110 FERC ¶61,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Pacific Gas & Electric Company Docket Nos. ER05-113-000 and ER05-125-000

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

(Issued January 12, 2005)

1. In this order, the Commission accepts for filing and suspends for a nominal period proposed revisions by Pacific Gas & Electric Company (PG&E) to its Reliability Must-Run Agreements (RMR Agreements)[1] with the California Independent System Operator Corporation (CAISO) for the Helms, Humboldt Bay, Hunters Point, San Joaquin, and Kings River Watershed power plants, and establishes hearing and settlement judge procedures. This order benefits customers because it allows PG&E to continue providing must-run generation to the CAISO, while providing an opportunity to resolve their disagreements through settlement negotiations or hearing.

I. Background

2. 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. The RMR Agreements require that, whenever the CAISO extends the terms of an RMR

[1] PG&E's RMR Agreements follow a generic, standard form that was agreed to as part of a settlement approved by the Commission in a letter order issued on May 28, 1999. *See California Independent System Operator Corporation*, 87 FERC ¶ 61,250 (1999).

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Agreement for an additional calendar year, the owner of a designated RMR unit must file with the Commission updates to certain rates and terms of service under the RMR Agreements.[2]

3. The CAISO designated PG&E's facilities for RMR service for the calendar year 2005 (Year 2005). As a result of that designation, on October 29, 2004, pursuant to Schedule F of the RMR Agreements, PG&E submitted, in Docket No. ER05-125-000, an informational filing (Informational Filing) that updates cost information used in determining the AFRR values for the Year 2005. On the same day, PG&E filed in Docket No. ER05-113-000 its section 205 Filing reflecting the updated AFRR values contained in the Informational Filing and certain other annual updates provided for in the RMR Agreements. Specifically, PG&E's section 205 Filing proposes to update: (1) Schedule A of the RMR Agreements to reflect updated contract service limits (for only Humboldt Bay and Hunters Point units); (2) Schedule B to reflect the updated AFRR values and associated rates, charges, and supporting data; and (3) Schedule D to reflect revised prepaid start-up charges (for only the Humboldt Bay unit). In addition, the filing includes rate revisions for the cost recovery of capital items which have been installed and are operational and to update the operating limits in Schedule A for the combined operation of two units under the Humboldt RMR Agreement. PG&E requests a January 1, 2005 effective date.

II. Notice of Filing and Responsive Pleadings

4. Notices of PG&E's filings were published in the *Federal Register*, 69 Fed. Reg. 65,421-22 (2004), with comments, interventions and protests due on or before November 19, 2004. This date was subsequently extended to December 13, 2004. The CAISO filed a motion to intervene and a provisional protest. The Public Utilities Commission of the State of California (CPUC) filed interventions.

III. The CAISO Protest

5. The CAISO argues that PG&E has failed to provide adequate supporting data to allow the CAISO to determine whether the proposed increases to the AFRR values for Year 2005 are just and reasonable. Specifically, PG&E has failed to provide an adequate

[2] The annual updates are usually made in two separate filings. The first is an informational filing that contains Annual Fixed Revenue Requirements (AFRR) values and Variable Operation and Maintenance Rates (VOM) rates. The second is a rate filing made pursuant to section 205 of the Federal Power Act, 18 U.S.C. § 824d (2000), (section 205 Filing) reflecting the annual updates provided for in the RMR Agreement.

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comparison of the proposed 2005 revenue requirements to the prior year's requirements as required by Article 1 Part B of Schedule F. Furthermore, the CAISO argues that PG&E proposes substantial and unjustified increases in operation and maintenance (O&M) costs for the RMR units.[3]

6. With regard to PG&E's section 205 Filing, the CAISO argues that PG&E has not provided sufficient data regarding its Hourly Capital Items Charges for RMR units and, as a result, the CAISO has not been able to verify that the capital items costs are the approved amounts. The CAISO also notes that the section 205 Filing includes annual rate updates for charges to the CAISO that have not been adequately justified because they are calculated using the proposed AFRR values, discussed above.

7. Therefore, based on PG&E's failure to provide supporting data in the Informational Filing and the section 205 Filing, the CAISO asks that the Commission issue a deficiency letter requiring PG&E to file such data. In the alternative, the CAISO requests that the filing be suspended and made effective subject to refund, that the matter be set for hearing and that such hearing be held in abeyance until January 5, 2004, to give the parties time to resolve the outstanding issues.[4]

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notice of intervention and the timely filed protest serve to make the entities that filed them parties to this proceeding.

B. The Commission's Response

9. The CAISO's concerns, which are identified above, raise factual questions concerning PG&E's section 205 Filing that we cannot summarily decide on the record before us. Based on our review of that filing, we find that PG&E's proposed revisions to its RMR Agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly,

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[3] For instance, the CAISO states that O&M costs increased from $4.5 to $7.8 million for the San Joaquin unit.

[4] According to the CAISO, the CPUC, the California Electricity Oversight Board and the CAISO have been engaged in informal discovery and discussions with PG&E in order to provide the CAISO with the information needed to fully review the filings.

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we will accept the proposed revisions to the RMR Agreements for filing, suspend them for a nominal period, to become effective January 1, 2005, subject to refund, and set them for hearing.

10. 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.[5] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Administrative Law Judge will select a judge for this purpose.[6] 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 section 205 Filing is hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2005, subject to refund, as discussed in the body of this order.

(B) 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 However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

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[5] 18 C.F.R. § 385.603 (2004).

[6] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience, available at: http://www.ferc.gov/about/offices/oalj/oalj-dj.asp.

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(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a separate judge, they must make their request to the Chief Judge within 5 days of the date of this order.

(D) Within 60 days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission on 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, if appropriate, or assign the case to a presiding judge for a formal hearing, if appropriate. If the parties are given additional time to continue their efforts, the settlement judge shall file a report at least every 30 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward resolving the outstanding issues.

(E) If settlement discussions fail, and a formal hearing is to be held, a presiding judge to be designated by the Chief Judge shall convene a conference in this proceeding to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.