140 FERC ¶ 61,112
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Pacific Gas and Electric Company Docket No. ER12-1968-000

ORDER ACCEPTING AND SUSPENDING UNEXECUTED AGREEMENT AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 6, 2012)

1. On June 6, 2012, Pacific Gas and Electric Company (PG&E) filed an unexecuted Small Generator Interconnection Agreement (Agreement) between itself and Acciona Solar Energy LLC (Acciona).[1] As discussed below, we accept the unexecuted Agreement for filing, suspend it for a nominal period to become effective August 9, 2012, as requested, subject to refund, and we establish hearing and settlement judge procedures.

I. Background and Filing

2. Acciona is developing the Lakeview Solar One project (the Project), a 20 MW solar photovoltaic generating facility to be located in Kern County, California. Acciona submitted a request to interconnect its Project to PG&E's 12 kV distribution system at the Lakeview Substation.

3. In April 2012, the parties executed a facilities study to determine the system impact and costs of interconnecting the Project to PG&E's distribution system. The proposed Agreement specifies the terms and conditions under which the Project will interconnect with, and operate in parallel with, PG&E's distribution system. PG&E identified the following Distribution Upgrades required to facilitate the interconnection: (a) a new 70/12 kV 30 MVA transformer Bank #2 and associated breakers and disconnects; (b) a 12 kV bus tie switch; and (c) a 12 kV bus extension (Lakeview

[1] The Agreement is designated as Service Agreement No. 112 under PG&E's Wholesale Distribution Tariff, FERC Electric Tariff Volume No. 4.

Facilities).[2] PG&E's Agreement defines Distribution Upgrades as the additions, modifications, and upgrades to PG&E's distribution system at or beyond the Point of Interconnection to facilitate interconnection of the Project. According to PG&E, Acciona is responsible for Distribution Upgrade costs of approximately $2,561,000.[3]

4. PG&E states that Acciona disagrees that it should have sole cost responsibility for the Lakeview Facilities. Thus, Acciona requested that PG&E file the Agreement in unexecuted form to allow PG&E to begin providing service to Acciona while also allowing the Commission to decide the merits of Acciona's objections regarding the cost responsibility for the subject upgrades.

II. Notice of Filing and Responsive Pleadings

5. Notice of this filing was published in the *Federal Register*, 77 Fed. Reg. 37,391 (2012), with interventions and comments due on or before June 27, 2012. A timely motion to intervene was filed by Modesto Irrigation District. A timely motion to intervene and protest was filed by Acciona. PG&E filed an answer to Acciona's protest on July 12, 2012. Acciona filed a motion for leave to answer on July 27, 2012.

A. Acciona's Protest

6. Acciona argues that PG&E has incorrectly classified the Lakeview Facilities as Distribution Upgrades under the Agreement. Acciona states that the Commission applies the five-factor *Mansfield* test to identify whether an upgrade is integrated with the transmission system, and is therefore a Network Upgrade.[4] Acciona's expert witness believes that the *Mansfield* factors are satisfied based on purported statements made by PG&E representatives during a teleconference. Specifically, PG&E allegedly stated that it reserves the right to close the 12 kV bus tie switch at its discretion to serve its own load.[5] If the bus tie switch is closed, Acciona asserts that the Lakeview Facilities will loop back into the transmission system, enabling energy to flow in both directions. Further, in closing the bus tie switch, Acciona contends that the facilities will provide transmission service to PG&E's load and generation customers. Acciona's expert further

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[2] PG&E's Agreement at Attachment 6; *see also* Acciona June 27, 2012 Protest at 1.

[3] *See* PG&E's Agreement at Attachment 6.

[4] Acciona Protest at 2 (citing *Mansfield Muni. Elec. Dept. v. New England Power Co.*, 97 FERC ¶ 61,134, at 61,613-14 (2001) (*Mansfield*)).

[5] Acciona Protest at 8 and Bristol Aff. at 6.

contends that the fourth *Mansfield* factor is satisfied because the facility upgrades can be used for coordinated operations as a backup to PG&E's existing transformer. Finally, in regards to the fifth factor, Acciona's expert states that outages on the Lakeview Facilities may disrupt load and generation customers, as well as the transmission system.[6]

7. Acciona also argues that the Lakeview Facilities qualify as Network Upgrades as defined under PG&E's Tariff. Acciona asserts that the Lakeview Facilities will benefit the transmission system by providing PG&E switching options at the Lakeview Substation for both loads and generators. Acciona's expert further explains the Project's output will be deliverable beyond its interconnection point at the Lakeview Substation and may access the California Independent System Operator Corporation (CAISO) grid depending on future off-take arrangements.[7] As a result, Acciona contends that the Lakeview Facilities are upgrades benefitting the PG&E transmission system, and are located at or beyond the point at which the PG&E distribution system connects to its transmission system.

