UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Pacific Gas and Electric Company Docket No. ER03-409-005

ORDER ON REHEARING

(Issued March 30, 2006)

1. On October 24, 2005, the Commission issued an opinion and order on the initial decision in this proceeding.[1] That opinion determined that the standby customer transmission rates should be set on the basis of adjusted contract demand using a probabilistic methodology rather than by the use of the 12 coincident peak methodology, and set just and reasonable transmission rates for standby customers of Pacific Gas and Electric Company (PG&E) based on the probabilistic methodology. The Cogeneration Association of California and the Energy Producers and Users Coalition (collectively, CoGen Associates) filed a request for rehearing. This order denies rehearing for the reasons stated below.

2. CoGen Associates raise three issues on rehearing: (1) whether PG&E's probabilistic methodology reasonably allocates costs incurred to serve the standby class of customers; (2) whether the 12 coincident peak methodology reasonably allocates costs incurred to serve the standby class of customers; and (3) whether PG&E's use of the probabilistic methodology in prior rate cases sets a precedent for approval of the rates in this case. We address these issues below.

Background

3. On January 13, 2003, in Docket No. ER03-409-000, PG&E filed a proposed change in its transmission rates (TO6 rates) under its Transmission Owner (TO) Tariff. On March 12, 2003, the Commission accepted the TO6 rates for filing, suspended them

[1] *Pacific Gas and Electric Co.*, Opinion No. 482, 113 FERC ¶ 61,084 (2005).

and made them effective August 13, 2003, subject to refund, and set them for hearing.[2] In its TO6 filing, PG&E proposed to increase its total annual revenue requirement of $379 million by $166 million to a total of $545 million[3] and to increase the standby reservation charge for the standby customers from $0.26 per KW of contract capacity to $0.35 per KW. All issues but one relating to the standby rate were resolved.[4] The remaining unresolved issue was whether PG&E's proposed rate design for rates charged to standby customers was just and reasonable.

4. On February 9, 2005, the ALJ issued an initial decision in which she noted that PG&E is obligated to provide standby service, and PG&E's proposed standby customer class rate based on contract demand is not *per se* unreasonable or discriminatory merely because PG&E uses a 12 coincident peak methodology for other customer class rates.[5] If the standby customer class is not similarly situated to these other customer classes, the ALJ stated, then a rate based on contract demand may be appropriate. The ALJ found that, given the unpredictability of both the timing of outages and the demand of individual members of the standby customer class, PG&E met its burden of proving that the standby customer class is not similarly situated to PG&E's other customer classes. Further, the ALJ stated that having PG&E standing ready to provide service to standby customers on demand is a valuable service, and rates based on this potential use, rather than actual use, are not *per se* unreasonable and may be reasonable if they are based on reasonable extrapolations from historical data on operating demand.[6]

5. However, the ALJ found that PG&E has not met its burden to prove that its particular proposed standby transmission rate design is just and reasonable.[7] The ALJ found that the main problem is with how PG&E generates its 27.1 percent allocation

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[2] *Pacific Gas and Electric Co.*, 102 FERC ¶ 61,270 (2003).

[3] *Id.* at P 3.

[4] *See, e.g., Pacific Gas and Electric Co.*, Opinion No. 470, 106 FERC ¶ 61,242 (2004); *Pacific Gas and Electric Co.*, 108 FERC ¶ 61,169 (2004).

[5] *Pacific Gas and Electric Co.*, 110 FERC ¶ 63,026 at P 38, 43 (2005) (Initial Decision).

[6] *Id.* at P 33-43.

[7] *Id.* at P 61.

factor.[8] The ALJ found CoGen Associates witness Ross' testimony more convincing and that PG&E's more recent data does not support charging the standby class differently from other rate classes.

6. The ALJ also found that PG&E's proposed methodology does little to take into account the extent to which scheduled outages of qualifying facilities' generating facilities can be usefully coordinated with scheduled outages of PG&E's facilities.

7. Therefore, the ALJ found that PG&E's proposed rate is unjust, unreasonable, and unduly discriminatory.[9] Exceptions to the initial decision were filed by PG&E and Commission Trial Staff, and a brief opposing exceptions was filed by CoGen Associates.

8. In Opinion No. 482, the Commission determined that: (1) PG&E's use of a probabilistic analysis properly determined the cost responsibility of the standby customer class;[10] (2) there was substantial evidence in the record to support PG&E's proposed rates for the standby customer class;[11] (3) the 12 coincident peak cost allocation methodology does not properly allocate costs to PG&E's standby customers;[12] and (4) PG&E's proposed cost allocation to the standby customer class does not violate section 292.305(c)(2) of the Commission's regulations and appropriately reflects coordination of outages by the standby customers.[13] CoGen Associates filed a request for rehearing.

