

UNITED STATES OF AMERICA 117 FERC ¶ 61,087
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Public Utilities With Existing Contracts in the
California Independent System Operator
Corporation Region

Docket No. ER04-928-002

California Independent System Operator
Corporation

Docket Nos. ER02-1656-028

ORDER DENYING REQUESTS FOR CLARIFICATION AND REHEARING

(Issued October 23, 2006)

1. In this order, we address requests for clarification and rehearing of the Commission's order issued on July 1, 2005.¹ In that order, the Commission defined the universe of existing transmission contracts (ETCs)² which will be in place upon implementation of the CAISO's Market Redesign and Technology Upgrade (MRTU)³ and addressed the applicable standard of review for the contracts in question. In this order, we deny the requests for rehearing and clarification of the July 2005 Order for the reasons stated below.

¹ *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,007 (2005) (July 2005 Order).

² An ETC is a contractual obligation of a CAISO Participating Transmission Owner (PTO), established prior to the start-up of the CAISO, to provide transmission service to another party in accordance with terms and conditions specified in the contract, utilizing transmission facilities owned by the PTO that have been turned over to CAISO operational control pursuant to the Transmission Control Agreement.

³ *See, e.g., Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006).

Background

2. In a June 17, 2004 Order,⁴ the Commission directed public utility parties providing service under ETCs (and non-jurisdictional parties on a voluntary basis) to submit to the Commission the following information: (1) the name of the entity responsible under the contract for scheduling the contract; (2) the type of agreement, *e.g.*, point-to-point, system integration; (3) the source point(s) applicable to the ETC; (4) the sink point(s) applicable to the ETC; (5) the maximum number of megawatts transmitted pursuant to the ETC for each set of source and sink points; (6) whether any modification to the ETC is subject to a just and reasonable standard of review or a *Mobile-Sierra* public interest standard of review;⁵ (7) the contract termination date; and (8) the FERC designation for the contract, if applicable.

3. Pursuant to the directive in the June 2004 Order, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas and Electric Company, and other PTOs with ETCs filed with the Commission summaries of their ETCs. In addition, certain parties receiving service under ETCs voluntarily filed summaries to provide their own representation of the information requested by the Commission.⁶ Certain parties also filed comments and reply comments on the ETC submissions. Subsequently, PG&E and SCE filed revised ETC templates for some of their ETCs.

4. In a subsequent order, addressing in concept the CAISO's ETC proposal,⁷ the Commission indicated that the CAISO must have an accurate accounting of both the number of relevant ETCs and the standard of review associated with each ETC. Accordingly, the Commission stated that a subsequent order would be issued setting forth

⁴ *Cal. Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,274, *order on reh'g*, 108 FERC ¶ 61,254 (2004), *order on reh'g*, 110 FERC ¶ 61,041 (2005) (June 2004 Order).

⁵ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power*, 350 U.S. 348 (1956).

⁶ These parties were Arizona Electric Power Cooperative, Inc. and Southwest Transmission Cooperative, Inc. (collectively, AEPCO), the Los Angeles Department of Water and Power, M-S-R Public Power Agency, Modesto Irrigation District (Modesto), Metropolitan Water District of Southern California Metropolitan, the City of Santa Clara, Transmission Agency of Northern California, and the Sacramento Municipal Utility District (SMUD).

⁷ *See Cal. Indep. Sys. Operator Corp.*, 110 FERC ¶ 61,113 (2005) (February 2005 Order).

the universe of relevant ETCs and a resolution of arguments raised by various parties regarding the appropriate standard of review for individual ETCs.

5. The July 2005 Order was a follow-up to the February 2005 Order. The July 2005 Order addressed the issue of the applicable standard of review for the contracts identified in PG&E's and SCE's ETC templates. The July 2005 Order also addressed three additional issues: (1) ETCs which were not initially included in ETC summaries; (2) termination dates for the ETCs in question; and (3) type of service provided under the identified ETCs (*i.e.*, point-to-point, network service, *etc.*).

6. On the issue of the applicable standard of review, the Commission found that 24 contracts are subject to the just and reasonable standard of review; 8 contracts are characterized as having the *Mobile-Sierra* public interest standard of review, and 22 are characterized as "mixed." The Commission stated that "mixed" contracts contain provisions providing for both the public interest standard of review and the just reasonable standard of review, depending on which of the parties initiates a contractual modification, or depending on which of the contractual provisions is being challenged.⁸

7. Certain parties filed requests for rehearing of the July 2005 Order, challenging the Commission's determinations regarding the applicable standard of review for these parties' respective ETCs. These parties are AEPCO, PG&E, Modesto, the City and County of San Francisco (San Francisco), and SMUD.

