

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip M. Moeller, and Jon Wellinghoff.

Modesto Irrigation District

Docket No. EL06-70-000

ORDER DENYING PETITION FOR DECLARATORY ORDER

(Issued August 31, 2006)

1. In this order, the Commission acts on the Petition for a Declaratory Order and Request for Waiver of Filing Fee filed by the Modesto Irrigation District (Modesto) on May 2, 2006. Modesto seeks an order declaring that the duties and obligations of both Modesto and the California Independent System Operator Corporation (CAISO) arising under section 3.8.1 of the Offer of Partial Settlement filed in *California Independent System Operator Corporation*, Docket Nos. ER04-115-000 and EL04-242-000 and *Pacific Gas and Electric Company*, Docket Nos. ER04-242-000 and EL04-50-000,<sup>1</sup> terminated as of December 1, 2005. Modesto also seeks refunds, plus interest, of amounts paid under the Grid Management Charge (GMC) Settlement since December 1, 2005, as well as a waiver of the filing fee normally applicable to petitions for declaratory orders under Rule 207(c) of the Commission's Rules of Practice and Procedure.<sup>2</sup> The Commission will deny the petition for declaratory order but will waive the filing fee.<sup>3</sup>

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<sup>1</sup> See *California Independent System Operator Corporation*, 110 FERC ¶ 61,090 (2005) (GMC Settlement).

<sup>2</sup> 18 C.F.R. §207(c) (2006).

<sup>3</sup> Modesto qualifies for an exemption from the Commission's filing fee pursuant to 18 C.F.R. section 381.108 (a), as it is a state agency functioning pursuant to the California Irrigation District Act. See *Cal. Water Code* §22116 (2001).

## **Background**

2. Modesto is an irrigation district that supplies both electric and irrigation services within the State of California. Modesto owns and operates facilities for the generation, transmission, distribution and purchase and sale of electric power and energy at wholesale and at retail. Modesto is a fully integrated utility operating within the Sacramento Municipal Utilities District (SMUD) control area. Modesto's electric system is interconnected with transmission facilities owned by Pacific Gas and Electric (PG&E) under the Modesto-PG&E interconnection agreement ("MID-PG&E IA") which became effective in 1988 and extends until April 1, 2008. In 1998, PG&E turned over operational control of its transmission facilities to the CAISO,<sup>4</sup> of which Modesto's electric system is also interconnected.

3. On October 31, 2003, the CAISO submitted to the Commission revisions to its GMC for 2004. The GMC is the rate through which the CAISO recovers its administrative and operating costs, including the costs incurred in establishing the CAISO prior to the commencement of operations. The Commission accepted and suspended the CAISO's revised GMC rates subject to refund, directed the appointment of a settlement judge, directed the parties to seek to reach a settlement, and directed the initiation of an administrative hearing in the event that the parties could not resolve their differences in settlement.<sup>5</sup>

4. On November 28, 2003, PG&E submitted to the Commission revisions to its GMC Pass Through Tariff (PTT). Under PG&E's PTT, the company is able to pass on certain CAISO GMC charges to entities for which it acts as scheduling coordinator (SC), which at that time included Modesto. During the proceedings on the CAISO's GMC proposal, Modesto expressed concerns not only about the GMC rate design and its own GMC charges, but it also raised concerns about the GMC charges incurred by PG&E and charged to Modesto under PG&E's PTT. Modesto also filed a motion to intervene and protest in the proceeding on the proposed revisions to the PG&E PTT. On January 23, 2004, the Commission accepted and suspended PG&E's revised PTT and set the matter for hearing procedures.<sup>6</sup>

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<sup>4</sup> See *Pacific Gas and Electric Company*, 81 FERC ¶ 61,122 (1997).

<sup>5</sup> See *California Independent System Operator Corp.*, 105 FERC ¶ 61,406 (2003).

<sup>6</sup> See *Pacific Gas and Elec. Co.*, 106 FERC ¶ 61,036 (2004). PG&E's revised PTT is set out in Attachments D and E to the GMC Settlement, which in turn are included in Attachment A to Modesto's petition.

