

E-6
DRAFT

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

Pacific Gas and Electric Company

Docket No. ER04-295-000

ORDER ACCEPTING AND SUSPENDING PROPOSED REVISIONS
TO RELIABILITY MUST-RUN AGREEMENTS AND ESTABLISHING
HEARING AND SETTLEMENT PROCEDURES

()

In this order, the Commission accepts for filing and suspends for a nominal period proposed revisions by Pacific Gas and Electric (PG&E) to its Reliability Must-Run Agreements (RMR Agreements)¹ with the California Independent System Operator Corporation (CAISO) for the Helms Power Plant (Helms), San Joaquin Power Plant (San Joaquin), and Kings River Watershed (King's River).² The order also consolidates this docket with Docket Nos. ER04-142-000 and ER04-143-000 and sets the matter for hearing, but holds the hearing in abeyance, so that the parties may continue their current settlement discussions. This order benefits customers because it allows PG&E to continue providing must-run generation to the CAISO while encouraging the parties to resolve the issues through direct settlement negotiations.

I. Background

RMR Agreements provide the rates, terms, and conditions by which PG&E and other power plant owners in California provide RMR service to the CAISO by dispatching designated units at certain power plants at the direction of the CAISO. These agreements require that, whenever the CAISO extends the terms of an RMR Agreement for an additional calendar year, the owner of the unit must file with the Commission updates to certain rates and terms of service under the RMR Agreement.³

¹ PG&E's RMR Agreements follow a standard form that was agreed to as part of a settlement approved by the Commission in a letter order. See *California System Operator Corporation, et al.*, 87 FERC ¶ 61,250 (1999).

² Because these facilities must operate at certain times for the reliability of the transmission grid, they are referred to as RMR units.

³ The annual updates are usually made in two separate filings. First, there is an

Further, for hydroelectric RMR facilities, the RMR Agreements provide that the Contract Service Limits for hydroelectric RMR facilities must be updated by a filing fifteen days prior to January 1st of the ensuing Contract Year.⁴

The CAISO designated PG&E's facilities for RMR service for the 2004 calendar year (Year 2004). As a result, on October 31, 2003, PG&E filed, in Docket No. ER04-142-000, an information filing, and in Docket No. ER04-143-000, revised rate schedule sheets to the RMR Agreements, pursuant to Section 205 of the Federal Power Act.⁵

On December 29, 2003, the Commission accepted for filing, suspended it for a nominal period, and set the matter for hearing, but held the hearing in abeyance so that the parties may continue their settlement discussions in the RMR Update Proceedings.⁶ Those discussions are still under way.

On December 17, 2003, PG&E filed revised rate schedule sheets for three of its hydroelectric facilities: Helms, San Joaquin River, and Kings River. These revisions update the RMR Agreements for service in the Year 2004. Specifically, PG&E proposes to amend the Contract Service Limits, Owner's Repair Cost Obligation, and Prepaid Start-up information for the RMR Agreement for each of these facilities.

II. Notice of Filing and Responsive Pleadings

Notice of PG&E's filing was published in the Federal Register, 69 Fed. Reg. 1,582 (2004), with interventions and protests due on or before January 7, 2004. The CAISO filed a motion to intervene, a motion to consolidate and a protest. The State of California Electricity Oversight Board (EOB) filed a motion to intervene one day out of time.

informational filing that contains the Annual Fixed Revenue Requirements (AFRRs) and Variable Operation and Maintenance Rates (VOM rates). Second, there is a rate filing under section 205 of the Federal Power Act, 18 U.S.C. § 824d (2000), reflecting the annual updates provided for in an RMR Agreement.

⁴ Section 4.11(b) of the RMR Agreements.

⁵ 18 U.S.C. § 824d (2000).

⁶ Pacific Gas and Electric Co., 105 FERC ¶ 61,386 (2003).

