

119 FERC ¶ 61,047
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER07-568-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued April 19, 2007)

1. On February 23, 2007, Pacific Gas and Electric Company (PG&E) filed an unexecuted service agreement under its Wholesale Distribution Tariff (WDT Service Agreement) and an unexecuted interconnection agreement (IA) with the City and County of San Francisco (San Francisco). PG&E requests waiver of notice to allow an effective date of March 31, 2007. In this order, the Commission conditionally accepts and suspends for a nominal period the WDT Service Agreement and the IA, makes them effective March 31, 2007, as requested, subject to refund, and sets them for hearing and settlement judge procedures.

Background and Filing

2. PG&E is an investor-owned public utility. San Francisco is applying to PG&E for wholesale distribution service at the Hunters Point Naval Shipyard under the WDT. San Francisco supplies electric power and energy to serve its municipal load, which is located entirely within what was formerly PG&E's control area and is now within the control area operated by the California Independent System Operator Corporation (CAISO).

3. PG&E and San Francisco are parties to a 1987 Amended and Restated Interconnection Agreement (1987 Agreement) under which PG&E provides San Francisco with a range of services, including interconnection services for San Francisco's transmission system and municipal loads to PG&E's transmission and wholesale distribution systems, wholesale distribution service, and various power sales and transmission services. In 2005, in Docket No. ER05-1190-000, PG&E filed modifications to the 1987 Agreement to remove the transmission, wholesale distribution and power sales services that PG&E claimed had become outdated and inconsistent with

the current California market. PG&E stated that in the future, new wholesale distribution services would be provided under its Wholesale Distribution Tariff (WDT).¹

4. PG&E's WDT provides the rate methodology and terms and conditions for wholesale transmission over PG&E's distribution facilities. The WDT includes a *pro forma* service agreement covering the specifics of the service that PG&E will provide to an eligible wholesale customer who executes a service agreement or who, as in this case, agrees to the filing of an unexecuted service agreement while the parties continue to negotiate the terms and conditions of service.

5. Under the WDT Service Agreement filed in this proceeding, PG&E will provide San Francisco with wholesale service over PG&E's distribution system between a 12 kV interconnection point in San Francisco and the Hunters Point Substation. PG&E will install a switched riser at the existing pole at the interconnection point, pull 75 circuit feet of cable from the riser pole to CCSF-owned and maintained switchgear, and install PG&E-owned and maintained metering and associated equipment inside the CCSF-provided switchgear. The WDT Service Agreement contains a direct assignment facilities charge of \$43,407, a monthly cost of ownership charge of \$213, a monthly customer service charge of \$390.25, and a wholesale distribution charge of \$3.69 per kW-month.²

6. The WDT Service Agreement deviates in some respects from the *pro forma* WDT service agreement. Among others, the WDT Service Agreement provides for customer-specific (1) termination charges, (2) limited waiver provisions and (3) load balance provisions.

7. The IA specifies the non-rate terms and conditions under which the parties will physically interconnect their electrical systems, and is filed as an attachment to the WDT Service Agreement.³

¹ The filing was set for hearing in an order issued August 25, 2005, *Pacific Gas and Electric Co.*, 112 FERC ¶ 61,225 (2005). In October 2005, the Commission granted the request of PG&E and San Francisco for a six-month stay so that the parties could engage in negotiations to resolve outstanding issues between them, *Pacific Gas and Electric*, 113 FERC ¶ 61,028 (2005). The Commission has granted numerous subsequent stays and negotiations between the parties continue.

² Under the WDT, customers are initially charged a generic distribution rate of \$3.69 per kW-month until a determination of customer-specific rates can be completed and filed.

³ PG&E's WDT does not have a *pro forma* version for system interconnection agreements such as this one. The *pro forma* interconnection agreement contained in PG&E's WDT is for generator interconnections, which is a different service.

8. The parties state that they are negotiating certain provisions of the WDT Service Agreement and IA, and that if they reach agreement on these provisions, PG&E will file executed versions of the agreements. The parties have asked the Commission to accept the Service Agreement and IA for filing, suspend it for a nominal period to become effective subject to refund, and establish hearing and settlement judge procedures, while they continue their negotiations. They state that PG&E filed the unexecuted agreements even though they are still negotiating the terms and conditions of those agreements in order to permit San Francisco to commence service on the date requested.⁴

Notice of Filing and Intervention

9. Notice of PG&E's filing was published in the *Federal Register*, 72 Fed. Reg. 10,203 (2007), with protests and interventions due on or before March 16, 2007. The Modesto Irrigation District (Modesto) filed a timely motion to intervene, raising no issues. San Francisco filed a timely motion to intervene and a protest.

10. In order to preserve its rights in the event the ongoing negotiations do not result in agreement, San Francisco objects to numerous provisions in both the unexecuted IA and in the unexecuted WDT Service Agreement that it considers unjust and unreasonable. With respect to the IA, San Francisco objects, among other things, that section 5.2.2 of the IA stipulates that interconnected operations are conditioned on San Francisco's having contracts or other arrangements for meeting its wholesale power requirements and giving it the ability to operate as a utility, and that final determination of these matters are a matter of "PG&E's judgment." San Francisco argues that this condition precedent to service under PG&E's WDT is without foundation and is improper.

11. San Francisco also objects that section 6.1.3 of the IA requires that San Francisco's arrangements with the CAISO to meet its energy requirements be satisfactory to PG&E and subject to its determinations, and that the "hold harmless" language of section 6.1.3 of the IA imposes an unreasonable, "open-ended" obligation on San Francisco for the actions of third parties over which it may have no control. San Francisco itemizes other objections to the IA related to cancellation and termination charges and, with respect to the unexecuted WDT Service Agreement, maintains that it: (a) varies from the approved *pro-forma* Service Agreement in the WDT; (b) contains specifications that are incorrect, impractical, or inappropriate; (c) contains charges that are excessive and/or inappropriate; and (d) fails to accommodate San Francisco's solar generation program. San Francisco states that it itemizes the foregoing concerns reluctantly, given the progress being made by the parties, and therefore requests that the Commission accept and suspend the filing to permit service to commence on March 31, 2007, and establish hearing and settlement judge procedures.

⁴ Transmittal Letter at 2.

Discussion

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene of Modesto and San Francisco serve to make them parties to this proceeding.

Commission Determination

13. PG&E's filing presents issues of fact that we cannot resolve based on the record before us and that are more appropriately addressed in the trial-type evidentiary hearing that we are ordering below. These issues include whether the conditions precedent to service and the cancellation and termination charges under the IA and the specifications and charges in the WDT Service Agreement are just and reasonable.

14. Our preliminary analysis indicates that the WDT Service Agreement and the IA have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will grant waiver of notice⁵ and accept the WDT Service Agreement and the IA for filing, suspend them for a nominal period, make them effective on March 31, 2007, as requested, subject to refund and set them for 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 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief

⁵ *Central Hudson Gas & Electric Corporation, et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992), and *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).

⁶ 18 C.F.R. § 385.603 (2004).

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 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).

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 IA and its unexecuted WDT Service Agreement are hereby accepted and suspended for a nominal period, to become effective March 31, 2007, 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 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 in Docket No. ER07-568-000 concerning the justness and reasonableness of PG&E's proposed, unexecuted IA and proposed, unexecuted WDT Service Agreement, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in 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 (2003), 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.

(D) Within sixty (60) days of the date of this order, 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, within fifteen (15) days of the date of the presiding judge's designation, convene a conference in these proceedings in a hearing room of the Federal Energy Regulatory 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)

Philis J. Posey,
Deputy Secretary.