

131 FERC ¶ 61,270
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Pacific Gas and Electric Company

Docket No. ER03-198-012

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued June 25, 2010)

1. In this order, the Commission accepts an updated market power analysis filed by Pacific Gas and Electric Company (PG&E) on December 23, 2009. As discussed below, the Commission concludes that PG&E continues to satisfy the Commission's standards for market-based rate authority.¹

I. Background

2. PG&E is an electric and gas utility serving retail and wholesale customers in northern and central California. PG&E states that it owns and operates electric generation, transmission, and distribution assets, and gas transmission and local gas distribution facilities within California, including gas storage facilities. PG&E is a subsidiary of PG&E Corporation, a publicly held California corporation. PG&E was granted market-based rate authorization in 2002.²

¹ PG&E's next updated market power analysis must be filed according to the regional schedule adopted in Order No. 697. *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 882, app. D, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, at P 368-371, apps. D, D-1, D-2, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010).

² *Pacific Gas & Electric Co.*, Docket No. ER03-198-000 (Dec. 19, 2002) (unpublished letter order).

3. PG&E states that in 2008, it owned and operated generating facilities located in the California Independent System Operator (CAISO) balancing authority area with a total capacity of 6,099 megawatts (MW), which PG&E represents meets approximately one-third of its load obligation. In addition, PG&E explains that long-term purchase contracts account for a large proportion of its generation portfolio. As of 2008, PG&E had various long-term power purchase agreements (PPAs) totaling about 9,137 MW. As such, PG&E's horizontal market power study accounts for approximately 15,000 MW of generation. PG&E categorizes its PPAs into six groups: (1) PPAs with irrigation districts and water agencies in Northern California; (2) dispatchable and take-or-pay contracts signed by California's Department of Water Resources; (3) tolling agreements with suppliers in California; (4) PG&E's evergreen seasonal exchange agreement with Puget Sound Power & Light; (5) renewable contracts; and (6) other long-term PPAs not classified elsewhere.

4. PG&E also includes approximately 18,022 combined miles of transmission in its asset appendix. PG&E states that all of its electric transmission facilities are under the operational control of the CAISO except for gen-ties that connect their transmission to the grid and cannot be taken out of service without notice to the CAISO, and transmission lines used to connect end-use customers at transmission voltage.

5. PG&E represents that it currently does not have any electric affiliates. However, it explains it has one affiliate engaged in energy-regulated businesses, Standard Pacific Gas Line Incorporated, that holds a certificate of exemption under section 1(c) of the Natural Gas Act³ and owns natural gas pipelines extending from Rio Vista, California to San Pablo, California. Additionally, PG&E states that through its affiliate, PG&E Strategic Capital, Inc., it is proposing to develop an interstate gas transmission pipeline with Fort Chicago Energy Partners, L.P. and Northwest Pipeline Corporation that would connect the proposed Jordan Cove liquefied natural gas terminal to the Northwest Pipeline system and to PG&E's backbone gas transmission system. However, PG&E notes that these facilities are not yet operational.

6. In lieu of a Simultaneous Transmission Import Limit (SIL) study, PG&E provides an analysis of import capability into the relevant market using Western Electricity Coordinating Council (WECC) path ratings. PG&E argues that the WECC paths have a carefully computed and monitored Operating Transfer Capability and that the seasonal transfer limits are established prior to the operation of a path by regional and sub-regional

³ 15 U.S.C. § 717(c) (2006).

WECC committees.⁴ PG&E states that the results are reviewed and commented on by other WECC sub-regional study groups.⁵

7. PG&E identifies eight major WECC paths into the relevant market and explains that five of these paths comprise the Southern California Import Transmission path.⁶ PG&E describes the conditions limiting the flow on the Southern California Import Transmission path and states that the WECC Operations Study Subcommittee has established a well-defined simultaneous import limit for this path.⁷

8. Of the remaining three paths, PG&E explains that two enter the CAISO market from the north and one from the south (Mexico). PG&E represents that it can find no evidence of interdependence of these three remaining paths into the relevant market.⁸ PG&E describes an additional limit on one of the northern paths into the relevant market as the water levels determining the hydro generating capability in Northern California.⁹ Therefore, PG&E limits the seasonal import capability of that path according to assumed water levels.¹⁰

9. PG&E adds the seasonal import capacity of the three paths to that of the Southern California Import Transmission path to estimate the import capacity into the relevant market.¹¹ PG&E then reduces the amount of import capacity for each season by the total amount of long-term contracts and remote generation owned and controlled by the California load-serving entities.¹²

⁴ PG&E Filing, Attachment A at P 39.

⁵ *Id.* n.100.

