

UNITED STATES OF AMERICA 118 FERC ¶ 63,001
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas & Electric Company

Docket No. ER06-902-000

CERTIFICATION OF UNCONTESTED SETTLEMENT

(Issued January 4, 2007)

TO THE COMMISSION:

1. On November 20, 2006, Pacific Gas and Electric Company (PG&E), filed the Offer of Settlement and Settlement Agreement executed by PG&E, the San Francisco Bay Area Rapid Transit District (BART), and the California Independent System Operator Corporation (CAISO) (collectively “Parties”) describing modifications to the previously filed and accepted BART-PG&E Network Integration Transmission Service Agreement (NITS Agreement). The settlement is not opposed by the Federal Energy Regulatory Commission Trial Staff (Staff).

CASE SUMMARY

2. On May 2, 2006, PG&E submitted for filing and acceptance, modifications to Service Agreement No. 42 for the NITS Agreement between BART and PG&E. The Settlement Agreement states that PG&E proposed to revise the NITS Agreement between BART and PG&E to reflect the arrangement between BART and PG&E to accommodate BART’s new power supply arrangements with the Northern California Power Agency (NCPA). To accommodate the NCPA power supply arrangements of BART beginning July 1, 2006, the NITS Agreement provided for NP-15 as an “alternate” Point of Receipt (POR) for NCBA residual power when BART’s primary POR at the California Oregon border (COB) is not physically available. The May 2 filing also established the Western Area Power Administration (Western) Cottonwood 230 kV Substation (Cottonwood) as a “backup” POR for Western power when the Western Tracy 230 kV Substation (Tracy) is not physically available as a POR.

3. On May 23, 2006, CAISO intervened and protested the PG&E filing of the revised NITS Agreement. CAISO requested the Commission to condition approval of the amended NITS Agreement such that the amendment to designate NP-15 expires on the first effective date of the Market Redesign and Technology Upgrade (MRTU). CAISO pointed out that the NITS Agreement is an Existing Transmission Contract (ETC) under the CAISO Tariff and therefore afforded certain distinct treatment under the CAISO Tariff. Additionally, CAISO indicated that it conditionally consented to the inclusion of NP-15 as an alternative POR with respect to CAISO’s existing Zonal Congestion

Management system; but it did not consent to the NP-15 POR with respect to the forthcoming implementation of the CAISO MRTU, as filed in Docket No. ER06-615-000.

4. On June 27, 2006, the Commission accepted PG&E's proposed tariff revisions for filing, suspended them for a nominal period to be effective July 1, 2006, subject to refund, and established hearing procedures. *See Pacific Gas and Electric Company*, 115 FERC ¶ 61,372 (2006).

5. On June 28, 2006, the Chief Administrative Law Judge issued an order designating me as the Presiding Administrative Law Judge in this proceeding.

6. On July 5, 2006, the Modesto Irrigation District filed a motion to intervene out of time, which was granted on July 24, 2006.

7. On July 6, 2006, the M-S-R Public Power Agency and the Cities of Redding and Santa Clara, California filed a motion to intervene out of time, which was granted on July 25, 2006.

8. On July 7, 2006, PG&E, on behalf of itself, CAISO and BART, filed a motion requesting that a Settlement Judge be appointed so that the Parties could continue the settlement negotiations they had already begun.

9. On July 10, 2006, the Chief Administrative Law Judge issued an order designating a Settlement Judge in this proceeding. A Settlement Conference via telephone was convened on July 19, 2006, after which subsequent discussions and telephone calls were held, culminating in the Settlement.

10. On September 21, 2006, the Commission conditionally accepted the MRTU Tariff¹ pursuant to the filing submitted by CAISO on February 9, 2006, providing for movement to congestion management based on nodal pricing rather than the existing zonal congestion management regime. CAISO also expressed concerns with regard to the proposed establishment of Cottonwood as a backup POR for Western power when Tracy is not physically available as a POR.

