UNITED STATES OF AMERICA 110 FERC ¶61,298
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company Docket No. ER05-480-000

Pacific Gas and Electric Company Docket No. ER00-565-010

ORDER ACCEPTING FOR FILING AND SUSPENDING TARIFF AMENDMENTS, ESTABLISHING HEARING PROCEDURES, AND CONSOLIDATING PROCEEDINGS

(Issued March 22, 2005)

1. On January 21, 2005, Pacific Gas and Electric Company (PG&E) proposed amendments to Schedule 2 of its Scheduling Coordinator Services (SCS) Tariff. PG&E conditionally filed these amendments under section 205 of the Federal Power Act (FPA),[1] notwithstanding its assertion that it has the unilateral right to file amendments to the SCS Tariff to recover new costs derived from the updating of charge types imposed by the California Independent System Operator (CAISO). In this order, we accept for filing and suspend for a nominal period PG&E's proposed SCS Tariff amendments, to become effective March 22, 2005, subject to refund, and establish hearing procedures. Because the instant filing raises issues the same as those already being litigated in the ongoing hearing proceeding concerning PG&E's original SCS Tariff in Docket Nos. ER00-565-000, we consolidate this docket with the ongoing proceeding. This order benefits customers by assuring an orderly process for deciding the allocation of these charges by the CAISO among PG&E's existing contract customers.

Background

2. PG&E originally filed its SCS Tariff in response to an Initial Decision issued in Docket No. ER97-2358-002, *et al.*, which held, inter alia, that certain costs incurred by PG&E as a Scheduling Coordinator under the CAISO Tariff for its existing contract customers could not be recovered under its Transmission Owner (TO) Tariff (*i.e.*, from

[1] 16 U.S.C. 824d (2000).

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its TO Tariff customers).[2] PG&E filed the SCS Tariff to ensure full recovery of SC costs from its contract customers in the event that the Initial Decision was affirmed by the Commission. On January 11, 2000, the Commission accepted the SCS Tariff for filing, suspended it and set it for hearing, but held the hearing in abeyance, pending the outcome in Docket No. ER97-2358.[3]

3. On August 5, 2002, the Commission issued Opinion No. 458 in Docket No. ER97-2358, affirming the Initial Decision.[4] As a result, on May 15, 2003, the Commission issued an order reactivating the SCS Tariff proceeding and establishing hearing procedures.[5] The presiding judge subsequently divided the SCS Tariff proceeding into two phases: liability issues would be addressed in Phase I, while cost allocation issues were to be addressed in Phase II. Phase I of that proceeding is complete: on October 28, 2004, the Commission issued Opinion No. 477, affirming in part and reversing in part the Initial Decision.[6] Phase II proceedings are presently underway before the presiding judge.

4. As the Commission has observed in previous orders, the SCS Tariff provides for a pass-through of costs imposed by the CAISO on PG&E in its role as Scheduling Coordinator for the existing contract customers. To allocate these costs, the ISO has created a series of charge types, which are the basis upon which it bills PG&E as a Scheduling Coordinator.

5. On September 14, 2004, PG&E filed conditionally under section 205 to include in the SCS Tariff twelve new charge types created by the CAISO in connection with its proposed market redesign. The CAISO notified market participants that it intended to implement a series of new charge types on October 1, 2004. These new charge types include some to replace charge types the CAISO intends to retire, as well as others for charges that did not previously exist. In its filing, PG&E maintained that it was not required to make a new section 205 filing each time the CAISO creates a new charge type or imposes a new charge on PG&E.

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[2] *Pacific Gas & Electric Co.*, 88 FERC ¶ 63,007 (1999).

[3] *Pacific Gas & Electric Co.*, 90 FERC ¶ 61,010 (2000), *reh'g denied*, 95 FERC ¶ 61,247, *clarified*, 96 FERC ¶ 61,072 (2001).

[4] *Pacific Gas & Electric Co., et al.*, 100 FERC ¶ 61,156 (2002).

[5] *Pacific Gas & Electric Co.*, 103 FERC ¶ 61,180 (2003).

[6] *Pacific Gas & Electric Co.*, 109 FERC ¶ 61,093 (2004).

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6. In an order issued on November 12, 2004, the Commission held that PG&E's filing raised issues, *e.g.*, whether PG&E's amendments to include new charge types required a section 205 filing, that were pending already in Phase II of the SCS Tariff proceeding.[7] Therefore, the Commission accepted PG&E's tariff amendments, established hearing procedures and consolidated the proceeding with the ongoing hearing proceeding concerning PG&E's original SCS Tariff in Docket No. ER00-565-010.

7. In the instant filing, PG&E reiterates its position that it is not required to make a section 205 filing each time the ISO adds or changes a charge type. PG&E explains that since its November 2004 filing, it has learned that one of the charge types referenced in that filing (Charge Type 1695 for Minimum Load Cost Allocation), has been retired by the ISO and never used. Instead, the ISO intends to split the costs that would have been allocated to that charge type to four new charge types (Charge Types 1691, 1697, 1698 and 1699).

