

150 FERC ¶ 61,255
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
Norman C. Bay, and Colette D. Honorable.

City and County of San Francisco

Docket No. EL15-3-000

v.

Pacific Gas & Electric Company

Pacific Gas & Electric Company

Docket Nos. ER15-702-000
ER15-703-000
ER15-704-000
ER15-704-001
ER15-705-000
ER15-735-000

(Consolidated)

ORDER ON COMPLAINT, ACCEPTING AND SUSPENDING NOTICES OF
TERMINATION AND REPLACEMENT AGREEMENTS, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES, AND CONSOLIDATING
PROCEEDINGS

(Issued March 31, 2015)

1. On October 7, 2014, the City and County of San Francisco (San Francisco) filed a complaint (Complaint) against Pacific Gas and Electric Company (PG&E) pursuant to sections 206 and 306 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² alleging that PG&E will, upon expiration of an Interconnection Agreement between the parties, unreasonably deny service to San Francisco under PG&E's wholesale distribution tariff (WDT) by

¹ 16 U.S.C. §§ 824e, 825e (2012).

² 18 C.F.R. § 385.206 (2014).

instead providing “equivalent” service to certain loads under a separate agreement. Subsequently, on December 23, 2014, PG&E filed: (1) a notice of termination of an Interconnection Agreement with San Francisco; (2) a series of replacement agreements that provide for continued service to San Francisco; and (3) notices of termination for eight separate delivery points that will transition from service under the Interconnection Agreement to the WDT Service Agreement.

2. In this order, we set the Complaint for hearing and settlement judge procedures. We accept PG&E’s notices of termination and replacement agreements (collectively, section 205 filings), and suspend them all for a nominal period to become effective June 30, 2015 and July 1, 2015, respectively, subject to refund. In addition, we set PG&E’s section 205 filings for hearing and settlement judge procedures and consolidate them with the Complaint proceeding.

I. Background

3. In 1987, PG&E and San Francisco entered into an Interconnection Agreement, (herein referred to as the 1987 Interconnection Agreement) which governs the interconnection of PG&E’s and San Francisco’s transmission and distribution systems, use of PG&E’s transmission and distribution systems by San Francisco, and power-related services provided by PG&E to San Francisco. The Interconnection Agreement is set to terminate by its express terms on June 30, 2015.³

4. PG&E states that, upon commencement of California Independent System Operator Corporation (CAISO) market operations, the Commission permitted existing, bilateral contracts, such as the 1987 Interconnection Agreement, to expire in accordance with their terms in order to preserve the parties’ then-existing electric transmission service arrangements.⁴ PG&E states that upon expiration of these contracts, customers will transition to open access transmission service under the CAISO tariff.

5. In anticipation of transitioning its customer base to open access transmission service, on November 27, 2013, San Francisco submitted an application for wholesale

³ See PG&E, Docket No. ER15-702-000, Transmittal Letter at 1-2. See also Ex. PGE-1 at 3, 7.

⁴ These contracts are generally referred to as existing transmission contracts. See PG&E, Docket No. ER15-702-000, Transmittal Letter at 2. See also Ex. PGE-1 at 6-7.

distribution service under PG&E's WDT⁵ to transition those customers who currently take service under the expiring Interconnection Agreement (approximately 100 MW of load), to take effect upon the expiration of the 1987 Interconnection Agreement. On March 13, 2014, PG&E responded that approximately 25 percent of San Francisco's total proposed load was not eligible for service under the WDT because those customers either: (1) do not have intervening facilities between PG&E's facilities and the customers' facilities; and/or (2) do not possess adequate meters.⁶ PG&E advised San Francisco that it intends to serve the points of delivery it has deemed ineligible for WDT service pursuant to a voluntary bilateral agreement.

II. Filings

A. Complaint

6. In Docket No. EL15-3-000, San Francisco submitted a Complaint against PG&E, alleging that PG&E will, upon expiration the 1987 Interconnection Agreement between the parties, unreasonably deny service to San Francisco under PG&E's WDT, by instead providing "equivalent" service to certain loads under a separate agreement.⁷

7. San Francisco contends that, in response to its November 27, 2013 application for WDT service, PG&E has improperly concluded that 25 percent of its load is ineligible for service under PG&E's WDT despite a clear record that these customers are the same customers or types of customers that San Francisco has served for decades.⁸ According to San Francisco, PG&E has indicated that this load is ineligible for WDT service because it does not qualify for grandfathered service under section 212(h) of the FPA⁹ and, therefore, cannot be served under the WDT unless San Francisco constructs new

⁵ The WDT provides the terms and conditions under which PG&E will interconnect an eligible customer's distribution facilities to PG&E's distribution system, as well as sets forth the terms and conditions for wholesale transmission over PG&E's distribution facilities.

⁶ San Francisco Complaint at 10 (citing Exhibit J at 2).

⁷ At the time San Francisco submitted the Complaint, PG&E had not yet filed its proposed replacement agreements and the terms and conditions of "equivalent" service for these loads were not clear.

⁸ San Francisco Complaint at 17-18.

⁹ 16 U.S.C. § 824k(h) (2012).

intervening facilities. San Francisco argues that all of its load is eligible for grandfathering under section 212(h), and qualifies for PG&E's WDT service.