5. The issues raised in the CAISO GMC proceeding and the PG&E PTT proceeding culminated in the GMC Settlement, which the Commission approved by order issued on February 2, 2005.<sup>7</sup> As part of a settlement, the CAISO, Modesto and PG&E agreed that Modesto would make a fixed monthly payment of \$75,000 directly to the CAISO in lieu of compensating PG&E for its share of PG&E's GMC charges through the PG&E PTT. This payment is set out in section 3.8.1 of the GMC Settlement, which provides:

Until the end of the moratorium under section 2.4.1,<sup>8</sup> [Modesto] shall pay the CAISO directly \$75,000.00 each month, subject to adjustment in section 3.8.2, in settlement of [Modesto's] obligation under PG&E's PTT to pay a share of the GMC charges payable by PG&E with respect to Scheduling Coordinator ID "PGAB." The ISO shall not assess [Modesto] for any additional amount for GMC payable with respect to SCID PGAB. [Modesto] shall pay the GMC charges assessed in accordance with this Settlement Offer and the CAISO Tariff against [Modesto's] Loads, Schedules, and other activities under other SCIDs including, without limitation, [Modesto's] SCID, except that in the event that Modesto accepts responsibility for scheduling any load currently scheduled by PG&E under SCID PGAB, the ISO will not charge any additional GMC at the tariffed GMC rate, but rather will attribute such schedules and load to the fixed \$75,000.00 per month payment set forth above, provided that [Modesto] schedules such load under a new and separate SCID and the ISO shall not assess GMC charges to such SCID.<sup>9</sup>

The GMC Settlement Agreement included as an appendix the replacement sheets for the CAISO Tariff necessary to implement the settlement. The provisions resolving

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<sup>7</sup> GMC Settlement, *supra* n.1.

<sup>8</sup> Section 2.4.1 provides that the CAISO shall not file an application under section 205 of the Federal Power Act (16 U.S.C. 824d) (FPA) to modify the GMC prior to the earlier of (1) January 1, 2007, or (2) the effective date of modifications to the CAISO's Tariff to implement a revised market design. A corresponding prohibition in section 2.4.2 prohibits the parties to the Settlement from filing under section 206 of the FPA (16 U.S.C. 824e) to make changes in the GMC. With respect to the filing moratorium, because the CAISO's proposed market redesign is not scheduled to take effect until November, 2007, the moratorium will expire on January 1, 2007. *See California Independent System Operator Corp., Tariff Filing to Reflect Market Redesign and Technology Upgrade, Docket No. ER06-615-000.*

<sup>9</sup> GMC Settlement, section 3.8., which is set forth in Attachment A to Modesto's petition.

Modesto's concerns were implemented through the addition of a new paragraph in Appendix F, Part F, section 3 of the CAISO Tariff, stating as follows:

Modesto Irrigation District (MID) is a Scheduling Coordinator and also is responsible for a portion of the GMC charges payable by another Scheduling Coordinator, Pacific Gas and Electric Company (PG&E) pursuant to a contract between them. MID and PG&E have agreed that MID shall pay the ISO directly \$75,000 each month, in lieu of any payments to PG&E for its share of the GMC charges payable by PG&E and the ISO shall credit a portion of the amount received from MID to PG&E as an offset to PG&E's obligation for GMC charges. Any difference, positive or negative, between the amount credited to PG&E and the amount paid by MID to the ISO under this provision shall be reflected in the Operating and Capital Reserves Account. The payment arrangement described in this paragraph is subject to the conditions, and will be implemented pursuant to the procedures, set forth in the Offer of Partial Settlement accepted by the FERC in Docket Nos. ER04-115-000, *et al.* This arrangement shall not apply to MID's obligation for GMC charges as a Scheduling Coordinator, which shall be governed by the provisions of this Schedule 1 and the other applicable provisions of the ISO Tariff, except that in the event that MID accepts responsibility for scheduling any load currently scheduled by PG&E under SCID PGAB, the ISO will not charge any additional GMC at the tariffed GMC rate, but rather will attribute such schedules and load to the fixed \$75,000.00 per month payment set forth above, provided that MID schedules such load under a new and separate SCID and the ISO shall not assess GMC charges to such SCID.<sup>10</sup>

