

3. The Commission also accepts in part and suspends in part for a nominal period, customer-specific rates for Western under PG&E's Wholesale Distribution Tariff (WDT). As requested by PG&E, these agreements and proposed rates will be made effective, following suspension, on the dates requested in PG&E's filings.² Additionally, the Commission also institutes hearing and settlement judge procedures, as discussed below.

4. This order benefits customers by accommodating Western's transfer to the SMUD control area.

Background

5. Western currently has contracts with PG&E, which will expire on December 31, 2004, under which PG&E acts as Western's interface with the California Independent System Operator (CAISO). Western and PG&E executed these contracts in 1967 in connection with the construction of the Pacific Northwest-Pacific Southwest Intertie (Pacific Intertie), two lines that run from the Pacific Northwest through California.³ These long-term contracts form the foundation of the relationship between Western and PG&E.

6. In 1996, California began to restructure its electric industry. As a result of this restructuring, and as required under California Assembly Bill 1890 (AB 1890), in 1998, the CAISO officially began operations. As a result, the three investor-owned utilities, PG&E, Southern California Edison Company, and San Diego Gas and Electric Company turned over operational control of their transmission facilities and contractual entitlements to the CAISO. Therefore, the use of Western's facilities under their contracts has been determined by the CAISO Tariff since 1998. In the December 3 Order, the Commission conditionally accepted for filing the notices of cancellation and offers of settlement related to the termination of these contracts.

² PG&E requests a January 1, 2005 effective date in Docket Nos. ER05-116-000, ER05-130-000 and ER05-132-000 and a December 31, 2004 effective date in Docket No. ER05-229-000.

³ In northern California, Western owns one of the two Pacific Intertie transmission lines (from the Malin Substation to the Round Mountain Substation). PG&E controls the other line.

7. Western has announced that it will join SMUD's control area for its Sierra Nevada Region, beginning January 1, 2005. Western has decided, however, that its Pacific Intertie line will remain within the CAISO's control area, and Western will implement procedures with Bonneville Power Administration (Bonneville) to enhance transmission system reliability across the California-Oregon border.

8. Pursuant to section 205 of the Federal Power Act (FPA),⁴ PG&E is submitting for filing the following rates and agreements to accommodate the planned change in control area boundaries related to the termination of Western's long-term contracts with PG&E and Western's decision to join the SMUD control area, beginning January 1, 2005:

(1) customer-specific rates for Western under PG&E's WDT; (2) an unexecuted Interconnection Agreement with Trinity under PG&E's Transmission Owner Tariff; (3) three unexecuted Generator Interconnection Agreements with Western for Western's generating plants; and (4) the unexecuted Western SCS Tariff.

Notices of Filings and Responsive Pleadings

9. Notice of PG&E's proposed rates under its WDT service agreement in Docket No. ER05-116-000 was published in the *Federal Register*, 69 Fed. Reg. 67,343 (2004), with protests and interventions due on or before November 22, 2004. Timely motions to intervene raising no issues were filed by the National Aeronautics and Space Administration Ames Research Center and the Northern California Power Agency (NCPA). Timely motions to intervene and comments were filed by Western and the Power and Water Resources Pooling Authority and its individual Members and Stakeholders (Pooling Authority). Timely motions to intervene and protests were filed by the Calaveras Public Power Agency (Calaveras); Tuolumne Public Power Agency (Tuolumne); and the University of California, Davis (Cal-Davis). PG&E filed an answer on December 3, 2004.

10. Notice of PG&E's unexecuted Interconnection Agreement with Trinity in Docket No. ER05-130-000 was published in the *Federal Register*, 69 Fed. Reg. 67,567 (2004), with protests and interventions due on or before November 22, 2004. A timely motion to intervene and comments were filed by Western. A timely motion to intervene and protest was filed by Trinity. PG&E filed an answer on December 7, 2004.

⁴ 16 U.S.C. §§ 824(d) (2000).

11. Notice of PG&E's unexecuted Generator Interconnection Agreements with Western in Docket No. ER05-132-000 was published in the *Federal Register*, 69 Fed. Reg. 67,567 (2004), with protests and interventions due on or before November 22, 2004. A timely motion to intervene raising no issues was filed by the CAISO. Timely motions to intervene and protest were filed by Western and U.S. Bureau of Reclamation (Reclamation). PG&E filed an answer on December 3, 2004.

12. Notice of PG&E's Western SCS Tariff in Docket No. ER05-229-000 was published in the *Federal Register*, 69 Fed. Reg. 71,029 (2004), with protests and interventions due on or before December 8, 2004. A timely motion to intervene raising no issues was filed by the Transmission Agency of Northern California (TANC). Timely motions to intervene and protests were filed by Western; NCPA; Lassen Municipal Utility District (Lassen); Modesto Irrigation District (MID); the Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency (Cities/M-S-R). PG&E filed an answer on December 14, 2004.

Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept PG&E's answers in these proceedings, and will, therefore, reject them.

B. Docket No. ER05-116-000: PG&E's Rates Under Its WDT Service Agreement

15. Under PG&E's WDT, wholesale distribution customers are initially charged generic distribution rates, consisting of a demand rate of \$3.69 per kW-month for primary distribution and \$7.00 per kW-month for secondary distribution, until a determination of customer-specific rates can be completed and filed. The WDT service agreement on file with Western, which was filed in Docket No. ER04-690-001 and accepted in the December 3 Order, contains these generic rates. PG&E states that the generic rates in the WDT are based on PG&E's Transmission Owner rates submitted in Docket No.

ER97-2358-000 (TO1),⁵ and have not been changed since. The WDT requires that, within 30 days of the date the generic rates become effective, PG&E must file customer-specific rates. PG&E states that this filing implements that requirement, and that it is not proposing any change to the revenue requirement.

16. PG&E points out that, while the primary and secondary distribution rates in the WDT are demand rates, many of Western's distribution points of interconnection with PG&E do not have demand meters. PG&E points out further that, in the settlement agreement in Docket No. ER04-690-001, it agreed to develop customer-specific energy rates for Western's points of interconnection that do not have demand meters rather than requiring Western and its customers to install demand metering at each point of interconnection. PG&E also notes that, because Western's service agreement includes 1,100 points of interconnection, PG&E determined not to compute a separate rate for each point of interconnection, which would be cumbersome and costly. Instead, PG&E states that it developed a customer-specific rate for Western that allocates a portion of PG&E's primary and secondary distribution system costs to Western based on the particular demand characteristics of Western's points of interconnection.

17. PG&E states that for rate design purposes, PG&E used statistical information and metered data from 2003 in the load profiling and rate calculation process, and used the TO1 revenue requirements as the cost basis for the design. For interconnection points without demand metering, PG&E used demand load profiles for comparable retail customer classes to estimate total demand, and derived the Western distribution load ratio share from that aggregated demand. For interconnection points with demand metering, PG&E took the recorded interval data to derive the Western distribution load ratio share. The Western distribution load ratio share was then multiplied by the primary or secondary distribution revenue requirement as applicable to develop the allocated cost, which was then divided by the annual usage at the meter. The result is a demand or energy rate for Western, applied depending on the type of customer metering (a demand rate if a demand meter exists for the load or an energy rate if a non-interval meter is used). In order to calculate secondary rates, which are additive to the primary rates, PG&E first calculated the primary component for Western's customers that are served at secondary (whether demand or energy meters), and then calculated the secondary rates and added the results together.

⁵ On December 17, 1997, the Commission accepted PG&E's proposed TO1 rates for filing, subject to refund, suspended them and set them for hearing, *Pacific Gas and Electric Company*, 81 FERC ¶ 61,323 (1997). An offer of settlement was filed in 1999, which was later approved by the Commission, *Pacific Gas and Electric Company*, 102 FERC ¶ 61,103 (2003).

18. PG&E states that these calculations result in a customer-specific primary distribution demand rate of \$3.49 per kW-month, and a customer-specific primary distribution energy rate of \$0.00737 per kWh. The proposed customer-specific secondary distribution demand rate is \$7.08 per kW-month, and the customer-specific secondary distribution energy rate is \$0.01912 per kWh. PG&E also proposes a customer service charge of \$4,992 per month for the costs of billing Western for services under the WDT service agreement. PG&E states that it derived this charge by utilizing the per hour employee cost used in previous WDT filings and an employee hours estimate based on experience under Contract 2948A.

19. With regard to revenue impacts, PG&E states that the increase to Western compared to revenues received from expiring contracts is \$629,244, or an overall increase to Western of 8 percent.⁶ PG&E notes that certain Western customers will face large rate increases because those customers' rates have not been adjusted for many years, some since the 1960s.

20. PG&E also proposes other modifications to the service agreement such as: (1) changing Specifications For Distribution Service sections 8.2, 8.3 and 8.4, which describe System Impact, Facilities Study, Direct Assignment and Cost of Ownership Charges, from stating "TBD, if applicable" to stating that these sections are not applicable now but may be in the future; and (2) revising section 9, Distribution Customer's Service Data, to provide more specific and clearer language regarding power factor data.

21. PG&E requests an effective date for the proposed rates of January 1, 2005, to coincide with the effective date of the WDT service agreement filed in Docket No. ER04-690-001.

