

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER05-1190-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING PROCEDURES

(Issued August 25, 2005)

1. On July 1, 2005, Pacific Gas and Electric Company (PG&E) filed an unexecuted Amended and Restated Interconnection Agreement (Amended IA) between PG&E and the City and County of San Francisco (San Francisco) and an unexecuted Service Agreement with San Francisco under PG&E's Wholesale Distribution Tariff (WDT Service Agreement)¹ to become effective on September 1, 2005. In this order, the Commission accepts PG&E's filing, suspends it for five months, to become effective February 1, 2006, subject to refund, and establishes expedited hearing procedures.

Background

2. PG&E is an investor-owned public utility. In 1998, PG&E transferred operational control of its transmission facilities to the California Independent System Operator Corporation (CAISO). Contemporaneously with that transfer, PG&E's Transmission Owner Tariff (TO Tariff), filed with and accepted by, the Commission, became effective. The TO Tariff provides access to PG&E's transmission system under the operational control of the CAISO.

¹ PG&E Electric Tariff, First Revised Volume No. 4.

3. San Francisco owns and operates the Hetch Hetchy Project.² San Francisco supplies electric power and energy to serve its municipal load, which is located entirely within what was formerly PG&E's control area and is now within the control area operated by the CAISO.
4. PG&E and San Francisco entered into the original Interconnection Agreement (Original IA) in 1987. The Original IA governs the interconnection of PG&E and San Francisco's electric systems and the coordination of their resources and load. Under the Original IA, PG&E also provides power and transmission services to San Francisco. Also, PG&E currently serves as the CAISO-certified Scheduling Coordinator (SC) to facilitate San Francisco's transmission service under the Original IA.
5. According to PG&E, the services that PG&E currently provides to San Francisco under the Original IA include: (1) interconnection services for the interconnection of San Francisco's transmission system and municipal loads to PG&E's transmission and wholesale distribution systems; (2) firm point-to-point transmission service for the delivery of energy generated at Hetch Hetchy over PG&E's system to San Francisco loads; (3) non-firm point-to-point transmission service to San Francisco; (4) a number of power-related services such as supplemental power (firm energy sold to San Francisco to serve its municipal load and firm obligations to Modesto Irrigation District (MID) and Turlock Irrigation District (TID)), maintenance power during scheduled maintenance outages, and emergency power in the event of forced outages of San Francisco's generation or transmission facilities; and (5) energy tracking (sales to assigned municipal and airport customers, the Deferred Delivery Account (DDA), and Municipal Deviation Account (MDA)).³

Description of Filing

6. In the instant filing, PG&E states that it is proposing to revise the Original IA to remove the provisions for energy tracking and other power services that it claims have become outdated, and the transmission services that are inconsistent with the model now

² The Hetch Hetchy Project consists primarily of three reservoirs, three hydroelectric generating plants, and two transmission lines. One of those transmission lines extends from the hydroelectric generating plants to PG&E's Newark Substation in the San Francisco Bay Area. The other line extends from those hydroelectric generating plants to PG&E's Bellota-Gregg transmission line.

³ PG&E further states the DDA is used to account for energy from the Hetch Hetchy project in excess of sales to customers who otherwise would have been served by PG&E. According to PG&E, the MDA is an accounting mechanism that tracks the difference between actual and scheduled municipal load.

in effect for transmission services in California. PG&E states that the Amended IA maintains provisions for the interconnection of San Francisco's electric system to PG&E's transmission and wholesale distribution facilities, and adds provisions governing all new facilities constructed under the Amended IA.

7. PG&E states that it entered into the Original IA with San Francisco at a time when energy markets were very different than they now are. PG&E states that the market conditions at the time required market participants like San Francisco to execute contracts with large utilities with diverse generation portfolios, like PG&E, to be able to satisfy municipal load. PG&E explains that San Francisco's resources and loads were within PG&E's control area and that PG&E had sufficient resources to complement San Francisco's resources to serve its load.

8. PG&E explains, however, that the current market structure is not designed to accommodate bilateral contracts like the Original IA, and requires significant administrative workarounds to accommodate the Original IA.

