

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

FILED  
OFFICE OF THE  
SECRETARY

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**Pacific Gas and Electric Company** )  
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 **Complainant,** )  
 )  
 v. )  
 )  
 **California Independent System** )  
 **Operator Corporation** )  
 )  
 **Respondent.** )

FEDERAL ENERGY  
REGULATORY COMMISSION  
**EL04-103-000**

**Docket No. EL04- -000**

**ORIGINAL**

**COMPLAINT OF PACIFIC GAS AND ELECTRIC COMPANY**

Pursuant to Rule 206 of the Federal Power Act (FPA) of the Rules of Practice and Procedure (Rules) of the Federal Energy Regulatory Commission (FERC or Commission), 18 C.F.R. § 335.206 (2004), Pacific Gas and Electric Company (PG&E) files this complaint against the California Independent System Operator Corporation (CAISO) for violations of the "filed rate doctrine" under Section 205 of the FPA and certain rules, regulations and orders promulgated thereunder, and requests prompt Commission action. The allocation by the CAISO to PG&E of Must Offer Obligation (MOO) costs, including Minimum Load Compensation Costs (MLCC), which currently exceeds \$5 million per month, equivalent to \$60 million per year, is unjust, unreasonable and unduly discriminatory.

The CAISO recently filed Amendment No. 60 to its tariff<sup>1</sup> in Docket No. ER04-835-000 to modify the allocation of MOO and MLCC. However, the CAISO has sought an indefinite effective date for the implementation of some of those modifications which extends the period in which the unjust, unreasonable and unduly discriminatory allocation method

<sup>1</sup> California Independent System Operator Corporation FERC Electric Tariff First Replacement Volume No. I.

remains in place. The CAISO currently has data on the location, and reasons for MOO waiver denials which could be used to allocate these costs more equitably and less discriminatorily.

As currently provided in the CAISO tariff regardless of the location and purpose of the incurrence of MLCC, the CAISO allocates these payments to generators to "each Scheduling Coordinator in proportion to the sum of that Scheduling Coordinator's Load and Demand within California outside the CAISO Control Area that is served by exports to the sum of the CAISO Control Area Gross Load and the projected Demand with California outside the CAISO Control Area that is served by exports from the CAISO Control Area of all Scheduling Coordinators". Amendment No. 60 proposes an allocation method that is based on the reason a Generating Unit incurred MLCC and allocates the costs in one of three ways. First, if the Generating Unit was operating to meet local reliability requirements the costs would be allocated to the Participating Transmission Owner (PTO) in whose PTO Service Territory the Generating Unit is located. Second, if the Generating Unit was operating due to Inter-Zonal Congestion the costs would be allocated to each Scheduling Coordinator in the constrained zone based on a ratio of that Scheduling Coordinator's Demand to the sum of all Scheduling Coordinator' Demand in that Zone. Third, if the Generating Unit was operating to satisfy an CAISO Control Area-wide need the costs would be allocated first to the absolute total of all Net Negative Uninstructed Deviation and then to each Scheduling Coordinator in proportion to the sum of the that Scheduling Coordinator's Load and Demand within California outside the CAISO Control Area that is served by exports to the sum of the CAISO Control Area Gross Load and the projected Demand with California outside the CAISO Control Area that is served by exports from the CAISO Control Area of all Scheduling Coordinators. .

PG&E requests that the Commission immediately establish an investigation into such improper cost allocation but hold such proceeding in abeyance for a period no longer than six months, pending Commission consideration of the recently filed CAISO tariff Amendment No. 60 which among other things, would revise how MLCC are allocated. The specific provision of the CAISO tariff, which is unjust and unreasonable, is Section 5.11.6.1.4, Allocation of Minimum Load Costs. PG&E also requests that the Commission establish a refund effective date as soon as possible and no later than sixty days from the date of this complaint, after which any charges for MOO costs allocated to PG&E by the CAISO may be subject to refund. This complaint does not represent PG&E's comments on Amendment 60 and PG&E reserves the right to submit comments on Amendment 60 in Docket No. ER04-835-000.