Discussion

1. AEPCO's Request for Clarification

8. On rehearing, AEPCO contends that the July 2005 Order creates uncertainty regarding its ETC with SCE (Rate Schedule No. 131). AEPCO explains that its ETC was referenced only once in footnote 11 and that the July 2005 Order is silent on whether the revised template submitted by SCE resolved all the discrepancies between SCE's original submission and the template submitted by AEPCO. Accordingly, AEPCO is concerned about the validity of its ETC.

9. In the July 2005 Order, we stated that

[w]e note that many of the issues raised by the parties in regard to PG&E and SCE's ETC summaries have been resolved by PG&E's and SCE's subsequent filings clarifying and correcting their July 23, 2004 submissions, as well as through reply comments. In this order, we will

⁸ See July 2005 Order at P 14.

address any outstanding issues which have not been resolved.⁹ (*footnote omitted*)

10. It is quite clear from the above quoted language that the July 2005 Order addressed exclusively the issues that were not resolved through subsequently revised submissions. For this reason, the July 2005 Order contains no substantive discussion of Rate Schedule No. 131. The ETC in question was listed in footnote 11 among the 24 contracts that were characterized by parties as having unilateral modification rights subject to the just and reasonable standard of review.¹⁰ Accordingly, we find that there is no need for additional clarification of our determination in the July 2005 Order, as requested by AEPCO. AEPCO's request for clarification is hereby denied.

2. PG&E's Request for Rehearing

11. On rehearing, PG&E argues that in the July 2005 Order, the Commission erroneously found that the applicable standard of review for non-rate terms and conditions of its South of Tesla Principles (SOTP) Agreement is the public interest standard. PG&E contends that in its determination, the Commission failed to consider supplemental provisions of the SOTP Agreement approved by the Commission in 1998¹¹ that clearly provides for the just and reasonable standard of review for non-rate terms and conditions. According to PG&E, the language in the supplemental SOTP Agreement provision is virtually identical to other ETC provisions discussed elsewhere in the July 2005 Order, which, the Commission determined, provided for the just and reasonable standard of review.

12. By offering this new evidence at the rehearing stage of the proceeding, PG&E attempts to amend its September 17, 2005 comments, in which it responds to the Transmission Agency of Northern California's concerns over PG&E's template. While PG&E may desire to revise its previous pleading, such revisions are not appropriate on rehearing, particularly because other parties are not entitled to respond to rehearing petitions. Allowing the amendment of filings and the offering of new evidence on rehearing would create administrative chaos. The Commission has consistently been

⁹ *Id.* at P 16.

¹⁰ *Id.* at P 17.

¹¹ PG&E cites to *Pacific Gas & Electric Co.*, 67 FERC ¶ 63,009, at 65,066 (1994) (*Initial Decision*); *Pacific Gas & Electric Co.*, 85 FERC ¶ 61,180, at 61,723 (1998) (*Order on Initial Decision*). PG&E also states that the contractual language in question was submitted for Commission review in a compliance filing on October 11, 2001 in Docket Nos. ER91-505-007 and EL92-18-004.

reluctant to chase a moving target by considering new evidence presented for the first time at the rehearing stage of Commission proceedings.¹² Accordingly, we deny PG&E's request for rehearing.¹³

13. Next, PG&E challenges the Commission's determination in regard to its Interconnection Agreement (Rate Schedule No. 213) with Turlock Irrigation District (Turlock). Specifically, PG&E disagrees with the Commission's characterization that the types of service under this ETC should include "system integration." PG&E states that section 5.1 of the ETC in question provides that PG&E agreed to provide transmission service "only between Turlock and specified Transaction Points on PG&E's System." According to PG&E, various "Transaction Points" are specified in section 5.1.1- 5.1.4. PG&E argues that the fact that there are multiple transaction points does not convert point-to-point transmission service into system integration service.

14. We agree with PG&E that section 5.1 provides that "PG&E shall provide transmission service under this Agreement only between Turlock and specified Transaction Points on PG&E's System." Sections 5.1.1-5.1.4, however, do not specifically identify these transmission points, except for Westley listed in section 5.1.2. For example, section 5.1.1 refers to "points where power enters PG&E's System from a resource owned, operated or scheduled by Turlock." Section 5.1.3 provides for "points where PG&E's System interconnects with Control Areas outside of PG&E's Service Area, including, *but not limited to*, Midway, Malin and Donner Summit." (*Emphasis added*). In addition, section 5.1.4 lists transaction points at "Third Party Utilities located within PG&E's Service Area." The language of the Turlock Interconnection Agreement clearly provides for random transaction points within PG&E's system. For this reason, we continue to find that the Turlock Interconnection Agreement provides for "point-to

¹² See, e.g., *Cities and Villages of Albany and Hanover v. Interstate Power Co.*, 61 FERC ¶ 61,362, at 62,451 (1992); *Northern States Power Co.*, 54 FERC ¶ 61,242, at 61,711 (1991).

