

123 FERC ¶ 61,228
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. ER08-733-000

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

(Issued May 30, 2008)

1. In this order, we accept for filing and suspend for five months a notice of cancellation of a pre-Order No. 888 Interconnection Agreement between Pacific Gas and Electric Company (PG&E) and Turlock Irrigation District (Turlock) that provides for interconnection and transmission services, to be effective November 1, 2008. We also accept for filing and suspend for five months a proposed successor agreement that provides for interconnection service only, to be effective November 1, 2008, subject to refund. Finally, we establish hearing and settlement judge procedures.

Background

2. PG&E and Turlock entered into the current Interconnection Agreement (Current IA)¹ in 1987, when Turlock was located within what was formerly PG&E's control area.² Until 2005, PG&E provided Turlock with system interconnection, transmission, power, and control area services under the Current IA. When Turlock established its own control area in 2005, PG&E amended the Current IA to remove the power and control area service provisions.³ Under the Current IA, PG&E continues to provide Turlock with interconnection service and 51 MW of firm, bi-directional Reserved Transmission

¹ The Current IA is designated as PG&E Rate Schedule FERC No. 213.

² In 1998, PG&E's control area became part of the Balancing Authority area of the California Independent System Operator Corporation (CAISO).

³ See *Pacific Gas and Electric Co.*, 110 FERC ¶ 61,189 (2005).

Service. The Current IA is considered an Existing Transmission Contract (ETC)⁴ and is listed in the CAISO Tariff as an encumbrance on PG&E's transmission system. The term of the Current IA expires on June 1, 2008.⁵

3. On March 28, 2008, PG&E filed a notice of cancellation of the Current IA, and an unexecuted replacement Interconnection Agreement (Replacement IA). PG&E explains that there are two principal differences between the Current IA and the Replacement IA. First, the Replacement IA does not provide for transmission service, which PG&E states Turlock will be able to obtain under the CAISO Tariff. Second, under the Replacement IA, PG&E treats certain transmission facilities that both Turlock and the Modesto Irrigation District (Modesto) jointly own as part of Turlock's transmission system. That is, the Replacement IA governs not only Turlock's obligations with respect to facilities that Turlock owns outright, but also the facilities that Turlock jointly owns with Modesto.⁶ PG&E states that the Replacement IA is based on other successor IAs that it recently filed to replace ETCs that have expired and that the Commission accepted. PG&E requests an effective date for both the notice of cancellation and the Replacement IA of June 1, 2008.

Notice of Filing and Pleadings

4. Notice of PG&E's filing was published in the *Federal Register*, 73 Fed. Reg. 19,202 (2008), with protests and interventions due on or before April 18, 2008. Turlock and Modesto filed timely motions to intervene and protests. The California Public Utilities Commission (CPUC) filed a motion to intervene out of time. On May 2, 2008, PG&E filed an answer in response to the protests.

5. Turlock contends that PG&E's proposed Replacement IA is unjust, unreasonable and unduly discriminatory for many reasons, and requests that the Commission reject it and allow the Current IA to continue until the parties can negotiate, or until PG&E files a just and reasonable successor agreement. In the alternative, Turlock requests that the

⁴ An ETC is a contractual obligation of a CAISO Participating Transmission Owner (PTO), established prior to the start-up of the CAISO, to provide transmission service to another party in accordance with terms and conditions specified in the contract, utilizing transmission facilities owned by the PTO that have been turned over to CAISO operational control pursuant to the Transmission Control Agreement.

⁵ Current IA section 9.2.

⁶ Turlock's system interconnects with PG&E's system at the Westley Junction via two 230 kV lines that begin at the Westley Switching Station, all of which are jointly owned by Turlock and Modesto. One line terminates at PG&E's Los Banos substation, the other at PG&E's Tesla substation.