## **I. Introduction**

As described in detail in the CAISO's May 11, 2004 filing letter in Docket No. ER04-835-000, the CAISO has filed changes to MOO tariff provisions, and PG&E has participated in a protracted stakeholder process that preceded the CAISO's filing. The proposed tariff changes specify how the MOO is applied to specific generating units and utilized by the CAISO, and, for certain components, increases compensation to MOO generation. However, the development of the tariff changes was complex and the tariff filing has already been delayed by several months.

PG&E understands the difficulty of completing and filing these tariff changes. However, it is clear that PG&E has paid and continues to pay a large proportion of MOO costs which are incurred outside PG&E's service area which in large part do not support transmission reliability in PG&E's service area and would not be charged to PG&E's customers under Amendment No. 60. This has been an increasing burden, with average monthly costs in 2003 of

\$3.6 million, and average monthly costs of \$5.5 million in the first three months of 2004 climbing to \$5.9 million in April 2004. Thus, annualized costs could exceed \$60 million for PG&E.

The April 2004 monthly MOO charge reveals an increase of 64% over the monthly average for 2003.

Furthermore, Amendment No. 60 would increase revenue to a MOO generator by removing tariff provisions that rescind MLCC payments if Ancillary Services are sold by the MOO generator. As these MOO payments increase, it is even more important that costs be allocated appropriately so as to avoid exacerbating the unjust, unreasonable and unduly discriminatory allocation to PG&E's customers.

**II. Persons to contact regarding this filing**

Please contact and provide service to the following persons in connection with this filing:

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**III. Background**

The CAISO Tariff currently provides that MOO costs are spread statewide. However, it is clear based on CAISO reports and data set forth in Amendment No. 60 that 90-95% of MOO costs are largely incurred in Southern California. see Figures 1 and 2 of the ISO

transmittal letter in Amendment 60, while MOO costs incurred by the CAISO and spread across all load and exports are payments for MLCC largely outside of PG&E's service area and for reasons unrelated to the needs of PG&E's customers. For example, as shown in Amendment No. 60, in December 2003, 18 Mw of MOO waiver denials were issued for system reasons, and 1864 Mw were incurred for local reliability reasons. (Amendment No. 60 Transmittal, Sec. E, Fig. 1). At the same time, in December 2003, 2 Mw of MOO waiver denial occurred in NP 15 and ZP 26 (PG&E's service territory), and 1880 Mw of MOO waiver denial occurred South of Path 15, in Southern California. (Amendment No. 60 Transmittal, Sec E, Cost Allocation, Fig. 2)

PG&E also pays Reliability Must Run (RMR) costs to support its own local reliability. These costs are allocated specifically to PG&E<sup>2</sup> as a PTO on the basis that RMR costs are incurred for the benefit of customers located in the PTO's service territory. Similarly, a significant portion of MOO costs are incurred for the benefit of a localized subset of load. The allocation of MOO costs to all load served through the CAISO on a statewide basis is inconsistent with cost causation principles and the manner in which similar costs, such as RMR, are charged under the CAISO tariff.

The Commission established the MOO in its April 26, 2001, order instituting price mitigation for California, *San Diego Gas & Elec. Co.*, 95 FERC ¶ 61,115. A June 19, 2001 order clarifying the MOO directed creation of a mechanism to allow recovery of Start-up Fuel Costs by charges to all load on the CAISO's system. Further orders clarified the form of compensation for generators subject to MOO. See, *San Diego Gas & Electric Company*, 97

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<sup>2</sup> Compare the allocation of MOO costs with other costs the CAISO incurs to help assure local reliability, those of Reliability Must-Run (RMR) Contracts. The costs of an RMR contract for a generating unit connected to the facilities of a Participating Transmission Owner (PTO) are entirely an obligation of that PTO. CAISO Tariff section 5.2.8. The Commission has determined that these local reliability costs should be allocated to that PTO alone because "the benefits of RMR services are localized." *California Indep. Sys. Operator Corp.*, 90 FERC ¶ 61,315 (2000).

FERC ¶ 61,293 (“December 19, 2001 Compliance Order”), followed by an ISO January 25, 2002 compliance filing, a May 15 2000 Compliance Order, a June 24, 2002 ISO Compliance filing, an October 31 Compliance Order, a December 2, 2002 ISO Compliance Filing, a March 13, 2003 Compliance Order, an April 14, 2003 Compliance Filing, and a November 14, 2003 Compliance Order, California Independent System Operator Corporation, 105 FERC ¶ 61, 196. However, the issue of allocation of must offer costs has not been reexamined during the three years of experience with how must offer obligations and waiver denials are implemented. Now, based on that experience, and the ISO’s reports, including Amendment No. 60, we know that a statewide allocation of such MOO costs is unjust and unreasonable.