Protesters' Arguments

22. Western states that it does not protest the rate design methodology utilized by PG&E, but requests that the Commission allow Western or its customers to examine the tables used to develop load profiles in more detail, and, in the event errors are discovered, to allow Western and its customers to raise those issues at a future date. Western states

⁶ PG&E states that the 8 percent increase represents revenue changes when comparing distribution revenues from Contract 2948A, and in some cases under PG&E retail rate schedules, and the proposed revenues under the service agreement.

that, due to the amount of work needed to verify the information, it is unable at this point to determine whether there are any errors, but that it would expect some errors due to the large number of meters contained in the tables.⁷

23. Pooling Authority states that it does not object to the use of the TO1 revenue requirement to establish the customer-specific rates, but is particularly concerned that it may soon face a filing that will exacerbate the rate impact that many of its participants will already experience from the rates established in this docket. Pooling Authority states that the Commission should consider requiring PG&E to propose measures to mitigate potential rate shock, such as filing rate adjustments only at periodic rate “windows” and phasing in of rate increases. The Pooling Authority also does not contest PG&E’s load profiling methodology for points of interconnection that lack demand meters, but notes that there are a number of inconsistencies in PG&E’s designations of service levels and applicable rates for the interconnection points listed in Table 9 of the service agreement.⁸ Pooling Authority states that these anomalies should be explained or corrected before the rates are placed in effect, so that Western’s customers can be assured that the proper load ratio shares were used to derive the customer-specific rates, and that each delivery point will be assigned the correct service and rate classification. Finally, Pooling Authority points out that, while a number of its participants take delivery of some or all of their Western power at transmission-level voltages (60kV and above) on radial tap lines that are not part of the CAISO-controlled grid, PG&E’s filing does not include any rate for deliveries at transmission-level voltages, nor is there a generic WDT rate or other default rate on file with the Commission that applies to such service. The Pooling Authority states that the fact that PG&E has not filed a rate for service to those delivery points should not relieve PG&E of the responsibility for serving those points.

24. Calaveras and Tuolumne protest PG&E’s filing on three main issues, and request that the Commission suspend the filing and set it for hearing and settlement judge procedures. First, they state that they are concerned that their members will experience an estimated 31 percent increase in rates without any increase in PG&E’s current wholesale distribution revenue requirement, and that any new cost-of-service filing will

⁷ Western points out that one customer, Pittsburgh Power Company, has informed Western that it believes that it has been improperly characterized as transmission level voltage service under the service agreement, and that operational control of the facilities it uses have been turned over to the CAISO.

⁸ For example, Pooling Authority states that some delivery points listed as 12 kV or above are designated for secondary service and rates, and some interconnection points that would normally qualify as transmission level voltage (60 kV and above) are designated for either primary or secondary service and rates.

further exacerbate the rate impact on its members. Calaveras and Tuolumne argue that the Commission should require PG&E to mitigate potential rate shock, by phasing in increases over time or by provisions that would permit PG&E to file rate adjustments only at periodic rate “windows.” Second, Calaveras and Tuolumne argue that PG&E’s energy rates for secondary distribution service do not provide for credits or refunds for facility upgrades paid for by Calaveras and Tuolumne, but owned by PG&E and included in PG&E’s rates. They argue that this results in double recovery. Third, Calaveras and Tuolumne contend that the costs of meter reading are embedded in PG&E’s proposed rates, regardless of the fact that Calaveras and Tuolumne provide their own meter reading services at their own cost. Calaveras also adds that, although it does not contest PG&E’s load profiling methodology for delivery points that lack interval demand meters in this docket, it reserves the right to raise issues concerning the load profiling at such time as PG&E files a new cost of service.

25. Cal-Davis questions whether the Departing Load Charges provisions in PG&E’s service agreement are consistent with the Split Wheeling Departing Load provisions in a PG&E rate schedule on file with the California Public Utilities Commission (CPUC). According to Cal-Davis, PG&E’s service agreement appears to exclude certain Western customers from CPUC’s Cost Responsibility Surcharges.

Commission Determination

26. As an initial matter, the Commission finds that Cal-Davis’s questions regarding the inconsistency of Departing Load Charges provisions in the service agreement with a PG&E agreement on file with the CPUC should have been raised by Cal-Davis when the original WDT service agreement was filed in Docket No ER04-690-001. The Commission accepted the service agreement, including the provisions Cal-Davis is questioning in this proceeding, as part of a comprehensive settlement approved in the December 3 Order. Furthermore, the Commission stated in that order that the Departing Load Charges do not derive from tariffs on file with the Commission, but derive from decisions of the CPUC, and therefore the Commission will not assert jurisdiction over to whom these charges apply.⁹

27. Our preliminary analysis indicates that PG&E’s proposed customer-specific rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. PG&E’s proposed customer-specific rates raise issues of material fact that cannot be resolved based on the record

⁹ See December 3 Order at P 96.

before us and are more appropriately addressed in hearing and settlement judge procedures. Therefore, we accept the proposed rates for filing, suspend them for a nominal period, make them effective January 1, 2005, as requested, subject to refund, and set this matter for hearing and settlement judge procedures, as ordered below.

