

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket Nos. ER06-24-001
EL06-79-000

ORDER GRANTING REHEARING, PROVIDING CLARIFICATION, AND
INSTITUTING SECTION 206 PROCEEDING

(Issued June 29, 2006)

1. In this order, we grant the request for rehearing filed by Modesto Irrigation District (Modesto) of a December 9, 2005 Order that accepted for filing the California Independent System Operator Corporation's (CAISO) proposal to amend the Responsible Participating Transmission Owner Agreement (RPTOA) between CAISO and Pacific Gas and Electric Company (PG&E).¹ We also provide clarification and institute a proceeding pursuant to section 206 of the Federal Power Act² (FPA) in Docket No. EL06-79-000 concerning the terms and conditions of the RPTOA and establish a refund effective date. However, as discussed below, we will hold the investigation in abeyance pending the outcome of the proceeding in Docket No. ER05-1286-000 and the issuance of a further Commission order.

Background

2. On October 11, 2005, CAISO filed an amendment to the RPTOA between CAISO and PG&E. The RPTOA is a *pro forma* agreement that incorporates certain CAISO tariff provisions and specifies the responsibilities of PG&E, as a scheduling coordinator, in the CAISO control area. As relevant here, CAISO sought to amend the RPTOA to reflect that pursuant to a filing made by PG&E with the Commission in Docket No. ER05-1286-000 (IA Proceeding), PG&E would no longer serve as the scheduling

¹ *California Independent System Operator Corp.*, 113 FERC ¶ 61,250 (2005) (December Order).

² 16 U.S.C. § 824(e) (2000).

coordinator for Modesto. In the IA Proceeding, PG&E filed a revised Interconnection Agreement (IA) with Modesto to reflect changes resulting from Modesto's proposed transfer from the CAISO control area to the Sacramento Municipal Utility District (SMUD) control area.³

3. Several parties, including Modesto and the Transmission Agency of Northern California (TANC), filed comments and protests in response to the CAISO's filing. Modesto and TANC argued that the proposed amendments to the RPTOA do not relieve PG&E of its obligation to act as the scheduling coordinator for Modesto's allocation of service under an agreement between PG&E and TANC known as the South of Tesla Principles (Tesla Agreement). According to Modesto, PG&E's scheduling obligation under the Tesla Agreement is not an issue in the IA Proceeding. Moreover, Modesto claimed that since it is not a signatory to the Tesla Agreement, PG&E and TANC must amend the Tesla Agreement in order to relieve PG&E of its scheduling coordinator responsibility for transactions pursuant to the Tesla Agreement.

4. The December Order accepted CAISO's proposed amendment to the RPTOA between CAISO and PG&E. The December Order further found that PG&E's scheduling coordinator responsibility for Modesto's allocation under the Tesla Agreement is at issue in the IA Proceeding and is, therefore, outside the scope of this proceeding.

Request for Rehearing

5. Modesto filed a timely request for rehearing of the December Order. Modesto alleges that the Commission erred in the December Order: (1) in finding that PG&E's scheduling coordinator responsibilities for Modesto under the Tesla Agreement are at issue in the IA Proceeding, (2) in not recognizing that the Tesla Agreement and the IA are two separate agreements and that each imposes a separate and unique encumbrance on the CAISO grid, and (3) in not preserving the sanctity of contracts by allowing PG&E to instruct the CAISO to remove PG&E's scheduling coordinator responsibility under the Tesla Agreement, based on modifications to a contract unrelated to that encumbrance.

6. According to Modesto, the Commission erred in finding that PG&E's obligations under the Tesla Agreement arise under the IA and that PG&E's obligations under the Tesla Agreement are at issue in the IA Proceeding. It states that the IA and the Tesla Agreement are different contracts and that each gives rise to a separate encumbrance –

³ See *Pacific Gas & Electric Co.*, 112 FERC ¶ 61,348 (2005).

the specific Modesto encumbrance under the IA is reserved transmission service, while the encumbrance under the Tesla Agreement is a bi-directional transmission path between PG&E's Midway station and Modesto's Westley switchyard.

7. Modesto explains that on December 1, 2005, it moved from the CAISO control area and commenced operations within the SMUD control area. As a result, pursuant to the terms of the revised IA, Modesto ceased taking reserved transmission service under the IA and, thereby, terminated the encumbrance associated with that IA. However, Modesto argues, the Tesla Agreement has not been similarly amended. Modesto asserts that PG&E's obligations under the Tesla Agreement have not been changed in any way, and the associated encumbrance remains the same.

8. Modesto contends that PG&E's unilateral filing of the revised IA in the IA Proceeding does not, and cannot, relieve PG&E of obligations that arise under the Tesla Agreement because the Tesla Agreement is a separate agreement. Modesto argues that if PG&E desires to amend the Tesla Agreement to change its obligations thereunder, PG&E must negotiate such changes with TANC and file an amendment to the Tesla Agreement. Modesto states that, to its knowledge, TANC did not agree to any such amendment to the Tesla Agreement or to PG&E's discontinuation of PG&E's role as the scheduling coordinator for Modesto deliveries under the Tesla Agreement.

9. Modesto asserts that the CAISO clearly is aware that the IA and the Tesla Agreement are different contracts and that each contract gives rise to an independent encumbrance since the Tesla Agreement is listed separately from the IA in the endnotes to Appendix A of the RPTOA. Modesto further notes that now-endnote two states: "[The Tesla Agreement] is an agreement between PG&E and [TANC]." Accordingly, Modesto argues, it was both inaccurate and improper for the CAISO to represent that PG&E's abrogation of its responsibilities under the Tesla Agreement results 'from the implementation of various agreements'⁴ between PG&E and the holders of Existing Contracts. Modesto states that only the IA has been amended, not the Tesla Agreement.