Commission Rulings

9. For the reasons laid out below, we deny rehearing and reaffirm our earlier rulings. CoGen Associates has presented no arguments that warrant reversal of our earlier rulings.

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[8] *Id.* at P 58.

[9] *Id.* at P 62.

[10] Opinion No. 482, 113 FERC ¶ 61,084 at P 24.

[11] *Id.* at P 41-48.

[12] *Id.* at P 53-57, 63-65.

[13] *Id.* at P 74-76.

A. Cost Causation

10. CoGen Associates argue that the opinion failed to reference any evidence as to what particular costs PG&E actually incurs to stand ready to provide up to 600 MW of transmission service that may be imposed by the standby customers and that the only testimony regarding this issue is that of PG&E witness Ben Morris. We reject this argument for two reasons; first, Mr. Morris did not testify as to cost causation, but testified on other matters; and second, CoGen Associates failed to take an exception to the ALJ's findings, which rejected CoGen Associates' argument regarding this issue.

11. Mr. Morris testified, *inter alia*, that PG&E conducted an annual assessment of its transmission system to identify problems and propose plans to expand the system to correct those problems.[14] He did not try to identify any particular incremental costs related to any such assessments and did not seek to assign any particular incremental costs to any particular customer or class of customers. Furthermore, any attempt to assign incremental annual transmission system construction costs to any class of customers would be inconsistent with the presentation of cost evidence in this proceeding. All rates for all classes of customers, as advocated by all parties, including CoGen Associates, were based on PG&E's annual transmission system revenue requirement.[15] The rate presentations of all parties are based on that annual transmission system revenue requirement, rather than any incremental transmission costs. Accordingly, we reject CoGen Associates' assertion that Mr. Morris's failure to specify what particular incremental costs PG&E incurs to serve the standby customer class is relevant or material to setting the rates for the standby customer class.[16]

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[14] Tr. 269.

[15] The total revenue requirement for PG&E's transmission system was stipulated at $544,936,387. *See* Exh. CAC/EPUC-1R at 6 (Mr. Ross' testimony); Exh. PGE 23 at 1 (Mr. Bell's testimony).

[16] To the extent that CoGen Associates' argument is instead that, because Mr. Morris testified that the transmission system was constructed to meet the annual system peak, and therefore costs to standby customers should be allocated based on system peak usage and thus based on the average of the 12 coincident peaks, *see* Opinion No. 482, 113 FERC ¶ 61,084 at P 62 & n.66, CoGen Associates' argument fails. That the transmission system may have been built to meet the annual system peak does not mean that the rates to the standby customer class must be set using a 12 coincident peak methodology. The standby customer class differs markedly from other customer classes.

(continued)

12. Second, the ALJ held that: "while [CoGen Associates]…argue that cost causation principles require use of the 12-CP method for all rate classes, the Commission clearly permitted cost allocations based on contract demand for different rate classes in *CPL."*[17] CoGen Associates failed to take exception to the ALJ's findings with regard to cost causation based on contract demand and the use of the probabilistic methodology to allocate costs. Rule 712(d) of the Commission's Rules of Practice and Procedure,[18] specifies that, if a participant does not object to a part of an initial decision in a brief on exceptions, any objection to that part of the initial decision is waived and the participant may not raise such an objection before the Commission on rehearing, which CoGen Associates is now inappropriately seeking to do in its request for rehearing.

B. 12 Coincident Peak Methodology

13. CoGen Associates argue that the 12 coincident peak methodology reasonably allocates costs to the standby customer class as well as all other customer classes. The Commission rejected that argument because the 12 coincident peak methodology is inappropriate for allocating costs to the standby customer class. The 12 coincident peak methodology does not fairly allocate costs to PG&E's standby customer class when, on this record, we found that the standby customer class is not similarly situated with PG&E's other classes because of its unpredictability; standby customers take service from PG&E only when their own generators are unable to supply their own needs. Thus, PG&E must stand by to provide up to 600 MW of transmission service that may be imposed by the standby customer class. PG&E's probabilistic methodology fairly allocates the costs of PG&E's transmission system to the standby class, and is supported by substantial evidence.[19] This decision is consistent with our policy in effect since 1980, pursuant to the Public Utility Regulatory Policies Act of 1978, which provided that the

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Therefore, its rates can, and should, be developed differently. S*ee* Opinion No. 482, 113 FERC ¶ 61,084 at P 63-64; *accord id* at P 11, 22, 26, 34, 38, 43.