28. We note that no parties to this proceeding protest PG&E's other modifications to the WDT service agreement, and that they are ministerial in nature and do not impact the rates. Therefore, we accept those proposed ministerial changes, to be effective January 1, 2005.

C. Docket No. ER05-130-000: PG&E/Trinity Interconnection Agreement

29. Trinity receives 100 percent of its power from Western, but is also interconnected with PG&E's electric transmission system and ultimately with the CAISO controlled grid. PG&E states that, under Articles 8 and 10 of its TO Tariff, all CAISO transmission customers that are interconnected with transmission facilities owned by PG&E must enter into an interconnection agreement with PG&E. PG&E explains that, while this TO Tariff requirement was previously covered by Contract 2948A, a substitute agreement is necessary in light of that contract's termination on December 31, 2004. PG&E notes that Trinity did not want to be included in the replacement interconnection agreement between Western and PG&E,¹⁰ which would have satisfied the requirements of PG&E's TO Tariff. As a result, PG&E filed a separate, unexecuted interconnection agreement between PG&E and Trinity (Trinity IA) in this proceeding.

30. PG&E states that the proposed Trinity IA designates the interconnection points, and corresponding rights and responsibilities, between PG&E and Trinity. PG&E adds that the Trinity IA also provides for coordination of certain aspects of operations and maintenance with Trinity, to maintain reliability and safeguard the parties' systems.

31. In its original filing, PG&E anticipates and responds to some of Trinity's arguments. PG&E explains that the parties did not engage in extensive negotiations over the terms and conditions of the proposed Trinity IA because Trinity opposed any interconnection agreement whatsoever. PG&E asserts that the two Commission decisions that PG&E expects will be cited by Trinity in its protest are not applicable¹¹ because those decisions were based on the fact that nothing in the applicable tariff required such an agreement. PG&E believes that its TO Tariff requires an interconnection agreement for the interconnection of Trinity loads to PG&E's system.

¹⁰ *Id.* at P 86.

¹¹ *Delmarva Power & Light Co.*, 106 FERC ¶ 61,290 (2004); *Cities of Azusa*, 107 FERC ¶ 61,179 (2004).

PG&E also argues that the existing operating agreement between Trinity and PG&E does not address many of the issues regarding interconnected operations that need to be addressed in an interconnection agreement and are required in the TO Tariff.

Protesters' Arguments

32. Trinity argues that the Commission does not have jurisdiction to require Trinity to execute the Trinity IA and should dismiss PG&E's filing. Trinity asserts that nothing in section 201(b) of the FPA¹² gives the Commission jurisdiction over the terms and conditions related to pre-existing interconnections. Trinity adds that the Commission has asserted such jurisdiction only under its authority to remedy undue discrimination and preferences under sections 205 and 206 of the FPA,¹³ and only with respect to generators. Trinity states that it is not a generator and that neither undue preference nor discrimination have been claimed by PG&E or Trinity. Finally, Trinity argues that, upon expiration of Contract 2948A, it will take no Commission-jurisdictional sales, transmission or interconnection services from PG&E. Trinity states that it will instead receive interconnection service from the CAISO under the CAISO Tariff.

33. Trinity argues that PG&E's TO Tariff does not require Trinity to execute a new interconnection agreement in order to obtain transmission service under the CAISO Tariff. Trinity cites two Commission decisions¹⁴ where the Commission found that the relevant tariff did not require a wholesale customer to enter into an interconnection agreement with the transmission owner. Trinity contends that PG&E has identified no provisions in the CAISO Tariff which would require it to execute an interconnection agreement as a condition to receiving transmission service under the CAISO Tariff. Finally, Trinity states that Articles 8 and 10 of PG&E's TO Tariff apply only when the customer requests a transmission expansion, facility upgrade, or new interconnection, which Trinity has not done.

34. Trinity asserts that the only terms and conditions that need to be addressed between the two parties have already been agreed upon in the existing operating agreement, effective as of May 21, 1993. Trinity suggests that, to the extent further clarification of the terms and conditions governing interconnections between PG&E and Trinity are needed, Trinity is willing to negotiate an expansion or changes to that agreement.

¹² 16 U.S.C. § 824(b) (2000).

¹³ 16 U.S.C. §§ 824(d), 824(e) (2000).

¹⁴ *See supra* note 13.

35. Trinity argues that the Trinity IA is unjust, unreasonable, and unduly discriminatory and should be rejected. Trinity maintains that it was given no opportunity to negotiate the terms and conditions of the Trinity IA with PG&E. Trinity also asserts that it has not had sufficient time to completely review the Trinity IA, given Trinity's limited resources. To the extent it has reviewed the agreement, Trinity states that the terms and conditions are more onerous than those under the replacement interconnection agreement between Western and PG&E. Trinity protests numerous requirements in the Trinity IA, including provisions related to: standards for reactive power that must be met on a continuous basis and at each point of interconnection; testing of existing points of interconnection prior to becoming operable; system planning and projection information that Trinity has not historically produced; and oversight of Trinity customers who maintain backup generation. Trinity concludes that, if the Commission does not reject the proposed Trinity IA, the Commission should nonetheless order a technical conference to better understand its terms and conditions and to ensure that its terms and conditions are just and reasonable.

