing, the California Independent System Operator Corporation (“ISO”) hereby moves to intervene in the above-captioned proceeding. In support thereof, the ISO states as follows:

I. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

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II. BACKGROUND

On April 6, 2001, Pacific Gas and Electric Company (“PG&E”) tendered for filing, pursuant to Section 205 of the Federal Power Act, a proposed rate revision under its Reliability Must-Run Service Agreement¹ with the ISO for Hunters Point Power Plant (“Hunters Point”). The rate change is a one-time charge of \$7,945,544 to the ISO to recover part of the costs PG&E incurred for unplanned repairs to Hunters Point Unit 4. Recovery of these costs is expressly authorized under the RMR Agreement. On October 5, 1999, in accordance with Section 7.5(c) of the RMR Agreement for Hunters Point, the ISO submitted to PG&E its written acceptance of estimated repair costs.

III. BASIS FOR MOTION TO INTERVENE

The 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 PG&E, San Diego Gas & Electric Company, and Southern California Edison Company, as well as for the coordination of the competitive electricity market in California. As the sole purchaser of PG&E’s RMR services, the ISO has a unique interest in any Commission proceeding concerning proposed changes to RMR service agreements. Accordingly, the ISO has a direct and substantial interest in the proposed rate change and requests that it be permitted to intervene in this proceeding with full rights of a party.

¹ Because the generating units covered by these agreements must run 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

IV. COMMENTS

As required by Section 7.7(b) of the RMR Agreement, the ISO files this Motion to Intervene in support of PG&E's recovery of the repair costs and requests that the Commission place the proposed change into effect without suspension or hearing, subject to the qualifications discussed below. In addition, Section 7.5(g) obligates the ISO to pay its agreed share of the repair costs as a lump sum within 60 days after the later of (i) the completion of the Repair, or (ii) the effective date of authorization by the Commission, if necessary, for PG&E to charge such costs to the ISO.

While supporting PG&E's right to payment, the ISO notes that, under Sections 9.2 and 9.3 of the RMR Agreement, the ISO is only obligated to pay to the RMR Owner those amounts received from the Responsible Utility and deposited into the RMR Owner Facility Trust Account. Sections 9.2 and 9.3 provide, in relevant part:

Section 9.2:

Payments received by the ISO from a Responsible Utility in connection with this Agreement, including payments following termination of this Agreement, shall be deposited into the RMR Owner Facility Trust Account and payments from the ISO to the Owner shall be withdrawn from such Account, all in accordance with Section 5.2.7 of the ISO Tariff, Annex 1 to the ISO's Settlement and Billing Protocol and this Article 9.

Section 9.3:

All payments shall be made from the RMR Owner Facility Trust Account on or before the Due Date by wire transfer in accordance with instructions from Owner. If Owner is also the Responsible

filing have the same meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

Utility, at the discretion of Owner payments to it may be made by memorandum account instead of wire transfer.

Read together, these provisions establish a pay-when-paid obligation. Therefore, the ISO is not obligated to pay PG&E (as Owner) until PG&E (as Responsible Utility) deposits the requisite amount into the RMR Owner Facility Trust Account. While the contingent nature of the ISO's payment obligation is clear from the RMR Agreement, the ISO believes it would assist all parties to this and other RMR Agreements, and all Responsible Utilities, if the Commission's order in this matter specifically notes that PG&E as RMR Owner will receive the lump-sum payment for the ISO Repair Share only when PG&E as Responsible Utility has deposited the amount of that payment into the relevant RMR Owner Facility Trust Account.

The ISO also notes that PG&E is obligated to pursue commercially reasonable efforts to recover its full entitlements under applicable insurance policies pursuant to Section 7.5(h) of the RMR Agreement. Section 7.5(h) states that "[PG&E] shall keep ISO informed of the status of such recovery efforts and will refund to ISO any portions of ISO's Repair Share payment that is later recovered from any other party . . . with interest." Of course, to the extent that PG&E as Responsible Utility has paid the amount of the Repair into the RMR Owner Facility Trust Account and the ISO has paid that amount from the trust account to PG&E as RMR Owner, whenever PG&E as RMR Owner later refunds to the ISO any portion of an insurance recovery, the ISO would pass the full amount of that refund to PG&E as Responsible Utility. In other words, the ISO is a conduit, in both directions, between PG&E as Owner and PG&E as

Responsible Utility. The ISO will monitor PG&E's efforts as Owner to recover insurance entitlements and refund those to the ISO for pass-through to PG&E as Responsible Utility, and will return to the Commission, if necessary, to ensure that PG&E fulfills its obligations and refunds the ISO's Repair Share to the extent that any insurance proceeds are recovered or, if the ISO's Repair Share has not been paid, credits such proceeds against the outstanding amount.

V. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission permit it to intervene, and that it be accorded full party status in this proceeding. The ISO also supports PG&E's right, as Owner, to receive the amount of the ISO Repair Share whenever PG&E, as Responsible Utility, has deposited that amount into the RMR Owner Facility Trust Account.

Respectfully submitted,

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Counsel for the California Independent
System Operator Corporation

Date: April 27, 2001

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 Washington, DC, on this 27th day of April, 2001.

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April 27, 2001

David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: **Pacific Gas and Electric Company,
Docket No. ER01-1744-000**

Dear Secretary Boergers:

Enclosed for filing in the above-captioned proceeding are an original and fourteen copies of the Motion to Intervene of the California Independent System Operator Corporation. Two additional copies of the filing are also enclosed. I would appreciate your stamping the additional copies with the date filed and returning it to the messenger.

Respectfully submitted,

J. Phillip Jordan
Counsel for the California Independent
System Operator Corporation