

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

Pacific Gas and Electric Company     )     Docket Nos. ER04-142-000  
  )                                   ER04-143-000

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

Pursuant to Rules 211, 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.211, 212 and 214 (2003), the California Independent System Operator Corporation (“ISO”) submits this motion to intervene, motion to consolidate the two captioned proceedings, and provisional protest. In support thereof, the ISO states as follows:

**I. Description of the Proceedings**

On October 31, 2003, PG&E made its annual informational filing under Schedule F of its RMR Agreements with the ISO for Helms Power Plant, Humboldt Bay Power Plant, Hunters Point Power Plant, San Joaquin Watershed, and Kings River Watershed (collectively “RMR Facilities”) 1/ updating the Annual Fixed Revenue Requirements (“AFRR’s”) and Variable O&M Rates (“VOMR’s”) for the RMR Facilities (“Schedule F Filing”) in Docket No. ER04-142-000. Schedule F

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1/ Because the facilities 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.”

establishes the procedures and methodology for determining the AFRR's and VOMR's for generating resources designated as RMR Units. <sup>2/</sup> The Schedule F Filing provided updated cost information used in determining the AFRR's and the VOMR's to be effective January 1, 2004. On November 7, 2003, the Commission issued a "Notice of Filing" in Docket No. ER04-142-000 setting November 21, 2003, as the date for interventions, comments and protests.

Additionally, on October 31, 2003, PG&E filed, pursuant to Section 205 of the Federal Power Act ("FPA"), its annual rate update for Contract Year 2004, including rate schedule sheet revisions to its RMR Agreements with the ISO for the RMR Facilities ("§ 205 Filing") in Docket No. ER04-143-000. The § 205 Filing updates rates that either (1) result from the new AFRR's and VOMR's set forth in the Schedule F Filing, or (2) are otherwise provided for on an annual basis in the RMR Agreements. For each of the RMR Facilities, updates are made to a number of the RMR Rate 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 7, 2003, the Commission issued a "Notice of Filing" in Docket No. ER04-143-000 setting November 21, 2003, as the date for interventions, comments and protests.

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<sup>2/</sup> The Schedule F Filing was made in compliance with the terms of a settlement agreement approved by the Commission 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. California Independent System Operator Corp., 87 FERC ¶ 61,250 (1999).

## **II. Description of the ISO and Communications**

The ISO is a non-profit public benefit corporation organized under the laws of the State of California with a principal place of business at 151 Blue Ravine Road, Folsom, CA 95630. The ISO is the Control Area Operator responsible for the reliable operation of a grid comprising of the transmission systems of a number of public utilities including PG&E, as well as for the coordination of the competitive ancillary services and real-time electricity markets in California.

The ISO requests that all communications and notices concerning this motion and these proceedings be provided to:

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## **III. Motion to Intervene**

As the Control Area Operator responsible for maintaining reliability and as the counter party in the RMR Agreements governing PG&E's provision of RMR services, the ISO has a unique interest in any Commission proceeding concerning proposed changes to the RMR Agreements. Accordingly, the ISO has a direct and substantial interest in the proposed changes in both of these dockets and

requests that it be permitted to intervene in these proceedings with full rights of a party. Because no other party can adequately represent the ISO's interests in these proceedings, the ISO's intervention is in the public interest and should be granted.

#### **IV. Provisional Protest**

##### **A. Schedule F Filing**

Based on its initial review of the Schedule F Filing, the ISO has identified the following problems. Generally, PG&E has failed to provide adequate supporting data to allow the ISO to determine whether it has overstated its actual and justified AFRR's in its Schedule F Filing. More specifically:

1. The proposed 2004 AFRR's for Helms, Humboldt Bay, Hunters Point and Kings River are substantially increased (e.g., a 47%, or \$5.2 million, increase as compared to the 2003 AFRR's for Humboldt Bay) without adequate support or justification.

2. PG&E failed to provide an adequate comparison of the proposed 2004 revenue requirements to the prior year's requirements as required by Article I, Part B of Schedule F. The comparison is necessary for each element of the Schedule F formula in order to understand which elements contribute the large increases of the rates from 2003 to 2004.

3. The PG&E filing proposes substantial and unjustified increases in O&M costs for the RMR Facilities (e.g., O&M increased from \$7.0 to \$10.1 million for the Helms facility and \$5.8 to \$9.8 million for the Humboldt Bay facility).