¹³ We also note that the proposed contractual language which, according to PG&E, provides for the just and reasonable standard of review, supplements the Principles of the SOTP Agreement, not the agreement itself. In the Initial Decision, the Administrative Law Judge (ALJ) found that "these Supplements shall supplement the Principles. Other than to implement the South of Tesla transmission service nothing in these Supplements shall change or supersede the SOTP except where the Commission has specifically determined..." See *Initial Decision* at 65,066. The ALJ further held that "[w]here there is any conflict with the SOTP, other than discussed and ruled on above, the SOTP shall continue to govern." *Id.* These ALJ findings were subsequently affirmed by the Commission. See *Order on Initial Decision* at 61,723.

point” and “system integration” types of service. Accordingly, PG&E’s request for rehearing of this issue is denied.

3. SMUD’s Request for Rehearing

15. SMUD argues that the Commission’s determination that SMUD-PG&E Interconnection Agreement, Slab Creek Agreement, and Camp Far West Agreement¹⁴ should be reviewed under the just and reasonable standard is not based on substantial evidence or any Commission precedent. According to SMUD, this finding in the July 2005 Order cites to a blank footnote. SMUD further argues that because the ETCs in question do not expressly reserve the right to change the rates, terms, or conditions of the contract, they should be reviewed under the public interest standard.¹⁵

16. SMUD is correct that footnote 18 is blank. The content of footnote 18 was accidentally omitted in the process of publishing the July 2005 Order. Footnote 18 was intended to contain citation to Commission precedent in support of the Commission’s finding in paragraph 24, which provides that

[w]ith respect to the Slab Creek Agreement, the Camp Far West Agreement, and [Interconnection Agreement], we reaffirm our earlier finding that modifications to these contracts should be reviewed under the just and reasonable standard. Accordingly, we find that the ETCs in question were correctly characterized as having the just and reasonable standard of review, and deny SMUD’s rehearing of the February Order.

17. Footnote 18 should be changed to read: “*Pacific Gas and Electric Co.*, 95 FERC ¶ 63,022, at 65,210 (2001); *Pacific Gas and Electric Co.*, 100 FERC ¶ 61,160, at Ordering Paragraph (A) (2002).” This correction constitutes an errata to footnote 18 in the July 2005 Order. Footnote 18 refers to: (1) the Initial Decision in which the ALJ found that the ETCs in question are subject to the just and reasonable standard of review; and (2) the Commission order affirming this finding.¹⁶ For these reasons, we find SMUD’s contention to be without merit and deny rehearing on this issue.

18. SMUD further argues that the Commission erred in prematurely ruling that SMUD-PG&E Extra High Voltage Transmission and Exchange Contract (EHV

¹⁴ Rate Schedule Nos. 136, 88, and 91, respectively.

¹⁵ SMUD cites to *Texaco Inc. v. FERC*, 148 F.3d 1091 (D.C. Cir. 1998).

¹⁶ We note that in its rehearing request, SMUD also challenges findings in the Initial Decision and the Commission order on the Initial Decision. We reject SMUD’s arguments as a collateral attack on the Commission’s prior orders.

Agreement)¹⁷ should be removed from PG&E's list of ETCs when SMUD has pending appeals regarding the Commission orders: (1) denying SMUD's complaint challenging PG&E's right to cancel the EHV Agreement; and (2) accepting PG&E's notice of cancellation of the EHV Agreement.

19. In excluding the EHV Agreement from PG&E's list of ETCs, the Commission relied on its determination in a prior order accepting PG&E's notice of cancellation of the EHV Agreement.¹⁸ SMUD's request for rehearing of that order was denied in May 2005.¹⁹ The order denying SMUD's complaint challenging PG&E's right to cancel the EHV Agreement was also upheld by the Commission on rehearing.²⁰ SMUD is mistaken in regard to the finality of the Commission orders in question. Filing an appeal does not by itself operate to stay the Commission order that is being appealed in court. As the Commission orders mentioned by SMUD have not been stayed and remain in effect, the Commission may rely upon the rulings in those orders.²¹ Accordingly, we deny SMUD's request for rehearing.

4. Modesto's Request for Rehearing

20. Modesto states that its timely motion to intervene was not noted in the July 2005 Order, and thus Modesto was not granted intervenor status.

