

151 FERC ¶ 61,274
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

City and County of San Francisco

Docket No. EL15-3-001

v.

Pacific Gas & Electric Company

Pacific Gas & Electric Company

Docket Nos. ER15-702-001
ER15-703-001
ER15-704-002
ER15-705-001
ER15-735-001

(Consolidated)

ORDER DENYING REHEARING AND GRANTING
REQUEST FOR LIMITED WAIVER OF CERTAIN TARIFF PROVISIONS

(Issued June 30, 2015)

1. On April 17, 2015, the City and County of San Francisco (San Francisco) filed a request for rehearing (rehearing request) of the Commission's order issued in these proceedings on March 31, 2015.¹ On May 21, 2015, Pacific Gas and Electric Company (PG&E) filed a request for limited waiver of certain tariff provisions in response to the concerns raised in San Francisco's rehearing request. As discussed below, we deny San Francisco's rehearing request, and grant PG&E's request for limited tariff waiver.

¹ *City and Cnty. San Francisco v. Pac. Gas & Elec. Co.*, 150 FERC ¶ 61,255 (2015) (March 31 Order).

I. Background

2. On October 7, 2014, San Francisco filed a complaint against PG&E alleging that upon expiration of an Interconnection Agreement² between the parties, PG&E will unreasonably deny service to San Francisco under PG&E's wholesale distribution tariff (WDT) by instead providing equivalent service to certain loads under a separate agreement. On December 23, 2014, PG&E filed, pursuant to section 205 of the Federal Power Act (FPA)³: (1) a notice of termination of the 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 a WDT Service Agreement.

3. In the March 31 Order, the Commission set the complaint for hearing and settlement judge procedures. The March 31 Order also accepted PG&E's notices of termination and replacement agreements (collectively, section 205 filings), suspended them for a nominal period to become effective June 30, 2015 and July 1, 2015 respectively, subject to refund. Finally, the March 31 Order set PG&E's section 205 filings for hearing and settlement judge procedures and consolidated them with the complaint proceeding.

II. San Francisco's Rehearing Request

4. On April 17, 2015, San Francisco submitted a rehearing request and motion for clarification of the Commission's March 31 Order. San Francisco states that the Commission erred in: (1) applying the *West Texas Utils. Co.*⁴ standard for determining the length of the suspension; (2) failing to suspend the section 205 filings for the full five-months; (3) failing to clarify that the March 31 Order is subject to a further Commission order; and (4) failing to clarify that PG&E is required to file a notice of termination prior to terminating service to any San Francisco point of delivery.

5. San Francisco contends that the Commission improperly applied the *West Texas* standard to determine the suspension period for PG&E's section 205 filings.

² As detailed in the March 31 Order, the Interconnection Agreement 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.

³ 16 U.S.C. § 824d (2012).

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

San Francisco argues that while the Commission has previously used the *West Texas* standard primarily in the context of rate schedule filings involving increases in the rate level,⁵ in contract termination cases, the Commission has routinely recognized that notices of termination, even when filed in conjunction with replacement agreements, may be unjust, unreasonable, and unduly discriminatory for reasons unrelated to the rates to be charged under the contract. San Francisco asserts that the Commission has historically considered other non-rate factors when granting a five-month suspension, notably analyzing whether “such termination may have significant, adverse effects on the coordination and operation of interconnected facilities.”⁶

6. San Francisco claims that without a full five-month suspension, it will be subject to substantial and irreparable harm. Specifically, San Francisco states that under the terms and conditions of PG&E’s replacement agreements, PG&E may begin terminating service to existing San Francisco delivery points almost immediately after the replacement agreements go into effect. San Francisco argues that in order to prevent termination in these cases, it must demonstrate that it owns or controls intervening facilities. San Francisco states that it should not be required to expend substantial public resources to install costly intervening facilities while the parties simultaneously discuss (in hearing and settlement proceedings) whether such facilities are needed. San Francisco states that, under the terms and conditions of the replacement agreements, San Francisco’s customers will be vulnerable to a substantial detriment beginning soon after the July 1, 2015 effective date; therefore, a five-month suspension is warranted.

7. San Francisco also states that the Commission has authority to issue a further order, when necessary, in cases that it has sent to hearing and settlement judge procedures for reasons of timing or due to other considerations.⁷ San Francisco states that, given the uncertainty of reaching a resolution on the issues in this proceeding, the Commission should clarify that it will exercise that authority here and issue an additional order should the circumstances warrant.

8. Finally, San Francisco contends that section 14.0 of the proposed WDT Service Agreement allows PG&E to unilaterally terminate service to San Francisco’s points of delivery under a variety of circumstances without filing a notice of termination with the Commission. San Francisco seeks a Commission determination that PG&E is required to file a notice of termination at least 60 days prior to terminating service to any

⁵ San Francisco rehearing request at 6 (citing *Tapoco, Inc.*, 21 FERC ¶ 61,112 (1982), *reh’g denied*, 24 FERC ¶ 61,018 (1983)).

