

131 FERC ¶ 61,256
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. EL09-72-001

ORDER GRANTING CLARIFICATION AND DENYING REHEARING

(Issued June 17, 2010)

1. On December 17, 2009, the Commission issued an order declaring that Pacific Gas and Electric Company (PG&E) may recover its costs to develop a regional synchrophasor project¹ (Synchrophasor Project) in PG&E's electric transmission rates.² The December 17 Order also declared that PG&E may seek to recover one hundred percent of abandoned plant costs in the event that the Synchrophasor Project is cancelled for reasons beyond PG&E's control.³

2. On January 19, 2010, the American Public Power Association (APPA) and the National Rural Electric Cooperative Association (NRECA) jointly moved to intervene out of time and to seek clarification of the December 17 Order. Also on January 19, 2010, the American Wind Energy Association (AWEA) moved to intervene out of time and to seek clarification of the December 17 Order. And finally on January 19, 2010, the ISO/RTO Council⁴ moved for leave to intervene out of time and, together with the

¹ Synchrophasors are also known as phasor measurement units, or PMUs. These devices use time-synchronized measurements of system parameters to inform operators of potential reliability concerns.

² *Pacific Gas and Electric Company*, 129 FERC ¶ 61,251 (2009) (December 17 Order).

³ *Id.* P 38.

⁴ The ISO/RTO Council is comprised of the following: the Independent System Operator operating as the Alberta Electric System Operator, the California Independent System Operator Corporation, Electric Reliability Council of Texas, the Independent Electricity System Operator of Ontario, ISO New England Inc., Midwest Independent Transmission System Operator, Inc., New York Independent System Operator, Inc., PJM
(continued...)

California Independent System Operator Corporation (CAISO), requested clarification, or, in the alternative, rehearing of the December 17 Order. For the reasons set forth below, we deny the motions to intervene filed by APPA, NRECA, AWEA, and the ISO/RTO Council, and we dismiss their requests for clarification, or in the alternative, rehearing, of the December 17 Order. We will grant CAISO's request for clarification and deny its request for rehearing of the December 17 Order.

I. Background

3. On July 16, 2009, the Commission issued a statement on Smart Grid Policy.⁵ In general, the Policy Statement's aim is to provide "guidance regarding the development of a smart grid for the nation's electric transmission system, focusing on the development of key standards to achieve interoperability and functionality of smart grid systems and devices."⁶ In the Policy Statement, the Commission also adopted an interim rate policy—for the period of time until it adopts interoperability standards—allowing the recovery of Commission-jurisdictional smart grid-related costs if certain demonstrations are made.⁷

4. On September 3, 2009, PG&E filed a petition for declaratory order under the Policy Statement (Petition). The Petition sought the Commission's determination that PG&E's filing made the demonstrations required by the Policy Statement's interim rate policy so that PG&E may recover \$25 million in Commission-jurisdictional electric transmission rates when the Synchrophasor Project becomes operational. As required by the interim rate policy, PG&E stated that (1) the Synchrophasor Project is consistent with the policy and goals set forth in section 1301 of the Energy Independence and Security Act,⁸ (2) the Synchrophasor Project will not adversely affect the reliability and cybersecurity of the bulk-power system, (3) PG&E has minimized the possibility of stranded investment in smart grid equipment, and (4) PG&E agrees to provide certain information to the Department of Energy Smart Grid Clearinghouse.

Interconnection, L.L.C., Southwest Power Pool, Inc., and New Brunswick System Operator. ISO/RTO Council states that the Alberta Electric System Operator and the New Brunswick System Operator do not join its filing. ISO/RTO Council Motion at n. 2.

⁵ *Smart Grid Policy*, 128 FERC ¶ 61,060 (2009) (Policy Statement).

⁶ *Id.* Summary.

⁷ *Id.* P 109.

⁸ 42 U.S.C. 17381 (2006).