Recent discussions have resulted in consideration of changes to MOO, and the filing of Amendment No. 60 which includes a proposal to allocate MOO costs locally based upon transmission system conditions and the PTO for which the MOO waiver and denial resulting costs are triggered. Thus, the CAISO eventually proposes to MOO costs on a cost causation basis. Amendment No. 60 proposes an effective date of July 11, 2004 for all but one element of the proposed revisions. Due to required system changes and staffing limitations the CAISO proposes an indefinite delay in the implementation of the proposal to reallocate MLCC costs until ten days after notice to the market that Phase 1B is ready to be deployed. However, if the CAISO can provide the data shown in Figures 1 and 2 of Amendment No. 60, including the reasons for MOO waiver denial, and the location of MOO waiver denial, by Mw, then the CAISO can implement reallocation of such costs without excessive difficulty, in view of the discriminatory nature of the current allocation.

PG&E already pays substantial amounts for local reliability services, including RMR costs exceeding \$300 million in 2003 and forecasted to be above \$350 million in 2004. It

is clearly unreasonable and inconsistent with established cost causation principles for PG&E and its customers to pay \$300 to \$350 million of dollars for RMR units, called by the CAISO for local reliability in PG&E's service area, and in addition pay over \$60 million more for MOO costs which are incurred at the direction of the CAISO for reasons related to transmission system conditions in Southern California but which are not yet allocated, like RMR, on a regional cost causation basis.

The allocation of MOO costs, on a statewide basis, when largely incurred for local reliability purposes as acknowledged by the ISO in Amendment No. 60, is unjust, unreasonable and violates principles of cost causation. In addition, simultaneously charging PG&E for RMR costs used for local reliability purposes which are allocated directly to PG&E is unduly discriminatory by making PG&E pay for costs incurred for other areas as well as for costs for its own area.

The Federal Power Act provides that a utility may not charge rates that "make or grant any undue preference or disadvantage." 16 U.S.C. S. 824d(b).; see also *Electricity Consumers Resource Council v. FERC*, 747 F.2d 1511 (D.C. Cir 1984) remanding a rate scheme that resulted in cross subsidization of certain customers by other customers. Therefore, this allocation of MOO costs in the ISO tariff is not just and reasonable, as required by the Federal Power Act. Incontestably, a rate that was approved once as reasonable, may become unreasonable upon a change in circumstances and underlying facts, such as the localized occurrence of MOO in Southern California, as reflected in information and reports from the ISO. Rates "should be based on the costs of providing service to the utility's customers, plus a just and fair return on equity." *Alabama Elec Coop v. FERC* 684 F2d 20, 27 (D.C. Cir 1982) and this cost causation principle has been consistently upheld. See, *e.g* *KN Energy v. FERC*, 968 F.2d 1300

(D.C. Cir 1992). Moreover, given the ISO's ability to identify the localized nature of MOO incurrence, issues of feasibility and practicality do not prevent a more equitable allocation of MOO costs. Most importantly, if the ISO proposes to increase MOO costs, by reducing the occasions on which MLCC payments will be rescinded, it must not implement such an increase until it has at the same time remedied the unjust, unreasonable and unduly discriminatory nature of the current MOO allocation.

The CAISO is proposing changes to both its Must Offer Obligation compensation as well as allocation of MOO costs. Initially, the changes will be an increase, as a result of not rescinding MLCC for Ancillary Services sales. Later, the ISO may have steps that reduce MOO costs. This means that until allocation of MOO on a cost causation basis occurs, at some indefinite future date, PG&E would pay significantly increased MOO costs that are not causally related to conditions on PG&E's transmission system, without any guarantee of when the costs will be reallocated. The CAISO has recognized that the Must Offer waiver process may be invoked for local reliability purposes and believes that the Commission has authorized use of the Must Offer waiver process to meet applicable reliability criteria based upon local conditions. However, use of Must Offer to meet such requirements should also mean that PTOs like PG&E who pay substantial RMR costs should not be additionally exposed to MOO costs from areas with PTO's who do not have similar RMR cost commitments for local reliability purposes. Such double charging of PTO's, for both local RMR and statewide MOO resulting from reliability issues in other PTOs' areas is unjust, unreasonable and unduly discriminatory.