9. PG&E states that it is also necessary to amend the Original IA due to the number of disputes between PG&E and San Francisco over the interpretation of various provisions of the Original IA. PG&E states that the number of disputes with San Francisco have resulted in significant litigation and financial costs to both parties.⁴

10. PG&E further states that it has the right under section 205 of the Federal Power Act (FPA)⁵ to propose such changes to the Original IA. Specifically, PG&E states that section 9.28 of the Original IA provides that, except as expressly provided in Appendix A,⁶ nothing in the Original IA affects "in any way PG&E's right to file unilaterally with [the Commission] a change in rate or rate methodology under Section 205 of the Federal Power Act..." PG&E further argues that the only pertinent

⁴ San Francisco has filed a complaint with the Commission in Docket No. EL05-133-000. We note that the complaint is presently pending. San Francisco asserts that PG&E is in violation of their Original IA, is wrongfully attempting to impose a rate increase for past services and attempting to use arbitration to evade the Commission's jurisdiction over the matter.

⁵ 16 U.S.C. § 824d (2000).

⁶ Appendix A provides that the term rates "as used herein shall mean a statement of electric services as provided in the Agreement, rates and charges for or in connection with those services, and all classifications, practices, rules, regulations, or contracts which in any manner affect or relate to such services, rates, and charges."

limitation in Appendix A is that rate schedules will not be changed by PG&E or objected to by San Francisco before January 1, 1999, and that date has since passed.

11. Under the Amended IA, PG&E proposes to cease providing transmission services under the Original IA. PG&E proposes to eliminate all power sales and also ancillary services provisions.⁷ PG&E states that it will be under no obligation to provide San Francisco with power under the Amended IA except as provided under the energy tracking accounts which would remain active for withdrawal purposes until mid-2007.

12. PG&E states that the proposed changes will still provide for the interconnection of San Francisco's electric system to PG&E transmission and wholesale distribution facilities. PG&E states that interconnection services will continue to be provided under the Amended IA for San Francisco's municipal load and the load of commercial tenants at the San Francisco International Airport.

13. Under the Original IA, PG&E and San Francisco agreed to provisions regarding transmission and wholesale distribution improvements. Under the Amended IA, PG&E proposes to replace those provisions with the following agreements: Transmission Facilities Agreements (TFA) and Distribution Facilities Agreements (DFA). These agreements will be used for all new facilities constructed under the Amended IA, whose costs will be directly assigned to San Francisco.

14. PG&E claims that the adoption of the Amended IA will not result in an interruption in service. PG&E states that there is an active and transparent energy market in California from which San Francisco can obtain all the energy necessary to serve its load. PG&E states that transmission services can be obtained pursuant to the CAISO Tariff and PG&E's TO Tariff.

15. Additionally, PG&E states that wholesale distribution services as provided under the Original IA will no longer be available in the Amended IA. In order to accommodate the need for wholesale distribution services, PG&E presently filed the WDT Service Agreement. PG&E states that the WDT Service Agreement will provide San Francisco with wholesale distribution service. PG&E states that the WDT Service Agreement reflects customer-specific wholesale distribution rate design that takes into account the fact San Francisco has hundreds of delivery points. PG&E states that it will not require San Francisco to install demand meters at each point of delivery, and proposes to apply a methodology to calculate the demand of the loads connected at the more than seventeen hundred energy meters.

⁷ According to PG&E an exception will be made for those services dealing with reactive power and voltage control.

Notice of Filing and Interventions

16. Notice of PG&E's filing was published in the *Federal Register*, 70 Fed. Reg. 41,698 (2005), with protests and interventions due on or before July 22, 2005. The Turlock Irrigation District (Turlock) and the California Department of Water Resources State Water Project (CDWR) submitted timely motions to intervene. San Francisco filed a timely motion to intervene and protest. The Modesto Irrigation District (Modesto) submitted a timely motion to intervene and protest. On August 8, 2005, PG&E filed an answer to San Francisco's protest.

17. San Francisco requests that the Commission: (1) summarily reject the filing; or, in the alternative, (2) suspend the effective date of PG&E's submittal for the maximum permissible time and affirm that PG&E must continue to operate under the terms of the Original IA until final disposition of this docket and requisite successor agreements (if any) are in place; (3) consolidate this matter with San Francisco's pending Complaint in Docket No. EL05-133-000; and (4) set both matters for hearing to the extent issues raised therein are not decided summarily in San Francisco's favor.