⁴ Citing CAISO Transmittal Letter in Docket No. ER06-24-000 at 2.

10. Moreover, Modesto states that the Commission has previously found that PG&E may not unilaterally file for any change to the non-rate terms and conditions of the Tesla agreement.⁵ Therefore, Modesto argues, PG&E may not cease to perform any obligation under the Tesla Agreement without TANC's agreement.

11. Accordingly, Modesto requests that the Commission reverse its finding that PG&E's scheduling coordinator responsibility for Modesto's allocation under the Tesla Agreement is at issue in the IA Proceeding, and is outside the scope of this proceeding.

Commission Determination

12. Upon further consideration and as discussed below, we will grant Modesto's rehearing request in part.

13. We agree with Modesto that PG&E's *obligations under the Tesla Agreement* are not at issue in the IA Proceeding, which concerns only PG&E's obligations under the IA.⁶ We clarify, however, that among the issues to be addressed in the IA Proceeding is whether PG&E's obligations under the IA include the obligation to schedule Modesto's Tesla Agreement transactions.⁷ If it is determined that PG&E does not have such an obligation under the IA, then any changes to the obligation to schedule Modesto's Tesla Agreement transactions would have to be made pursuant to the Tesla Agreement and in a separate proceeding.

⁵ Citing *Public Utilities With Existing Contracts in the California Independent System Operator Corporation Region*, 112 FERC ¶ 61,007 at P 25-27 (2005), *reh'g pending*.

⁶ Indeed, PG&E specifically recognized in its answer filed in the IA Proceeding that it "does not propose changes to the [Tesla Agreement] itself, and it remains an existing contract at both FERC and the CAISO." *See* Pacific Gas and Electric Company's Answer to the Motion to Reject and Request for Leave to Answer and Answer to Protest, Requests for Suspension and Rehearing of Modesto Irrigation District at 7 (Sept. 8, 2005) (PG&E IA Proceeding Answer).

⁷ *See* Motion to Reject and Request for Leave to Answer and Answer to Protest, Requests for Suspension and Rehearing of the Modesto Irrigation District at 22 (Aug. 24, 2005) (conditionally protesting whether PG&E's IA filing was intended to remove PG&E's scheduling obligations for Modesto under the Tesla Agreement); PG&E IA Proceeding Answer at 7.

14. Moreover, because the Commission, in the IA Proceeding, set PG&E's scheduling obligations under the IA with respect to Modesto for hearing and settlement judge procedures, and that proceeding continues to be open, the Commission in Docket No. ER06-24-000 should not have accepted, without suspension or hearing, CAISO's proposed amendments to the RPTOA concerning PG&E's scheduling obligations with respect to Modesto. CAISO's proposed amendments to the RPTOA are necessarily contingent on the outcome of the IA Proceeding. If it is determined in that proceeding that the IA establishes PG&E's scheduling obligations with respect to Modesto's allocation of service under the Tesla Agreement, then the revisions to the RPTOA would be appropriate. On the other hand, if it is determined in that proceeding that the IA does not establish PG&E's scheduling obligations with respect to Modesto's allocation of service under the Tesla Agreement, then the revisions to the RPTOA would be inappropriate.

15. Because the Commission erroneously accepted for filing, without suspension or hearing, CAISO's proposed amendments to the RPTOA concerning Modesto in Docket No. ER06-24-000, and instead should have made them effective contingent on the outcome of the IA Proceeding, we will institute a section 206 proceeding in Docket No. EL06-79-000, with a refund effective date, to permit the Commission to revise the RPTOA in the event that it is determined in the IA Proceeding that the IA does not establish PG&E's scheduling obligations with respect to Modesto's allocation of service under the Tesla Agreement.

16. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b), as amended by the Energy Policy Act of 2005,⁸ requires that the Commission establish a refund effective date that is no earlier than the date of the publication by the Commission of notice of the initiation of the Commission's proceeding in the *Federal Register*, and no later than five months after the publication date. In order to give maximum protection to customers, and consistent with our precedent,⁹ we will establish a refund effective date at the earliest date allowed. This date will be the date on which notice of the initiation of the proceeding in Docket No. EL06-79-000 is published in the *Federal Register*. In addition, section 206 requires that, if no final decision has been rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has

⁸ Pub. L. No. 109-58, § 1285, 119 Stat. 594, 980-81 (2005).

⁹ See, e.g., *Canal Electric Co.*, 46 FERC ¶ 61,153 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).

failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. That date, we estimate, will be coincident with our final decision in the IA Proceeding.

17. Although we are instituting an investigation, we will hold the investigation in abeyance pending the outcome of the proceeding in Docket No. ER05-1286-000 and the issuance of a further Commission order.

The Commission orders:

(A) Modesto's request for rehearing is hereby granted, 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 FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), the Commission hereby institutes a proceeding in Docket No. EL06-79-000 concerning the terms and conditions of the amended RPTOA, as discussed in the body of this order.

(C) The Secretary shall promptly publish a notice of the Commission's initiation of the investigation under section 206 of the FPA in Docket No. EL06-79-000 in the *Federal Register*.

(D) The refund effective date in Docket No. EL06-79-000, established pursuant to section 206(b) of the FPA will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (C) above.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.