#### **IV. Additional information**

##### **The Issue of the Current Unjust, Unreasonable and Discriminatory MOO Allocation Prior to the Effective Date of Amendment 60. (206)(b)(6)**

Although the CAISO has filed Amendment No. 60, to reallocate MOO costs, the issue of the lawfulness of the current allocation of MOO costs under the CAISO tariff until the effective date of any changes under Amendment No. 60 is not currently before the Commission in any proceeding. PG&E recognizes the interrelatedness of this complaint with Amendment No. 60, but because of the severe misallocation of MOO costs currently occurring due to PG&E's customer's being charged for both RMR in the PG&E service area as well as MOO costs incurred in other service areas, PG&E must seek relief from such unjust and unreasonable costs at the earliest possible date.

##### **Attempts to Resolve this Matter Through Settlement or Agreement (206)(b)(9))**

As described in the CAISO's Amendment No. 60 filing letter, PG&E requested that the CAISO accelerate the effective date of the modifications to the allocation of MOO costs, but the CAISO did not propose such reallocation of MOO costs before implementation of other changes in Amendment No. 60. See, Amendment No. 60 Transmittal, Section VI, Effective Date. If Amendment No. 60 is delayed or subject to additional review before acceptance and implementation, allocation of excessive MOO costs to PG&E before the effective date of implementation of Amendment No. 60 must be regarded as a separate issue as to which the Commission should make a determination that such costs may be unjust, unreasonable and unduly discriminatory and therefore establish an investigation and refund effective date.

### **III. Conclusion and Request for Relief**

PG&E recognizes that the CAISO is moving toward localized allocation of MOO costs. Unfortunately, the CAISO has proposed that other changes be made effective 60 days after the date of the filing of Amendment No. 60, July 11, 2004, except for the cost allocation changes. (Amendment No. 60, Transmittal). Therefore, the CAISO currently proposes reallocation only on an indefinite, contingent date.

In view of repeated delays, PG&E must file this complaint against the current allocation of MOO costs to all load statewide, and request that the Commission:

- 1) Establish a refund effective date no later than 60 days from the date of this complaint for return of excess and unlawful MOO costs charged to PG&E for reasons not related to system conditions involving PG&E's transmission facilities;
- 2) Hold this complaint in abeyance for up to six months to determine whether the CAISO has filed a proposal which would establish a just and reasonable cost allocation for MOO costs as part of a tariff modification regarding MOO generally; and
- 3) Consolidate this complaint with FERC Docket No. ER04-835-000 which proposes among other things a localized MOO cost allocation, to be implemented as of the refund effective date established pursuant to this complaint.

Wherefore, PG&E respectfully requests that the Commission accept this complaint and establish a refund date under the Federal Power Act, Section 206, and take other actions as specified herein.

*Respectfully submitted,*

/s/ Kermit R. Kubitz

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

<b>Pacific Gas and Electric Company</b>	)	
<b>Complainant,</b>	)	
v.	)	<b>Docket No. EL04- -000</b>
<b>California Independent System</b>	)	
<b>Operator Corporation</b>	)	
<b>Respondent</b>	)	

**Notice of Filing**

(           , 2004)

Take notice that on, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, a Complaint Requesting Relief. PG&E filed the Complaint against California Independent System Operator Corporation (CAISO) and requests the Commission to establish an investigation into unjust and unreasonable cost allocation, but hold such proceeding in abeyance for a period of six months pending consideration of an expected CAISO tariff amendment which would provide a basis for Reallocating such unjust and unreasonable costs.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (§385.211 and §385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: \_\_\_\_\_, 2004

Magalie R. Salas  
Secretary

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this day caused to be served by U.S. Mail, a copy of the foregoing document upon the California Energy Commission, the California Electricity Oversight Board and all parties designated on the official service list in FERC Docket No. ER02-1656-000 in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure and the following:

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Dated at San Francisco California, this 18th day of May, 2004.

/s/ Joanne M. Myers

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