128 FERC ¶ 61,175
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Pacific Gas and Electric Company Docket No. ER09-1336-000

ORDER ACCEPTING NON-CONFORMING LARGE GENERATOR INTERCONNECTION AGREEMENT

(Issued August 21, 2009)

1. On June 22, 2009, Pacific Gas and Electric Company (PG&E) filed an unexecuted, non-conforming Large Generator Interconnection Agreement (LGIA) between itself and the California Independent System Operator Corporation (CAISO) for the interconnection of a PG&E-owned generation project with PG&E's transmission system. In this order, we accept PG&E's non-conforming LGIA effective June 23, 2009.

I. Background

2. PG&E is constructing the Humboldt Bay Re-Powering Project (Humboldt Project), a new 166-MW generating facility that will replace an existing generator at PG&E's Humboldt Bay Power Plant Substation. The Humboldt Project will be owned and operated by PG&E and will interconnect with PG&E's existing 60 kV and 115 kV transmission facilities. PG&E's transmission system is under the operational control of the CAISO. Interconnection of generation projects to the transmission grid is a component of non-discriminatory open access transmission service.[1] Thus, as a large generator interconnecting to the CAISO-controlled transmission grid, the Humboldt Project is required to be the subject of an LGIA pursuant to Order No. 2003.[2]

---

[1] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *affirmed sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007) (Order No. 2003).

[2] *Id.*

3. PG&E states that it and the CAISO disagree over the applicability of certain LGIA provisions cited in the appendices to the CAISO's *pro forma* LGIA relating to advance funding and security for construction costs.[3]

II. <u>The Filing</u>

4. On June 22, 2009, PG&E filed an unexecuted, non-conforming LGIA between itself and the CAISO for interconnection of the Humboldt Project. PG&E states that the proposed LGIA is the same as the *pro forma* LGIA contained in the CAISO's tariff, with the exception of alterations to Appendix A.9 – Funding and Security Requirements and Appendix B.2 (d) and (e) – Due Dates for submittal of security. PG&E proposes to label as "not applicable" these provisions which specify the payment of advance funds by the Interconnection Customer to the Transmission Owner for construction, and the refund of these monies, including interest, by the Transmission Owner to the Interconnection Customer for network transmission facilities, as well as the requirement for the Interconnection Customer to provide a form of security for construction costs. PG&E states that these provisions are simply not applicable to PG&E's utility-owned generation project, arguing that it would be inappropriate for PG&E to effectively make a loan to itself for the network upgrades and then repay the loan to itself with interest.[4]

5. PG&E contends that its transmission rates are cost-based. Thus, all of the funds required to construct the Humboldt Project would be provided by PG&E at PG&E's weighted cost of capital, which includes both debt and equity.[5] According to PG&E, accepting the proposed appendices will permit it to account for, fund and recover the costs of the Humboldt Project in accordance with the Commission's Uniform System of Accounts.[6] PG&E states that requiring PG&E to provide itself with advances for construction costs, as advocated by the CAISO, would eliminate the normal accrual of AFUDC during the construction period and result in the recovery of PG&E's financing cost for the network upgrades associated with PG&E's utility-owned generation at the

[3] PG&E transmittal letter at 2.

[4] *Id.* at 2-3.

[5] *Id.* PG&E explains that, during the construction period, it would typically capitalize Allowance for Funds Used During Construction (AFUDC) for both the interconnection and network upgrade portions of the project. Once the facilities are completed and placed into service, the AFUDC would cease and PG&E would transfer the total cost of both the interconnection and network upgrades to Account 101 – Electric Plant in Service.

[6] *Id.* at 3.

lower Commission interest rate only. PG&E contends that this result is at odds with the ratemaking treatment in place for PG&E's other network upgrades where PG&E recovers the financing costs at its weighted cost of capital. Furthermore, PG&E argues that for PG&E to follow the procedures set out in the LGIA, which would have PG&E collecting monies from itself and then refunding those monies to itself, simply makes no sense. PG&E states that the Commission accepted similar revisions for another PG&E-owned generation project.[7]

6. PG&E requests waiver of the Commission's notice requirement[8] to allow the LGIA to become effective on June 23, 2009.

III. Notices of Filings and Responsive Pleadings

7. Notice of PG&E's filing was published in the *Federal Register*, 74 Fed. Reg. 32143 (2009), with interventions and protests due on or before July 13, 2009. A timely motion to intervene and protest was filed by the CAISO. A timely motion to intervene and comments were filed by San Diego Gas & Electric Company (SDG&E). On July 14, 2009, Duke Energy Corporation (Duke Energy)[9] filed a motion for leave to intervene out of time. On July 21, 2009, PG&E filed an answer.