8. San Francisco requests that: (1) the Commission require PG&E to expeditiously tender wholesale distribution service agreements that include reasonable and nondiscriminatory terms; (2) fast track processing for the Complaint pursuant to Rule 206(h) of the Commission's Rules of Practice and Procedure; and (3) to the extent that the Commission finds that PG&E is acting in accordance with its WDT on the matters detailed above, the Commission find the provisions of the WDT unjust, unreasonable, and unduly discriminatory due to the denial of wholesale distribution service to San Francisco. In the event that this matter is still pending when the Interconnection Agreement expires on July 1, 2015, San Francisco requests that the Commission preserve the status quo until a final resolution is reached.

B. Termination of the 1987 Interconnection Agreement

9. In Docket No. ER15-702-000, PG&E submitted a notice of termination of Rate Schedule FERC No. 114, the 1987 Interconnection Agreement with San Francisco, which, as noted above, is set to terminate by its express terms on June 30, 2015. PG&E states that, together with the notice of termination, it has filed replacement arrangements with San Francisco consistent with current terms and conditions for interconnection service using PG&E's open access tariffs.¹⁰ PG&E requests that the Commission accept the notice of termination effective June 30, 2015.

C. Termination of Rate Schedule and Facility Charge Agreements

10. In Docket No. ER15-703-000, PG&E submitted a notice of termination of Rate Schedule FERC No. 165, the Moscone Convention Center Agreement for Installation or Allocation of Special Facilities (Special Facilities Agreement) with San Francisco. PG&E proposes to terminate the Special Facilities Agreement in order to transition service to this delivery point under the proposed WDT Service Agreement. PG&E requests that the Commission accept the notice of termination effective June 30, 2015.

11. In Docket No. ER15-735-000, PG&E submitted a notice of termination of seven Facility Charge Agreements with San Francisco. PG&E seeks to terminate these Agreements to transition service to the seven delivery points under the proposed WDT Service Agreement. PG&E requests that the Commission accept the notice of termination effective June 30, 2015.

¹⁰ These tariffs include PG&E's WDT and PG&E's Open Access Transmission Tariff.

D. WDT Service Agreement and WDT Interconnection Agreement

12. In Docket No. ER15-704-000, PG&E submitted an unexecuted WDT Interconnection Agreement and a WDT Service Agreement with San Francisco. The WDT Interconnection Agreement contains the terms and conditions addressing the interconnection of San Francisco's distribution facilities to PG&E's distribution system. The WDT Service Agreement and its appendices contain the points of delivery for which San Francisco will receive wholesale distribution service, the associated monthly charges, and the details of the facilities required to provide wholesale distribution service for each delivery point for a 10-year term.

13. Under the WDT Service Agreement, PG&E proposes to provide either WDT or "WDT-equivalent" service to San Francisco's approximate 2,000 points of delivery by categorizing the delivery points into five separate categories: (1) WDT Qualified Load, which includes WDT service to San Francisco delivery points that meet all WDT requirements, or qualify for grandfathering under section 212(h) of the Federal Power Act (FPA); (2) non-WDT Qualified Municipal Load, which includes WDT-equivalent service to San Francisco's municipal load delivery points in service as of June 30, 2015;¹¹ (3) non-WDT Qualified Non-Municipal Load, which includes WDT-equivalent service to San Francisco's non-municipal delivery points in service since 1998 and still in service as of June 30, 2015 under the 1987 Interconnection Agreement;¹² (4) prospective WDT delivery points, which includes provisional WDT-equivalent service to delivery points where San Francisco initiated service after October 24, 1992, and do not serve municipal public purpose end-use customers;¹³ and (5) small unmetered loads including WDT-equivalent service to certain San Francisco delivery points that do not meet the

¹¹ PG&E states that it will provide WDT-equivalent service to non-WDT qualified municipal loads without the need for San Francisco to own or control intervening facilities or WDT-compliant meters as long as the original delivery point continues to serve a municipal load customer. Ex. PGE-1 at 32.

¹² PG&E states that it will provide WDT-equivalent service to non-WDT qualified non-municipal loads without the need for San Francisco to own or control intervening facilities or WDT-compliant meters as long as the original delivery point continues to service the same end-use customer and where the load does not exceed 125 percent of the average annual load on June 30, 2015. Ex. PGE-1 at 33.

¹³ PG&E states that these delivery points were previously served under the 1987 Interconnection Agreement.

requirements for metering under the WDT, such as streetlights, traffic signals, and street furniture.¹⁴

14. PG&E states that, collectively, these agreements provide for the continued interconnection of San Francisco's customer locations to PG&E's distribution system, and replace the provisions of distribution interconnection and firm distribution service from the terminated 1987 Interconnection Agreement. PG&E requests that the Commission accept the WDT Interconnection Agreement and WDT Service Agreement effective July 1, 2015. PG&E also seeks the Commission's approval to submit a compliance filing after November 1, 2015 to reflect delivery points that may have been added or removed between the time San Francisco submitted its request for wholesale distribution service in November 2013, and the time service under the new WDT Interconnection Agreement and WDT Service Agreement take effect.

E. The WDT Transmission Interconnection Agreement and Transmission Facilities Agreements

15. In Docket No. ER15-705-000, PG&E submitted an unexecuted WDT Transmission Interconnection Agreement with San Francisco, and five related Transmission Facilities Agreements. PG&E states that the WDT Transmission Interconnection Agreement provides for the continued interconnection of San Francisco's and PG&E's transmission systems, and replaces similar provisions in the 1987 Interconnection Agreement. PG&E states that the Transmission Facilities Agreements address each of the five points of interconnection under the WDT Transmission Interconnection Agreement. PG&E states that San Francisco will, going forward, purchase transmission services through the CAISO-run markets or bilateral contracts. PG&E requests that the Commission accept the WDT Transmission Interconnection Agreement and five Transmission Facilities Agreements effective July 1, 2015.

