

98 FERC & 61, 089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

Pacific Gas and Electric Company

Docket No. ER02-479-000

California Independent System Operator
Corporation

Docket Nos. ER02-250-000 and
ER02-527-000

ORDER ACCEPTING 2002 GRID MANAGEMENT CHARGE AMENDMENT
AND 2002 GRID MANAGEMENT CHARGE PASS-THROUGH
TARIFF MODIFICATIONS FOR FILING, SUSPENDING
TARIFF REVISIONS, DENYING REQUESTS FOR REJECTION, AND
CONSOLIDATING DOCKETS FOR HEARING PURPOSES

(Issued January 31, 2002)

The Commission will accept for filing Pacific Gas and Electric Company's (PG&E) 2002 Pass-Through Tariff and the California Independent System Operator Corporation's (Cal ISO) Grid Management Charge Amendment (GMC Amendment), with a nominal suspension, to become effective January 1, 2002, subject to refund and to the outcome of the 2001 GMC proceedings. We will also consolidate these filings with the 2002 GMC proceedings, Docket No. ER02-250-000,¹ for purposes of hearing and decision. Finally, we will deny intervenors' motions for summary rejection of the PG&E Pass-Through Tariff.

This order is in the public interest because it will allow this Commission to determine the justness and reasonableness of the 2002 Pass-Through Tariff and GMC Amendment along with other aspects of the 2002 GMC.

¹California Independent System Operator Corporation, 97 FERC & 61,303 (2002 GMC). In that order, the Commission accepted for filing Cal ISO's 2002 GMC, to become effective January 1, 2002, and set it for hearing, subject to refund and to the outcome of Docket Nos. ER01-313-000, et al., which involves Cal ISO's 2001 GMC.

I. Background

On December 5, 2001, in Docket No. ER02-479-000, PG&E filed its 2002 Grid Management Charge Pass-Through Tariff (Pass-Through Tariff) modifications,² in order to pass the 2002 Cal ISO costs of transmission service through to certain of PG&E's wholesale contract customers. In addition, on December 7, 2001, in Docket No. ER02-527-000, Cal ISO filed to amend the 2002 GMC to provide for quarterly adjustment for cost savings or penalties.

II. Summary of Proposals

A. PG&E 2002 Pass-Through Tariff Modifications

The GMC is charged by Cal ISO to all Scheduling Coordinators, among them, PG&E. The Commission accepted PG&E's proposal to pass through the ISO's GMC costs, subject to refund and subject to the outcome of further orders regarding the Unbundled GMC.³ PG&E recovers GMC charges it has to pay to Cal ISO by passing those costs through to applicable Control Area Agreement (CAA) customers under its Pass-Through

²On December 29, 2000, the Commission consolidated and set for hearing Cal ISO's 2001 GMC and PG&E's Pass-Through Tariff Amendment, effective January 1, 2001. California Independent System Operator Corporation, 93 FERC & 61,337 (2001 GMC)., This proceeding is currently pending before a Commission Administrative Law Judge.

³See California Independent System Operator Corp., et al., 81 FERC & 61,321 (1997), order on reh'g, 82 FERC & 61,348 (1998).

Tariff. In the 2002 Pass-Through Tariff filing, PG&E proposes to modify the Pass-Through Tariff to incorporate the 2002 GMC revisions and rates filed by Cal ISO in Docket No. ER02-250-000, for the three GMC service categories, Control Area Services, Congestion Management and Ancillary Services and Real-Time Energy Operations (ASREO).⁴

⁴In the Cal ISO 2002 GMC filing, the revenue requirement increased to \$244.5 million from \$225 million in 2001. See Cal ISO at & 62,420-21.