5. In the Petition, PG&E also requested that the Commission declare that it would be permitted to recover one hundred percent of abandoned plant costs in the event that the Synchronphasor Project were cancelled for reasons beyond PG&E's control. PG&E stated that once the Synchronphasor Project becomes operational, it will include the full amount of its investment in its transmission rate filing for that year.⁹

6. In support of the Petition, PG&E stated that the Synchronphasor Project will be developed in conjunction with the Western Electricity Coordinating Council and that it "will help achieve a more responsive, interactive and transparent electric transmission grid throughout the Western Interconnection."¹⁰ PG&E explained its plans to invest \$50 million to install or upgrade approximately 25 synchronphasor measurement devices, together with communication infrastructure to inform operators of potential reliability concerns, and to identify actions that can address those concerns. On October 27, 2009, PG&E received a grant from the Department of Energy to fund one-half of PG&E's portion of the Synchronphasor Project.¹¹

II. December 17 Order

7. In the December 17 Order, the Commission found that the Petition met the four demonstrations set forth in the Policy Statement. The Commission granted PG&E's request for a declaratory order that it may recover in electric transmission rates the costs to develop the Synchronphasor Project and seek recovery of one hundred percent of abandoned plant costs in the event that the Synchronphasor Project is abandoned for reasons beyond PG&E's control.

8. In the Commission's discussion of the Synchronphasor Project's effects on reliability and cybersecurity, the Commission made a few observations about its analysis. Among other things, the Commission discussed the current state of synchronphasor uses, and expectations about future use of synchronphasor data for smart grid applications, including whether data should be protected under the North American Electric Reliability Corporation's (NERC) critical infrastructure requirements (NERC CIP 002). This led to the statement in paragraph 46 of the December 17 Order that

we note that it is important for entities to designate the substations where phasor measurement units and the phasor data concentrators are located as

⁹ PG&E September 3, 2009 Petition at 11.

¹⁰ *Id.* at 1.

¹¹ PG&E October 30, 2009 Motion to Lodge Department of Energy Notification of Selection for Smart Grid Investment Grant at 1.

critical assets under CIP 002. In addition, if the phasor measurement units and phasor data concentrators will feed directly into operational decisions, then such devices should also be identified and protected as critical cyber assets.^[12]

III. CAISO's Request for Clarification, or, in the Alternative, Rehearing

9. CAISO requests clarification, or in the alternative, rehearing, of paragraph 46 of the December 17 Order. CAISO asks the Commission to clarify that

[p]aragraph 46 is not intended to modify the currently effective version of CIP-002 by requiring all Responsible Entities to treat all substations where PMUs and [phasor data concentrators] are located as Critical Assets. Paragraph 46 should be understood as merely expressing the Commission's opinion that such substations should be counted as Critical Assets to the extent that PMUs and [phasor data concentrators] become more involved in real-time operations in the future and therefore become Critical Assets themselves.^[13]

10. CAISO also asks the Commission to clarify that paragraph 46 "was not a binding Commission ruling that all items that 'feed directly into operational decisions' constitute Critical Cyber Assets."¹⁴ CAISO finally asks the Commission to "clarify that paragraph 46 is not intended to override the existing provisions of CIP-002."¹⁵

11. CAISO states that the clarifications it requests will avoid unintended consequences. First, CAISO states that investments in synchrophasors could be less attractive if such facilities must comply with CIP standards. Second, CAISO states that paragraph 46 could call into question Responsible Entities' compliance with CIP standards without reasonable notice or due process.¹⁶ Third, CAISO states that if paragraph 46 were "understood to require all PMUs, [phasor data concentrators], and related substations to be classified as Critical Assets or Critical Cyber Assets without considering their actual significance to the Bulk Electric System it would cause Responsible Entities to unnecessarily over-invest in protecting them" in turn "resulting in

¹² December 17 Order at P 46.

¹³ CAISO January 19, 2010 Request at 7-8.

¹⁴ *Id.* at 8.

¹⁵ *Id.*

¹⁶ *Id.* at 10.

inefficient allocation of resources to the detriment of systems and facilities that are more critical to reliability.”¹⁷ Fourth, CAISO states that paragraph 46 has the potential to subject distribution assets to the CIP standards because phasor functions, in the future, may be embedded in distribution feeders.¹⁸ Finally, CAISO states that, if paragraph 46 is understood to convert non-critical assets into Critical Cyber Assets, then the Commission and NERC may, in the future, consider many other assets critical when they do not warrant such treatment.¹⁹

12. In the alternative to clarifying the December 17 Order as requested, CAISO asks the Commission for rehearing of the order.

