

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Pacific Gas and Electric Co.

Docket No. ER06-902-000

ORDER ACCEPTING AND SUSPENDING TARIFF REVISIONS AND
ESTABLISHING HEARING PROCEDURES

(Issued June 27, 2006)

1. On May 2, 2006, Pacific Gas and Electric Company (PG&E) filed under section 205 of the Federal Power Act (FPA)¹ proposed modifications to Service Agreement No. 42 for Network Integration Transmission Service (NITSA) between PG&E and the San Francisco Bay Area Rapid Transit District (BART) under PG&E's Open Access Transmission Tariff (OATT). In this order, the Commission accepts for filing and suspends for a nominal period, to become effective July 1, 2006, subject to refund the proposed modifications to the NITSA. We also set the NITSA for hearing.

Background

2. BART provides rail transit services for four counties in the greater San Francisco Bay Area. The NITSA provides for network transmission service of up to 84 MW of power to be delivered to BART under PG&E's OATT. Currently BART takes transmission service for the delivery of power from the Bonneville Power Administration (Bonneville) and the Western Area Power Administration (Western). As of July 1, 2006, BART will no longer be purchasing power from Bonneville and has instead contracted with the Northern California Power Agency (NCPA).

3. In accordance with this change in supplier, PG&E and BART executed a letter agreement on April 28, 2006 to amend the NITSA, proposing the addition of alternate points of receipt and a new section addressing significant regulatory and operational changes.

¹ 16 U.S.C. § 824d (2000).

4. The primary points of receipt have been, and remain, the California-Oregon border (COB) and Western's Tracy Substation (Tracy). PG&E proposes amending section 4 of the NITSA to identify BART's purchase of power from NCPA in place of the previous supplier, Bonneville. Section 7 changes the alternate point of receipt to the California Independent System Operator Corporation (CAISO) Zone North of Path 15 (NP-15) for residual power or when the primary point of receipt (POR), the COB, is not available. BART also receives a smaller amount of power from Western, which is typically received at Tracy. Proposed amendments to section 7 thus also establish Western's Cottonwood 230 kV substation (Cottonwood) as the alternative point of receipt when Tracy, the primary point of receipt, is not available.

5. The new section, entitled Significant Regulatory and Operational Change, addresses the CAISO's proposed Market Redesign and Technology Upgrade (MRTU). This section provides procedures for establishing new points of receipt upon the potential elimination of NP-15 as a POR, and for addressing any potential issues that may result from the CAISO's proposed MRTU. A new Appendix B, which describes BART's network resource and loads, has also been added.

Notice of Filing and Responsive Pleadings

6. Notice of PG&E's filing was published in the *Federal Register*, 71 Fed. Reg. 28,674 (2006), with interventions and protests due on or before May 23, 2006. A timely motion to intervene was filed by BART and a timely motion to intervene and protest was filed by the CAISO. On May 31, 2006, a request for leave to answer and answer to the CAISO's protest was filed by BART. On June 7, 2006, PG&E filed a response to the CAISO's protest.

7. In its protest, the CAISO states that it informed PG&E that the establishment of NP-15 as an alternate POR constitutes a new Encumbrance to which it conditionally consents under the CAISO's existing Zonal Congestion Management system. However, with respect to the new MRTU, it does not consent to the new Encumbrance.

8. The CAISO argues that section 4.4.3 of the Transmission Control Agreement (TCA) requires the CAISO's consent to the creation of an Encumbrance unless it finds that the Encumbrance may materially impair the CAISO's ability to exercise operational control over the affected facilities or reduces the reliability of the grid. The CAISO states that the existing NITSA did not contemplate NP-15 as a possible POR and it has determined that the addition of NP-15 as an alternate POR constitutes a new Encumbrance.

9. The CAISO expresses concern that consent to creation of PG&E's new Encumbrance under MRTU would set a precedent for other existing rights holders to create new Encumbrances. The CAISO argues that repeated expansion of Encumbrances would materially impair the CAISO's ability to exercise operational control over the affected facilities.

10. The CAISO adds that the Commission recognized, in its order authorizing start-up of the CAISO, that the CAISO has a legitimate interest in limiting new or increased service.² The CAISO states that it proposes to limit BART's request for increased service under the NITSA in order to minimize the burden of administering Existing Contracts under MRTU.

11. The CAISO also states, however, that it will conditionally consent to NP-15 as an alternate POR if section 11 of the NITSA is modified to reflect expiration of NP-15 as a POR upon the date that the MRTU becomes effective. The CAISO declares that, if such change is included in the NITSA, then it will withdraw its protest with respect to NP-15 as an alternate POR.

12. The CAISO states that the Commission should only approve the establishment of Cottonwood as a permanent back-up POR to Tracy under conditions consistent with the CAISO's scheduling practices. The CAISO explains that it did not protest previous requests to use Cottonwood as a back-up POR because the requests were only for temporary use and for a finite period of time. They argue that an unlimited extension of Cottonwood as a back-up POR would pose a significant operational constraint unless the right to use the back-up POR is consistent with the CAISO's scheduling practices. The CAISO further states that, if PG&E had requested the CAISO to make a determination of whether or not the use of Cottonwood as a back-up POR constituted a new Encumbrance, it would have informed PG&E that such a proposal under MRTU would be unreasonable.

Discussion

Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

² CAISO Protest at 9.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept BART's May 31 and PG&E's June 7 answers and will, therefore, reject them.

Commission Determination

15. The CAISO's protest stems from a disagreement about the nature of the changes to the NITSA. The CAISO objects because it believes that adding additional PORs would be a burden on the CAISO's exercise of operational control of the CAISO controlled grid and the administration of Existing Contracts. PG&E's filing and the CAISO's protest raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below.

16. Our preliminary analysis indicates that PG&E's proposed modifications to the NITSA 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 proposed modifications to the NITSA for filing, suspend them for a nominal period to become effective July 1, 2006, as requested, subject to refund, and set them for hearing.

The Commission orders:

(A) PG&E's proposed modifications to the NITSA are hereby accepted for filing, and suspend for a nominal period to become effective July 1, 2006, as requested, subject to refund.

(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, 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 PG&E's proposed modifications to the NITSA.

(C) A presiding administrative law judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., 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)

Magalie R. Salas,
Secretary.