8. The CAISO objects to PG&E's proposed non-conforming changes, arguing that PG&E is seeking to grant itself a waiver from the security requirements of article 11.5 of the *pro forma* LGIA which require PG&E, in its role as Interconnection Customer, to provide security to PG&E as the Transmission Owner.[10] The CAISO states that it believes that PG&E has applied LGIA article 11.5 to all other non-utility-owned generators interconnecting to PG&E's transmission system. Therefore, the CAISO

---

[7] PG&E cites to a July 1, 2008 letter order in Docket No. ER08-956-000. *Id.* at 4.

[8] *See* 18 C.F.R. § 35.11 (2009).

[9] Duke Energy filed on behalf of its franchised utility affiliates, Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc., Duke Energy Carolinas, LLC., as well as Duke Energy Business Services, LLC.

[10] CAISO Motion to Intervene and Protest at 1. LGIA article 11.5 states, in relevant part: "the Interconnection Customer shall provide the Participating TO, at the Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to the Participating TO and…shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable portion of the Participating TO's Interconnection Facilities, Network Upgrades, or Distribution Upgrades…."

argues, PG&E's proposal would grant undue preferential treatment to PG&E as an Interconnection Customer by virtue of PG&E's status as the Transmission Owner, and that a non-utility-owned generator would not receive the same consideration from PG&E.[11]

9. The CAISO asserts that the funding and security requirements apply equally to all utility-owned and non-utility-owned generation projects. The CAISO cites to its Large Generator Interconnection Procedures (LGIP) section 2.2 – Comparability, which states (in relevant part):

> The CAISO will use the same Reasonable Efforts in processing and analyzing Interconnection requests from all Interconnection Customers, whether the Generation Facilities are owned by a Participating TO, its subsidiaries, or Affiliates or others.

The CAISO contends that, given LGIP section 2.2, it does not have the authority to treat utility-owned generation projects any differently from non-utility-owned projects, or to waive funding and security requirements, even if the Interconnection Customer and the Transmission Provider are the same entity. The CAISO states that it understands that PG&E's accounting approach may facilitate rate recovery of financing costs and possibly earn PG&E a higher return on investment for any network upgrades, however, the CAISO states that this fact alone does not justify PG&E's proposed changes to the LGIA. The CAISO claims that it has applied these requirements to other utility-owned generation projects.[12]

10. The CAISO also contends that PG&E has offered no citations to Commission orders to support its arguments that it should not be required to post security, but instead relies on the terms of a Generator Special Facilities Agreement (GSFA) in Docket No. ER08-956-000. The CAISO states that PG&E's example is inapposite because it arose from PG&E's acquisition of a power project and the subject GSFA that predate the *pro forma* LGIA. Furthermore, the CAISO argues that the Commission has previously rejected attempts to rely on the terms and conditions of a GSFA when a *pro forma* LGIA

[11] *Id.* at 1-2.

[12] *Id.* at 3. As an example, the CAISO cites to an LGIA between the CAISO and SDG&E relating to SDG&E's Miramar Energy Facility II, dated August 25, 2008 and submitted to the Commission's Electric Quarterly Report database in September 2008.

was available to allow generation facilities to participate in the CAISO's wholesale market.[13]

11. SDG&E states that it agrees with PG&E's position that the funding and security requirements of the LGIA should not apply to a utility-owned generator, and that it has raised the same concerns with the CAISO, but elected not to bring them before the Commission because the SDG&E-owned generators in question were small in size and the amount of any advance and refund were either insignificant or not required.[14] SDG&E argues that comparability under Order No. 2003 would not be impaired by the Commission recognizing the means by which a public utility finances construction activities. SDG&E argues that where the Transmission Owner and Interconnection Customer are the same entity, there is no useful business or regulatory purpose for the Transmission Owner to impose security and payments/reimbursements on itself when there can be no discriminatory effect of the Transmission Owner's treatment of third party generation customers.[15]

IV. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[16] the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant Duke Energy's late-filed motion to intervene given Duke Energy's interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the PG&E's answer and will, therefore, reject it.

---

[13] *Id.* at 4-5. The CAISO cites to *Pacific Gas & Elec. Co.*, 124 FERC ¶ 61,196, at PP 19-20 (2008). In that order, the Commission found that the interconnection to the CAISO-controlled grid of generation facilities transitioning from Qualifying Facilities under state jurisdiction to the Commission-jurisdictional wholesale market should be governed by the CAISO LGIA.

[14] SDG&E Motion for Leave to Intervene at 2, note 1.

[15] *Id.* at 3.

[16] 18 C.F.R. § 385.214 (2009).