⁶ *Id.* at 7 (citing *Pac. Gas & Elec. Co.*, 123 FERC ¶ 61,228, at P 18 (2008)).

⁷ *Id.* at 15 (citing, *e.g.*, *Kentucky Utilities Co.*, 140 FERC ¶ 61,039 (2012)).

San Francisco point of delivery, in accordance with section 35.15 of the Commission's rules and regulations.⁸

9. For these reasons, San Francisco seeks rehearing of the Commission's decision not to suspend PG&E's section 205 filings for the full five-month period, and seeks further clarification of the availability of additional protections should the proceedings continue beyond the expiration of the suspension period. San Francisco also requests that the Commission issue its decision on San Francisco's request for rehearing prior to July 1, 2015, when the nominal suspension period currently in place is set to expire.

III. PG&E's Request for Limited Waiver

10. On May 21, 2015, PG&E submitted an answer in response to San Francisco's rehearing request and a request for limited waiver of certain tariff provisions. PG&E states that in the event that the parties have not come to an agreement on the matters set for hearing and settlement judge procedures by July 1, 2015, the replacement agreements' effective date, PG&E requests a limited waiver of certain tariff provisions applicable to San Francisco under both PG&E's WDT and the replacement agreements for the duration of hearing and settlement procedures.⁹ PG&E states that the limited waiver will: (1) allow San Francisco's prospective WDT customers and non-municipal load customers to continue to be served by San Francisco under the WDT without the need to demonstrate ownership or control of intervening facilities, and without risk of conversion

⁸ *Id.* at 17 (citing 18 C.F.R § 35.15 (2014)).

⁹ Specifically, PG&E requests waiver of WDT sections 14.1d and 14.2 (addressing the necessary demonstration for ownership or control of intervening facilities which applies to new or modified points of delivery serving municipal load), and 15.2(ix) (addressing requirements for detailed engineering descriptions of all intervening facilities owned or controlled by San Francisco), sections D.1.3 (in part) (addressing the 90 day termination provision), D.2.5 and D.2.6 (addressing PG&E's right to terminate a point of delivery in the event that the annual Reserved Capacity at such point of delivery is exceeded), D.2.7 and D.2.8 (addressing revisions to reflect customer relocations and revisions to reflect changes in end-use customers), D.2.9 (which requires a complete list and identification of end-use customers for all points of delivery), and section 10.2 (in part) (addressing the requisite information pertaining to intervening facilities). PG&E's request for limited waiver of the WDT sections will apply only to San Francisco, and no other PG&E WDT customer.

to PG&E service;¹⁰ (2) allow all existing and future San Francisco municipal load customers to interconnect and/or relocate under the WDT without the need for San Francisco to own or control intervening facilities;¹¹ (3) allow all existing San Francisco non-municipal and prospective WDT customers served under the expiring Interconnection Agreement to relocate without the need for San Francisco to own or control intervening facilities;¹² and (4) allow existing loads served under the expiring Interconnection Agreement, (where San Francisco's end-use customers have not been clearly identified) to continue to be served under the WDT without intervening facilities.¹³

11. With respect to its waiver request of WDT sections 14.1d and 14.2, PG&E states that, during the tariff waiver period, San Francisco would not be required to satisfy the WDT's conditions for ownership or control of intervening facilities in order to apply for and receive WDT service to new or modified municipal load points of delivery. As such, San Francisco would not be required to submit information described in Section 15.2(ix) pertaining to intervening facilities. Furthermore, with respect to section 10.2 of San Francisco's WDT Service Agreement, PG&E states that the requisite information pertaining to intervening facilities would not be needed during the term of the proposed waiver.¹⁴

12. PG&E states that its request for waiver addresses San Francisco's claim that it will suffer irreparable harm in the absence of a five-month suspension.¹⁵ PG&E further states

¹⁰ The applicable tariff provisions PG&E seeks waiver of with respect to this point are in two separate agreements: (1) PG&E's WDT, sections 14.1d, 14.2, and 15.2(ix); and (2) San Francisco's WDT Service Agreement section 10.2 (in part) (collectively, Intervening Facility Provisions).

¹¹ The applicable tariff provisions PG&E seeks waiver of with respect to this point are: Appendix D, sections D.2.7 and D.2.8 (addressing point of delivery revisions to reflect customer relocations and changes to end-use customers), and Intervening Facility Provisions.

¹² *See supra* at n.9.

¹³ The applicable tariff provisions PG&E seeks waiver of are: WDT Service Agreement, Appendix D, section D.2.9 (which requires a complete list and identification of end-use customers for all points of delivery), and Intervening Facility Provisions.

