

114 FERC ¶ 61,024

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator
Corporation

Docket No. ER06-227-000

Pacific Gas & Electric Company

Docket No. ER05-1533-001

ORDER ACCEPTING AND SUSPENDING FILING, ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES, AND DISMISSING REQUEST FOR
REHEARING

(Issued January 13, 2006)

1. In this order, we accept an unexecuted Interim Operations Agreement (Interim Agreement) between the California Independent System Operator Corporation (ISO) and the City and County of San Francisco (San Francisco) for filing, suspend it for a nominal period, establish hearing and settlement judge procedures, and grant waiver of the Commission's 60-day prior notice requirement to make the Interim Agreement effective December 1, 2005, as requested. We also dismiss as moot San Francisco's request for rehearing of the November 30 Order.¹

Background

A. Docket No. ER05-1533-000

2. On September 30, 2005, the ISO filed the California-Oregon Intertie Control Area Operating Agreement (Intertie Agreement), in Docket No. ER05-1522-000, and Amendment No. 4 to the Interconnected Control Area Operating Agreement (Amendment No. 4), in Docket No. ER05-1533-000, which were entered into by the ISO and the Sacramento Municipal Utility District (SMUD). The Intertie Agreement and Amendment No. 4 to the Interconnected Agreement facilitated, among other things, the

¹ *California Indep. Sys. Operator Corp.*, 113 FERC ¶ 61,217 (2005) (November 30 Order).

transfer of Modesto Irrigation District's (Modesto) electric system from the ISO's control area to SMUD's control area.

3. On November 7, 2005, in Docket No. ER05-1533-000, San Francisco filed comments, raising various concerns that Modesto's control area change should not adversely affect it. The ISO filed an answer to San Francisco's comments, explaining that it was sympathetic to San Francisco's concerns and proposing to make a unilateral filing of an interim operations agreement (i.e., the Interim Agreement) between the ISO and San Francisco in order to address those concerns.

4. In the November 30 Order, the Commission accepted the Intertie Agreement and Amendment No. 4, effective December 1, 2005.²

B. Docket No. ER06-54-000

5. On October 19, 2005, the ISO submitted, in Docket No. ER06-54-000, the Interconnected Control Area Operating Agreement (ICAOA) in order to facilitate the implementation of the proposed Turlock Irrigation District (Turlock) control area and requested an effective date of December 1, 2005 for that agreement.

6. On November 9, 2005, San Francisco filed a protest of the ICAOA, raising similar concerns with respect to the creation of a new control area by Turlock that it raised regarding the transfer of Modesto from one control area to another. In response, the ISO filed an answer, explaining, as it did in Docket No. ER05-1533-000, that it was sympathetic to San Francisco's concerns and proposing to file the Interim Agreement to address those concerns.

7. The ISO's filing in Docket No. ER06-54-000 is pending before the Commission.

The Interim Agreement

8. On November 17, 2005, in Docket No. ER06-227-000, the ISO filed the Interim Agreement between it and San Francisco. The Interim Agreement governs the operational relationship between the ISO and San Francisco with respect to San Francisco's power transactions over transmission facilities that are not part of the grid controlled by the ISO and that are delivered to SMUD's control area at the Standiford Interconnection and to Turlock's control area at the Oakdale Interconnection.

² *Id.* Those transfers were among several planned modifications to the current ISO control area that were scheduled to occur on December 1, 2005.

9. According to the ISO, the Interim Agreement is intended to establish, among other things: (1) the operational and settlement requirements under which San Francisco and the ISO will coordinate and exchange information on schedules for San Francisco's transactions with Modesto and Turlock after they are no longer in the ISO's control area; (2) that San Francisco's transactions with Modesto and Turlock at the new control area interties will be scheduled by an ISO-certified scheduling coordinator; (3) requirements for the provision of telemetry and revenue metering data from San Francisco's facilities to the ISO; (4) that San Francisco will coordinate outages of its facilities with the ISO and comply with the reliability management system of the Western Electricity Coordinating Council; and (5) provisions for scheduling and settlement of San Francisco's transactions in accordance with the Raker Act.³

10. The ISO requests a waiver of the 60-day prior notice requirement to allow the Interim Agreement to be made effective on December 1, 2005.

Notice of Filing and Responsive Pleadings

11. Notice of the ISO's filing of the Interim Agreement was published in the *Federal Register*, 70 Fed. Reg. 73,223 (2005), with interventions and protests due on or before December 8, 2005. The Transmission Agency of Northern California and Modesto filed motions to intervene. Pacific Gas & Electric Company (PG&E), Turlock, and San Francisco filed motions to intervene and protest. On December 23, 2005, the ISO filed an answer to the motions to intervene.