6. Effective December 1, 2005, Modesto transferred its electric operations from the CAISO Control Area to the SMUD Control Area and terminated its SC contract with PG&E. Modesto takes the position that the termination of this contract and the withdrawal of its loads formerly scheduled under the PG&E contract from the CAISO Control Area also terminated its obligation to make the fixed monthly payments specified in CAISO Tariff and the Settlement Agreement. In support of this view, Modesto cites language in section 3.8.1 of the contract that characterizes the payment as being "in settlement of MID's obligation under PG&E's PTT to pay a share of the GMC charges payable by PG&E with respect to ..." PG&E's SC function on Modesto's behalf. Modesto seeks a Commission declaration that Modesto is not obligated to pay the \$75,000 monthly payments from December 1, 2005, but that Modesto is, instead,

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<sup>10</sup> CAISO Tariff, Appendix F, Part F, section 3, First Revised Sheets 376H-376I. Modesto's petition sets out this portion of the CAISO Tariff in Attachments A and B of the GMC Settlement, which is in turn included as Attachment A of the petition.

required to pay the GMC charges at the applicable rate under the CAISO tariff.<sup>11</sup> In addition, Modesto seeks a Commission order directing the CAISO to refund the difference between the \$75,000/month charge under section 3.8.1 of the settlement and the applicable GMC charges under the CAISO tariff.

### **Notice of Filing and Motions to Intervene**

7. Notice of Modesto's filing was published on May 19, 2006 in the *Federal Register*, 71 Fed. Reg. 29,141 (2006), with interventions or protests due on or before June 1, 2006. PG&E, Northern California Power Agency (NCPA), and Powerex Corp. (Powerex), filed timely motions to intervene. The CAISO and Southern California Edison Company (SCE) each filed a timely motion to intervene and protest.

### **The Protests**

8. CAISO and SCE contend that Modesto's obligation to pay \$75,000 per month to the CAISO is unaffected by the cessation of PG&E's SC function for Modesto's load. In interpreting sections 3.8.1 and the moratorium in section 2.4.1, CAISO states that "The Settlement Agreement thereby establishes a clear duration for [Modesto's] obligation to make the \$75,000 monthly payments, subject to no exception for changes in the contractual relationship between [Modesto] and PG&E or for any reduction in the volume of ISO transactions scheduled by PG&E on [Modesto's] behalf."<sup>12</sup> Similarly, SCE asserts that the plain language of section 3.8.1 "is clear and unambiguous" that Modesto is obligated to pay CAISO \$75,000 per month until January 1, 2007, regardless of the termination of PG&E's obligation to act as Modesto's SC.<sup>13</sup> Both CAISO and SCE argue that the issue of Modesto's continuing obligation under section 3.8.1 of the GMC Settlement is a matter of contract interpretation, and because the language of the Settlement is unambiguous, it is therefore unnecessary for the Commission to call upon extrinsic evidence, such as Modesto's changed circumstances, to resolve the issue raised by Modesto's petition.<sup>14</sup>

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<sup>11</sup> Pending resolution of its request for relief, Modesto has continued to make \$75,000 monthly payments to the CAISO.

<sup>12</sup> CAISO protest at 7.

<sup>13</sup> SCE protest at 2-3.

<sup>14</sup> SCE protest at 3, citing *Cinergy Services, Inc.*, 94 FERC ¶61,146 at 61,555 (2001); CAISO protest at 6, citing *Cambridge Electric Light Co.*, 84 FERC ¶ 61,049 at 61,225 (1998), *Pacific Gas and Electric Co.*, 65 FERC ¶ 61,312 at 62,431 (1993); and *Ala. Power Co. v. FERC*, 993 F.2d 1557 at 1565 (D.C. Cir. 1993).