13. CAISO states that if the Commission is changing CIP 002, it must follow the steps set forth in Federal Power Act section 215²⁰ and its own regulations, as well as the notice and comment procedures of the Administrative Procedure Act.²¹ CAISO states that, to the extent the December 17 Order was intended to make generic findings regarding critical assets and critical cyber assets, it is arbitrary and capricious.²²

IV. Discussion

A. Procedural Matters

14. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such later intervention. APPA, NRECA, AWEA, and ISO/RTO Council have not met this higher burden of justifying their late intervention.²³

¹⁷ *Id.* at 11.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ 16 U.S.C. § 824d (2006).

²¹ CAISO Request at 13-14.

²² *Id.* at 15.

²³ *See, e.g., Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

15. In light of our decision to deny APPA, NRECA, AWEA, and ISO/RTO Council's late motions to intervene, we will dismiss their requests for clarification and rehearing. Because APPA, NRECA, AWEA, and ISO/RTO Council are not parties to this proceeding, they lack standing to seek clarification and rehearing of the December 17 Order under the Federal Power Act and the Commission's regulations.²⁴

16. CAISO timely intervened in this proceeding on October 5, 2009 and, hence, has standing to seek clarification and rehearing. Accordingly, we will address the issues raised in the pleading filed by ISO/RTO Council in light of CAISO's status as a party to this proceeding. We note that the arguments raised by APPA/NRECA and AWEA also pertain to paragraph 46 of the December 17 Order and believe that our response to CAISO will address many of their concerns.

B. Commission Determination

17. We will grant CAISO's request for clarification in that paragraph 46 of the December 17 Order was not intended to depart from the currently effective CIP-002 standard. Nor was it a decision that all items that feed directly into operational decisions constitute Critical Cyber Assets. Accordingly, paragraph 46 is deemed deleted from the December 17 Order. However, consistent with concerns over the use of PMU data and how that use may affect reliability, the Commission emphasizes that PMU devices require close scrutiny and protection. In this instance, the Commission finds that CAISO's assertion that "investments in synchrophasors could be less attractive if such facilities must comply with CIP standards"²⁵ is not sufficient to overcome legitimate reliability concerns. The Commission believes that effective and sustained life-cycle security must be factored into the total cost of ownership of any technology that could adversely impact the reliability of the bulk-power system. PMU devices, along with other equipment, may provide functionality for applications that are needed and necessary for the reliable operation of the Bulk-Power System. Such functions may require additional cyber security protection. The Commission is currently monitoring NERC's efforts²⁶ in both the Cyber Security Order 706 Standard Drafting Team and the

²⁴ See 16 U.S.C. § 825e (a) (2006); 18 C.F.R. § 385.713(b) (2009); and *Southern Company Services, Inc.*, 92 FERC ¶ 61,167 (2000).

²⁵ CAISO Request at 10.

²⁶ See *Mandatory Reliability Standards for Critical Infrastructure Protection*, Order No. 706, 122 FERC ¶ 61,040, at P 253 (directing NERC to develop additional

Identifying Critical Cyber Assets guideline document and looks forward to reviewing NERC's filing on this matter.

18. Because CAISO's alternative request for rehearing requests the same relief as its request for clarification, which we grant herein, the request for rehearing is moot and we will deny it.

The Commission orders:

(A) The untimely motions to intervene of APPA, NRECA, AWEA, and ISO/RTO Council are hereby denied, as discussed in the body of this order.

(B) The requests for clarification and rehearing of APPA, NRECA, AWEA, and ISO/RTO Council are hereby dismissed, as discussed in the body of this order.

(C) CAISO's request for clarification is hereby granted, and its request for rehearing is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

guidance on determining whether assets are critical to the Bulk-Power System), *order on reh'g*, Order No. 706-A, 123 FERC ¶ 61,174 (2008), *order on clarification*, Order No. 706-B, 126 FERC ¶ 61,229 (2009), *order on clarification*, Order No. 706-C, 127 FERC ¶ 61,273 (2009).