8. PG&E thus proposes two measures in its filing. First, it proposes to update its September 2004 filing by "(1) updating Original Sheet No. 81 WW for [charge type] 1695 to indicate this [charge type] is not being used by the ISO; [and] (2) add new tariff sheets for [charge types] 1691, 1697 and 1699 (proposed Original Sheet Nos. 81GGG, 81HHH, and 81III)."[8]

9. Additionally, PG&E indicates that the tariff sheet accepted by the Commission in the November 2004 Order for Charge Type 4680 (original Sheet No. 81 FFF) now needs to be amended to match the charges and credits that PG&E now understands the ISO to be passing through under this charge type. Thus, "PG&E is proposing to update the tariff sheet to match this understanding."[9]

10. PG&E further requests that the docket established by the Commission for the instant filing be consolidated with Docket No. ER05-565-010, *et al.*, the ongoing Phase II of the SCS Tariff proceeding. In this regard, PG&E asks the Commission to indicate that any such consolidation should not change the current procedural schedule in that proceeding.

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[7] *Pacific Gas & Electric Co.*, 109 FERC ¶ 61,158 (2004) (November 2004 Order), *reh'g pending*.

[8] PG&E Transmittal Letter at 4 (footnote omitted).

[9] *Id.*

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11. PG&E seeks an effective date for its new tariff sheets of November 15, 2004, which is the date the prior tariff sheet collecting the costs now assigned to the ISO's new charge types was accepted by the November 2004 Order. According to PG&E, this effective date is appropriate for these new tariff sheets as only the charge types, rather than the underlying costs allocated to them, are changing.[10]

12. Notice of PG&E's filing was published in the *Federal Register*, 70 Fed. Reg. 5,990 (2005), with interventions and protests due on or before February 11, 2005. Timely motions to intervene and/or protests were filed by the Modesto Irrigation District (Modesto) and Turlock Irrigation District (Turlock)[11] A timely motion to intervene raising no substantive issues were filed by Transmission Agency of Northern California (TANC). Additionally, the City and County of San Francisco (San Francisco) filed a late motion to intervene and protest, two days after the deadline.

13. Modesto, San Francisco and Turlock all raise anew their arguments concerning PG&E's SCS Tariff that are already pending in the ongoing Phase II proceeding in Docket No. ER00-565-010. For example, they reiterate their positions that the SCS Tariff is not a formula rate, and that a new section 205 filing by PG&E is required when it amends its tariff to take into account new charge types. For this reason, the parties agree that the instant proceeding should be consolidated with that one. However, Turlock states that the question of whether any changes need to made in the current procedural schedule in that proceeding should be determined by the presiding judge in Docket No. ER00-565-010.

14. Modesto additionally objects to the passthrough of Charge Type 1699 on the ground that it would assess charges for Inter-Zonal Congestion to Existing Transmission Contracts, which Modesto asserts is contrary to Commission precedent.[12]

15. Modesto and San Francisco both object to PG&E's requested effective date of November 15, 2004. Both parties contend that the proposed effective date violates the notice requirements of section 205, in that PG&E's filing contains insufficient information for the Commission or affected parties to determine how the proposed changes may impact PG&E's existing contract customers.

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[10] *Id.* at 6.

[11] On February 22, 2005, PG&E filed with the Commission an Offer of Partial Settlement which, if approved, will require Turlock to withdraw from this proceeding.

[12] Modesto Protest at 6-7, citing *California Independent System Operator Corp.*, 89 FERC ¶ 61,229 at 61,682.

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Discussion

16. Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (2004), the timely, unopposed motions to intervene filed by Modesto, Turlock and TANC serve to make them parties to this proceeding. Additionally, we will grant San Francisco's motion for late intervention, given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

17. The Commission agrees with the protestors that the questions of whether PG&E's underlying SCS Tariff is a formula rate and whether amendments to the tariff to include new charge types require a section 205 filing are at issue in Phase II of the ongoing SCS Tariff proceeding, Docket No. ER00-565-001. Therefore, because the proceedings present common issues of law and fact, the Commission finds that the instant case should be consolidated with the ongoing proceeding in Docket No. ER00-565-001. We agree with Turlock that it is appropriate to defer to the presiding judge in that proceeding concerning whether any modifications to the current procedural schedule in that case are necessitated by this consolidation.

18. PG&E's proposed SCS Tariff amendments raise issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing ordered below.

19. Our preliminary analysis indicates that the SCS Tariff amendments have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the SCS Tariff amendments for filing, suspend them for a nominal period, to be effective March 22, 2005,[13] subject to refund, and set them for hearing. As stated previously, we will consolidate this hearing with the ongoing hearing of the SCS Tariff in Docket No. ER00-565-000.

The Commission orders:

(A) PG&E's filing is hereby accepted for filing and suspended for a nominal period, to become effective March 22, 2005, subject to refund.

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[13] We agree with the protesters that PG&E has not made a sufficient showing that a waiver of the statutory prior notice period is appropriate.

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(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of PG&E's filing of amendments to the SCS Tariff.

(C) The aforesaid hearing is hereby consolidated with the ongoing hearing in Docket No. ER00-565-000 for purposes of hearing and decision.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.