¹⁴ PG&E May 21 Filing at 17.

¹⁵ *Id.* at 2.

that its request is for a specific, narrowly tailored waiver for a limited period and that, if granted, would neither result in undesirable consequences nor harm other customers. PG&E avers that the proposed waiver would benefit San Francisco by providing relief with respect to the requirements under the replacement agreements to make a demonstration of ownership or control of intervening facilities for certain points of delivery. Furthermore, PG&E states that its request would provide the parties a path for managing new applications for WDT service while the issues related to grandfathering and the replacement agreements are being resolved during hearing or settlement discussions.¹⁶

IV. Emergency Motion & Answer to Emergency Motion

13. On May 30, 2015, San Francisco filed an emergency motion for decision by June 15, 2015 and response to PG&E's answer and request for waiver. San Francisco states that, while PG&E's proposed waiver request will ameliorate issues associated with PG&E's proposal to terminate service to certain San Francisco points of delivery, the proposed replacement agreements are still problematic and warrant a five-month suspension. San Francisco argues that, in addition to other issues concerning the replacement agreements, the terms and conditions of the replacement agreements mischaracterize the nature of San Francisco's facilities, lack clarity about respective responsibilities of San Francisco and PG&E, establish excessive metering requirements, and impose unreasonable costs.¹⁷

14. San Francisco requests that the Commission accept PG&E's request for a limited tariff waiver and grant San Francisco's rehearing request of the Commission's decision to suspend the replacement agreements for only a nominal period.

15. On June 3, 2015, PG&E submitted an answer to San Francisco's emergency motion. PG&E states that San Francisco has failed to demonstrate that it will face any irreparable harm in this proceeding. PG&E contends that none of the concerns identified in San Francisco's emergency motion could result in a service interruption or other "significant [or] adverse effects on the coordination and operation of interconnected facilities" sufficient to justify anything beyond a nominal suspension.¹⁸ As such, PG&E states that the Commission should deny both San Francisco's rehearing request and emergency motion.

¹⁶ *Id.* at 16.

¹⁷ San Francisco May 30 Filing at 6-8.

¹⁸ PG&E June 3 Answer at 6 (citing *Pacific Gas & Elec. Co.*, 123 FERC ¶ 61,228 at P 18).

V. Discussion

A. Procedural Issues

16. As part of PG&E's May 21, 2015 request for limited waiver, PG&E moved for leave to answer San Francisco's rehearing request.¹⁹ Rule 713(d) of the Commission's Rules of Practice and Procedure²⁰ prohibits an answer to a rehearing request. Accordingly, that portion of PG&E's pleading is rejected. Accordingly, the portion of San Francisco's May 30, 2015 pleading that responds to PG&E's answer is also rejected.

B. Substantive Issues

1. Rehearing Request

17. We deny rehearing regarding San Francisco's request for a five-month suspension. The Commission does not, as a general rule, reconsider its decisions regarding the length of suspension periods.²¹ The Commission's decision to suspend and set a proposed rate for hearing is based upon: (1) a review of the company's rate filing, and that review, due to the need to act within a statutorily-mandated, limited time, is without the benefit of discovery or cross-examination or responsive testimony which may identify the underlying details which support the filing or which may demonstrate errors or other flaws in the filing; (2) an evaluation of the arguments and supporting documents filed by the intervenors, also necessarily without the benefit of discovery, cross-examination or responsive testimony; and (3) a preliminary analysis developed by the Commission's advisory staff.²² Moreover, this preliminary analysis must typically be made within, as in

¹⁹ PG&E's answer was submitted in the same filing as its request for limited tariff waiver.

²⁰ 18 C.F.R. § 385.713(d) (2014).

²¹ See, e.g., *Midwest Independent Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,208, at PP 14-18 (2005), *Southern California Edison Co.*, 112 FERC ¶ 61,045, at P 16 (2005), *Appalachian Power Co.*, 59 FERC ¶ 61,313, at 62,158 (1992), *Jersey Central Power & Light Co.*, 56 FERC ¶ 61,376, at 62,435-36 (1991), *Northern States Power Co.*, 53 FERC ¶ 61,236, at 61,976 (1990), *Gulf States Utils. Co.*, 37 FERC ¶ 61,174, at 61,422 (1986), *Pennsylvania Elec. Co.*, 20 FERC ¶ 61,401, at 61,817 (1982).