11. On November 21, 2006, PG&E filed the Settlement on behalf of itself, CAISO and BART.

¹ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006) ("MRTU Order").

OFFER OF SETTLEMENT

12. The Settlement consists of the following: (a) a transmittal letter; (b) an Explanatory Statement in Support of the Settlement Agreement; (c) the Settlement Agreement; (d) clean and redlined versions of the Revised Tariff Sheets to Network Integration Transmission Service Agreement, Service Agreement No. 42; and (e) a Draft Letter Order.

13. Part II, Article I of the Settlement Agreement states the Terms of Settlement. Section 1.1 states that the Settlement Agreement intended for the purposes of terminating the dispute in the above captioned Docket is as reflected in the provisions of the Settlement Agreement, including the principles for interpretation of an amendment to be filed to the existing NITS Agreement between PG&E and BART for the purpose of implementing this Settlement Agreement as contained in Section 1.5 of Article I.

14. Section 1.2 states that concurrent with the Settlement Agreement, PG&E is filing the amendment to modify sections 7, 11 and Appendix B² to the existing NITS Agreement between PG&E and BART, to which CAISO is not a party. Section 1.2 further states that the NITS Agreement as amended and filed in this docket will be effective as of sixty (60) days after the filing of the Settlement Agreement or such other date as the Commission may indicate in accepting the Settlement and the amended NITS Agreement. Section 1.2 finally states that the Settlement Agreement is for the purpose of terminating this docket and is not intended to affect any other docket.

15. Section 1.3 states that PG&E will provide a Notice of Termination NP-15 as a POR under the NITS Agreement at least six (6) months before the effective date of MRTU, currently expected to be November 2007. Section 1.3 also notes that as the MRTU has been preliminarily approved by the Commission as of September 21, 2006, the Tariff, congestion management and ETC treatment provisions of MRTU have begun to be defined with more certainty.

16. Section 1.4 states that PG&E and BART will continue meeting to discuss POR(s) under MRTU, and that these discussions have already begun, and if necessary will involve CAISO, with the objective to attempt to designate, by February 1, 2007, any such

² Section 7 is changed so that the word “physically” is added in front of the word “available.” The changes to section 11 are discussed in paragraphs 15 and 16, *infra*. Appendix B is changed so that BPA is added to the NCPA network resource control area, in addition to CAISO, and so that the peak demand for POR NP-15 reads “20 MW or 84 MW”.

new POR(s) and associated Network Resource(s) pursuant to the OATT and CAISO requirements for Transmission Rights and Transmission Curtailment (TRTC) Instructions in the MRTU Tariff. Section 1.4 further states that it is the understanding and expectation of PG&E, BART and CAISO that scheduling consistent with the MRTU Tariff and TRTC Instructions provided by PG&E to CAISO will result in treatment of such schedules as ETC service, including application of the perfect hedge for such ETC service under MRTU as provided for in Section V.C, paragraphs 901 *et seq.* and 906 *et seq.* of the MRTU order of September 21, 2006; and that modification to such TRTC instructions can be made upon notice of at least seven (7) days or more such that changes to amounts of service from different PORs as specified in the Appendix B of the NITS Agreement, included in revised TRTC Instructions given by PG&E to the CAISO with at least seven (7) days advance notice will be accepted as valid and eligible for such ETC perfect hedge treatment. Section 1.4 also states that on the basis of information provided by PG&E and BART concerning the amended NITS Agreement, CAISO and PG&E concur that BART's designation of a new POR(s) for the purposes of resolving this dispute as described in the Settlement Agreement, consistent with the MRTU framework and the applicable MRTU Tariff, PG&E's OATT, and PG&E's acceptance of the designation pursuant to the amended NITS Agreement does not constitute a new Encumbrance to which the CAISO does not provide its consent under the CAISO Tariff or MRTU. Section 1.4 finally states that any other future amendments to the NITS Agreement, or any attachments of any form to such agreement, including but not limited to its Schedules, will be subject to the applicable review provisions for such changes as specified in the Transmission Control Agreement Among the Independent System Operator and Transmission Owners, California Independent System Operator Corporation, FERC Electric Tariff No. 7, as amended from time to time.

