

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

Pacific Gas and Electric Company) Docket Nos. ER04-141-000

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

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.211 and 385.214 (2003), the California Independent System Operator Corporation (“ISO”) submits this motion to intervene and provisional protest in the captioned proceeding.

I. Description of the Proceeding

On October 31, 2003, Pacific Gas and Electric Company (“PG&E”) filed revised rate schedules, pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission’s regulations, 18 C.F.R. § 35.13 (2003). Specifically, PG&E submitted rate schedule sheet revisions, to become effective January 1, 2004, to its Reliability Must-Run Service Agreement (“RMR Agreement”) with the ISO for Humboldt Bay Power Plant increasing the fuel curve coefficients 1/ in Schedule C of the RMR Agreement (Docket No. ER04-141-000). The fuel coefficients are part of a formula used to determine the fuel cost, which in turn is

1/ These are identified in tables C1-7a and C1-7b for the Unit Hourly Cap Heat Input (MMBtu) formulae identified as equations C1-7a and C1-7b.

used to calculate the variable cost payments from the ISO to PG&E for the Humboldt facility.

On November 7, 2003, the Commission issued a "Notice of Filing" in Docket No. ER04-141-000 setting November 21, 2003, as the date for interventions, comments and protests.

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:

Anthony J. Ivancovich
Senior Regulatory Counsel
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
916-351-4400 (tel)
916-608-7222 (fax)

Deborah A. LeVine
Director of Contracts
California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
916-351-4400 (tel)
916-608-7222 (fax)

Mary Anne Sullivan
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
202-637-3695 (tel)
202-637-5910 (fax)

III. Motion to Intervene

As the Control Area Operator responsible for maintaining reliability and as the counter party to 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 this docket and requests that it be permitted to intervene in this proceeding with full rights of a party.

Because no other party can adequately represent the ISO's interests in this proceeding, the ISO's intervention is in the public interest and should be granted.

IV. Provisional Protest

The ISO enters this provisional protest in this matter because PG&E has not shown its proposed rate changes to be just and reasonable. Specifically, PG&E failed to provide any data supporting the proposed changes to the fuel curve coefficient; e.g., the heat rate and test data and results, in its October 31, 2003 filing. Section 4.9(c) of the RMR Agreement provides that heat input test may be conducted in accordance with testing standards and procedures agreed to by the ISO and Owner and that after such test "Owner shall be permitted to make a filing under Section 205 of the Federal Power Act limited to modifying the heat inputs used in the Variable Cost Payment, in Schedules C, D, E and M, respectively, to reflect the results of such test." Without the heat input test implemented in accordance with Section 4.9(d) of the RMR Agreement, a change to the heat input or fuel coefficients requires an agreement between the RMR Owner and the ISO. While the ISO and PG&E have discussed the concept of the fuel coefficient changes

proposed, the ISO believes that supporting data from a heat input test is necessary to substantiate the filed coefficient values. Further, Section 35.13 of the Commission's regulations requires cost support information. A filing is deficient absent such supporting information or waiver of the Commission's regulations. ^{2/} Without the requisite supporting data, neither the ISO nor the Commission can meaningfully evaluate whether the proposed rate changes are just and reasonable. 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 revised rate schedules have not been shown to be just and reasonable and suspend the rates establishing January 1, 2004 as the refund date. Once PG&E has made the supporting data available to the ISO, the ISO will withdraw this protest if it determines that the proposed fuel curve coefficients are just and reasonable.

V. Conclusion

Accordingly, the ISO hereby respectfully requests that the Commission: (i) grant ISO's motion to intervene and make the ISO a party to the captioned proceeding, with full rights to have notice of and participate in any hearings, to present evidence, cross-examine witnesses, file briefs, and participate in oral argument, if any, and for all other proper and needful purposes; and (ii) issue a deficiency letter requiring PG&E to file supporting data in a compliance filing due within fifteen (15) days of the issuance of the deficiency letter, or in the

^{2/} See, 18 C.F.R. § 35.5 (2003).

alternative, rule that the rates set forth in this filing have not been shown to be just and reasonable; suspend the rates establishing January 1, 2004 as the refund date and allow the ISO and PG&E and other interested parties time to under take further activities to determine the justness and reasonableness of PG&E's proposed rates.

Respectfully submitted



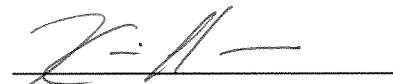
Mary Anne Sullivan
Karin L. Larson
Hogan & Hartson L.L.P
555 13th Street, N.W.
Washington, D.C. 20004

Counsel for
California Independent System
Operator Corporation

Dated: November 21, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of November, 2003 caused to be served a copy of the forgoing Motion to Intervene 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.



Karin L. Larson
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
(202) 637-6861 (voice)
(202) 637-5910 (fax)