Commission suspend the filing for five months and set it for hearing and settlement judge procedures. Turlock states that during the suspension period while the Current IA remains in effect, Turlock is willing to voluntarily pay higher rates to PG&E for transmission service, pursuant to the rates that are currently in effect for certain ETC customers in Docket No. ER08-267-000.⁷

6. First, Turlock objects to PG&E's proposal to expand Turlock's obligations and liabilities to facilities owned by Modesto, arguing that Modesto is the operator of the jointly owned facilities at Westley, and that Turlock has no right to govern how Modesto operates or uses Modesto-owned facilities. Turlock states that, as a public entity, Turlock cannot agree to be held liable for the actions of a third party with respect to facilities owned or operated by that third party. Turlock adds that it and Modesto have been interconnected to PG&E through jointly owned facilities for decades, yet neither the Current IA nor a settlement IA just filed in March 2008 between Modesto and PG&E has a similar provision. Modesto states that the filing is unclear on this issue, but if PG&E's intent is to require Turlock to take on obligations for Modesto-owned facilities, it agrees with Turlock that such a requirement would be improper.

7. Turlock objects to provisions that require Turlock (and PG&E) to agree to perform certain power flow studies and establish reliability-related operational limitations and requirements in cooperation with the Sacramento Valley Study Group (Study Group) and relevant Balancing Authorities, including the CAISO. Turlock argues that if this provision conveys regulatory rights to the Study Group, the CAISO, or a neighboring Balancing Authority, or conveys upon these entities the right to interpret Turlock's transmission rights, the provisions are unjust and unreasonable.

8. Turlock argues that transmission service that it would receive under the CAISO Tariff would be at vastly different prices, terms and conditions compared to the transmission service it receives from PG&E under the Current IA, leading to an unduly discriminatory result. Turlock states that it has made significant contributions to PG&E in order to protect and preserve its firm transmission rights. For example, Turlock states that it helped pay for reinforcements for Path 15 in exchange for higher curtailment priority for its transmission service along that path. Turlock argues that, in light of these contributions, the Commission should at least require PG&E to grant Turlock "rollover rights" for similar future transmission service.

⁷ In Docket No. ER08-267-000, PG&E proposed rate changes for several ETC customers. In an order issued January 30, 2008, the Commission accepted and suspended that filing for five months, to be effective July 1, 2008, subject to refund, and set it for hearing and settlement judge procedures, *Pacific Gas and Electric Co.*, 122 FERC ¶ 61,065 (2008), *reh'g pending*.

9. Turlock objects to a number of other provisions in the proposed Replacement IA and requests that the Commission require PG&E to modify them. For example, Turlock states that PG&E should (1) modify the “Avoidance of Adverse Impacts” provision to reflect a standard that existed before PG&E re-rated Path 15; (2) revise the definition of “Long-Term Change to Operations” to include any change in seasonal or minimum load operating conditions that has an adverse effect on another party, no matter how many days the change is in effect; (3) modify the term of the Replacement IA to run for at least 20 years, with evergreen provisions; (4) remove any provisions that give PG&E more rights to “To and Through” service over Turlock’s system than Turlock has over PG&E’s system; and (5) retain the stated ampacity levels in the proposed Replacement IA, so that Turlock has some measure of certainty of how much electric energy it can import at the Westley Interconnection during the summer and winter seasons.

10. PG&E responds that Turlock has not made the case that the proposed Replacement IA is unjust, unreasonable or unduly discriminatory, or that continuing transmission service under the Existing IA is required to provide reasonable and adequate transmission service to Turlock. While PG&E states that it does not object to settlement procedures for the terms and conditions of the Replacement IA, it does object to any suspension of the termination of the Current IA past June 1, 2008. PG&E argues that continuation of the Current IA would extend the term of an encumbrance on the CAISO system, and that the Current IA provides for its termination on that date. Moreover, PG&E argues that CAISO transmission service is an adequate replacement for Turlock’s transmission needs and that the Commission has ordered ETC customers to take service under the CAISO Tariff upon termination of their contracts.

11. PG&E maintains that the provisions regarding jointly-owned facilities are reasonable and fully-justified, arguing that Turlock must bear responsibility for operation, maintenance and planning of facilities that it owns or jointly owns, as the interconnection of these facilities puts PG&E’s system at risk.⁸ PG&E notes that the jointly-owned facilities exist at a point where three balancing authorities meet – those of Turlock, the Sacramento Municipal Utility District, and the CAISO. PG&E states that this makes it vital that the Replacement IA establishes clear responsibilities among the parties that own the facilities. PG&E also argues that the Replacement IA does not place new regulatory requirements on Turlock; rather it merely reaffirms the existing procedure that requires the parties to conduct joint studies to determine the capability of the PG&E-Turlock-Modesto interface under the direction of the Study Group.