F. Waiver Requests

16. In each of the above section 205 filings, PG&E requests waiver of the Commission's notice requirement¹⁵ to permit the filings to be tendered more than 120 days in advance of the proposed effective date.

¹⁴ PG&E Docket No. ER15-704-000, Transmittal Letter at 4. *See also* PG&E Answer at 14-16; Ex. PGE-1 at 32-35.

¹⁵ 18 C.F.R § 35.3 (2014).

III. Request for Privileged Treatment

17. As further discussed below, on December 30, 2014, PG&E and San Francisco filed a joint motion for privileged treatment of certain information that San Francisco considers commercially sensitive information in Docket No. ER15-704-000, and a proposed protective agreement. San Francisco requests that PG&E treat portions of Appendices B, C, and D to the proposed WDT Service Agreement as privileged because, according to San Francisco, they contain information that could be used to identify specific retail customers, and disclose information about their energy consumption, and provide information regarding the physical design of their facilities. Accordingly, on January 2, 2015, PG&E submitted an amendment to the WDT Service Agreement in Docket No. ER15-704-001 to re-file certain information contained in the appendices of the WDT Service Agreement as privileged. PG&E requested that the Commission initiate immediate steps to manually delete the originally filed tariff records submitted on December 23, 2014 from its eTariff database.¹⁶

IV. Notice of Filing and Responsive Pleadings

A. San Francisco's Complaint

18. Notice of San Francisco's Complaint was published in the *Federal Register*, 79 Fed. Reg. 61,627 (2014), with answers, interventions, and protests due on or before November 6, 2014. The period for answers, interventions, and protests was subsequently extended to November 10, 2014.¹⁷

19. Timely motions to intervene were filed by the Turlock Irrigation District, the Power and Water Resources Pooling Authority, and Modesto Irrigation District. On November 10, 2014, PG&E submitted an answer, and CAISO submitted comments. On November 12, 2014, PG&E submitted an errata to its answer. On November 26, 2014, San Francisco submitted a motion for leave to reply and reply to PG&E's answer. On December 15, 2014, U.S. Senator Dianne Feinstein submitted comments.

¹⁶ On January 8, 2015, the Office of the Secretary removed the requested tariff records from the eTariff database.

¹⁷ See Notice Granting Extension of Time, Docket No. EL15-3-000 (Nov. 17, 2014).

B. PG&E's Section 205 Filings

20. Notice of PG&E's December 23, 2014 section 205 filings were published in the *Federal Register*, 79 Fed. Reg. 78,846 (2014), and 79 Fed. Reg. 78,847 (2014), with interventions and protests due on or before January 13, 2015. Notice of PG&E's January 2, 2015 filing in Docket No. ER15-704-001 was published in the *Federal Register*, 80 Fed. Reg. 1500 (2015), with interventions and protests due on or before January 23, 2015.

21. Modesto Irrigation District and San Francisco submitted motions to intervene in the section 205 filings. San Francisco submitted a protest and request for suspension, hearing, and settlement procedures regarding PG&E's section 205 filings and Docket No. EL15-3-000. On January 28, 2015, PG&E filed an answer to San Francisco's protest. On February 13, 2015, San Francisco submitted an answer to PG&E's answer. On January 23, 2015, San Francisco filed comments regarding the confidentiality of portions of the filing submitted by PG&E in Docket No. ER15-704-001 on January 2, 2015.

V. Comments, Protests, and Answers**A. Complaint Proceeding****1. PG&E Answer**

22. In the context of determining which of San Francisco's delivery points are eligible for WDT service, PG&E states that, if a delivery point did not exist on October 24, 1992, it could not have been considered eligible to receive service, and therefore is ineligible for grandfathering consideration under section 212(h).¹⁸ With regard to *Suffolk County I and II*,¹⁹ PG&E believes that, for any given delivery point that Suffolk actually served (or which existed and was eligible to receive service) on October 24, 1992 (i.e., a grandfathered point of service), individual customer turnover at that grandfathered service point would not destroy the underlying grandfathering status so long as each of the subsequent customers served at that delivery point are members of the same customer "class." If Suffolk (or, in this case, San Francisco) had proposed to use a grandfathered service point that originally served a residential customer to subsequently serve a commercial customer, then, PG&E argues, the grandfathered status of the delivery point

¹⁸ PG&E Answer at 28-29.

¹⁹ *Id.* (citing *Suffolk Cnty. Elec. Agency*, 77 FERC ¶ 61,355 (1996) (*Suffolk County I*); *Suffolk Cnty. Elec. Agency*, 96 FERC ¶ 61,349 (2001) (*Suffolk County II*)).

would have been lost.²⁰ PG&E also argues that grandfathering a relocated service point would also defeat the original purpose of the grandfathering clause – to protect or exclude application of the Energy Policy Act of 1992 to any then-existing service point lacking intervening facilities.²¹

2. CAISO Comments

23. In its comments, CAISO states that the CAISO tariff, the CAISO Transmission Control Agreement, and Commission precedent do not support extension of the transmission services provided under the existing Interconnection Agreement between San Francisco and PG&E, as requested by San Francisco in the event that parties do not reach resolution of the issues. CAISO argues that the 1987 Interconnection Agreement is an existing transmission contract, and the transmission service it provides represents an encumbrance on the CAISO controlled grid.²² CAISO states that PG&E is not permitted to extend the term of any encumbrance without its written consent, which has been neither provided nor requested. Moreover, CAISO argues that it is the policy of the Commission not to extend existing contracts,²³ and that extending this encumbrance would set a precedent for other parties with existing contracts to expand the scope of their existing rights.²⁴ CAISO states that, while it cannot consent to a long-term extension of the Interconnection Agreement, it understands that the Commission may consider a temporary extension of the interconnection agreement to provide the parties with adequate time to develop long-term replacement agreements. Therefore, CAISO states that it would not object to a limited extension of the 1987 Interconnection Agreement.²⁵

²⁰ *Id.* at 29-30.