18. San Francisco argues that PG&E has no right of termination under the Original IA. San Francisco states that, notwithstanding, PG&E is seeking to unilaterally and prematurely terminate the Original IA prior to the July 1, 2015 termination date, under the guise of a rate change. San Francisco claims that the proposed Amended IA will virtually terminate all services under the Original IA, including transmission and power sales. San Francisco adds that PG&E has not evoked any of the enumerated conditions necessary for early termination under section 9.26.2.⁸

19. San Francisco also argues that under the *Mobile-Sierra* doctrine, PG&E is barred from unilaterally making changes to a long-term contract filed with the Commission unless there is an express preservation of section 205 rights within the contract itself.⁹ San Francisco argues that such a right does not exist in the Original IA. It states that section 9.28 of the Original IA does not contain a provision for termination of services

⁸ Section 9.26.2.1 provides that the Original IA "shall terminate on July 1, 2015, unless terminated earlier by either Party pursuant to Section 8.4, 9.15, 9.29 or 9.31." Section 8.4 provides for termination in the event of an unpaid disputed bill. Section 9.15 provides for termination in the event that a signatory to the Original IA lacks authority to bind a party, and all the signatories had the requisite authority. Section 9.29 allows for termination should a party fail to comply with an arbitrator's decision. Section 9.31 allows for termination should there be a material modification.

⁹ *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

and rate schedules, only a provision for a limited section 205 right under the FPA to change “rate and rate methodology.” San Francisco argues that since PG&E does not have a section 205 right to terminate the Original IA, it must demonstrate that the public interest requires the Commission to intervene and modify the Original IA.¹⁰ San Francisco argues that PG&E’s submittal does not even attempt to satisfy the heavy burden of the “public interest” standard and therefore must be rejected.

20. San Francisco further argues that the “just and reasonable standard” compels rejection of the Amended IA. San Francisco states that Commission policy does not allow existing transmission contracts to be abrogated even if the contract potentially conflicts with the new market structure as a result of California deregulation. San Francisco states that the Commission has recognized, “the sanctity of contracts is presumed and that the Commission will not lightly undo the term of existing contracts.”¹¹

21. San Francisco further states that the Commission should reject PG&E’s submittal because PG&E has failed to submit the cost support required by section 35.13 of the Commission regulations.¹² San Francisco disagrees with PG&E’s contention that it has no obligation to submit most cost-of-service data because the new filing results in an overall decrease in revenues for PG&E. San Francisco states that PG&E’s submittal is misleading and that, on a service-for-service basis, PG&E would receive more revenue under the Amended IA than it does under the Original IA. San Francisco claims, therefore, PG&E must justify the increase by providing cost of service data, and, since PG&E has failed to do so, San Francisco argues that the Commission should reject PG&E’s submittal.¹³

22. San Francisco further contends that PG&E’s Amended IA potentially leaves San Francisco unable to obtain essential services. San Francisco states that a third party will not be able to replace the unique service that has been developed over the parties’ 60-year business relationship. San Francisco also states that the time frame contemplated by PG&E’s submittal places a significant constraint on San Francisco’s ability to obtain new providers for services. San Francisco states that it is impossible for San Francisco to put such arrangements in place between now and the end of any likely suspension period.

¹⁰ *Citing Metropolitan Edison Co. v. FERC*, 595 F.2d 851, 855-56 (D.C. Cir. 1979).

¹¹ *Citing PacifiCorp v. Reliant Energy Services, Inc.*, 103 FERC ¶ 61,355 at P 87 (2003).

¹² 18 C.F.R. § 35.13 (2005).

¹³ *Citing City of Groton v. FERC*, 584 F.2d 1067, 1070 (D.C. Cir. 1978).

23. San Francisco also argues that, even if it can replace PG&E's current services, the replacement services will result in a dramatic cost increase for San Francisco. San Francisco states that there will be a 33 percent increase in transmission costs as it migrates from firm transmission service with PG&E to CAISO tariff services. San Francisco also states that it will have to obtain many power services, e.g. supplemental power, maintenance power, and emergency power, that it now receives from PG&E. These prices, argues San Francisco, will be higher than the current prices under the Original IA.

24. Finally, San Francisco argues that PG&E's submittal prevents the parties from satisfying certain obligations. San Francisco states that, under the Amended IA, San Francisco is unable to meet its obligation in the Scheduling Coordinator Services Tariff Settlement (SCS Settlement). As part of the SCS settlement, San Francisco agreed to acquire an SC other than PG&E by no later than December 31, 2005.¹⁴ San Francisco states that the Amended IA creates too much uncertainty and allows too little time for San Francisco to meet that deadline. Also, according to San Francisco, the Amended IA prevents PG&E from satisfying its obligations under the Stanislaus Commitments, which obligated PG&E to provide transmission services, power sales, interconnection arrangements and other services to San Francisco and others.¹⁵ San Francisco also opposes several other miscellaneous provisions outlined in the Amended IA.¹⁶

25. San Francisco argues that the Commission should suspend PG&E's submittal should it decide not to reject PG&E's submittal. San Francisco requests that the Commission require PG&E to continue to operate under the terms of the Original IA until PG&E and San Francisco are able to work out the terms of all necessary replacement agreements and any related implementation issues.