⁶ *Id.* P 41.

⁷ *Id.*

⁸ *Id.* P 42.

⁹ *Id.* P 40.

¹⁰ *Id.*

¹¹ *Id.* P 42.

¹² *Id.* P 48.

II. Notices

10. Notice of PG&E's filing was published in the *Federal Register*, 75 Fed. Reg. 1766 (2010), with interventions or protests due on or before February 22, 2010, as amended by errata notice extending the comment period. None was filed.

III. Discussion

A. Market-Based Rate Authorization

11. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, horizontal and vertical market power.¹³ As discussed below, the Commission concludes that PG&E satisfies the Commission's standards for market-based rate authority.

1. Horizontal Market Power

12. The Commission adopted two indicative screens for assessing horizontal market power, the pivotal supplier screen and the wholesale market share screen.¹⁴ PG&E has prepared the pivotal supplier and wholesale market share screens for the CAISO market, consistent with the requirements of Order No. 697.¹⁵

13. The Commission has accepted WECC path ratings for SIL studies when sellers have demonstrated that they are simultaneously feasible and take into account any interdependencies between paths.¹⁶ Based on PG&E's representations, we find that the PG&E analysis using WECC path ratings for the CAISO market meets the requirements of a SIL study as discussed in Appendix E of the April 14 Order¹⁷ and Order No. 697.

¹³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 62, 399, 408, 440.

¹⁴ *Id.* P 62.

¹⁵ *Id.* P 235.

¹⁶ *Id.* n.364. See also *Pinnacle West Capital Corp.*, 110 FERC ¶ 61,127, at P 8-11 (2005) (providing clarification of methods used to calculate simultaneous transmission import capability in the Western Interconnection).

¹⁷ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004).

14. PG&E provided import values for all seasons for the CAISO market. Consistent with Appendix E of the April 14 Order and Order Nos. 697-A and B,¹⁸ PG&E then reduced the import values by subtracting the total amount of long-term contracts and remote generation owned and controlled by the California load serving entities. These reduced import values are the SIL values we accept and rely on for the CAISO market. Accordingly, we accept the following PG&E-submitted SIL values for the CAISO market: Winter - 9,892 MW; Spring - 10,295 MW; Summer - 10,132 MW; and Fall - 10,067 MW.

15. The Commission has reviewed PG&E's pivotal supplier and wholesale market share screens for the CAISO market and has determined that using the SIL values we accept above, PG&E passes the pivotal supplier screen and passes the wholesale market share screen in the CAISO market with a market share of zero percent in each season.¹⁹

16. Accordingly, the Commission finds that PG&E satisfies the Commission's requirements for market-based rates regarding horizontal market power in the CAISO market.

2. Vertical Market Power

17. In cases where a public utility, or any of its affiliates, owns, operates, or controls transmission facilities, the Commission requires that there be a Commission-approved Open Access Transmission Tariff (OATT) on file before granting a seller market-based rate authorization.²⁰

18. The Commission also considers a seller's ability to erect other barriers to entry as part of the vertical market power analysis.²¹ The Commission requires a seller to provide

¹⁸ *Id.*; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 144; Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 at P 22.

¹⁹ In its pivotal supplier and wholesale market share screens, PG&E applied the import values before they were reduced by the total amount of long-term contracts and remote generation owned and controlled by the California load-serving entities.

However, as noted above, we accept and rely on the reduced SIL values, and confirm that PG&E passes both screens using these reduced SIL values. *See PSEG Energy Resources & Trade LLC*, 124 FERC ¶ 61,147, at P 20-22 (2008) (accepting reduced SIL values for a RTO once those values have been reduced by all of the reservations held by the load serving entities in that RTO).

²⁰ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 408.

²¹ *Id.* P 440.

description of its ownership or control of, or affiliation with an entity that owns or controls, intrastate natural gas transportation, storage or distribution facilities; sites for generation capacity development; and physical coal supply sources and ownership of or control over who may access transportation of coal supplies (collectively, inputs to electric power production).²² The Commission also requires sellers to make an affirmative statement that they have not erected barriers to entry into the relevant market and will not erect barriers to entry into the relevant market.²³

19. PG&E states that its transmission assets located in the CAISO market are under the functional control of the CAISO, which is a Commission-approved independent system operator with an OATT on file with the Commission.²⁴

20. PG&E states that it owns or controls generation sites or resources for the development of new generation. However, PG&E notes that approximately 710 MW of new generation capacity from its competing suppliers has come on-line during 2009 and 34,848 MW of capacity are pending interconnection to the CAISO grid, reflecting the possibilities for resource development by numerous market participants. PG&E states that although it owns or controls Hinshaw natural gas pipelines or a local natural gas distribution system with Standard Pacific Gas Line Incorporated, this ownership does not raise issues with regard to barriers to entry.