[17] Initial Decision, 110 FERC ¶ 63,026 at P 67; *see Central Power & Light Co.*, 47 FERC ¶ 61,339 at 62,166, *rehearing denied*, 49 FERC ¶ 61,002 (1989). *Cf.* Opinion No. 482, 113 FERC ¶ 61,084 at P 24, 41-43, 53-57 (discussing appropriate cost allocation methodology to be used to develop standby customer class rates).

[18] 18 C.F.R. § 385.712(d) (2005).

[19] Opinion No. 482, 113 FERC ¶ 61,084 at P 63-64.

rates for standby or back up power for qualifying facilities be based on a probabilistic methodology.[20]

14. CoGen Associates disagree that the unpredictability of the standby class of customers is a cost driver. However, CoGen Associates ignore that PG&E must be prepared to serve the entire contract demand of each standby customer when that customer's own generation equipment fails and the customer instantaneously requires service from PG&E. These conclusions are supported by CoGen Associates' own witness, who testified that service to the standby customers "is a function of random outages associated with the customer generation failure. . . .and forced outages obviously cannot be planned by the customer . . . ."[21] Accordingly, we reject CoGen Associates' argument that the 12 coincident peak methodology reasonably allocates costs to the standby customer class.

15. CoGen Associates argue that the Commission erred in rejecting the application of the decision in *Missouri Utilities*[22] to this situation. The Commission expressly considered that decision and held that the ALJ erred in ruling that *Missouri Utilities* supports the use of a 12 coincident peak methodology to develop rates to PG&E's standby customer class.[23] The standby customers here are just that, standby, rather than being partial requirements service customers as was the case in *Missouri Utilities.* In addition, the Commission effectively overruled *Missouri Utilities* when it announced, in *Central Power & Light Co.*,[24] its approval of billing partial requirements customers on a contract basis rather than on a usage basis, and in *Missouri Utilities*, a probabilistic analysis of the Cities' use of peak capacity was not before the Commission and thus not considered by the Commission. Hence, *Missouri Utilities* does not dictate that the Commission adopt a 12 coincident peak methodology in this circumstance.

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[20] *Id*. at P 23 n. 28.

[21] Exh. CAC/EUC-1R at 4.

[22] *Missouri Utilities Co.*, 6 FERC ¶ 63,041 at 65,241-42 (1979), *affirmed in relevant part*, 10 FERC ¶ 61,297 at 61,600 (1980) (*Missouri Utilities).*

[23] Opinion No. 482, 113 FERC ¶ 61,084 at P 53-55; *see also id.* at P 50-51.

[24] *Central Power & Light Co.*, 47 FERC ¶ 61,339 at 62,166, *rehearing denied*, 49 FERC ¶ 61,002 (1989).

16. CoGen Associates also argue that the principle of reserved transmission capacity as a basis for billing customers pursuant to Order No. 888 is different from cost incurrence on PG&E's transmission system. We disagree. Just as Order No. 888 provides for billing point-to-point transmission customers on a reservation of capacity basis,[25] so PG&E may charge the standby class based on the probability that a certain percentage, here 27.1 percent, of the aggregate contract demand of all customers in the standby class would need to take service from PG&E. In each instance, PG&E needs to be prepared to provide service that it might not previously have been providing and for the standby customer class the unpredictability of the service is particularly acute.

C. Reliance on the Probabilistic Methodology

17. CoGen Associates argues that the Commission should not rely on the use in prior cases by PG&E of the probabilistic methodology and that CoGen Associates should not be bound by those prior cases. Further, CoGen Associates argues that the Commission is

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[25] In Order No. 888, the Commission stated, with respect to point-to-point transmission service:

> The flexibility and reassignment rights of this transmission service require the transmission provider to hold the firm contract capacity available regardless of the customer's load characteristics or its actual use. In other words, a transmission provider's obligation to plan for, and its ability to use, a transmission customer's reserved capacity is clearly defined by that customer's contract reservation. For that reason, it is appropriate to consider a firm reservation as the equivalent of a load for cost allocation and planning purposes.

Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 at 31,738 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part, remanded in part on other grounds sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

required to review evidence presented in this case and determine which cost allocation methodology is just and reasonable in this case.