17. Section 1.5 provides the principles for interpreting certain provisions of Service Agreement No. 42 as accepted by the Commission on June 27, 2006. Section 1.5 addresses USAGE OF CURRENT PORs, stating that PG&E interprets the currently accepted NITS Agreement to provide for up to 80 MW of OATT transmission service at COB (when COB is physically available) and up to 14 MW of OATT transmission service at Tracy (when Tracy is physically available) after the effective date of termination of NP-15 as a POR as specified in the Settlement Agreement above, and PG&E will provide instructions to the CAISO to implement OATT services as an ETC under any applicable CAISO Tariff requirements (1) consistent with such service, and (2) for any greater quantity of service consistent with BART's load requirements from identified Network Resources and POR(s) as requested by BART and approved by PG&E pursuant to the OATT. Section 1.5 addresses PROVISION FOR RESIDUAL POWER AT NP-15, stating that as a clarification of the use of NP-15 prior to its termination as a POR, BART has indicated that when COB is physically available, it expects to use NP-15 intermittently for no more than 20 MW per hour for residual power; however this does not limit BART's ability to use NP-15 to meet its load requirements

when (a) the COB transmission facilities are curtailed and/or operationally out of service and COB is not physically available as a POR for 80 MW of delivery, or (b) in extraordinary and/or emergency circumstances other than (a), upon written notice by BART and/or its Scheduling Agent to PG&E given in advance of submitting a day ahead schedule which includes such extraordinary use of NP-15. Section 1.5 finally addresses PROVISION FOR TRACY BACKUP AT COTTONWOOD, stating that BART and PG&E agree to change PG&E's POR on a day ahead basis from Tracy Substation to Cottonwood Substation as a backup POR for the receipt of deliveries from Western, and that the Cottonwood POR is not an alternate to the Tracy POR under normal operation. Section 1.5 then states that Cottonwood will be utilized as a backup POR only when Tracy is physically unavailable to Western for the delivery of power to BART, and that the POR reverts back from Cottonwood to Tracy Substation when the outage or unavailability of the Tracy Substation is over. This section continues by saying that the Operating Instruction PG&E submits to the CAISO to establish contract reference number (CRN) for Cottonwood as backup POR will be consistent with the conditions described in section 1.5. Section 1.5 concludes its discussion of PROVISION OF TRACY BACKUP AT COTTONWOOD by stating that the CRN will be utilized for reserving transmission capacity on a day ahead basis; BART or its Scheduling Agent will provide a schedule to PG&E indicating the transmission capacity required to be reserved on a day ahead basis; and that if BART or its Scheduling Agent submits or changes its schedule to request an amount greater than what was reserved on a day ahead basis, the CRN will not exempt the applicable charges, if any, associated with the capacity above the reserved amount.

18. Article II of the Settlement Agreement, entitled Precedential Effect, states in section 2.1 that the Settlement Agreement is non-precedential with respect to any future case, except as necessary to enforce the terms of the Settlement Agreement and the NITS Agreement, as amended.

19. Article III is entitled Reservation of Rights. Section 3.1 states that the Settlement Agreement shall not be deemed in any respect to constitute an admission by any Party or intervenor that any allegation or contention made by any other Party or intervenor in this proceeding is true and valid, except that no Party or intervenor shall deny or challenge the accuracy of this Settlement Agreement. Section 3.1 further states that except as necessary for the enforcement of this Settlement Agreement, no Party or intervenor shall be deemed to have approved, accepted, agreed to, or consented to any fact, concept, theory, rate methodology, principle or method relating to jurisdiction, prudence, reasonable cost of service, cost classification, cost allocation, rate design, tariff provisions or other matters underlying or purported to underlie any of the resolutions of the issues provided herein. Section 3.1 concludes by stating that the Commission's approval of this Settlement Agreement shall not constitute approval of, or precedent regarding, any principle or issue, including any principle or issue in this proceeding.