²¹ *Id.* at 35.

²² CAISO Comments at 1-2.

²³ *Id.*

²⁴ *Id.* at 5.

²⁵ *Id.* at 2, 8.

B. Replacement Agreements in Docket Nos. ER15-704-000 and ER15-705-000

1. San Francisco Protest

24. San Francisco contends that, under the proposed WDT Service Agreement, PG&E arbitrarily categorizes San Francisco's existing delivery points into the five categories set forth above. San Francisco contends that it lacks sufficient information to understand many of PG&E's determinations about why certain loads are in certain categories, or why only 153 delivery points (out of nearly 2,000) qualify for WDT service.²⁶

25. San Francisco contends that PG&E applies restrictions to each category that will impede San Francisco's ability to serve its customers. Specifically, San Francisco argues that under the categorization scheme, PG&E may terminate San Francisco's delivery points for relocating a facility, increasing load or reserved capacity beyond a certain point, or failing to establish ownership of intervening facilities. Further, San Francisco argues that PG&E imposes certain non-bypassable charges on categories serving new loads and existing loads that "change service" or "change customers or types of customers" (e.g. from municipal load to non-municipal load). San Francisco contends that PG&E has no basis to assess such charges because the Commission has previously determined that States should decide issues related to such non-bypassable costs.²⁷ San Francisco requests that the Commission summarily reject PG&E's proposal to apply non-bypassable charges to San Francisco under the WDT Service Agreement.²⁸

26. Next, San Francisco argues that PG&E unreasonably limits the "grandfathering" exception in section 212(h) of the FPA.²⁹ Specifically, San Francisco states that section 212(h) of the FPA requires the Commission to order the transmission of power directly to an ultimate consumer if the distribution customer: (1) owns intervening facilities that it uses to deliver the power; or (2) was "providing electric service to such

²⁶ San Francisco Protest at 17 (citing Ex. PGE-1 at 14).

²⁷ *Id.* at 21 (citing 18 C.F.R. § 35.26(d)(1); also citing *Cent. Vt. Pub. Serv. Corp. v. FERC*, 214 F.3d 1366, 1369 (D.C. Cir. 2000) ("The regulations provide that FERC will consider proposals for recovery of stranded costs from a utility's retail customers, but only when the state regulatory commission lacks authority to do so. *See Id.* § 35.26(d)(1).")).

²⁸ *Id.* at 23.

²⁹ *Id.* at 11 (citing 16 U.S.C. § 824k (2012)).

ultimate customers” on October 24, 1992. San Francisco asserts that the *Suffolk County* orders later clarified that section 212(h) did not refer to individual customers but instead to those customers “eligible to receive service” on October 24, 1992.³⁰ San Francisco asserts that the Commission expanded on this point in *Suffolk County II*, when it clarified that grandfathering covered the “class of customers” eligible for service by Suffolk on October 24, 1992.

27. San Francisco states that, consistent with the Commission’s *Suffolk County* decisions, San Francisco has long served a particular class of customers eligible for service under the federal Raker Act that, it asserts, should be afforded grandfathered treatment.³¹ Therefore, San Francisco requests that the Commission determine, pursuant to section 212(h) of the FPA, the Commission’s *Suffolk County* decisions, the Raker Act, and the long-standing configuration of the distribution facilities of PG&E and San Francisco that: (1) San Francisco’s existing Interconnection Agreement customers are appropriately grandfathered to WDT service; (2) the class of San Francisco’s customers that is grandfathered is the class of customers eligible to be served by San Francisco pursuant to the Raker Act; and (3) grandfathered customers do not lose their grandfathered status just because they do not meet new conditions proposed here by PG&E.³²

28. San Francisco agrees with PG&E that there is a need for a transitional process to address changes to the list of points of delivery that have occurred or will occur between when San Francisco filed its application for WDT service in November 2013 and the date on which San Francisco transitions to WDT service in 2015. However, San Francisco requests that: (1) PG&E be required to work with San Francisco to develop any such process; (2) the transition procedures include some form of dispute resolutions; and (3) the transition accommodate points of delivery that are already in the interconnection process pursuant to the 1987 Interconnection Agreement, rather than just points of interconnection where service has already commenced.³³

³⁰ *Id.*

³¹ *Id.* at 12 (citing Raker Act, 63 Pub L. No. 41, 38 Stat. 242). San Francisco generates and supplies its own electricity to meet municipal needs, serve customer load, and carry out related public purposes under the Raker Act of 1913. The Raker Act requires San Francisco to use water resources of the Hetch Hetchy Valley to generate power from the O’Shaughnessy Dam, and use this power to serve municipal loads.

³² *Id.* at 2.

³³ *Id.* at 17, 30-32.