¹⁴ See *Pacific Gas and Electric Co.*, 112 FERC ¶ 61,076 (2005).

¹⁵ See *Pacific Gas and Electric Company*, Opinion Nos. 471, 107 FERC ¶ 61,154 (2004), *reh'g denied*, Opinion No. 471-A, 108 FERC ¶ 61,304 (2004).

¹⁶ San Francisco opposes: (1) PG&E's recommendation for an Engineering and Operations Committee; (2) the removal of California Public Utilities Commission rules from Appendix F which will allow PG&E to collect costs in excess of previously agreed upon amounts; (3) provisions which provide PG&E with the sole authority to decide which interconnections are permissible; and (4) a provision which allows PG&E to determine the amount of power delivered where meters are inaccurate and their accuracy cannot be determined.

26. San Francisco also asserts that the maximum suspension period is warranted in this case because PG&E's Amended IA results in rate increases to San Francisco for the limited services that PG&E will provide.

27. Modesto also protests PG&E's filing and argues that it should be rejected because it contradicts the Commission precedent regarding the abrogation of existing contracts. Modesto states that, under Order No. 888,¹⁷ the Commission never intended that alternative transmission access would be provided at the price of sacrificing existing contracts.

28. Modesto further states that the adoption of the Amended IA may have far reaching implications regarding contracts for power Modesto has with San Francisco. Modesto requests that PG&E demonstrate or affirm that its proposals will not impair Modesto's rights under these arrangements with San Francisco.

Discussion

Procedural Matters

29. Pursuant to Rule 214 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept PG&E's answer and will, therefore, reject it.

Hearing Procedures

31. PG&E's filing presents issues of material fact, including whether the Original IA permits the filing at issue here, that we cannot resolve based on the record before us and

¹⁷ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmissions Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmission Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1997), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in part sub nom. Transmission Access Policy Study Group v. FERC*, 255 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom., New York v. FERC*, 535 U.S. 1 (2002).

that are more appropriately addressed in the trial-type evidentiary hearing that we are ordering below.

32. Our preliminary analysis indicates that PG&E's filing has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept PG&E's proposed Amended IA and WDT Service Agreement for filing, suspend them for five months, make them effective February 1, 2005,¹⁸ subject to refund, and set them for an expedited hearing. Without making any findings as to the validity of San Francisco's claims in its protest, we are concerned at this preliminary stage that San Francisco could suffer irreparable harm if PG&E's proposed changes become effective after the five-month suspension period. Therefore, we will direct the presiding judge to establish an expedited procedural schedule that will allow the Commission to issue a final decision within the five-month suspension period.¹⁹

33. We deny San Francisco's request to consolidate this proceeding with the complaint proceeding presently in Docket EL05-133-000. We note that the parties are involved in ADR procedures at the present time. Therefore, consolidation would be inappropriate at this time.

The Commission orders:

(A) PG&E's unexecuted Amended IA and unexecuted WDT Service Agreement is hereby accepted and suspended for five months, to become effective February 1, 2006, 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 by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER05-1190-000 concerning the justness and reasonableness of PG&E's Amended IA and WDT Service Agreement, as discussed in the body of this order.

¹⁸ During a period of suspension, the pre-existing rates, terms and conditions remain in effect. Here, that would be the Original IA.

¹⁹ See, e.g., *Interstate Power Co.*, 68 FERC ¶ 61,178 (1994), *Cleveland Electric Illuminating Co.*, 22 FERC ¶ 61,016 (1983), *Louisiana Power & Light Co.*, 16 FERC ¶ 61,016, *reh'g denied*, 16 FERC ¶ 61,265 (1981).

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a pre-hearing conference in these proceedings, to be held within approximately seven (7) days of the date of the issuance of this order, 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 for in the Commission's Rules of Practice and Procedure.

(D) Unless the proceeding settles in its entirety, the presiding judge shall issue an initial decision no later than December 2, 2005. Briefs on exceptions shall be due ten (10) days after date of issuance of the initial decision but no later than December 12, 2005, and briefs opposing exceptions shall be due seven (7) after date of filing of briefs on exceptions but no later than December 19, 2005.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.