

126 FERC ¶ 61,298
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Pacific Gas and Electric Company

Docket No. ER09-625-000

ORDER ACCEPTING AND SUSPENDING REPLACEMENT INTERCONNECTION
AGREEMENT AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued March 31, 2009)

1. In this order, we accept Pacific Gas and Electric Company's (PG&E) notice of cancellation of the Interconnection Agreement (IA) between PG&E and Modesto Irrigation District (Modesto) (Current IA) to be effective April 1, 2009, when it expires by its own terms. We also accept for filing and suspend for a nominal period a proposed unexecuted successor IA (Replacement IA) to be effective immediately upon termination of the Current IA, April 1, 2009, subject to refund and hearing and settlement judge procedures.

Background

2. From 1988 to 2005, PG&E and Modesto (the Parties) maintained an interconnection agreement under which PG&E provided Modesto with system interconnection, transmission, power and control area services. In 2005, Modesto switched from the CAISO balancing authority area¹ to the Western Power Administration (Western) sub-balancing authority area, which is part of the Sacramento Municipal Utility District (SMUD) balancing authority area. Thereafter, the Parties negotiated a revised IA to reflect these changed conditions and on May 2, 2008, the Commission accepted the Current IA.² Under the Current IA PG&E continues to provide Modesto with interconnection service, but PG&E's control area-related service obligations and

¹ In 1998, PG&E's control area became part of the balancing authority area of the California Independent System Operator Corporation (CAISO).

² *Pacific Gas and Electric Co.*, 123 FERC ¶ 61,112 (2008).

transmission and power-related services have been eliminated. The term of the Current IA expires on April 1, 2009.

3. In November 2008, PG&E initiated negotiations with Modesto to amend the Current IA. The Parties were unable to reach agreement and on January 30, 2009, PG&E filed a notice of cancellation of the Current IA and an unexecuted Replacement IA. PG&E requests an effective date for both the notice of cancellation and the Replacement IA of April 1, 2009. PG&E states that cancellation of the Current IA is just and reasonable because it effectuates the will of the Parties who agreed that the Current IA should terminate on April 1, 2009.

4. PG&E states that the Replacement IA governs the interconnection of PG&E's and Modesto's electric transmission systems. PG&E asserts that it primarily differs from the Current IA in one respect, which is the potential expansion of Modesto's obligations and liability pertaining to the planning, operation and maintenance of its electric system, including certain facilities jointly owned by Modesto and Turlock Irrigation District (Turlock). PG&E asserts that the liability provisions are necessary in order to avoid uncertainty and unknown risks associated with the jointly owned facilities. The Replacement IA treats the jointly owned Modesto and Turlock facilities as part of Modesto's electric system until such time as a liability agreement between Modesto and Turlock becomes effective. PG&E also explains that it is its understanding that a liability agreement between Modesto and Turlock will become effective upon the filing of a settlement between PG&E and Turlock in Docket No. ER08-733.

Notice of Filing and Pleadings

5. Notice of PG&E's filing was published in the *Federal Register*, with comments due on or before February 20, 2009. SMUD, the City and County of San Francisco and Turlock filed timely, unopposed motions to intervene. Modesto filed a timely motion to intervene and protest. PG&E filed an answer on March 5, 2009, and on March 12, 2009, Modesto filed an answer to PG&E's answer.

6. Modesto contends that PG&E's proposed Replacement IA is unjust, unreasonable and should be set for hearing and settlement judge procedures.

7. Modesto objects to PG&E's changes regarding treatment of jointly owned facilities, stating that Modesto should not be held liable for actions taken by Turlock on its own nor be responsible for mitigating changes to facilities or providing notice to PG&E resulting from actions taken by Turlock on its own. Modesto further asserts that PG&E has not required such obligations over the twenty-year term of the Current IA and PG&E has not shown why these changes are now needed. With respect to a liability agreement between Modesto and Turlock, referenced by PG&E, Modesto explains that the liability agreement is contingent upon a settlement that has yet to be completed and is not proper for Commission consideration.

8. Modesto argues that PG&E's definition of "Adverse Impact" is unacceptably vague and inappropriately gives more weight to events that occur rather than on the effects of certain events. Modesto asserts that PG&E's definition is likely to cause disputes concerning the application of this provision.

9. Modesto further objects to the exemption of certain PG&E projects³ from the definition of Adverse Impact. Modesto maintains that these projects should not automatically be considered part of the baseline system for Adverse Impacts and exempted from system impact studies. Modesto asserts that these projects could create very significant adverse impacts not currently understood by the Parties and have the potential to harm Modesto. Modesto alleges that this is an attempt by PG&E to insulate itself from potential obligations or liability under the Replacement IA and that such an action is unjust and unreasonable.

10. Modesto objects to a number of other definitions and provisions in the proposed Replacement IA and believes that modifications and/or additions to the Replacement IA are necessary in the following areas: (1) Long-Term Change to Operations, (2) Mutual Benefits, (3) System Planning Information, (4) Telemetry, (5) Operating Data, (6) Dispute Resolution, (7) Interconnection Capacity, (8) Unscheduled Flows, (9) Billing, (10) Engineering and Operating Committee, (11) Encumbrances, (12) South of Telsa Principles, (13) Term, (14) Applicable Requirements, (15) Costs, (16) Operational Limitations, and (17) Disclosure Laws.

Discussion

Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁵ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept PG&E's answer or Modesto's answer to PG&E's answer and will, therefore, reject them.

³ The four projects exempted under the definition are the Panoche Energy Center Project, the East Bay Municipal Utility District – Camanche Load Project, the Los Banos #1 500/230 kV Transformer Replacement Project and the Gregg Reactor Project.

⁴ 18 C.F.R. § 385.214 (2008).

⁵ 18 C.F.R. § 385.213(a)(2) (2008).

Hearing and Settlement Judge Procedures

12. PG&E's notice of cancellation of the Current IA is accepted effective April 1, 2009.
13. PG&E's proposed Replacement IA raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.
14. Our preliminary analysis indicates that PG&E's proposed Replacement IA has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept PG&E's proposed Replacement IA for filing, suspend it, and make it effective April 1, 2009, subject to refund, and establish hearing and settlement judge procedures.
15. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁷ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of 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 proposed notice of cancellation of the Current IA is hereby accepted, effective April 1, 2009.

⁶ 18 C.F.R. § 385.603 (2008).

⁷ 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 the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(B) PG&E's proposed Replacement IA is hereby accepted and suspended, to become effective April 1, 2009, subject to refund, and further proceedings, as discussed in the body of this order and the Ordering Paragraphs below.

(C) 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 concerning PG&E's proposed Replacement IA. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2008), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (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 specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge 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 this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a 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)

Kimberly D. Bose,
Secretary.