21. Modesto was accidentally omitted from the list of parties who filed motions to intervene. We hereby acknowledge that Modesto filed a timely motion to intervene in the instant proceeding. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), filing of the timely motion to intervene that has not been opposed makes Modesto a party to the instant proceeding.

¹⁷ Rate Schedule No. 37.

¹⁸ See *Pacific Gas and Electric Co.*, 109 FERC ¶ 61,255, at P 70 (2004). See July 2005 Order at P 57.

¹⁹ See *Pacific Gas and Electric Co.*, 111 FERC ¶ 61,175 (2005).

²⁰ *Sacramento Municipal Util. Dist.*, 105 FERC ¶ 61,358 (2003), *reh'g denied*, 107 FERC ¶ 61,237 (2004).

²¹ By analogy, pursuant to Rule 713(e) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(e) (2006), the filing of a request for rehearing does not by itself operate to stay the order for which rehearing is sought.

22. Modesto further requests that the Commission clarify that the transmission service provided under the Modesto-PG&E Interconnection Agreement is both “point-to-point” and “system integration” transmission service.

23. The type of transmission service provided under the Modesto-PG&E Interconnection Agreement (Rate Schedule No. 116) was designated in PG&E’s ETC template as “point-to-point.” Modesto failed to raise any objection to this designation by PG&E in its reply comments to the template. The Commission generally looks with disfavor on parties raising on rehearing issues that should have been raised earlier. Such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision.²² For this reason, we deny Modesto’s request for clarification.

24. Modesto further challenges the Commission’s finding that the just and reasonable standard of review applies to both rate and non-rate terms and conditions in its Interconnection Agreement with PG&E. Modesto argues that section 10.26, on which the Commission relied in making its determination, provides that the just and reasonable standard of review applies only to proposed changes in rates. Modesto disagrees with the Commission’s interpretation of the contractual language in section 10.26. According to Modesto, the Commission concluded that since the “rates” under the Interconnection Agreement include “a statement of electric services,” the term “rates” encompasses non-rate terms. Modesto explains that “statement of electric services” means a document with a listing of the current charges being assessed and credits granted. Modesto therefore concludes that because the Interconnection Agreement in question is silent on the applicable standard of review applicable to non-rate terms, the public interest standard should apply pursuant to court precedent.²³

25. Section 10.26 of Modesto’s Interconnection Agreement with PG&E contains the language identical to the language in the Slab Creek Agreement and the Camp West Agreement. The Commission has previously found these three ETCs to be subject to the just and reasonable standard of review.²⁴ Accordingly, we affirm our determination in the July 2005 Order that the applicable standard of review for Modesto’s Interconnection Agreement is the just and reasonable standard. Accordingly, Modesto’s request for rehearing is denied.

²² See, e.g., *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 109 FERC ¶ 61024, at P 6 (2004).

²³ Modesto cites to *Texaco Inc. v. FERC*, 148 F.3d 1091 (D.C. Cir. 1998).

²⁴ *Pacific Gas and Electric Co.*, 95 FERC ¶ 63,022, at 65,210 (2001); *Pacific Gas and Electric Co.*, 100 FERC ¶ 61,160, at Ordering Paragraph (A) (2002).”

5. San Francisco' Request for Rehearing

26. On rehearing, San Francisco raises issues in regard to its Interconnection Agreement with PG&E (Rate Schedule No. 114), which is mentioned in footnote 11 of the July 2005 Order as one of the contracts with the just and reasonable standard of review. According to San Francisco, it is unclear how the Commission was able to make the determination in regard to the applicable standard of review, since the Interconnection Agreement was not submitted to the Commission for review in the instant proceeding. San Francisco concludes that because the Commission's determination does not rest on substantial evidence, any reference to the applicable standard of review for San Francisco's Interconnection Agreement should be deleted.

27. In the June 2004 Order, the Commission directed public utility parties providing service under ETCs (and non-jurisdictional parties on a voluntary basis) to submit to the Commission various information, including, but not limited to, the applicable standard of review. The Commission explained that this information would be used to form the basis of further proceedings.²⁵ In its template submission, PG&E characterized the Interconnection Agreement in question as having the just and reasonable standard of review. San Francisco had an opportunity to challenge this designation; however, it failed to do so. As we stated above, the Commission generally looks with disfavor on parties raising on rehearing issues that should have been raised earlier. Such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision.²⁶ For this reason, we deny San Francisco's request for rehearing.

The Commission orders:

Requests for clarification and rehearing are hereby denied for reasons discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²⁵ See June 2004 Order at P 161-64.

²⁶ See, e.g., *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 109 FERC ¶ 61024, at P 6 (2004).