8. Acciona maintains that requiring it to bear the entire cost of these facilities, without reimbursement, would be unjust, unreasonable, and contrary to Commission policy. Accordingly, Acciona requests that the Commission order PG&E to submit a compliance filing reclassifying the facilities as Network Upgrades subject to crediting under Section 5.2 of the Agreement. Alternatively, Acciona requests that the Commission set for hearing whether the facilities have been properly classified.[8]

B. PG&E's Answer

9. In its answer, PG&E disagrees with Acciona's analysis and presents counter arguments to support its position that the Lakeview Facilities are correctly classified as Distribution Upgrades.

10. PG&E disagrees with Acciona's analysis of each of the five *Mansfield* factors. PG&E's expert witness contends that *Mansfield* factors are not satisfied by closing the bus tie switch. Contrary to Acciona's assertions, PG&E contends that the Lakeview Facilities will be used for radial operation, with power flowing in one direction toward the customer load. Further, PG&E's expert asserts that the 12 kV bus path is not used

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[6] Acciona Protest at 8 and Bristol Aff. at 7-8.

[7] Acciona Protest at 7 and Bristol Aff. at 5.

[8] Acciona Protest at 11-12.

nor needed for transmission support.[9] In regards to the fourth *Mansfield* factor, PG&E argues that Acciona's Project triggers the need for a new transformer bank in order to comply with PG&E's safety and reliability standards. Accordingly, PG&E contends that these upgrades will not provide benefits to the transmission grid. Finally, PG&E refutes Acciona's contention that outages of the Lakeview Facilities will impact the transmission system. PG&E states that a failure of the substation transformer will not impact the transmission system with the proposed 70 kV ring bus configuration, and thus the fifth factor is not met.[10]

11. PG&E additionally challenges Acciona's assumption that the facilities will benefit PG&E's transmission system. PG&E states that its steady state power flow analysis concluded that the Project's power back feed would cause an overload on the Lakeview Substation Bank 1 under Summer minimum load conditions. As a result, PG&E identified the installation of the second bank to mitigate the overload that the Project's interconnection would cause.[11] PG&E contends that the identified upgrades will not benefit the transmission system, and are needed to comply with PG&E's safety, reliability, and power quality standards.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make those entities that filed them parties to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PG&E's answer because it has provided information that assisted us in our decision making process. We are not persuaded to accept Acciona's answer, and will, therefore, reject it.

B. Commission Determination

14. PG&E's unexecuted Agreement raises issues of material fact that cannot be resolved based on the record before us. Specifically, PG&E and Acciona present conflicting arguments on both the classification and cost allocation of the facilities

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[9] PG&E Answer at 4 and Sun Aff. at 2-4.

[10] PG&E Answer at 5 and Sun Aff. at 4.

[11] PG&E Answer at 3 and Sun Aff. at 2.

necessary for Acciona's interconnection under PG&E's Wholesale Distribution tariff that require further evidence to support. These arguments are more appropriately addressed in the hearing and settlement judge procedures ordered below.

15. Our preliminary analysis indicates that PG&E's unexecuted Agreement 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 the unexecuted Agreement for filing, suspend it for a nominal period, make it effective August 9, 2012, as requested, subject to refund, and set it for hearing and settlement judge procedures, as ordered below. The issue to be examined at hearing is the classification and cost responsibility associated with the Lakeview Facilities, including all additional related issues.

16. While we are setting this matter 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.[12] 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.[13] The settlement judge shall report to the Chief Judge and the Commission within 30 days 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 unexecuted Agreement is hereby accepted for filing and suspended for a nominal period, to become effective August 9, 2012, as requested, 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

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[12] 18 C.F.R. § 385.603 (2012).

[13] If the parties decide to request a specific judge, they may make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days 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).

Department of Energy Organization Act and 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 the justness and reasonableness of the unexecuted Agreement. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), 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 in writing or by telephone within five (5) days of the date of this order.

(D) 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.

(E) 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 convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 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 in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.