

135 FERC ¶ 61,282  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Pacific Gas and Electric Company                      Docket Nos. ER11-2592-001

Southern California Edison Company                      ER11-2694-001

(Not Consolidated)

ORDER GRANTING EXTENSION OF WAIVER

(Issued June 30, 2011)

1. In this order, the Commission accepts Pacific Gas and Electric Company (PG&E) and Southern California Edison's (SoCal Edison) (jointly, Applicants) joint progress report filed in compliance with the Commission's order issued on March 31, 2011.<sup>1</sup> The Commission also grants the Applicants' request to extend the waiver of sections 40.9.5 and 40.9.6 of the California Independent System Operator Corporation's (CAISO) tariff to September 30, 2011.

**I. Background**

2. On December 31, 2010, PG&E filed a request for temporary waiver of the forced outage reporting requirements in section 40.9.5 of the CAISO tariff. Similarly, SoCal Edison filed a request for temporary waiver of the same CAISO tariff provision on January 14, 2011. In their respective filings, Applicants stated that they were unable to provide the information required by section 40.9.5 for certain qualifying facility (QF) resource adequacy (RA) resources because of certain contractual provisions in the power purchase agreements for those resources. Applicants argued that the requested waiver would allow them to work with CAISO to resolve the reporting issues and develop a solution without being found in violation of the CAISO tariff. Applicants further stated that they expected CAISO to begin a stakeholder process to discuss a remedy in the beginning of 2011.

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<sup>1</sup> *Pacific Gas and Elec. Co. and South. Cal. Edison Co.*, 134 FERC ¶ 61,265 (2011) (March 31 Order).

3. In the March 31 Order, the Commission granted Applicants temporary waiver of CAISO tariff section 40.9.5 until June 30, 2011. The Commission also granted Applicants temporary waiver of section 40.9.6 in response to CAISO's concern that the Applicants would receive undue availability incentive payments if the Commission granted waiver of section 40.9.5. In granting waiver of both tariff sections, the Commission required Applicants to file a joint progress report containing details on the outcome of the expected CAISO stakeholder process. Lastly, the Commission stated that if the parties could not reach a resolution, Applicants should provide detailed information to explain why they have been unable to resolve these issues.

## **II. Joint Progress Report and Motion for Extension of Waiver.**

4. On June 20, 2011, Applicants filed a joint progress report and a motion for an extension of the waivers granted in the March 31 Order. In the progress report, Applicants state that they have worked with CAISO in a recently-initiated stakeholder process.

5. Applicants state that because the stakeholder process is not complete, the permanent remedy to resolve the forced outage reporting requirements is unknown. Applicants explain that in the interim, they have submitted a Joint Proposal of the Investor-Owned Utilities<sup>2</sup> (Joint Proposal) to the CAISO, which, they argue, is consistent with the Commission's approach of respecting existing contractual arrangements while implementing market improvements. Applicants note that the Joint Proposal recommends grandfathering the QF RA contracts that do not contain mandatory forced outage reporting requirements. Further, Applicants state that the Joint Proposal recommends exempting these resources from the non-availability charges and availability incentive payments in the CAISO tariff. Applicants state that they do not request that the Commission approve this approach on a permanent basis, but note that they chose to describe the Joint Proposal as part of the progress report in order to comply with the requirements of the March 31 Order. Applicants note that CAISO recently posted the Joint Proposal on its website on June 10, 2011, with comments due by June 24, 2011. Applicants state that CAISO is scheduled to post its recommendations on June 30, 2011.

6. Applicants state that the Joint Proposal also discusses the difficulty of renegotiating QF RA contracts. Applicants explain that they have made extensive efforts to negotiate new contracts for these resources in a settlement process overseen by the California Public Utilities Commission. Applicants state that if the settlement resulting from this process becomes effective, it will result in new contracts for certain QF RA resources that include provisions allowing for the reporting of forced outages in

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<sup>2</sup> The Joint Proposal of the Investor-Owned Utilities was proposed by PG&E, SoCal Edison, and San Diego Gas & Electric Company.

compliance with the CAISO tariff.<sup>3</sup> In addition, Applicants assert that all other new QF RA contracts will contain contractual provisions providing for the reporting of outage data compliant with the CAISO tariff.