B. § 205 Filing

Based on its initial review of the § 205 Filing, the ISO has identified the following problems:

1. PG&E has failed to provide any supporting data regarding the calculation of the Targeted Available Hours (“TAH”), in Table B-5 of Schedule B, for each of the RMR Facilities; accordingly the ISO cannot determine the accuracy and reasonableness of the TAH.

2. The § 205 Filing includes annual rate updates for charges to the ISO that are calculated using the AFRR’s as proposed in the Schedule F Filing. As stated above, PG&E has failed to justify the proposed AFRR’s for the RMR Facilities for Contract Year 2004. Thus, to the extent these unjustified costs were used to calculate the proposed rates filed in the § 205, those proposed rates are unjust and unreasonable.

Section 35.13 of the Commission’s regulations requires a filing for a rate schedule change to include supporting information. A filing is deficient absent such supporting information or waiver of the Commission’s regulations. See, 18 C.F.R. § 35.5 (2003). Accordingly, the ISO urges the Commission to issue a deficiency letter requiring PG&E to file supporting data in a compliance filing within fifteen (15) days of the issuance of the deficiency letter; or in the alternative, rule that the rates set forth in PG&E’s filing has not been shown to be just and reasonable; suspend the rates subject to hearing and establish a refund date equal to the proposed effective date, January 1, 2004. Should the Commission suspend the rates, the ISO requests that the Commission hold the hearings in abeyance for

45 days, until January 5, 2004 to give the parties time to attempt to resolve outstanding issues associated with the PG&E Schedule F Filing. <sup>3/</sup>

## V. Motion to Consolidate

The ISO respectfully requests that the Commission consolidate Docket Nos. ER04-142 and ER04-143. PG&E has made two related filings regarding the rates under its RMR Agreements for the RMR Facilities for Contract Year 2004. The updated rates set forth in the § 205 filing are based on the AFRR's and VOMR's set forth in the Schedule F Filing. Any changes or corrections made to the AFRR's and VOMR's in the Schedule F Filing will require corresponding changes and corrections to the § 205 Filing. Because the two filings are interrelated, the ISO intends to discuss with PG&E its concerns regarding the filings jointly. In light of the fact that the same applicant, the same RMR Facilities, the same RMR Agreements and the interrelated rate issues are involved in both dockets, consolidation of the dockets will result in savings of time and resources of the parties and of the Commission staff and hence is in the public interest.

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<sup>3/</sup> To date, the ISO and the California Electricity Oversight Board ("EOB") have engaged in informal discovery and discussions with PG&E to provide the ISO with the information needed to fully review the filings. Without the additional information, the ISO has not been able to confirm whether or not the proposed AFRR's, VOMR's and the corresponding rates filed by PG&E are just and reasonable and consistent with the RMR Agreement and Schedule F. However, because of the November 21<sup>st</sup> protest deadline, the ISO files this Provisional Protest in order to preserve its 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. The 45-day deferral of Commission action in these proceedings would allow the parties to continue to informally resolve this matter.

## VI. Conclusion

For the foregoing reasons, the ISO respectfully requests that the Commission: (i) grant the ISO's motion to intervene in the above-captioned proceedings; (ii) consolidate the filings in Docket No. ER04-142 and in Docket No. ER04-143; (iii) issue a deficiency letter requiring PG&E to file supporting data in a compliance filing within fifteen (15) days of the issuance of the deficiency letter; or in the alternative, rule that the rates set forth in PG&E's filing has not been shown to be just and reasonable; suspend the rates subject to hearing and establish a refund date equal to the proposed effective date, January 1, 2004 and defer action on the § 205 Filing for 45 days, until January 5, 2004, to give the parties time to attempt to resolve outstanding issues associated with the PG&E Schedule F Filing and to consider the additional § 205 Filing PG&E is required to submit on December 15, 2003 to update the Contract Service Limits for its hydroelectric facilities.

Respectfully submitted



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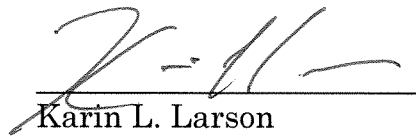
California Independent System

Operator Corporation

Dated: November 21, 2003

## CERTIFICATE OF SERVICE

I hereby certify that I have this 21<sup>st</sup> day of November, 2003 caused to be served a copy of the forgoing Motion to Intervene, Motion to Consolidate and Provisional Protest upon all parties listed on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

A handwritten signature in black ink, appearing to read "K. Larson", is written over a horizontal line.

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