CAISO states that PG&E's revised rate schedule for these three hydroelectric facilities is based on factors currently under discussion between PG&E and CAISO in the RMR Update Proceeding, as directed by the Commission.⁷ In this December 17th filing, PG&E proposes to revise the Owner's Repair Cost Obligation, which is calculated as three percent of the fixed operation and maintenance (O&M) costs for the same contract year for each of the hydroelectric facilities. However the O&M cost for the Year 2004 for these facilities is currently under discussion between PG&E and CAISO in the RMR Update Proceeding. CAISO requests that the Commission require PG&E to adjust the Owner's Repair Cost Obligation to reflect the final fixed O&M costs agreed to by CAISO and PG&E. Additionally, the other updated values filed by PG&E are based on the annual fixed revenue requirement (AFRR), which is also a part of the current RMR Update Proceeding.

In its motion to consolidate, the CAISO states that since PG&E's revised rate schedule for these three hydroelectric facilities is based on factors currently under discussion in the RMR Update Proceeding, and any changes or corrections made to the AFRRs and the O&M costs will require corresponding changes to this filing, Docket No. ER04-295 should be consolidated with Docket Nos. ER04-142 and ER04-143.⁸

III. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), CAISO's timely, unopposed motion to intervene serves to make CAISO a party to this proceeding. We will accept the motion to intervene out of time of EOB, given EOB's interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

B. The Commission's Response

The CAISO points out that portions of these proposed revisions to the RMR Agreements are based on previously proposed revisions to the RMR Agreements

⁷ 105 FERC ¶ 61,386. CAISO states that PG&E and CAISO have begun informal discovery and discussions; however, they have not yet reached an agreement.

⁸ The CAISO states that Docket Nos. ER04-142 and ER04-143 appear to have been consolidated, although the Commission did not explicitly so state in its December 29, 2003 Order.

which are currently under review in the RMR Update Proceeding. Additionally, CAISO concerns raise factual questions that we cannot summarily decide on the record before us. These concerns are best addressed in the hearing and settlement judge procedures that we order herein. In addition, based on our review of the filing, we find that its proposed revisions to its RMR Agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we accept the proposed revisions for filing, suspend them for a nominal period, and set them for hearing, to become effective, subject to refund, on the date requested by PG&E. We find good cause to grant PG&E's request for waiver of the Commission's 60-day prior notice requirement to permit an effective date of January 1, 2004,⁹ which is the effective date set forth in PG&E's RMR Agreements for their annual renewal.

While we are setting this proceeding for a trial-type, evidentiary hearing, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, in order to assist the parties in resolving this matter. If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise, the Chief Administrative Law Judge will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) PG&E's filing is hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2004, subject to refund, as discussed in the body of this order.

(B) PG&E's request for waiver of the Commission's 60-day prior notice requirement is hereby granted.

⁹See Central Hudson Gas & Electric Corp., 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992); see also Florida Power Corp., 76 FERC ¶ 61,070 at 61,436 (1996) (stating that "the Commission generally will grant waiver for filings that increase rates if the rate change and effective date are prescribed by contract, such as annual rate revisions required by contract to become effective on a date specified in the contract"); accord, Florida Power and Light Co., 74 FERC ¶ 61,038 at 61,092-93 (1996); Consolidated Edison Company, 68 FERC ¶ 61,230 at 62,090 (1994).

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed revisions to the RMR Agreements. As discussed in the body of this order, the hearing shall be held in abeyance to provide time for the parties to resolve the issues through settlement judge procedures.

(D) Docket No. ER04-295-000 is hereby consolidated with Docket Nos. ER04-142-000 and ER04-143-000, as discussed in the body of this order.

(E) The settlement judge or the president judge in Docket Nos. ER04-142-000 and ER04-143-000, as appropriate, shall determine the procedure best suited to accommodate the consolidation of Docket No. ER04-295-000 with Docket Nos. ER04-142-000 and ER04-143-000.

By the Commission.

Secretary