Specifically, PG&E proposes to revise rates in its Pass-Through Tariff as follows: (1) the Control Area Services charge would increase by 42-percent from \$0.406/MWh to \$0.575; (2) the Congestion Management Charge would increase by 65 percent, from \$0.223/MWh to \$0.368/MWh; and (3) the ASREO Charge would increase by 1 percent, from \$0.951/MWh to \$0.957/MWh.⁵ PG&E requests waiver of the Commission's notice requirements to allow the Pass-Through Tariff to become effective on January 1, 2002, the date on which the 2002 GMC became effective.

B. Cal ISO's GMC Amendment

Currently, rate adjustments to the GMC are made on an annual basis. Appendix F, Schedule 1, Part B of the ISO Tariff describes the circumstances under which the Quarterly Adjustment may be made to each component rate of the GMC if the estimated billing determinate volumes for each component rate of the GMC change by more than five percent. The GMC Amendment would allow for a quarterly adjustment that would reduce Cal ISO's revenue requirement due to unanticipated cost savings or unanticipated collections of fines and penalties. Cal ISO states that the GMC Amendment is intended to benefit ratepayers of California by enabling Cal ISO to more quickly reduce rates when the operating and capital reserves account is full. Cal ISO adds that currently, such a rate reduction resulting from an operating and capital reserves account credit can only be made on an annual basis.

III. Notices of Filings and Pleadings

A. PG&E's Pass-Through Tariff

⁵In the 2002 GMC filing, Cal ISO revised the billing determinants for ASREO (formerly called Market Operations) to add 50 percent of effective self-provision volumes of Ancillary Services in addition to the previous billing based on purchases and sales of Ancillary Services, Supplemental Energy, and Imbalance Energy. In the instant filing, PG&E proposes to add this revision to its Pass-Through Tariff.

Notice of PG&E's Pass-Through Tariff revisions was published in the Federal Register, 66 Fed. Reg. 65,477 (2001), with motions to intervene and protests due on or before December 26, 2001. The following parties filed timely motions to intervene raising no substantive issues: The City and County of San Francisco, the San Francisco Bay Area Rapid Transit District, the California Electricity Oversight Board, The Metropolitan Water District of Southern California (Metropolitan), Southern California Edison Company, The Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency, and The Transmission Agency of Northern California (TANC).

The Public Utilities Commission of the State of California filed a notice of intervention.

The following parties filed timely motions to intervene, protests and requests for clarification, consolidation, suspension, hearing and/or rejection of portions of PG&E's filing: California Department of Water Resources (DWR), Turlock Irrigation District (Turlock), the Western Area Power Administration (Western), the Modesto Irrigation District (MID), the City of Santa Clara, California (Santa Clara), the Sacramento Municipal Utility District (SMUD), and Northern California Power Agency (NCPA).

Several intervenors question the reasonableness of the 2002 Pass-Through Tariff Amendment. More specifically, intervenors challenge whether the Pass-Through Tariff offers a new service with appropriately defined cost allocations, question whether and to what extent PG&E has the right to modify certain of its pre-existing customer contracts, and question whether the filing should be rejected as deficient for lack of cost support.

For example, SMUD asserts that its Control Area Agreement (CAA) with PG&E requires SMUD to self-provide all of its ancillary services and imposes substantial economic penalties for failure to meet the self-provision requirements. These requirements are based on SMUD's total load, whether it is supplied from internal generation or from imports over transmission provided under separate contracts. SMUD also objects to PG&E's failure to explain or justify how costs are allocated among municipal entities in a manner that recognizes their contractual and operating differences.

MID, NCPA and Western object to PG&E's attempt to replace pre-existing contractual arrangements, in violation of the Mobile-Sierra Doctrine, with undefined costs which may be duplicative or unjust and unreasonable in other ways. Generally, these intervenors note that their objections are currently under review in the 2001 GMC proceeding.⁶ Santa Clara requests that PG&E's filing be suspended and set for hearing.

⁶We note that in *Pacific Gas & Electric Company*, 97 FERC & 61,082 (October

Turlock asserts that PG&E's 2002 Pass-Through Tariff presents material issues of fact, and therefore requests that it be consolidated with Cal ISO's 2002 GMC proceeding.