36. Western states that certain language in the proposed Trinity IA seemingly would preclude Trinity from receiving power from Western at a point of interconnection where Western is directly connected with Trinity. Western argues that PG&E should correct the relevant language to ensure there are no ambiguities.

Commission Determination

37. We note that Trinity raises questions with respect to the Commission's authority. However, PG&E is a jurisdictional public utility, and so must file with the Commission the rates, terms and conditions of interconnection service between PG&E and a load serving entity. We emphasize, in this regard, that it is the interconnection service that PG&E provides to Trinity which falls under the jurisdiction of the Commission. We conclude, therefore, that the Commission has jurisdiction over the proposed Trinity IA at issue in this proceeding. However, the issue of whether Trinity must execute a new interconnection agreement as a condition to receiving transmission service under PG&E's tariff should be subject to hearing ordered below.

38. Our preliminary analysis indicates that PG&E's proposed unexecuted Trinity IA has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. PG&E's proposed Trinity IA raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in hearing and settlement judge procedures. Therefore, we accept the proposed Trinity IA for filing, suspend it for a nominal period, make it effective January 1, 2005, as requested, subject to refund, and set this matter for hearing and settlement judge procedures, as ordered below.

39. We recognize that we have concurrently, in a separate order, set another unexecuted agreement with Trinity for hearing in Docket No. ER05-149-000, *et al.* While we have not consolidated the two proceedings, the parties may file motions for consolidation with Docket No. ER05-149-000, *et al.*, and we will leave to the Chief Administrative Law Judge's discretion whether to consolidate some or all of these proceedings, in whole or in part, and, if he chooses to consolidate any or all of the proceedings, in whole or in part, how the consolidation should occur.¹⁵

D. Docket No. ER05-132-000: PG&E/Western Generator Interconnection Agreements

40. PG&E filed three unexecuted Generator Interconnection Agreements (GIAs) between PG&E and Western. PG&E filed a GIA for each of the following facilities: (1) Western's New Melones Power Plant; (2) Western's O'Neill (San Luis Forebay) Pumping-Generating Plant; and (3) Western's share of San Luis Pumping-Generating Plant (together, Facilities). PG&E states that the GIAs provide for the interconnection and parallel operation of the Facilities with the PG&E-owned system at transmission voltage.

41. PG&E states that it is necessary to file separate GIAs for each of Western's generating facilities to supplement two existing contracts between Western and PG&E which expire by their terms in 2032 and 2016, respectively: (1) the Transmission Service Contract for New Melones Project (New Melones Contract); and (2) the Transmission Service Contract for San Luis Unit (San Luis Contract). PG&E maintains that the New Melones Contract and the San Luis Contract are transmission service contracts and are not interconnection contracts. PG&E adds that some aspects of a standard interconnection contract were included in Contract 2948A, which terminates on December 31, 2004. PG&E argues that all of these contracts were executed long before the existence of the CAISO, and that they do not include all of the terms and procedures that are necessary for interconnection in the context of the CAISO-controlled grid. PG&E concludes that, without the GIAs, there would be no contractual basis for an interconnection between PG&E and Western for the Facilities.

¹⁵ 18 C.F.R. § 385.503 (2004).

42. PG&E notes that it is also filing the New Melones Contract in accordance with the Commission's Order No. 614¹⁶ and with section 35.9 of the Commission's regulations.¹⁷ PG&E states that the only change to this contract is the addition of the unexecuted New Melones GIA.

43. PG&E states that it attempted to negotiate with Western so that it could file executed GIAs, but that it was unable to complete these negotiations in time to make the filing. PG&E requests that the Commission accept the filing without immediately setting the matter for a prehearing conference, and instead allow parties 90 days to continue to negotiate in an attempt to reach a consensus. PG&E states that the parties will provide an update to the Commission within 45 days to apprise the Commission of the status of further negotiations or any expected subsequent filing.

Protesters' Arguments

44. Western raises questions with respect to the applicability of sections 205 or 206 of the FPA to Western as a federal agency, but states that it will continue to work with PG&E to negotiate a "mutually beneficial agreement." Western adds that it is concentrating its efforts to implement a new operational configuration and marketing plan as result of the termination of Contract 2948A, and that it would not be prudent to divert critical staff resources devoted to these efforts. Western therefore requests that the Commission suspend the filing for five months and set the matter for hearing. Western suggests that this will allow sufficient time to implement all of the necessary arrangements to ensure that Western will be able to reliably operate its system and implement its marketing plan.