20. Section 3.2 states that the Settlement is not designed or intended to restrict or deny the rights of BART, PG&E or CAISO or any other affected party or intervenors with standing to make a filing under Section 205 or 206 of the Federal Power Act³ to make any necessary changes in the transmission arrangements between BART and PG&E, and all such full 205 or 206 rights are expressly preserved for all parties to this proceeding.

21. Section 3.3 states that all discussions among Parties, Staff and intervenors preceding the Settlement Agreement have been conducted on the explicit understanding that they were undertaken subject to Commission Rule 602(e),⁴ and the rights of the Parties, Staff and intervenors with respect thereto shall not be impaired by this Settlement Agreement. Sections 3.3 also states that all communications between the Parties, Staff and intervenors during the course of such discussions are privileged and may not be used in any future proceeding.

22. Section 3.4 states that the titles and headings of the various Articles in the Settlement Agreement are for reference purposes only. They are not to be construed or taken into account in interpreting this Settlement Agreement, and do not qualify, modify, or explain the effects of this Settlement Agreement.

23. Article IV addresses the applicable Standard of Review. Section 4.1 states that with respect to the specific issues resolved in this Settlement Agreement, this Settlement Agreement cannot be changed unless a showing, including any action taken by the Commission on its own motion, is made that the public interest requires it under the *Mobile-Sierra*⁵ doctrine. Section 4.1 further states that the Settlement Agreement is not designed or intended to restrict or deny the rights reserved under Section 3.2 of the Settlement Agreement.

24. Article V, entitled Successors and Assigns, states in section 5.1 that the rights conferred and obligations imposed on any Party by this Settlement Agreement shall inure to the benefit of or be binding on that Party's successors in interest or assignees as if such successor or assignee were itself a party to this proceeding.

25. Article VI is entitled Offer of Settlement is a Unified Whole. Section 6.1 states that notwithstanding any other provision of the Settlement Agreement, the Settlement

³ 16 U.S.C. § 824d (2006).

⁴ 18 C.F.R. § 385.602(e) (2006).

⁵ *United Gas Pipeline Co. v Mobile Gas Services Corp.*, 350 U.S. 332 (1956) and *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

Agreement is to be treated as a unified whole. Section 6.1 further states that should the Commission reject any term of the Settlement Agreement or any amendments to the NITS Agreement as filed concurrently with the Settlement Agreement, the entire Settlement Agreement shall be null and void unless the parties specifically agree otherwise.

COMMENTS

26. On December 11, 2006, Staff filed comments in support of the Settlement, and notes that if the Settlement is approved by the Commission, Docket No. ER06-902-000 will be terminated. Staff notes that the Settlement is sponsored by PG&E and BART, the two Parties to the NITSA, and CAISO which filed the only protest to the original filing. Staff notes further that the two other intervenors in this proceeding, M-S-R Public Power Agency and the Cities of Redding and Santa Clara, California and Modesto Irrigation District, participated in the settlement discussions and have no objection to the proposed Settlement. Staff notes that the terms of the Settlement reflect diligent efforts by all participants to negotiate a resolution of the issues in a manner satisfactory to all participants, and that approval of the Settlement will avoid the expense and delay of litigation.

27. Staff's comments state that the Settlement addresses the issue of appropriate PORs for the PG&E-BART NITSA to be used both before and after the implementation of the MRTU; that prior to the effective date of the MRTU, the PORs will be those specified in the May 2, 2006 filing; that to determine the appropriate PORs after the MRTU takes effect, the Parties have committed to continuing their ongoing discussions with an eye to designating new PORs by February 1, 2007; and as part of the Settlement, the Parties have agreed to certain principles concerning scheduling and operations under the NITSA for use in designating appropriate PORs under the MRTU requirements. Staff concludes that the ultimate result of the Settlement will be PORs which conform to both the requirements of PG&E's OATT and the CAISO's MRTU.