B. Substantive Matters

13. In Order No. 2003, the Commission required Transmission Providers to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with these documents.[17] The use of *pro forma* documents ensures that Interconnection Customers are treated on a just and reasonable and not unduly discriminatory basis. Using *pro forma* documents also streamlines the interconnection process by eliminating the need for an Interconnection Customer to negotiate each individual agreement. This reduces transaction costs and reduces the need to file interconnection agreements with the Commission to be evaluated on a case-by-case basis.[18]

14. At the same time, the Commission recognized in Order No. 2003 that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for non-conforming agreements.[19] The Commission made clear that the filing party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the unique circumstances require a non-conforming interconnection agreement.[20]

15. The Commission analyzes such non-conforming filings, which we do not expect to be common, to ensure that operational or other reasons necessitate the non-conforming agreement.[21] The Commission recognizes that allowing non-conforming agreements may

---

[17] *See, e.g., Florida Power & Light*, 118 FERC ¶ 61,176, at P 10 (2007) (citing Order No. 2003 at P 10).

[18] *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 10 ("[I]t has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues."); *see, e.g., PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098, at P 8, *order on compliance*, 111 FERC ¶ 61,461 (2005); *El Paso Electric Co.*, 110 FERC ¶ 61,163, at P 4 (2005).

[19] *See Id.* P 913-915.

[20] *Id.* at P 140 ("[E]ach Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each nonconforming provision and provide a redline document comparing the nonconforming agreement to the effective *pro forma* [Interconnection Agreement].").

[21] *See, e.g., Florida Power & Light*, 118 FERC ¶ 61,176, at P 12 (2007).

result in interconnection customers being treated differently, but nonetheless finds it to be necessary in certain situations.[22]

16. Here, the Commission finds the fact that PG&E is both the Transmission Provider and Interconnection Customer to be a unique circumstance that necessitates a non-conforming agreement. Thus, based upon the information provided by the parties, we find that PG&E's request to designate Appendix A.9 – Funding and Security Requirements and Appendix B.2 (d) and (e) – Due Dates for submittal of security as non-applicable should be granted. The funding and security provisions at issue exist to protect the Transmission Owner from financial risk associated with the construction of interconnection facilities or upgrades requested by an independent Interconnection Customer. In instances such as the one presented here, where the Transmission Owner and the Interconnection Customer are one and the same, that protection is unnecessary.

17. We further find that based upon the facts of this case, the failure by the Interconnection Customer to provide security or funding will not result in undue discrimination inasmuch as the Customer and the Transmission Provider are the same entity. We note that PG&E is not requesting that an affiliate be relieved from posting security. Therefore, we accept the appendices as proposed by PG&E.

18. The CAISO asserts that PG&E's requested revisions to the LGIA appendices require a waiver of the security requirements of article 11.5 of the LGIA. Article 11.5 requires all Interconnection Customers to provide a form of security to the Transmission Owner 30 days prior to the start of construction. It appears that article 11.5 did not contemplate circumstances where the requesting Interconnection Customer and the Transmission Owner would be one and the same or where a form of security would be unnecessary. We note however that article 11.3 of the *pro forma* LGIA does in fact provide that the Transmission Owner may elect to fund that capital for network upgrades itself. In addition, while we agree with the CAISO that article 11.5 itself does not explicitly contemplate situations in which the provision of security to oneself would be unnecessary, we find under such circumstances as here the requirement to provide security to oneself to be impractical and obviously unnecessary. Accordingly, we grant the waiver.

19. Moreover, we find the CAISO's interpretation of section 2.2 of the LGIP inapplicable to the situation here. That provision essentially requires the CAISO to exert the same comparable effort in processing and analyzing each interconnection request. This provision does not apply to security requirements that may be required in the future. Accordingly, we find that no waiver of section 2.2 is necessary here.

---

[22] *Id.*

20. It is unclear to the Commission whether the situation where the Transmission Owner and Interconnection Customer are one and the same is likely to reoccur frequently in the future, either by PG&E or other Transmission Owners. Accordingly, if this situation arises frequently, the CAISO should consider amending article 11.5 of the LGIA to provide that where the Transmission Owner is also the Interconnection Customer, the posting of security is not necessary so that all similarly situated parties would be treated in the same manner without having to file individual non-conforming agreements and requests for waiver of the security requirements.

21. Finally, we also grant PG&E's requested waiver of section 35.11 of the Commission's Rules of Practice and Procedure[23] and assign an effective date of June 23, 2009 to the LGIA.[24]

<u>The Commission orders</u>:

(A) PG&E's non-conforming LGIA is accepted, effective June 23, 2009, as discussed in the body of this order.

(B) The request for waiver of the Commission's prior notice requirement is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

---

[23] 18 C.F.R. § 35.11 (2009).

[24] *See Central Hudson Gas & Electric Corporation, et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992), and *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified* 65 FERC ¶ 61,081 (1993).

Document Content(s)