45. Reclamation is concerned that, as the "owner" of the Facilities, it is required under the GIAs to make certain commitments regarding operation and maintenance. Reclamation also raises questions with respect to applicability of sections 205 or 206 of the FPA to Reclamation as a federal agency. However, Reclamation states that it is also prepared to work with PG&E to address any differences and negotiate appropriate changes to the GIAs.

Commission Determination

¹⁶ FERC Stats. & Regs. ¶ 31,096 (2000).

¹⁷ 18 C.F.R. § 35.9 (2004). PG&E filed the San Luis Contract in Docket No. ER04-690-000, which was accepted by the Commission in the December 3 Order.

46. We note that Western raises questions with respect to the Commission's authority given Western is a federal agency. However, PG&E is a jurisdictional public utility, and so must file with the Commission the rates, terms and conditions of interconnection service between PG&E and a generator. We emphasize, in this regard, that it is the interconnection service that PG&E provides to Western which falls under the jurisdiction of the Commission. We conclude, therefore, that the Commission has jurisdiction over PG&E's proposed GIAs at issue in this proceeding.

47. While Order Nos. 2003 and 2003-A¹⁸ established compliance obligations and effective dates for transmission providers' *pro forma* Large Generator Interconnection Procedures and Large Generator Interconnection Agreements, the Commission has granted PG&E, along with other California entities, an extension of time, until January 5, 2005, in which to file its interconnection compliance. We conclude that the GIAs here need not comply with Order No. 2003 for two reasons. First, because the GIAs include no proposed increases in capacity or material modifications of the characteristics of an existing generating facility, the GIAs are not new interconnection requests that trigger the applicability of Order No. 2003.¹⁹ Second, even if the GIAs were considered new interconnection requests, until the January 5, 2005 deadline, PG&E's filed interconnection procedures and agreements continue to apply, and any executed or unexecuted agreements submitted for Commission approval before the January 5, 2005 deadline, like the GIAs in this proceeding, are grandfathered from compliance with Order No. 2003.²⁰

48. We will therefore accept the GIAs for filing and suspend them for a nominal period, to become effective on January 1, 2005, subject to refund and further Commission

¹⁸ Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *reh'g pending*; *see also* Standardization of Generator Interconnection Agreements and Procedures, 106 FERC ¶ 61,009 (2004).

¹⁹ *See New England Power Co.*, 109 FERC ¶ 61,364 at P 12-13 (2004).

²⁰ *See California Independent System Operator Corp.*, 108 FERC ¶ 61,315 at P 4 (2004); Order No. 2003 at P 187.

order. This will permit PG&E to continue providing Western interconnection services on January 1, 2005 for the Western Facilities upon the termination of Contract 2948A on December 31, 2004. In the interim, parties are free to negotiate terms and conditions of the GIAs that are mutually acceptable. If the parties successfully conclude negotiations, we direct PG&E to timely file as a compliance filing in this proceeding amended GIAs for Commission review. However, if the parties are unable to reach agreement and file within 90 days, we direct PG&E to notify the Commission within 90 days of the date of this order of the status of the negotiations, and any outstanding issues. Also, consistent with PG&E's application, we will require PG&E to file an initial status report within 45 days of the date of this order.

E. Docket No. ER05-229-000: Scheduling Coordinator Services Tariff for Western

49. PG&E filed an unexecuted Scheduling Coordinator Services Tariff with Western (Western SCS Tariff), under which PG&E (or its designated scheduling coordinator) will act as Western's scheduling coordinator for transactions under the San Luis and New Melones Contracts, which remain in effect after January 1, 2005. PG&E states that, because Western utilizes the CAISO-controlled grid for transactions under these agreements, which pre-date the CAISO, a scheduling coordinator is required to submit schedules to the CAISO.

50. PG&E states that the Western SCS Tariff is necessary because neither the San Luis nor the New Melones Contracts require PG&E to act as a scheduling coordinator or to provide scheduling coordinator services. Scheduling of transmission service for the San Luis and New Melones Contracts has been done in connection with service to Western under Contract 2948A which will terminate on December 31, 2004. Western's payments under the contracts are only for transmission and distribution service and not for any ancillary services or scheduling services, which was performed pursuant to Contract 2948A.

51. As a scheduling coordinator, PG&E is required to submit schedules to the CAISO and is invoiced by the CAISO for costs associated with these schedules. Under the Western SCS Tariff, PG&E will pass through to Western all charges and credits it receives from the CAISO for transactions scheduled on behalf of Western. PG&E is not, however, seeking to recover any of the internal costs it incurs acting as Western's scheduling coordinator (or retaining a designated scheduling coordinator). Instead, PG&E proposes to pass through to Western: (1) the charges/credits it is invoiced by the CAISO for Western's transactions; (2) the costs of establishing and maintaining a scheduling coordinator interconnection agreement; and (3) any costs PG&E incurs retaining a designated scheduling coordinator if it elects to do so.