29. San Francisco contends that PG&E's proposed 10-year term for the WDT Service Agreement is inadequate. San Francisco states that, because open access service is an essential service, an appropriate term for such service is indefinite. Therefore, San Francisco requests that the Commission determine that the maximum 10-year term and provision is unjust and unreasonable.³⁴

30. San Francisco also contends that the respective responsibilities for each party under the WDT Interconnection Agreement require clarification. While noting that section 6.1.2 of the WDT Interconnection Agreement provides that San Francisco will "be solely responsible for all costs and charges arising from its Balancing Authority Area Arrangements, including but not limited to any charges or claims by CAISO under the CAISO tariff or charges or claims by other Third Parties," San Francisco states that is unclear what balancing authority area arrangements San Francisco should assume under the WDT Interconnection Agreement.³⁵

31. San Francisco further argues that the metering requirements in the proposed WDT Interconnection Agreement are inconsistent with the metering requirements of the WDT Service Agreement and include unnecessary provisions. San Francisco also takes issue with certain provisions that it contends fail to address proper compensation to San Francisco. San Francisco argues that PG&E should be required to address how it will provide compensation for: (1) PG&E's use of San Francisco's Direct Assignment Facilities; (2) reactive power support; and (3) PG&E's performance of true-ups.

32. With regard to the Transmission Interconnection Agreement, San Francisco states that the agreement does not accurately characterize its facilities or the relevant interconnections. Specifically, the proposed Transmission Interconnection Agreement improperly identifies several delivery points as "generator interconnections," when they are in fact transmission interconnections.³⁶ San Francisco also contends that the Transmission Interconnection Agreement contains inapplicable provisions that should be addressed separately between PG&E and CAISO, as well as provisions that limit San Francisco's operating flexibility and require equipment additions that are unnecessary and will primarily benefit PG&E. San Francisco also argues that certain provisions in the Transmission Interconnection Agreement should be reciprocal, because PG&E's actions can adversely impact San Francisco's system and obligations.

³⁴ *Id.* at 2, 34-35.

³⁵ *Id.* at 37-38.

³⁶ *Id.* at 41-42.

33. With respect to both the proposed WDT Interconnection Agreement and Transmission Interconnection Agreement, San Francisco states that: (1) several definitions in the agreements are vague or overbroad and require either narrowing or clarification; and (2) the agreements should clarify responsibilities for the North American Electric Reliability Council (NERC) reliability standards as well as clarify provisions regarding under-frequency load shedding.

2. PG&E Answer

34. In its answer, PG&E states that, while both parties agree that a prompt Commission decision on the issue of “grandfathering” under the FPA is critical, the single source of the difference is the parties’ widely divergent view of the correct definition of grandfathering. PG&E states that the Commission should find that the FPA grandfathering status is available only to San Francisco’s points of delivery that were in service on October 24, 1992, and that San Francisco delivery points initiating service after that time are not eligible for grandfathered service and that the grandfathered status of a qualified point of delivery cannot be transferred to another point of delivery.³⁷ PG&E opines that if the Commission finds that this definition is accurate, than the approach adopted by PG&E’s replacement agreements will be just and reasonable. PG&E states that a prompt Commission decision on the grandfathering issue would resolve nearly all of the parties’ disputes related to PG&E’s replacement agreements.

35. PG&E argues that its categorization of San Francisco’s loads for service under the WDT Service Agreement is a direct result of the fact that most of San Francisco’s delivery points do not qualify for WDT service or service under the FPA section 212(h). PG&E states that it developed a mechanism to continue to offer service to San Francisco’s unqualified points and conditioned such service in a manner that is fair and consistent with its obligation to provide non-preferential treatment to each of its WDT customers.³⁸ PG&E notes that the categorization scheme within the WDT Service Agreement will effectively provide San Francisco with a twenty-three year grandfathering extension, allowing all San Francisco points of delivery in service during the term of the 1987 Interconnection Agreement (i.e., through June 30, 2015) to also benefit from grandfathering.³⁹

³⁷ PG&E Answer at 24-25.

³⁸ *Id.* at 12.

³⁹ *Id.* at 3.

36. PG&E states that the proposed 10-year term of the WDT Service Agreement is similar to other comparable service agreements PG&E has with other customers, and allows for changing market conditions.⁴⁰

37. PG&E addresses additional issues raised by San Francisco regarding the proposed replacement agreements including provisions addressing certain costs, reserved capacity figures, shared metering data, unmetered loads, power factor requirements, primary plus eligibility, accommodation of small-scaled renewable generation, and the lack of detail on NERC and under-frequency load shedding requirements. PG&E generally states that many of these issues are unfounded and lack support or explanation, but can likely be resolved through additional discussions with San Francisco.

38. PG&E requests that the Commission refuse San Francisco's plea to summarily reject PG&E's proposal to implement non-bypassable charges to San Francisco's loads. PG&E argues that this issue is beyond the jurisdiction or purview of the Commission and should be decided on by the California Public Utilities Commission. Furthermore, PG&E clarifies that it is neither assessing such charges to San Francisco, nor asking the Commission to decide that issue.⁴¹

C. Notices of Termination in Docket Nos. ER15-702-000, ER15-703-000 and ER15-735-000

1. San Francisco Protest

39. With regard to PG&E's notices of termination, San Francisco requests that the Commission condition its acceptance of the terminations on the establishment of just and reasonable open access replacement service that will serve San Francisco's entire load.⁴² San Francisco notes that one of the services provided under the 1987 Interconnection Agreement was Energy Banking.⁴³ San Francisco asserts that the banking account has a positive balance that is of value to San Francisco. In connection therewith, San Francisco requests that the Commission require PG&E to propose a method to distribute such funds

⁴⁰ *Id.* at 21.