²² *Xcel Energy Servs., Inc.*, 111 FERC ¶ 61,084, at P 15 & n.3 (2005) (citing *West Texas*, 18 FERC at 61,374); accord, e.g., *Pennsylvania Elec. Co.*, 20 FERC ¶ 61,401, at 61,817 (1982) (*Pennsylvania Elec. Co.*), *Southern California Edison Co.*, 20 FERC ¶ 61,129, at 61,285 (1982).

this case, 60 days. The Commission therefore does not, as a general rule, open its preliminary analysis of the proposed rates to review and challenge, and we see no reason to depart from that precedent here.²³

18. We disagree with San Francisco's assertion that the Commission has historically relied on other non-rate factors when granting a five-month suspension. The cases cited by San Francisco (in support of a five-month suspension) are distinguishable from this proceeding because each of the cited cases addressed a situation in which a notice of termination resulted in uncertainty about whether a customer would continue to receive energy deliveries once the original underlying service agreement expired. By contrast, in this case, there is no threat of a gap in service because PG&E's replacement agreements have already been accepted, effective July 1, 2015. Furthermore, we agree with PG&E that none of the concerns identified in San Francisco's emergency motion would have a significant impact on San Francisco's ongoing service or impede the transition of San Francisco's customers from service under the Interconnection Agreement to service under PG&E's replacement agreements. Accordingly, we deny rehearing.

19. We also deny San Francisco's rehearing request on the remaining issues regarding the need for termination notices and additional Commission orders. The need for the termination notices is among the issues previously set for hearing and we will not prejudge that issue here. We further note that there will be an additional Commission order in this proceeding after the presiding judge issues its Initial Decision in this case.

2. Request for Limited Waiver

20. We find good cause to grant PG&E's limited request for waiver of the tariff provisions, effective July 1, 2015, as discussed below. The Commission has previously granted limited waivers of tariff provisions in situations where: (1) the waiver was of limited scope; (2) a concrete problem needed to be remedied; and (3) the waiver did not have undesirable consequences, such as harming third parties.²⁴ We find that PG&E's requested waiver satisfies the aforementioned conditions.

²³ *Pennsylvania Elec.*, 20 FERC at 61,817; *Southern California Edison*, 20 FERC at 61,285; *New England Power Co.*, 53 FERC ¶ 61,268, at 62,057 & n.15 (1990), *Boston Edison Co.*, 55 FERC ¶ 61,087, at 61,265-66 (1991), *Jersey Central*, 56 FERC at 62,435-36; *Appalachian Power*, 59 FERC at 62,158.

²⁴ *See, e.g., Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,184, at P 18 (2014), *Southwest Power Pool, Inc.*, 148 FERC ¶ 61,013, at P 13 (2014), *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041, at P 5 (2014).

21. First, the requested waiver is of limited scope. The waiver applies for a finite period from the effective date of the replacement agreements, July 1, 2015, through the duration of hearing and settlement judge procedures. Specifically, PG&E states that once the Commission issues a final order that is not subject to rehearing, the tariff waiver period will end, and all points of delivery that were subject to the tariff waiver will then be subject to the final resolution of the Commission in this proceeding.

22. Second, the requested waiver resolves a concrete problem. The waiver request specifically addresses San Francisco's concerns with respect to: (1) potential conversion of the non-municipal load and prospective WDT loads under Appendix D of its WDT Service Agreement to PG&E service in the absence of a demonstration of ownership or control of intervening facilities by San Francisco; (2) the requirement for new municipal load applications; and (3) relocations of existing Interconnection Agreement customers in the absence of intervening facilities.²⁵

23. Third, we find that granting waiver will not have undesirable consequences. Indeed, we find the limited waiver benefits San Francisco by addressing concerns it raised in its rehearing request and allowing San Francisco's customers to continue to be served under the WDT without the risk of conversion or the burden of demonstrating ownership or control of intervening facilities. Further, the waiver provides certainty for the parties in managing new applications for WDT service while the issues related to grandfathering and the replacement agreements are being resolved during hearing or settlement discussions, in the event that parties do not reach resolution prior to the July 1, 2015 effective date of the replacement agreements.

24. Therefore, for good cause shown, we will grant PG&E's request for limited tariff waiver of PG&E's WDT sections 14.1d, 14.2, and 15.2(ix), sections D.1.3 (in part), D.25, D.2.6, D.2.7, D.2.8, and D.2.9, and WDT Service Agreement section 10.2 (in part), effective July 1, 2015, as requested, and lasting through the duration of this proceeding.²⁶

²⁵ Specifically, under the waiver request Appendix D of the WDT Service Agreement, section D.2.7 and D.2.8, will be interpreted to allow new and existing municipal load customers to relocate without the need to install intervening facilities. Similarly, San Francisco's existing non-municipal load and provisional WDT load customers would be permitted to relocate during the term of the waiver period without the need to install intervening facilities. PG&E May 21 Filing at 18.

²⁶ We note that requests for waiver of PG&E's WDT will apply only to San Francisco.

The Commission orders:

(A) San Francisco's rehearing request of the March 31 Order is hereby denied, as discussed in the body of this order.

(B) PG&E's request for limited waiver is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.