On January 7, 2002, PG&E filed an answer to the various motions to suspend, reject and/or consolidate. PG&E requests consolidation of its Pass-Through Tariff modifications with the 2002 GMC.

On January 15, 2002, PG&E and Turlock filed a joint motion for expedited consideration of the requests to consolidate the dockets.

B. California ISO's GMC Amendment

Notice of the California ISO's amendment to the 2002 GMC rate was published in the Federal Register, 66 Fed. Reg. 65,476 (2001), with motions to intervene and protests due on or before December 28, 2001.⁷

Timely motions to intervene were filed by NCPA, TANC, MID, Metropolitan, Southern California Edison Company, the Cities of Redding and Santa Clara, California and

24, 2001), the Commission affirmed an Initial Decision in which PG&E's proposed amendments to the Western Integration Agreement (Contract 2948A) were rejected as inconsistent with the parties' pre-existing contractual commitments. However, the question of whether the Pass-Through Tariff constitutes a new service is currently being litigated in the 2001 GMC proceeding.

⁷The California ISO's amendment was filed in Docket No. ER02-250-001. The Commission issued an errata notice on December 14, 2001 assigning a new Docket No. ER02-527-000 to the amendment.

the M-S-R Public Power Agency, and Turlock. TANC, MID, NCPA and Metropolitan note that they have intervened and protested the Cal ISO's 2002 GMC proceeding, and they incorporate by reference those protests and arguments.

On December 28, 2001, Cal ISO filed a motion to consolidate the GMC Amendment with the 2002 GMC proceeding. Cal ISO argues that the amendment expands the use of the GMC quarterly adjustment mechanism, is an integral part of the 2002 GMC proposal, and as such, consolidation will avoid the duplicative process that would result if one element of the 2002 GMC proposal is reviewed out of context.

C. Docket No. ER02-250-000 Interventions

The San Francisco Bay Area Rapid Transit District (BART) filed a motion to intervene out of time in Docket No. ER02-250-000 on December 17, 2001. BART explained that it did not become aware of the Cal ISO's 2002 GMC filing before the deadline for comments because of the number of California-related energy proceedings before the Commission and before the California Public Utilities Commission in which BART is participating, and the Thanksgiving holiday. BART notes that allowing it to intervene at this time will not disrupt the proceeding or result in prejudice to, or additional burden upon, the existing parties. BART therefore requests that the Commission grant the untimely motion to intervene in Docket No. ER02-250-000.

On December 18, 2001, the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency (Cities) filed a reply to Cal ISO's December 7, 2001 answer in Docket No. ER02-250-000 rebutting Cal ISO's contention that because Cities failed to participate in the GMC development process, it did not have the background to knowledgeably comment on Cal ISO's 2002 GMC proposal.

IV. Discussion

A. Preliminary Matters

We note that on April 6, 2001, PG&E filed for Chapter 11 bankruptcy protection. Although the Bankruptcy Code provides that the filing of a bankruptcy petition automatically stays certain actions against the debtor,⁸ the Code also provides an exception from this automatic stay for:

⁸11 U.S.C. ' 362(a)(1) (1994 & Supp. 2000).

An action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.⁹

⁹11 U.S.C. ' 362(b)(4) (1994 & Supp. 2000).