7. Applicants further state that CAISO's stakeholder process will not be complete until June 30, 2011. Therefore, Applicants request that the waivers granted in the March 31 Order be extended until September 30, 2011, so that the stakeholder process can finish and to allow all parties ample time to take any further action necessary to remedy unresolved reporting issues. Applicants note that CAISO is not opposed to the extension of the waivers. Lastly, Applicants commit to filing an additional progress report by September 30, 2011, to report on the outcome of the stakeholder process and to address any necessary remedies.

### **III. Notice, Intervention and Responsive Pleadings**

8. A notice of PG&E's and SoCal Edison's filings in Docket Nos. ER11-2592-001 and ER11-2694-001 was issued on June 20, 2011 and published in the *Federal Register*, 76 Fed. Reg. 37803 (2011). Subsequently, errata notices were issued on June 21, 2011 in Docket No. ER11-2592-001, and on June 23, 2011 in Docket No. ER11-2694-001, with interventions, comments, and protests due on or before June 27, 2011 and June 28, 2011, respectively.

9. CAISO submitted comments in response to Applicants' motion for extension of waiver. In its comments, CAISO confirms that they are in support of the motion to extend waiver. CAISO states that there could be negative consequences if the waivers granted in the March 31 Order are not extended. First, to the extent QF RA resources cannot report forced outage data, they would have an apparent availability percentage of 100 percent. This high apparent availability percentage could result in undue availability incentive payments for these resources.

10. Second, CAISO states that, to the extent any QF RA resources have a forced outage, scheduling coordinators for those QFs would face sanctions for failing to report those outages to CAISO. However, scheduling coordinators claim that they do not have access to the data necessary to identify violations. Thus, CAISO states that it would be placed in a difficult position, since it would face a tariff obligation to levy sanctions without the appropriate information to do so. Accordingly, CAISO recommends that the Commission extend the waivers granted in the March 31 Order to September 30, 2011.

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<sup>3</sup> Applicants state that this settlement could become effective as early as November 2011.

#### IV. Commission Determination

11. The Commission historically has granted certain waiver requests involving an emergency situation or an unintentional error.<sup>4</sup> Waiver, however, is not limited to those circumstances. For example, in several recent cases, the Commission has found good cause to grant waiver where the waiver is of limited scope, where there are no undesirable consequences, or where there are resultant benefits to customers.<sup>5</sup>

12. In the joint progress report, Applicants have demonstrated that they have made progress toward resolving contractual problems obstructing their compliance with CAISO's forced outage reporting requirements through a stakeholder process initiated by CAISO. Applicants note that while they have submitted the Joint Proposal for comment, CAISO's recommendations are not due until June 30, 2011, the date that the waivers terminate. The parties state that they are making progress toward a permanent remedy to resolve the contractual reporting issues. Based upon these representations, we are persuaded to grant the Applicants' request to extend the waivers granted in the March 31 Order for a limited amount of time. Accordingly, we find that good cause exists to extend the waiver of sections 40.9.5 and 40.9.6 granted in the March 31 Order until September 30, 2011. However, we expect that the parties will resolve the reporting issues in a timely manner.

13. In granting waiver, we direct Applicants to submit an additional joint report to the Commission providing details on the outcome and resolution of the stakeholder process by August 31, 2011. The progress report should inform the Commission of the permanent remedy developed during the stakeholder process, and if further actions or tariff filings are necessary.

14. Finally, the Commission acknowledges the receipt of the joint progress report submitted by the Applicants. The joint progress report, along with the cited portions of

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<sup>4</sup> See, e.g., *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006) (granting limited and temporary change to tariff to correct an error); *Great Lakes Gas Transmission LP.*, 102 FERC ¶ 61,331, at P 16 (2003) (granting emergency waiver involving *force majeure* event for good cause shown); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330, at P 5 (2003) (granting waiver for good cause shown to address calculation in variance adjustment).

<sup>5</sup> See, e.g., *Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226 (2007); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,132 (2010); *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,020 (2010); *Coso Energy Developers*, 134 FERC ¶ 61,088 (2011).

the Joint Proposal, contains the information requested by in the March 31 Order and, therefore, complies with the Commission's directives.

The Commission orders:

(A) The waiver granted in the March 31 Order is hereby extended until September 30, 2011, as discussed in the body of this order.

(B) Parties are hereby directed to submit an additional joint progress report no later than August 31, 2011, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.