18. First, while we certainly noted that a probabilistic methodology had been used in prior cases,[26] we never concluded that that fact was the deciding fact.[27] In this regard, it is important to note that the rates in this rate case were based on a different revenue requirement,[28] and a different contract allocation factor than that used in PG&E's prior rate case.[29] Second, the evidence in this proceeding should be and was the basis for the decision. That is evident from our discussion in Opinion No. 482 and here. However, we cannot help but note that CoGen Associates never directly confronted PG&E's continued use since at least 1993 of the probabilistic methodology in designing rates for standby customers, nor did it address the Commission's policy, expressed in its 1980 rulemaking, that "a qualifying facility is entitled to purchase back-up or standby power at a non-discriminatory rate which reflects the probability that the qualifying facility will or will not contribute to the need for and the use of the utility capacity."[30]

19. CoGen Associates witness Ross addressed PG&E's evidence in support of the continued use of that method only by stating that his "testimony takes issue with PG&E's departure from using the sum of the 12 coincident monthly retail peak demands method (12-CP method) to allocate Standby Service revenue responsibility."[31] He specifically urged that a 12 coincident peak allocation methodology is appropriate for allocating transmission-related revenue responsibility of the standby customer class.[32] That

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[26] Opinion No. 482, 113 FERC ¶ 61,084 at P 23.

[27] Indeed, we expressly found "substantial and persuasive" evidence supporting PG&E's proposed allocation of costs. *Id.* at P 41.

[28] *See Pacific Gas and Electric Co.,* 102 FERC ¶ 61,270 at P 3 (2003)

[29] PG&E reduced the allocation factor from 38 percent to 27.1 percent of contract demand. *See* Exh. PGE 45 at 2-3.

[30] *Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, Order No. 69, FERC Stats. & Regs. ¶ 30,128 at 30,889 (1980).

[31] *See* Exh. CAC/EUC-1R at 5 at 2-3.

[32] *Id.*

evidence offered by Mr. Ross is the sum of CoGen Associates' testimony regarding this critical issue. CoGen Associates had every opportunity to challenge PG&E's methodology, which the ALJ specifically ruled "follows the Commission's guidance, when it [PG&E] attempts to use a 'probabilistic analysis' to account for the randomness of the standby class demand."[33] But, CoGen Associates focused instead on its alternative 12 coincident peak methodology, which we found was an inappropriate method to allocate costs and design rates for standby transmission customers.[34] Moreover, the ALJ accepted the probabilistic methodology (which no one took exception to, and which we affirmed)[35] and only rejected PG&E's rates based on an asserted failure to update the analysis.[36]

20. CoGen Associates argue that the probabilistic methodology did not produce a reasonable result. We disagree. First, an allocation factor of 27.1 percent will be used to allocate costs to the standby class, and that is, as PG&E and Trial Staff emphasized in addressing the regional cost component, fairly conservative;[37] that is especially so given the unpredictable demand of the standby customer class.[38] Additionally, the record shows that these standby customers are charged less than customers who do not have their own generation but rely completely on PG&E.[39]

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[33] Initial Decision, 110 FERC ¶ 63,026 at P 38.

[34] Opinion No. 482, 113 FERC ¶ 61,084 at P 53-57.

[35] *Id.* at P 11, 22, 24.

[36] Initial Decision, 110 FERC ¶ 63,026 at P 44, 50.

[37] Opinion No. 482, 113 FERC ¶ 61,084 at P 36.

[38] *Id*. at P 11, 22, 63-64.

[39] *See* Opinion No. 482, 113 FERC ¶ 61,084 at P 48. Contrary to CoGen Associates' argument that the probabilistic methodology did not produce a reasonable result, the Commission's policy providing for the use of a probabilistic methodology provides a substantial discount (as compared to a 100 percent allocation that would recognize the possibility that the entire standby customer class might need to take service at the time of the peak), and standby customers, as noted above, are charged less than customers who, unlike the standby customers, do not have their own generation but rely completely on PG&E. *See id.*

21. CoGen Associates argue that the record does not support the proposed rates for the standby customer class.[40] CoGen Associates again argues that the only evidence of costs incurred is in the testimony of Mr. Morris, and those arguments and that testimony have been addressed above.

D. Coordination of Outages

22. CoGen Associates argue that PG&E's probabilistic methodology and analysis do not reflect an opportunity to coordinate outages, as required by section 292.305(c)(2) of the Commission's regulations. We disagree.

Section 292.305(c)(2) states that:

> The rate for sales of back-up power or maintenance power: . . .
>
> (2) Shall take into account the extent to which scheduled outages of the qualifying facilities can be usefully coordinated with scheduled outages of the utility's facilities.

23. CoGen Associates argue on rehearing that Mr. Bell's analysis may include some scheduled maintenance outages, that maintenance must be performed during the summer months and may be required in peak periods, and that PG&E's rates should provide some consideration to the extent that coordination can occur. As shown by the record in this proceeding, CoGen Associates' argument is without merit.