21. The Commission adopted a rebuttable presumption that the ownership or control of, or affiliation with any entity that owns or controls, inputs to electric power production does not allow a seller to raise entry barriers but will allow intervenors to demonstrate otherwise.²⁵

22. PG&E affirmatively states that neither it nor its affiliates have erected barriers to entry into the CAISO market and neither PG&E nor its affiliates will erect barriers to entry into the CAISO market.

23. Based on PG&E's representations, we find that PG&E's submittal satisfies the Commission's requirements for market-based rates regarding vertical market power.

²² *Id.* P 447. Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 176.

²³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 447.

²⁴ *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,122 (1997).

²⁵ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 446.

B. Other Matters

24. PG&E explains that the appendix of assets submitted with its updated market power analysis reflects small fluctuations in its miles of transmission lines and gas assets from its most recently filed appendix of assets. These fluctuations are caused by events such as relaying and rerouting pipe or transmission lines, connecting new customers and the abandonment of facilities that are no longer needed. PG&E explains that these changes take place on a continuous basis and are a significant challenge for reporting, because the system size, measured in miles, can quite literally change from day to day. PG&E asserts that these changes that occur in the ordinary course of business are not changes in the facts upon which the Commission relied when granting PG&E market-based rate authority.

25. PG&E notes that it will be filing change in status notices with relative frequency in the future due to changes in the amount of owned and controlled generation. PG&E proposes to file an asset appendix of its gas and transmission assets, as of December 31 of the most recent year, in the first quarter of each calendar year. Then, PG&E proposes to submit that same asset appendix with each notice of change in status filed during that year. PG&E argues that this approach will significantly reduce the burden on PG&E, and the annually updated asset appendices would be more useful to the Commission than numerous sporadic updates. In addition, PG&E commits to report changes in its gas and transmission assets that are outside the ordinary course of business and which, according to PG&E, would therefore constitute a change from the facts the Commission relied upon in granting it market-based rate authority.

26. We find that PG&E's proposal to file an asset appendix as of December 31 in the first quarter of each calendar year is unnecessary. The Commission did not intend to require that a seller update its gas and transmission asset appendix to reflect small fluctuations in the physical characteristics of these assets that occur daily in the ordinary course of business and do not trigger a change in status reporting requirement, as described by PG&E. Indeed, the Commission's regulations provide that a seller may approximate the size of its transmission assets in the form provided in Appendix B to Part 35.²⁶ Thus, when submitting a change in status notification, as required by Order Nos. 697 and 652,²⁷ a seller may continue to submit the most recently filed gas and

²⁶ See 18 C.F.R. § 35.42(c) and Appendix B (2009). See also Order No. 697, FERC Stats. & Regs. ¶ 31,252 at Appendix B; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 379.

²⁷ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 894; *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, at P 18, 26, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2009).

transmission asset appendix with each notice of change in status if there is no change in gas or transmission assets outside of the ordinary course of business that would reflect a departure from the facts the Commission relied upon in granting market-based rate authority.

27. We remind PG&E that, with regard to transmission and gas assets, it must timely report to the Commission any change in ownership or control of transmission facilities, or inputs to electric power production or affiliation with any entity not previously disclosed that owns or controls transmission facilities or inputs to electric power production, that “would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.”²⁸ Such a change would then be required to be reflected in PG&E’s asset appendix.²⁹

C. Reporting Requirements

28. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or longer) market-based power sales during the most recent calendar quarter.³⁰ Public

²⁸ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, at P 18, 26, *order on reh’g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2009).

²⁹ *See* Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 894.

³⁰ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats. & Regs. ¶ 31,127, *reh’g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh’g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334 (2003). Attachments B and C of Order No. 2001 describe the required data sets for contractual and transaction information. Public utilities must submit Electric Quarterly Reports to the Commission using the EQR Submission System Software, which may be downloaded from the Commission’s website at <http://www.ferc.gov/docs-filing/eqr.asp>.

utilities must file Electric Quarterly Reports no later than 30 days after the end of the reporting quarter.³¹

29. PG&E must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.³² Additionally, PG&E must file an updated market power analysis for the Southwest Region in compliance with the regional reporting schedule adopted in Order No. 697.³³ The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) PG&E's updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) PG&E is hereby directed to file an updated market power analysis according to the regional reporting schedule adopted in Order No. 697.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³¹ The exact filing dates for these reports are prescribed in 18 C.F.R. § 35.10b (2009). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

³² *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005); 18 C.F.R. § 35.42 (2009).

³³ Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 882.