12. PG&E states that it is amenable to some of Turlock’s requested modifications to terms and conditions in the Replacement IA. For instance, PG&E states that it is willing to accept a modified, more restrictive definition of “Long-Term Change to Operations” as

⁸ PG&E notes that nothing in the Replacement IA seeks to govern how Modesto operates its solely-owned facilities.

Turlock suggests. However, PG&E objects to most of Turlock's arguments. For example, PG&E argues that (1) the "Avoidance of Adverse Impacts" provisions are properly based upon the current status of each party's system and are reasonable; (2) the phrase "to and through" in the Replacement IA confers no special advantage to PG&E but merely reflects the way in which its and Turlock's transmission systems operate; (3) the proposed 10-year term of the Replacement IA is long enough and is similar in length to other IAs; and (4) the statement of ampacity levels in the Replacement IA would be unnecessary and confusing.

Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene of Turlock and Modesto serve to make them parties to this proceeding. We will grant the CPUC's late filed motion to intervene, given its interest in this proceeding, the early stage of the proceeding, and the absence of any prejudice or delay.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), 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.

B. Rollover Rights

15. Turlock requests that the Commission require PG&E to grant Turlock "rollover rights" for its transmission service. We have previously denied the extension of expiring ETCs, and found that the CAISO Tariff is adequate for replacement service.⁹ We find here as well that, upon termination of the Current IA, Turlock will have available to it adequate and reasonable transmission service under the CAISO's Tariff. Accordingly, we will not require PG&E to grant Turlock "rollover rights."

C. Hearing and Settlement Judge Procedures

16. PG&E's notice of cancellation of the Current IA and proposed Replacement IA raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

⁹ *Sacramento Municipal Utility District*, 105 FERC ¶ 61,358, at P 21-23 (2003), *reh'g denied*, 107 FERC ¶ 61,237, at P 12-13 (2004), *aff'd*, *Sacramento Municipal Utility District v. FERC*, 428 F.3d 294, 297-98 (D.C. Cir. 2005). *See also*, *PacifiCorp, et al.*, 120 FERC ¶ 61,113, at P 57-60 (2007) (*Pacific Intertie Order*).

17. Our preliminary analysis indicates that PG&E's proposed Replacement IA has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept PG&E's proposed Replacement IA for filing, suspend it for five months, make it effective November 1, 2008, subject to refund, and set it for hearing and settlement judge procedures. In addition, we will accept the notice of cancellation of the Current IA after a five months suspension, effective November 1, 2008.

18. The Commission may impose a five months suspension of the termination of an expiring contract when such termination may have significant, adverse effects on the coordination and operation of interconnected facilities.¹⁰ Given the number of terms of the proposed Replacement IA that are in dispute, we are concerned that allowing termination of the Current IA without appropriate replacement interconnection service may be unjust and unreasonable. This is particularly important since the point of interconnection between the parties is at the confluence of three different balancing authority areas. In addition, Turlock will need time to arrange for replacement transmission service. Finally, we note that section 9.3 of the Current IA contemplates that termination of the contract may be subject to a five months suspension beyond the contractual termination date of June 1, 2008. This order's suspension period is consistent with that provision.

19. 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.¹¹ 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.¹² The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to

¹⁰ See *Pacific Intertie Order* at P 20-23. See also *Pacific Gas and Electric Co., et al.*, 98 FERC ¶ 61,281, at 62,214-15 (2002).

¹¹ 18 C.F.R. § 385.603 (2007).

¹² 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 the date 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).

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 proposed notice of cancellation of the Current IA is hereby accepted for filing and suspended for five months, to become effective on November 1, 2008.

(B) PG&E's proposed Replacement IA is hereby accepted for filing, suspended for five months, to become effective November 1, 2008, subject to refund, as discussed in the body of this order.

(C) 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 PG&E's proposed Replacement IA. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), 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.

(E) Within thirty (30) days of the appointment of the settlement judge, 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.

(F) 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 prehearing conference in these proceedings in a hearing room of the 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)

Kimberly D. Bose,
Secretary.