12. San Francisco maintains that the Interim Agreement infringes on San Francisco's ownership of its own transmission and generation facilities, fails to accommodate the constraints imposed on San Francisco by the Raker Act, and fails to recognize and honor San Francisco's contractual arrangements with its customers and PG&E. In order to remedy those problems, San Francisco argues, among other things, that the Interim Agreement should be modified to: (1) reflect that since it covers transactions using transmission facilities that are wholly owned by San Francisco and that are not part of the ISO controlled grid, the Interim Agreement should not impose ISO grid management charges, certain ISO tariff requirements, or other limitations on San Francisco's use of its non-ISO grid transmission system; (2) ensure that San Francisco's ability to use Hetch Hetchy energy and ancillary services to serve its own load or its customers' loads is not impaired by imposing requirements that might be inconsistent with the Raker Act; (3) ensure that San Francisco can continue to operate under the terms of its contracts,

³ San Francisco operates its facilities under provisions of the Raker Act, which, *inter alia*, requires it to offer energy from the Hetch Hetchy Project to Modesto and Turlock for agricultural pumping and municipal loads when such energy is not needed to serve San Francisco's own such needs. *See* 38 Stat. 242 (1913).

including its existing contract with PG&E and its related contractual arrangements with other customers; (4) increase its term from two years to five years; and (5) ensure that any rights, pursuant to section 205 of the Federal Power Act,⁴ apply to changes in the rates under the ISO tariff and that the ISO has not retained section 205 rights to unilaterally amend the Interim Agreement.

13. In light of its concerns regarding the Interim Agreement, San Francisco requests that the Interim Agreement be suspended for a nominal period, subject to refund, and that hearing and settlement judge procedures be established to assist the parties in determining whether they can come to a negotiated resolution of the matters at issue.

14. PG&E requests that the Commission accept the Interim Agreement. However, PG&E states that section 9.1 of the Interim Agreement should be amended to indicate that San Francisco, rather than PG&E (which is San Francisco's scheduling coordinator), is liable under the Interim Agreement and the ISO tariff, as PG&E did not consent to such liability and is not a party to the Interim Agreement.

Request for Rehearing

15. On December 30, 2005, San Francisco filed, in Docket No. ER05-1533-000, a request for rehearing of the November 30 Order. According to San Francisco, the Commission erred in dismissing as speculative San Francisco's concern that the shift of Modesto's transmission system into SMUD's control area might result in the ISO imposing additional charges on San Francisco for its power deliveries to Modesto.⁵ San Francisco states that before the November 30 Order was issued, the ISO filed the Interim Agreement that seeks to recover such additional charges. Therefore, San Francisco contends that even though it subsequently reached agreement with Modesto on the treatment of those charges, its concern with respect to the ISO imposing additional charges was not speculative. San Francisco requests the "Commission to grant rehearing and correct the [November 30 Order] to state that [San Francisco's] concerns about the allocation of costs have been resolved, rather than dismissing them as speculative."⁶

⁴ 16 U.S.C. § 824d (2000).

⁵ November 30 Order, 113 FERC ¶ 61,217 at P 18.

⁶ San Francisco Request for Rehearing at 5.

Discussion

Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. Although Turlock labeled its filing as an intervention, it raises a number of substantive issues; therefore, we will treat it as a protest. However, Turlock failed to file a statement of issues section, as required by Rule 203(a)(7) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203(a)(7) (2005).⁷ Rule 203(a)(7) applies to all pleadings, including protests, and requires that any issues that a movant wishes the Commission to address must be specifically identified in a section entitled "Statement of Issues." Since Turlock did not include a statement of issues section, we deem the issues raised in its protest to be waived. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to protest. We are not persuaded to accept ISO's answer and will, therefore, reject it.

Commission's Determination

A. The Interim Agreement

17. The Interim Agreement raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

18. Our preliminary analysis indicates that the Interim Agreement has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept the Interim Agreement for filing, suspend it for a nominal period, make it effective, subject to refund, December 1, 2005, and set this matter for hearing and settlement judge procedures.

19. The ISO requests waiver of the 60-day notice requirement to allow the Interim Agreement to become effective December 1, 2005. In support of that request, the ISO states that December 1, 2005 is the date that other agreements related to the instant filing became effective (i.e., Amendment No. 4 between the ISO and SMUD and the ICAOA between the ISO and Turlock). The Commission finds good cause to grant the ISO's

⁷ See also *Revision of Rules of Practice and Procedure Regarding Issue Identification*, Order No. 663, 112 FERC ¶ 61,297 (2005) (Order 663) (stating that any issues not listed in a statement of issues section will be deemed to have been waived). Order No. 663 became effective September 23, 2005.

request for waiver of the Commission's prior notice requirement to permit a December 1, 2005 effective date.⁸

20. While we are setting these matters 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 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.⁹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Administrative Law Judge (Chief Judge) will select a judge for this purpose.¹⁰ The settlement judge 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 that 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.

B. Request for Rehearing

21. Even assuming for the sake of argument that San Francisco is correct that the Commission's November 30 Order was in error with respect to its finding that San Francisco's concern that the ISO might impose additional charges on San Francisco for its power deliveries to Modesto was speculative, we note, as San Francisco concedes, that it has resolved this issue with Modesto. Therefore, as no justiciable issue remains with respect to San Francisco's concern, we dismiss San Francisco's request for rehearing as moot.

The Commission orders:

(A) The Interim Agreement is hereby accepted for filing, suspended for a nominal period to become effective, subject to refund, on December 1, 2005, and set for hearing and settlement judge procedures, as discussed in the body of this order.

⁸ See *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁹ 18 C.F.R. § 385.603 (2005).

¹⁰ 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 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).

(B) San Francisco's request for waiver of the 60-day prior notice requirement is hereby granted, as discussed in the body of this order.

(C) San Francisco's request for rehearing is hereby dismissed, as discussed in the body of this order.

(D) 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 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 Interim Agreement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief 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 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 within five (5) days of the date of this order.

(F) 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 that 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.

(G) 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, N.E., 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 rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.