28. No Reply Comments were filed.

DISCUSSION & CONCLUSION

What are the issues underlying the Settlement and what are the major implications?

29. The Settlement and associated NITSA amendment is a final resolution of all issues among PG&E, BART and the CAISO, and all other Parties, in this proceeding. Under the terms of the Settlement, PG&E, BART and the CAISO agree to continue discussions to identify Network Resources and new POR(s) for BART network transmission service consistent with OATT requirements and CAISO requirements for TRTC Instructions for

treatment of BART network transmission service as an Existing Contract under the CAISO Tariff. The Settlement concludes this proceeding by providing a means for transition to such ETC treatment under the CAISO's MRTU and TRTC Instructions.

Do any of these issues raise policy implications?

30. Neither this proceeding nor the Settlement raises any policy considerations.

Will other pending cases be affected?

31. The Settlement will not affect any other pending case. Although this proceeding is affected by and has requirements related to Docket No. ER06-615-000, this proceeding is not intended to affect that Docket or the Commission approved tariffs to be applied thereunder. The Settlement Agreement states that the Commission's approval of the Settlement Agreement shall not constitute approval of, or precedent regarding, any principle or issue, including any principle or issue in this proceeding.

Does the Settlement involve issues of first impression, or are there any previous reversals on the issues involved?

32. The Settlement does not involve any issues of first impression, nor have there been any reversals in this proceeding on any issue resolved by the Settlement.

Whether the proceeding is subject to the just and reasonable standard or whether there is *Mobile-Sierra* language making it the standard, i.e., the applicable standards of review.

33. PG&E, BART and CAISO state that it is their intent, with respect to the specific issues resolved in the Settlement, that the Settlement cannot be changed unless a showing, including any action that might be taken by the Commission on its own motion, is made that the public interest requires it under the *Mobile-Sierra* doctrine.

34. Nevertheless, the Settlement is not designed or intended to restrict or deny the rights of BART, PG&E or CAISO or any other affected Party with standing to make a filing under Section 205 or 206 of the FPA to make any necessary changes in the transmission arrangements between BART and PG&E, and all such full 205 or 206 rights are expressly preserved for all Parties to this proceeding. Thus the "just and reasonable" standard applies in those cases.

CERTIFICATION

35. Pursuant to 18 C.F.R. § 385.602(g)(1), the Settlement is certified for the Commission's consideration. The following documents are part of this record:

- a. The Settlement, filed on November 21, 2006, by PG&E, on behalf of itself, CAISO and BART;
- b. Staff's Initial Comments, filed on December 11, 2006;
- c. All pleadings, orders, and other documents of record in this proceeding.

Robert K. Rogers, Jr.
Presiding Administrative Law Judge

DRAFT
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

In Reply Refer To:
Docket No. ER06-902-000

Pacific Gas and Electric Company
Attn: Kermit R. Kubitz
Attorney for Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, CA 94120

Dear Mr. Kubitz:

1. On November 21, 2006, you filed, on behalf of Pacific Gas and Electric Company, San Francisco Bay Area Rapid Transit District and California Independent System Operator Corporation, a Settlement, including a Settlement Agreement, Explanatory Statement and Revised Tariff Sheets, in the above referenced docket. On December 11, 2006, the Commission Trial Staff filed comments in support of the Settlement. No other comments were received. On January 4, 2007, Presiding Judge Robert K. Rogers, Jr. certified the Settlement to the Commission as uncontested.
2. The rate schedule designations submitted as a part of the Settlement are in compliance with *Designation of Electric Rate Schedule Sheets*, Order No. 614 (FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000, ¶ 31,096 (2000)) and are hereby accepted for filing as designated and made effective as specified in the Settlement.
3. The Settlement is in the public interest and is hereby approved. The Commission's acceptance of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
4. This order terminates Docket No. ER06-902-000.

By direction of the Commission.

Secretary

cc: To All Parties