### **Commission Determination**

9. As a preliminary matter, the Commission notes that, on June 15, 2006, Modesto filed a Motion for Leave to Answer and Answer and Request for Expedited Treatment of Petition for Declaratory Order in which it purports to “help clarify for the Commission misunderstandings in the CAISO’s and SCE’s Protests and clarify [Modesto’s] position in this proceeding.” Modesto asserts that the Commission has discretion to waive its general prohibition in 18 C.F.R. §385.213(a)(2) against answers to protests if the answer will aid the Commission’s understanding of the parties’ positions.<sup>15</sup> However, in this instance, the Commission finds that Modesto’s answer does not provide additional clarity, but instead largely reiterates arguments made in its petition in an attempt to refute arguments made by the CAISO and SCE. Therefore, the Commission will deny the motion and will invoke its prohibition of answers to protests.

10. The Commission has reviewed the GMC Settlement and the CAISO Tariff provisions that flowed from that Settlement and finds that the provisions of both are clear. Pursuant to section 3.8.1 of the Settlement, Modesto agreed to pay a flat fee of \$75,000 per month directly to the CAISO in lieu of paying PG&E for a share of PG&E’s GMC through the PG&E PTT. The duration of this obligation is clearly circumscribed by the filing moratorium set in section 2.4.1 of the Settlement, which provides that no filings to change the GMC Settlement may be made until January 1, 2007. Despite the fact that Modesto has terminated its contract with PG&E and Modesto apparently has no further obligations to PG&E under its PTT, the Settlement does not take into account this change in circumstances. Rather, the Settlement is based upon the assumption of a continuing contractual relationship between Modesto and PG&E. It is clear that Modesto and PG&E designed the Settlement to address Modesto’s objections to both the CAISO’s proposed GMC and PG&E’s corresponding PTT proposal, subject only to the moratorium in section 2.4.1. As stated above, there is nothing in the Settlement that anticipates any change in the contractual relationship between Modesto and PG&E, in particular any change in PG&E’s status as SC for Modesto. Likewise, the Commission does not find any provision in the Settlement that would reduce or eliminate the monthly payment obligation if PG&E’s SC function were to terminate.

11. The Commission finds additional support for its conclusion that the Settlement does not anticipate termination of the monthly payment obligation from the section 3.8.2 of the Settlement, which provides for an upward adjustment of that obligation if Modesto’s load grows significantly above its historical usage. The fact that there is no corresponding provision in the Settlement for a downward adjustment to Modesto’s fixed

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<sup>15</sup> Modesto answer at 2, citing *KeySpan-Ravenswood, Inc. v. New York Indep. System Operator, Inc.*, 99 FERC ¶ 61,252 at 62,101 (2002); and *Entergy Servs., Inc., et al.*, 62 FERC ¶ 61,073 at 61,369 (1993).

monthly payment if its load decreases, or if PG&E stops scheduling load on Modesto's behalf is a compelling omission. In short, the Settlement was intended to address specific concerns expressed by Modesto, but the Settlement did not address the cessation of PG&E's scheduling coordinator function on behalf of Modesto. Modesto's interpretation that the monthly payment obligation terminated with the cessation of PG&E's SC function is not supported by the specific terms of the Settlement. The Commission does not need to consider extrinsic evidence to determine that, under the unambiguous terms of the Settlement, Modesto remains liable for the monthly payment obligation.<sup>16</sup>

12. Therefore, the Commission will deny Modesto's petition for declaratory order.

The Commission orders:

(A) Modesto's Petition for Declaratory Order is hereby denied as discussed in the body of this order.

(B) Modesto's Request for Waiver of Filing Fee is granted as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>16</sup> See, e.g., *Cinergy Services, Inc.; Cambridge Electric Light Co.; and Pacific Gas and Electric Co.*, n.13, *supra*.