

110 FERC ¶61,189
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Pacific Gas and Electric Company

Docket No. ER05-390-000

ORDER ACCEPTING FOR FILING AND SUSPENDING INTERCONNECTION
AGREEMENT, SUBJECT TO REFUND, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued February 28, 2005)

1. In this order, we accept for filing and suspend for five months, subject to refund, a revised system-to-system Interconnection Agreement¹ between Pacific Gas and Electric Company (PG&E) and Turlock Irrigation District (Turlock). We also establish hearing procedures for the Agreement, but hold the hearing in abeyance pending settlement discussions between the parties. This action benefits customers because it assures that the terms, conditions, and rates for interconnection service are just and reasonable and encourages increased power supply while protecting reliability.

Background

2. On December 29, 2004, PG&E filed a revised, unexecuted system-to-system Interconnection Agreement with Turlock in response to Turlock's decision to form its own control area starting on March 1, 2005. PG&E explains that the revised Interconnection Agreement is necessary because Turlock, and not PG&E, will now be responsible for providing the services associated with operation of a control area. PG&E explains that the revised Interconnection Agreement also reflects the fact that PG&E turned over its Control Area Operator responsibilities to the California Independent System Operator (CAISO) approximately seven years ago.

3. PG&E points out that the revised Interconnection Agreement is consistent with similar agreements it negotiated with other municipal entities that formed their own control areas. PG&E states that the revised Agreement includes the following

¹ To be designated as PG&E Second Revised Rate Schedule FERC No. 213 (superceding First Revised Rate Schedule No. 213).

modifications: (1) update of provisions to reflect new control area circumstances; (2) removal of the power sales and ancillary service provisions, except for reactive power and voltage control terms and conditions; (3) inclusion of provisions declaring that Turlock's existing transmission service on PG&E's transmission system, originally scheduled by PG&E and more recently scheduled by CAISO through PG&E acting as Scheduling Coordinator, will no longer be scheduled with or through PG&E; (4) revision of Control Area Operator provisions to reflect the fact that PG&E no longer is a Control Area Operator, but continues to be the transmission system owner; and (5) removal of Turlock's ability to request additional Reserved Transmission Service beyond its current allocation of 42 MW.²

4. PG&E requests a March 1, 2005 effective date, the date on which Turlock will begin operating its control area.

Notice of Filing, Interventions, Protests and Answer

5. Notice of PG&E's filing was published in the *Federal Register*, 70 Fed. Reg. 1,885 (2005), with comments, interventions and protests due on or before January 19, 2005. Northern California Power Agency, CAISO, Merced Irrigation District, and Modesto Irrigation District filed timely motions to intervene. Turlock filed a timely motion to intervene and protest. PG&E filed an answer to Turlock's protest on February 3, 2005.

Discussion

A. Procedural Matters

6. 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 this proceeding.

7. 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 will accept PG&E's answer because it has provided information that assisted us in our decision-making process.

² PG&E notes that the provisions that are not materially changed relate to the maintenance and coordination of the Turlock and PG&E transmission systems, subject to PG&E's responsibilities to CAISO, as host Control Area Operator.

B. Revised Interconnection Agreement

8. In its protest, Turlock first argues that PG&E's filing should be rejected because PG&E does not have the right to unilaterally file for changes to the terms of the current Interconnection Agreement under section 205 of the FPA and that PG&E has not met the public interest standard of *Mobile-Sierra*.³ Additionally, Turlock argues for rejection of PG&E's revised Interconnection Agreement because it failed to complete the alternative dispute resolution procedures required by the existing Interconnection Agreement. Finally, Turlock argues that the revised Interconnection Agreement should be rejected because PG&E has failed to show that its proposed changes are required by Turlock's operation of a control area.

9. In the alternative, if the Commission does not reject PG&E's revised Interconnection Agreement, Turlock requests a five-month suspension because PG&E has not shown that all of its proposed changes are just and reasonable. If the Commission orders a five-month suspension of PG&E's revised Interconnection Agreement, Turlock offers to defer implementation of its Control Area in order to preserve the status quo so that the Parties may negotiate mutually acceptable changes to the revised Interconnection Agreement.

10. In its answer, PG&E states that: (1) it does have the right to make a section 205 filing; (2) it is not required to use alternative dispute resolution under the existing Interconnection Agreement when exercising its section 205 rights; and (3) its proposed changes are reasonable and appropriate in view of Turlock's proposed formation of its own control area. However, PG&E proposes that, now that Turlock has indicated that it is willing to delay the operation date of its Control Area to allow time to negotiate a revised Interconnection Agreement, PG&E is willing to engage in those negotiations. PG&E requests that before Turlock operates a separate control area, Turlock file with the Commission an Inter-Control Area Operations Agreement between Turlock and the CAISO, with an effective date no earlier than the five-month deferral period proposed by Turlock in this proceeding, namely August 1, 2005. PG&E also requests that the revised Interconnection Agreement become effective on the earlier date of any control area operations proposed by Turlock or August 1, 2005 (based on the five-month suspension time period). Finally, PG&E requests that the Commission defer the appointment of a settlement judge for thirty days to determine whether a revised Interconnection Agreement can be negotiated without the need of a settlement judge.

³ See *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power*, 350 U.S. 346 (1956).

11. We will not reject the filing. Section 10.27 of the existing Interconnection Agreement specifically provides that PG&E has the right to file changes in rates and rate methodologies with the Commission under section 205 of the FPA. Section 10.27 defines the term “rates” to include electric services as provided in the Agreement, rates and charges for or in connection with those services, and all classifications, practices, rules, regulations or contracts, including but not limited to the Agreement, that in any manner affect or relate to such services, rates and charges. We note, further, that section 10.27 also provides that Turlock has the right to oppose those revisions. We conclude, therefore, that under the existing Interconnection Agreement, PG&E can file this revised Interconnection Agreement and Turlock can oppose it. We also find that the dispute resolution and arbitration provision in section 8.0 of the Interconnection Agreement specifically exempts disputes concerning rates or other filings initiated by PG&E at the Commission from its arbitration requirements, and therefore, does not take precedence over PG&E’s right under section 10.27 to propose amendments to the Interconnection Agreement. We conclude, therefore, that PG&E’s revised unexecuted Interconnection Agreement is properly before the Commission in this proceeding.

12. PG&E’s filing presents issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that the proposed revised Interconnection Agreement has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept the proposed revised Interconnection Agreement for filing, suspend it for five months as requested by the parties, make it effective August 1, 2005, subject to refund, and set this matter for hearing and settlement judge procedures.⁴

13. 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.⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the

⁴ The Commission denies PG&E’s request to defer the appointment of a settlement judge for thirty days. Both PG&E and Turlock note the negotiations that preceded this filing were not successful. The Chief Administrative Law Judge, therefore, is directed to appoint a settlement judge as directed in this order.

⁵ 18 C.F.R. § 385.603 (2004).

proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁶ 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 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) The revised Interconnection Agreement is hereby accepted for filing, suspended for five months, to become effective on August 1, 2005, subject to refund, and set for hearing and settlement judge procedures, 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 concerning the justness and reasonableness of the revised Interconnection Agreement between PG&E and Turlock. 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 (2004), 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 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

⁶ 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).

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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.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.