52. PG&E requests waiver of the 60-day prior notice requirement to make its filing in this proceeding effective on December 31, 2004. Citing "extraordinary circumstances,"

PG&E points out that it, along with Western and numerous intervenors, have been involved for some time in negotiations relating to the termination of the various Western agreements and the accommodation of remaining agreements, such as the New Melones and San Luis Contracts, after December 31, 2004. PG&E notes further that these negotiations have been “intensive and fluid,” and that for some time it was unclear whether it or Western would act as the scheduling coordinator for transactions under the New Melones and San Luis Contracts. According to PG&E, Western clarified that it would not assume the scheduling coordinator role only recently and PG&E made its filing 43 days before the requested December 31, 2004 effective date. PG&E, therefore, requests that the Commission waive the 60-day prior notice requirement in this proceeding.

Protesters’ Arguments

53. Western argues that under the contracts at issue in this proceeding the United States prepaid PG&E for transmission service for a fifty-year term. The San Luis Contract expires in 2016. The New Melones Contract expires in 2032. According to Western, there is nothing in the existing contracts with PG&E that requires Western to take additional services or allows PG&E to charge Western for any additional services. Western states that it has prepaid for those services and PG&E cannot charge Western any additional charges. Western also argues that it cannot legally be bound by the proposed Western SCS Tariff and that it cannot legally execute the proposed Western SCS Tariff because it contains terms and conditions that would require Western to violate federal law. Western argues further that its financial obligations to PG&E are also unclear, undefined and uncertain under the proposed Western SCS Tariff and Western would be agreeing to an unidentifiable and undetermined future financial obligation. Western recommends that the Commission reject the Western SCS Tariff or, in the alternative, modify the proposed Western SCS Tariff and require PG&E to take service under it to meet its contractual obligations to Western.

54. MID, Cities/M-S-R and Lassen concur with the arguments made in Western’s protest. Additionally, MID, Cities/M-S-R, and Lassen all protest PG&E’s filing because PG&E has not submitted cost support and they recommend that the filing be rejected. They state that, if the filing is not rejected, it should be suspended for five months and set for hearing. MID and Cities/M-S-R also state that another “SCS Tariff” is at issue and is

currently being litigated at the Commission in Docket No. ER00-565-000, and both parties request that the Commission not issue a ruling in this proceeding which would

prejudice matters pending in that docket.²¹

55. NCPA argues that these contracts were prepaid for a fifty-year term of service and that PG&E bore the risk and should bear the cost for any industry changes impacting its ability to provide the prepaid, guaranteed, facility-specific firm transmission service.

Commission Determination

56. We note that Western raises questions with respect to the Commission's authority given Western is a federal agency. However, PG&E is a jurisdictional public utility, and so must file with the Commission the rates, terms and conditions of scheduling coordinator service between PG&E and Western. We emphasize, in this regard, that it is the scheduling coordinator service that PG&E provides to Western which falls under the jurisdiction of the Commission. We conclude, therefore, that the Commission has jurisdiction over PG&E's proposed Western SCS Tariff at issue in this proceeding.

57. On October 28, 2004, the Commission issued Opinion No. 477²² and found that Scheduling Coordinator Services constitute a new service. In this Opinion the Commission stated:

The Commission finds that the services performed by PG&E under its SCS Tariff represent a "new service" to its existing contract customers, which was not covered by the terms of those contracts. As the Initial Decision correctly observed, under our precedent a new service is one that the utility has not obligated itself to provide under an existing contract. It is self-evident that PG&E did not obligate itself to perform as a CAISO Scheduling Coordinator under its existing contracts, as the role itself and the responsibilities and obligations that it entails did not exist at the time these contracts were entered into, when the CAISO was not yet a twinkle in the California legislature's eye. Thus, it is no surprise that none of the Control Area Agreements makes reference to PG&E playing such a role.²³

58. The New Melones Contract mentions scheduling, and the San Luis Contract

²¹ See *Pacific Gas and Electric Company*, 109 FERC ¶ 61,093 (2004).

²² *Pacific Gas and Electric Company*, 109 FERC ¶ 61,093 (2004) (Opinion No. 477).

²³ *Id* at P 57.

appears not to mention scheduling. The existing scheduling services performed by PG&E under these contracts is unclear. Therefore, we will set for hearing the issue of whether any scheduling services being performed by PG&E on behalf of Western in the New Melones and San Luis Contracts fall under the definition of a “new service” as enumerated in Opinion No. 477. Also, our preliminary analysis indicates that the charge types and the costs in the Western SCS Tariff have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The proposed unexecuted Western SCS Tariff raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in hearing and settlement judge procedures. Therefore, we accept the proposed Western SCS Tariff for filing, suspend it for a nominal period, make it effective December 31, 2004, as requested, subject to refund, and set this matter for hearing and settlement judge procedures, as ordered below.