⁴¹ *Id.* at 4-5.

⁴² San Francisco Protest at 2.

⁴³ Energy Banking is currently used to track surplus energy from San Francisco's Hetch Hetchy resources. PG&E Docket No. ER15-702-000, Transmittal Letter at 6-7. *See also* Ex. PGE-1 at 4.

to San Francisco, as well as require PG&E to file its proposal before the Commission in advance of the termination of the 1987 Interconnection Agreement.⁴⁴

2. PG&E Answer

40. PG&E states that San Francisco's existing banking balances will be addressed in a subsequent rate schedule filing. PG&E explains that the provisions of the new rate schedule will document the remaining balance of the Energy Banking accounts (i.e., Peak account, Partial Peak account and Off-Peak account) and establish a process to ensure that energy is no longer deposited into these accounts after the 1987 Interconnection Agreement terminates. PG&E states that the rate schedule will ensure that San Francisco withdraws its banked energy within a reasonable time frame following the termination of the 1987 Interconnection Agreement.⁴⁵

D. Request for Privileged Treatment in Docket No. ER15-704-001

1. PG&E Position

41. On December 30, 2014, PG&E and San Francisco filed a joint motion for privileged treatment of certain information that San Francisco considers commercially sensitive information in Docket No. ER15-704-000, and adoption of a protective agreement. PG&E states that there was an apparent misunderstanding between the parties regarding privileged and commercially sensitive information under the appendices filed as part of the WDT Service Agreement. PG&E states that it remains committed to working cooperatively with San Francisco, and states that it will re-file public versions of the appendices once the parties reach an agreement regarding what information may be included in the appendices, without the need for privileged treatment.⁴⁶

42. Accordingly, on January 2, 2015, PG&E submitted an amendment to the WDT Service Agreement in Docket No. ER15-704-001 to remove Appendices B, C and D.⁴⁷

⁴⁴ San Francisco Protest at 47.

⁴⁵ PG&E Answer at 23-24.

⁴⁶ The privileged information has been removed from eLibrary.

⁴⁷ Appendix B contains a complete listing of all San Francisco delivery points served by PG&E under the WDT Service Agreement, and Appendices C and D set forth the Specifications for Distribution Service for WDT-qualified delivery points and non-WDT qualified delivery points, respectively. PG&E, Docket No. ER15-704-000, Transmittal Letter at 3.

PG&E states that given the time it will take to resolve the remaining issues related to the proper treatment of the WDT Service Agreement appendices, PG&E has agreed, as a temporary measure, to amend its filing by replacing the originally filed tariff records with placeholders for the removed appendices that San Francisco has requested be treated as privileged.

43. PG&E explains that in earlier discussions on this matter with San Francisco, it understood that San Francisco's confidentiality concerns were limited to San Francisco's private, non-governmental customers, since its governmental customers would otherwise be subject to both San Francisco and California public disclosure obligations. Based on this understanding, PG&E states that it proposed a method to anonymize or cloak customer identifying information in the appendices, such as customer and/or project name, and project location, allowing the remainder of the information to be included in the appendices, without risk of it being associated with any particular San Francisco customer. PG&E states that such an approach would address San Francisco's concerns and allow PG&E to have publicly available tariff records on file with the Commission.⁴⁸

44. PG&E states that, in more recent discussions, San Francisco sought to expand the scope of its confidentiality request to include information for all of its customers (both private and governmental) and encompass most of the information reflected in PG&E's WDT Service Agreement.⁴⁹ PG&E contends that San Francisco's new requested scope of confidentiality is an extraordinary request that extends beyond the type of information considered privileged for purposes of inclusion in a public tariff filed with the Commission. Specifically, PG&E contends that several of the data elements that San Francisco requests to remove from public view are the same elements that are included in the form of service agreement for firm point-to-point transmission service in the Commission's *pro forma* OATT. Further, PG&E states that the parties have existing

⁴⁸ PG&E, Docket No. ER15-704-001, Transmittal Letter at 5.

⁴⁹ Under San Francisco's request for privileged treatment, the following information would be cloaked from public view: Service Point ID, Point of Receipt, Point of Delivery, Estimated Peak Load, System Impact and/or Facility Study Charges, Installed Costs, Cost of Ownership Charges, Point of Interconnection, Monthly Consumption at Peak Demand Month, Annual Consumption, Description of Distribution Provider-owned Facilities, Direct Assignment Facilities, and Customer-owned Intervening Facilities. *Id.* at 5-6.

Facilities Charge Agreements which are filed with the Commission, where similar data are reflected and publicly available.⁵⁰

45. PG&E states that it is required to file, maintain, and post complete public tariffs to comply with the Commission's rules.⁵¹ PG&E argues that if there is no specific information associated with the particular point of delivery in the tariff to update, PG&E is unclear how it would comply with the Commission's rules and regulations in future filings.

46. PG&E asserts that this is an issue of first impression, and requests the Commission's clarification on the following matters: (1) whether jurisdictional entities may file non-public redacted tariff records (other than those that contain critical energy infrastructure information (CEII)) with the Commission; (2) the criteria required to demonstrate that any particular information merits privileged treatment in a tariff; and (3) if the Commission allows San Francisco's customer-specific information in the WDT Service Agreement to be redacted as non-public, what information must PG&E submit when it seeks to amend the WDT Service Agreement in the future.⁵²

2. San Francisco Comments

47. On January 23, 2015, San Francisco submitted comments regarding the confidentiality of certain portions of PG&E's December 23 filing. San Francisco states that its customer information contained in Appendices B, C, and D to PG&E's proposed WDT Service Agreement is properly designated as privileged. San Francisco explains that each of these appendices includes information about San Francisco delivery points that could allow specific retail customers to be identified and discloses information about

⁵⁰ *Pacific Gas & Elec. Co.*, Letter Order, Docket No. ER93-154-000, issued April 1, 1994.

