

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION  
102 FERC ¶ 61,209

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

Pacific Gas & Electric Company

Docket No. ER03-312-000

ORDER ACCEPTING AND SUSPENDING AGREEMENTS AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 26, 2003)

1. In this order, we accept for filing an unexecuted Interconnection Agreement (IA) covering the interconnection of the electric systems of Pacific Gas & Electric Company (PG&E) and Hercules Municipal Utility (Hercules)<sup>1</sup> and an unexecuted service agreement between the same parties for the provision of wholesale distribution service<sup>2</sup> from PG&E to Hercules (Service Agreement), suspend them for a nominal period, and make them effective, subject to refund, January 1, 2003. We also establish hearing procedures, but hold the hearing in abeyance pending settlement discussions between the parties. This order benefits the public because it allows Hercules to obtain wholesale distribution service from PG&E while encouraging the parties to resolve their issues through direct settlement negotiations, if possible.

**Background**

2. On December 23, 2002, PG&E submitted for filing the above mentioned Service Agreement and IA. The Service Agreement is under PG&E's Wholesale Distribution Tariff ("WDT") and permits PG&E to recover the ongoing costs of service required over PG&E's distribution facilities. The IA provides the terms and conditions for the interconnection of PG&E's and Hercules' electric systems. These agreements are necessary for PG&E to establish wholesale distribution service to Hercules, as Hercules requested.

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<sup>1</sup>Hercules is a municipal electric utility owned by the City of Hercules, California. Hercules seeks to obtain interconnection and wholesale distribution service from PG&E so that it can obtain its wholesale electric power and energy supplies elsewhere.

<sup>2</sup>Wholesale distribution service delivers purchased power for the purpose of resale.

3. The unexecuted agreements were submitted by PG&E at Hercules' request because the parties were unable to reach agreement on all issues relating to the construction of facilities to accommodate Hercules' interconnection. PG&E has requested certain waivers for a proposed effective date of January 1, 2003.

### **Notice of Filing, Interventions and Protests**

4. Notice of PG&E's filing was published in the Federal Register at 68 Fed. Reg. 764 (2003), with comments, protests and interventions due on or before January 13, 2003. In response, Hercules timely filed a motion to intervene and protest and Southern California Edison Company (SoCal Edison) filed a motion to intervene out of time. On January 28, 2003, PG&E filed a motion for leave to file an answer and an answer to Hercules' protest.

### **Positions of the Parties**

5. Hercules states that the parties disagree on: (1) the term of the IA;<sup>3</sup> (2) an obligation for Hercules to pay stranded costs; (3) a jurisdictional concern regarding conditions for terminating the interconnection; (4) the amount of distribution service to be made available to Hercules; (5) restrictions on Hercules' use of PG&E's distribution service; and (6) PG&E's right to determine material breaches under certain conditions.

6. PG&E responds that: (1) it believes the parties can reach settlement on the remaining issues; (2) it agrees to a 5-year IA under certain circumstances; (3) if additional distribution service is to be provided to Hercules, this may necessitate system upgrades that need to be reflected in the IA; (3) it does not oppose Hercules' proposed revisions relating to non-bypassable charges under certain circumstances; (4) it opposes revision of the points of interconnection; and (5) PG&E agrees that Hercules may challenge the adequacy of certain determinations by PG&E of material breaches in section 6.1.3 of the IA.

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<sup>3</sup>Hercules seeks an IA of 5 years or longer and PG&E initially offered a term of 2 years. However, in its answer, PG&E agrees to a 5 year term provided that the Service Agreement specifies a maximum load of 0.6 MW and an interconnection point near Apollo Drive and Zephyr Court in Hercules, California.

## Discussion

### A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>4</sup> the timely unopposed motion to intervene of Hercules makes it a party to this proceeding. Moreover, given SoCal Edison's interest in the proceeding and the lack of prejudice to other parties, we will grant its late-filed motion to intervene.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>5</sup> generally prohibits the filing of an answer to a protest unless the filing aids in the decision-making process. We find good cause to accept PGE's answer, notwithstanding the general prohibition on the filing of answers to a protest, because PG&E's answer aids us in our understanding and resolution of issues raised.

### B. Unexecuted Service Agreement and IA

9. Although PG&E's answer bridges some of the differences between the parties, disagreements remain. We find that issues of material fact have been presented by the parties that are best examined in a hearing or resolved by settlement. Therefore, we will accept the filing subject to the outcome of an evidentiary hearing and settlement procedures. We will also hold the evidentiary hearing in this case in abeyance and provide for a settlement judge to assist the parties in arriving at a settlement.<sup>6</sup>

10. We will grant waiver of the prior notice requirement to permit the agreements to become effective, subject to refund, on January 1, 2003.

### The Commission orders:

(A) PG&E's proposed unexecuted Service Agreement and Interconnection

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<sup>4</sup>18 C.F.R. § 385.217 (2002).

<sup>5</sup>18 C.F.R. § 385.213(a)(2) (2002).

<sup>6</sup>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. FERC's website contains a list of Commission Judges and a summary of their background and experience. (See [www.ferc.gov](http://www.ferc.gov) - click on Office of Administrative Law Judges).

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Agreement are hereby accepted for filing, and suspended for a nominal period, to become effective January 1, 2003, subject to refund.

(B) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of 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 Pacific Gas & Electric's Agreements. However, the hearing will be held in abeyance while the parties attempt to settle, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.603 (2002), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. To the extent consistent with this order, the designated settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as possible. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within ninety (90) days of the date of this order, the settlement judge shall issue a report to the Commission and the Chief Judge on the status of the settlement discussions. The settlement judge shall issue a report at least every sixty (60) days thereafter, apprising the Commission and the Chief Judge of the parties' progress towards settlement.

(E) If the settlement discussions fail, a presiding administrative law judge, to be selected by the Chief Judge, shall convene a prehearing conference in these proceedings, to be held within approximately fifteen (15) days of the date of the settlement judge's report to the Commission and the Chief Judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

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(F) PG&E's rate schedule designations are accepted as filed.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.