59. The Commission finds good cause to grant PG&E’s request for waiver of the 60-day prior notice requirement to permit an effective date of December 31, 2004.²⁴

F. Hearing and Settlement Judge Procedures

60. As discussed above, PG&E’s filings in these proceedings raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Our preliminary analysis of PG&E’s filings in these proceedings indicates that the proposed rates and agreements have 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 filings, suspend them for a nominal period, make them effective as requested in each docket,²⁵ subject to refund, and institute hearing and settlement judge procedures.

61. Given the variety of issues involved in all of the above dockets, we will not consolidate these proceedings. However, we recognize that some efficiencies could be gained from consolidation. Accordingly, the parties may file motions for consolidation, and we will leave to the Chief Administrative Law Judge's discretion whether to

²⁴ The Parties have been on notice of this and the other pending agreements, and their effective, dates in order to coordinate all of the new services simultaneously since PG&E made its initial filing of the contract terminations and successor agreements on March 1, 2004.

²⁵ *Central Hudson Gas and Elec. Corp.*, 60 FERC ¶ 61,106 at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

consolidate some or all of these proceedings, in whole or in part, and, if he chooses to consolidate any or all of the proceedings, in whole or in part, how the consolidation should occur.²⁶

62. While we are setting these matters for trial-type evidentiary hearings, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearings in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁷ If the parties desire, they may, by mutual agreement, request specific judges as the settlement judges in each proceeding; otherwise, the Chief Judge will select judges for this purpose.²⁸ The settlement judges 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 Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of hearings by assigning the cases to presiding judges.

The Commission orders:

(A) PG&E's proposed customer-specific rates for Western in Docket No. ER05-116-000 are hereby accepted and suspended for a nominal period, to become effective January 1, 2005, subject to refund, as discussed in the body of this order.

(B) PG&E's proposed ministerial changes in Docket No. ER05-116-000 are hereby accepted, effective on January 1, 2005, as discussed in the body of this order.

(C) PG&E's unexecuted interconnection agreement with Trinity in Docket No. ER05-130-000 is hereby accepted and suspended for a nominal period, to become effective January 1, 2005, subject to refund, as discussed in the body of this order.

(D) PG&E's unexecuted Generator Interconnection Agreements with Western in Docket No. ER05-132-000 are hereby accepted and suspended for a nominal period, to become effective January 1, 2005, subject to refund and further Commission order, as discussed in the body of this order.

²⁶ 18 C.F.R. § 385.503 (2004).

²⁷ 18 C.F.R. § 385.603 (2004).

²⁸ *Id.*

(E) PG&E's unexecuted Scheduling Coordinator Services Tariff with Western in Docket No. ER05-229-000 is hereby accepted and suspended for a nominal period, to become effective December 31, 2004, subject to refund, as discussed in the body of this order.

(F) 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 the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), public hearings shall be held concerning the justness and reasonableness of PG&E's proposed rates and unexecuted service agreements in Docket Nos. ER05-116-000, ER05-130-000, and ER05-229-000. However, the hearings shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (G) and (H) below.

(G) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), the Chief Administrative Law Judge is hereby directed to appoint settlement judges in each of these proceedings within fifteen (15) days of the date of this order. Such settlement judges shall have all powers and duties enumerated in Rule 603 and shall convene settlement conferences as soon as practicable after the Chief Judge designates the settlement judges. If the parties decide to request specific judges, they must make their request to the Chief Judge by telephone within five (5) days of the date of this order.

(H) Within sixty (60) days of the date of this order, the settlement judges shall file reports with the Commission and the Chief Judge on the status of the settlement discussions in each proceeding. Based on these reports, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign the cases to presiding judges for trial-type evidentiary hearings, if appropriate. If settlement discussions continue, the settlement judges shall file reports at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(I) If settlement judge procedures fail and trial-type evidentiary hearings are to be held, presiding judges, to be designated by the Chief Judge, shall within fifteen (15) days of the date of the presiding judges' designation convene a conference in the proceedings, in hearing rooms of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conferences shall be held for the purpose of

establishing procedural schedules. The presiding judges are 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. Commissioner Kelliher dissenting in part, with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

Docket Nos. ER05-116-000
ER05-130-000

(December 30, 2004)

Joseph T. KELLIHER, Commissioner *dissenting in part*:

I agree with the Commission's decision to set the proposed Western SCS Tariff for hearing. I believe that the focus of the hearing should be on whether PG&E is obligated to provide this service to Western under the existing New Melones and San Luis contracts. However, as I disagreed with the finding that the service provided in Opinion No. 477 constitutes a new service,¹ I reject the notion that the hearing should focus on whether the service PG&E will provide under the proposed Western SCS Tariff falls under the definition of a "new service" enumerated in Opinion No. 477.

Joseph T. Kelliher

¹ See *Pacific Gas and Electric Company*, 109 FERC ¶ 61,093 at 61,406 (2004)(Kelliher, dissenting in part).