⁵¹ Section 35.1(a) of the Commission's Rules (18 C.F.R. § 35.1(a) (2014)) states that "Every public utility shall file with the Commission and post, in conformity with the requirements of this part, *full and complete* rate schedules and tariffs and those service agreements not meeting the requirements of §35.1(g), *clearly and specifically setting forth all rates and charges* for any transmission or sale of electric energy subject to the jurisdiction of this Commission, the classifications, practices, rules and regulations affecting such rates, charges, classifications, services, rules, regulations or practices, as required by section 205(c) of the Federal Power Act. *Emphasis added.*

⁵² PG&E, Docket No. ER15-704-001, Transmittal Letter at 7.

their energy consumption and the physical design of their facilities.⁵³ San Francisco argues that this is the type of customer-specific information that both PG&E and San Francisco have obligations to protect under California law.⁵⁴ Further, San Francisco states that the relevant information warrants privileged treatment because it has thousands of delivery points within PG&E's service territory, and therefore, detailed information about specific San Francisco delivery points can be mapped to particular San Francisco retail customers in a way that is not possible when utilities are connecting one distribution system to another at only a few points of interconnection.⁵⁵ San Francisco states that it does not object to the information being available to the Commission or the parties to this proceeding that have executed a non-disclosure agreement.

48. For these reasons, San Francisco requests that the Commission retain the protections that are currently in place for PG&E's January 2, 2015 filing. Alternatively, San Francisco states that it would have no objection to PG&E re-filing a redacted public version of the information at issue.

E. Request for Suspension, Consolidation and Hearing and Settlement Procedures

1. San Francisco Protest

49. San Francisco requests that the Commission suspend PG&E's section 205 filings for the maximum period, subject to refund, and establish hearing and settlement judge

⁵³ San Francisco Comments at 2.

⁵⁴ *Id.* at 3 (citing Cal. Pub. Util. Code § 394.4(a)(West 2004) (“[c]ustomer information shall be confidential unless the customer consents in writing. This shall encompass confidentiality of customer specific billing, credit, or usage information.”); Cal. Pub. Util. Code § 8381(a)-(b)(1)(West 2013) (protecting “electrical consumption data,” meaning “data about a customer’s electrical usage that is made available as part of an advanced metering infrastructure, and includes the name, account number, or residence of the customer”); also citing Cal. Pub. Util. Code § 588 (West 2004) (providing circumstances under which a California district attorney’s office may access customer information but providing that “in no case shall information be released disclosing customer usage of the services provided by the utility without a court order or subpoena”); Cal. Civ. Code § 1798.98 (West 2009) (prohibiting businesses from sharing, disclosing, or making accessible to any third party a customer’s electrical or natural gas usage data)).

⁵⁵ *Id.* at 7.

procedures. San Francisco also requests that the Commission consolidate PG&E's instant filings with each other and with the Complaint filed by San Francisco against PG&E in Docket No. EL15-3-000.⁵⁶ San Francisco states that the facts and issues in PG&E's instant filings are intertwined with San Francisco's Complaint.⁵⁷ In addition, in case the suspension period might expire before appropriate replacement agreements are in place, San Francisco requests that the Commission retain the authority to issue a further order should that date approach while the proceeding is still pending to permit a short extension of the 1987 Interconnection Agreement.⁵⁸

2. PG&E Answer

50. PG&E states that it supports San Francisco's proposal to consolidate San Francisco's Complaint with PG&E's instant filings, but only to the extent that doing so does not delay a Commission decision on the grandfathering issue or approval of the replacement agreements.⁵⁹

F. Pending Related Proceeding

51. On March 29, 2013, PG&E proposed revisions to its rates, terms and conditions of service under its WDT (WDT Proceeding). The proceeding was set for hearing and settlement judge procedures.⁶⁰ On July 29, 2014, the Commission approved a partial settlement agreement resolving rate-related issues associated with PG&E's revised WDT.⁶¹ However, settlement negotiations are underway to address the non-rate terms and conditions of the WDT, including metering requirements, and a revised definition of "Eligible Customer," which requires a demonstration of *bona fide* ownership or control of intervening distribution facilities and related revisions to describe how, and for what facilities, this demonstration should be made.

⁵⁶ *Id.* at n. 2.

⁵⁷ *Id.* at 2, 4-6.

⁵⁸ *Id.* at 51 (citing *Ky. Utils. Co.*, 140 FERC ¶ 61,039, at P 29 (2012)).

⁵⁹ PG&E Answer at 4.

⁶⁰ See *Pacific Gas & Elec. Co.* 143 FERC ¶ 61,190 (2013).

⁶¹ See *Pacific Gas & Elec. Co.*, 148 FERC ¶ 61,072 (2014).

VI. Discussion

A. Procedural Matters

52. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the parties that filed them parties to these proceedings.

53. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers of PG&E and San Francisco in PG&E's section 205 filings, and accept San Francisco's reply to PG&E's answer in the Complaint proceeding, because they have provided information that assisted us in our decision-making process.