24. Opinion No. 482 explained that PG&E has satisfied the regulation, based on the finding on evidence in the record that standby rates are based on summer months' usage of standby power, which would not likely include maintenance power. PG&E witness Bell testified, in this regard, that his cost allocation focused exclusively on those periods when standby service is unlikely to be caused by scheduled outages.[41] Because the

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[40] In Opinion No. 482, we analyzed the evidence in support of PG&E's proposed rates. *See* Opinion No. 482, 113 FERC ¶ 61,084 at P 25-48. Claims made by CoGen Associates attacking that evidence have been reviewed, and are rejected, based on the above-cited evidence and given that CoGen Associates offered no evidence to contradict the evidence in support of our findings.

[41] Tr. 211, 234-35.

probabilistic analysis is focused on the summer period when all standby usage would reasonably be likely to be caused by unscheduled generator outages, rather than scheduled maintenance outages (which would instead likely be scheduled outside the summer peak), PG&E's rate design already effectively assumes that all scheduled outages will already be usefully coordinated.[42]

25. CoGen Associates nevertheless asserts that maintenance still must be performed during the summer months and may be required in peak periods. CoGen Associates' assertions are not supported by the record. To the contrary, the record evidence supports the opposite conclusion. Mr. Bell explained, in response to the ALJ's inquiry during the hearing: "My best professional judgment is that it wouldn't have affected my calculations because there isn't any maintenance power reflected in the period that was being looked at to coordinate out of the on peak and part peak periods."[43] Further, CoGen Associates witness Ross concurred with this view in his testimony that "the 'maintenance power' provided under PG&E's standby rate would not be expected to contribute to the coincident peak of the system."[44] We conclude therefore that the record in this proceeding does not support CoGen Associates' assertions and provides no basis on which to grant rehearing.

26. CoGen Associates also offer a new, alternative proposal to adjust PG&E's standby rates to allow for coordination of maintenance. The appropriate place for a proposal to adjust the standby transmission rates was in the evidence filed with and in the hearing before the ALJ, where a record could have been developed. CoGen Associates witness Ross could have advocated such a proposal but did not do so. Indeed, while Mr. Ross had this longstanding regulation before him, he did not offer any evidence on or advocate an alternative proposal.[45]

27. The record reflects that setting transmission rates to the standby customer class is unaffected by further coordination on maintenance by the standby class. No adjustment to the standby customer class rates is required under these circumstances.

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[42] Opinion No. 482, 113 FERC ¶ 61,084 at P 75-76.

[43] Tr. 234-35.

[44] Exh. CAC/EPUC-1R at 4.

[45] *See* Exh. CAC/EUC-1R at 5.

E. Relief Requested

28. CoGen Associates move, absent a reversal of the opinion, that this proceeding be remanded for further evidentiary hearings, possibly in conjunction with the pending PG&E TO8 rate proceeding in Docket No. ER05-1284-000,[46] or set for oral argument before the Commission. PG&E filed an answer to the motion.[47] PG&E states that a remand is not supported by any new evidence identified by CoGen Associates which was not before the Commission when the opinion was issued and CoGen Associates has set forth no new circumstances which would warrant remanding this proceeding for consideration in conjunction with PG&E's pending TO8 rate proceeding. PG&E adds that there was no limitation on CoGen Associates in its discovery or fact finding leading to the hearing in this proceeding. PG&E also adds that, in its TO7 rate proceeding, the parties stipulated that the resolution of the standby class rate design in TO6 would also determine the standby class rate design in the TO7, and that reopening the record would cause significant delays and uncertainties for all other customer classes for the period these two rate cases were in effect (the TO8 rates become effective March 1, 2006).

29. We have examined CoGen Associates' proposal to reopen the record for additional evidentiary hearings or to conjoin it with the new TO8 rate proceeding and find it without justification. The Commission had an adequate record to decide this matter, and no further hearing is warranted.

30. CoGen Associates also requests an opportunity for oral argument before the Commission to explore the issues in the proceeding. We deny CoGen Associates' request for oral argument. CoGen Associates had ample opportunity in the hearing and in briefs to the ALJ and the Commission, and on rehearing, to raise and argue all pertinent issues, and we see no need for oral argument.

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[46] *See Pacific Gas and Electric Co.*, 112 FERC ¶ 61,336 (2005).

[47] On December 8, 2005, PG&E filed a motion for leave to answer the request for rehearing of CoGen Associates. Answers to requests for rehearing are not permitted by Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2005) but an answer to a motion is permissible. PG&E's answer is permitted to the extent it answers CoGen Associates' motion.

The Commission orders:

The request of CoGen Associates for rehearing of Opinion No. 482 is hereby denied and the motion by CoGen Associates for a remand or oral argument is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.