The Commission has found in the past that actions taken under the authority granted it by the Federal Power Act and the controlling regulations fit within this exception, and, therefore, are exempt from the automatic stay provision.¹⁰ Here, we are exercising our regulatory power under section 205 of the Federal Power Act as permitted by section 362(b)(4) of the Bankruptcy Code to issue an order that does not threaten the bankruptcy court's control over the property of the bankruptcy estate.¹¹

¹⁰See Virginia Electric and Power Co., 84 FERC & 61,254 (1998) and Century Power Corp., 56 FERC & 61,087 (1991). The Commission's conclusion on this matter is consistent with judicial precedent regarding the scope of the exemption to the automatic stay. E.g., Board of Governors of the Fed. Reserve Sys. v. MCorp Fin., Inc., 502 U.S. 32 (1991); SEC v. Brennan, 250 F.3d 65 (2nd Cir. 2000); NLRB v. Continental Hagen Corp., 932 F.2d 828 (9th Cir. 1991); United States v. Commonwealth Cos. Inc., 913 F.2d 518 (8th Cir. 1990); NLRB v. Edward Cooper Painting, Inc., 804 F.2d 934 (6th Cir. 1986); Penn Terra Ltd. v. Dept. of Env'tl. Resources, 733 F.2d 267 (3rd Cir. 1984); see generally 3 Collier on Bankruptcy ' 362.05 (15th ed. rev. 2000).

¹¹This order does not change any PG&E monetary obligations, and therefore, has no effect on the estate.

B. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the notices of intervention and timely, unopposed motions to intervene serve to make those who filed them parties to these proceedings.¹² The Public Utilities Commission of California's timely notice of intervention makes it a party to these proceedings.¹³

Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, the Commission will grant BART's late-filed motion to intervene in Docket No. ER02-250-000 given the early stage of the proceeding, the fact that no disruption of the proceeding or undue prejudice to existing parties will result, and the fact that the party's interests are not adequately represented by other parties in the proceeding.¹⁴

¹²18 C.F.R. ' 385.214 (2001).

¹³Id. at ' 385.214(a)(2) (2001).

¹⁴Id. at ' 385.214(b) (2001).

Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise permitted by the decisional authority.¹⁵ The Commission will reject PG&E's answer and Cities' reply.

C. Commission Determination

We note, as in Cal ISO, that certain issues with regard to the PG&E Pass-Through Tariff provisions were similarly raised in the 2001 GMC proceeding. These issues need not be relitigated. However, intervenors have raised material issues of fact involving the PG&E Pass-Through Tariff modifications. Issues raised regarding the effect of the GMC Amendment on the 2002 GMC are best examined in the hearing proceedings established to review the 2002 GMC. Our preliminary analysis of the 2002 Pass-Through Tariff and GMC Amendment indicates that the proposed revisions 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 proposed 2002 Pass-Through Tariff modifications and GMC Amendment for filing, to become effective on January 1, 2002, subject to refund and to the outcome of the 2001 GMC proceedings. In addition, we will consolidate these proceedings with the 2002 GMC proceeding in Docket No. ER02-250-000 for purposes of hearing and decision. Lastly, we will reject the requests for summary disposition, since, as stated earlier, we believe the protests raise material issues of fact that should be addressed at hearing.

The Commission orders:

(A) PG&E's 2002 Pass-Through Tariff and Cal ISO's Amendment to the 2002 GMC rates, are hereby accepted for filing. Waiver of notice is granted and the filings are suspended for a nominal period to become effective on January 1, 2002, subject to refund

¹⁵Id. at 385.213(a)(2) (2001).

and to the outcome of the California ISO proceedings consolidated in Docket No. ER01-313-000, et al., as discussed in the body of this order.¹⁶

(B) Docket Nos. ER02-250-000, ER02-479-000, and ER02-527-000 are hereby consolidated for purposes of hearing and decision.

(C) 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 the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedures and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning PG&E's proposed Pass-Through Tariff.

(D) The presiding administrative law judge designated by the Chief Administrative Law Judge in Docket No. ER02-250-000 shall convene a conference in these proceedings, to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural duties and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedures.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,

¹⁶Pacific Gas and Electric Company FERC Electric Tariff, First Revised Volume No. 11, Original Sheet Nos. 1-18. And California Independent System Operator Corporation FERC Electric Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 374 (Supersedes First Revised Sheet No. 374).

Acting Secretary.