54. We find that the issues that have been raised with respect to the Complaint in Docket No. EL15-3-000 and the section 205 filings in Docket Nos. ER15-702-000, ER15-703-000, ER15-704-000, ER15-704-001, ER15-705-000 and ER15-735-000 are closely interrelated, and this warrants consideration of the two proceedings jointly for purposes of settlement, hearing and decision. Consequently, the Commission will consolidate these proceedings for purposes of settlement, hearing and decision.

B. Commission Determination

55. We note that the issues raised in the Complaint were premature and speculative at the time they were filed. Specifically, San Francisco alleged that PG&E would have unreasonably denied it service under the WDT prior to receiving the proposed replacement agreements that set forth the rates, terms, and conditions for replacement transmission and distribution service for San Francisco. Nevertheless, the issues raised in the Complaint are appropriately resolved in the context of the Commission's consideration of PG&E's section 205 filings, because the proceeding addresses the proposed replacement agreements that provide for the terms and conditions of wholesale distribution service. Moreover, we find that the Complaint raises issues of material fact that cannot be resolved based on the record before us and that may be addressed in the hearing and settlement judge procedures ordered below. Therefore, as discussed above, San Francisco's Complaint is consolidated with PG&E's section 205 filings for purposes of settlement, hearing, and decision.

56. We find that it is premature at this time to address San Francisco's request to extend the existing arrangements beyond July 1, 2015 should there be no resolution to the issues described herein. Such requests are more properly addressed within the context of hearing and settlement judge procedures.

57. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Section 206(b) permits the Commission to order refunds for a 15-month period following the refund effective date. Consistent with our general policy of providing maximum protection to customers,⁶² we will set the refund effective date at the earliest date possible, i.e., October 7, 2014, the date the complaint was filed.

58. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within 12 months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by March 31, 2016. Thus, we estimate that if the case were to go to hearing immediately, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or January 31, 2017.

59. Our preliminary analysis indicates that PG&E's section 205 filings have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. PG&E's section 205 filings raise issue of material fact that cannot be resolved on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Therefore, we will accept PG&E's proposed notices of termination and proposed replacement agreements, suspend them for a nominal period, to become effective June 30, 2015 and July 1, 2015, respectively, subject to refund, and establish hearing and settlement judge procedures.

60. With regard to the parties' confidentiality concerns, our preliminary analysis indicates that the appendices to the proposed WDT Service Agreement may include information that may be used to identify or track retail customers of San Francisco in a way that is not possible when a transmission provider interconnects to a distribution system at only a few points of interconnection. Therefore, we will direct PG&E and San Francisco to develop a public version of the appendices that: (1) complies with section

⁶² See, e.g., *Seminole Elec. Coop., Inc. v. Florida Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

35.1(a) of the Commission's rules and regulations;⁶³ (2) includes specific rates, terms and conditions for service that are consistent with the information typically included in WDT Service Agreements; and (3) reflects necessary information in a manner that does not disclose information that could be used to identify San Francisco's individual retail customers and their energy consumption. We will require the parties to submit a public version of the proposed appendices by June 1, 2015, which is 30 days prior to the effective date of PG&E's replacement agreements.

61. In addition, we hereby find good cause to grant PG&E's requests for waiver of the prior notice requirements of section 35.3 of the Commission's Rules and Regulations to permit the filings to be made more than 120 days in advance of the proposed effective date because this will allow the parties additional time to resolve areas of dispute with respect to the replacement agreements before expiration of the 1987 Interconnection Agreement.

62. We deny San Francisco's request for a maximum suspension. In *West Texas Utilities Co.*,⁶⁴ the Commission explained that it generally will impose a maximum five-month suspension when its preliminary analysis indicates that a proposed rate is substantially excessive, as defined in *West Texas*. In the instant proceeding, our preliminary analysis does not indicate that the proposed rates are substantially excessive and therefore, as stated above, we accept PG&E's proposed rates under the replacement agreements, suspend them for a nominal period, making them effective June 30, 2015.

63. While we are setting this matter for a trial-type evidentiary hearing, 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 hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶⁵ 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.⁶⁶ The settlement judge

⁶³ 18 C.F.R. §35.1(a) (2014).

⁶⁴ 18 FERC ¶ 61,189 (1982) (*West Texas*).

⁶⁵ 18 C.F.R. § 385.603 (2014).

⁶⁶ 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 (5) 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).

shall report to the Chief Judge and the Commission within 30 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) PG&E's notices of termination are hereby accepted for filing and suspended for a nominal period to become effective June 30, 2015, subject to refund, as discussed in the body of this order.

(B) PG&E's proposed replacement agreements are hereby accepted for filing and suspended for a nominal period to become effective July 1, 2015, subject to refund, as discussed in the body of this order.

(C) PG&E is hereby directed to submit public versions of Appendices B, C, and D to the proposed WDT Service Agreement by June 1, 2015, as discussed above.

(D) Docket Nos. EL15-3-000, ER15-702-000, ER15-703-000, ER15-704-000, ER15-704-001, ER15-705-000, and ER15-735-000 are hereby consolidated for purposes of settlement, hearing, and decision, as discussed in the body of this order.

(E) 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, 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 in the above-captioned dockets. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (F) and (G) below.

(F) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), 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 the 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.

(G) Within thirty (30) 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 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.

(H) 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 this proceeding in a hearing room of the Commission, 888 First Street, NE, 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.

(I) The refund effective date in Docket No. EL15-3-000, established pursuant to section 206(b) of the FPA, is October 7, 2014.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.