

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Pacific Gas and Electric Company) Docket No. ER08-1193

**MOTION FOR LEAVE TO INTERVENE AND PROTEST OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rules 213 and 214 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure, 18 C.F.R. §§ 385.213, 385.214, and the Combined Notice of Filing issued on July 10, 2008, the California Independent System Operator Corporation ("CAISO")¹ submits this motion to intervene and protest concerning the June 30, 2008 filing ("June 30 Filing") by Pacific Gas and Electric Company ("PG&E") seeking Commission approval of revisions to a Generator Special Facilities Agreement ("GFSA") and a Generator Interconnection Agreement ("GIA") between PG&E and Geysers Power Company, LLC ("Geysers"),² in order to add terms so that these agreements would govern the interconnection arrangements with respect to four geothermal plants owned and operated by Geysers. These four plants, which are Qualifying Facilities ("QFs"), previously sold their entire output to PG&E pursuant to now-expired California Public Utilities Commission ("CPUC")-jurisdictional Power Purchase Agreements ("PPAs").

¹ Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² Geysers is a wholly owned subsidiary of Calpine Corporation ("Calpine").

The CAISO has no objection to the four plants commencing FERC-jurisdictional wholesale sales. Indeed, Geysers has satisfied all of the requirements necessary for the four plants to begin scheduling and selling power in the CAISO's markets. However, it is not appropriate for these plants to take FERC-jurisdictional interconnection service over the CAISO Controlled Grid under the terms of the GFSA and GIA. Pursuant to the CAISO Tariff, and the Commission's interconnection policies, QFs such as the four Geysers plants that wish to make wholesale energy sales must take interconnection service pursuant to the terms of the applicable *pro forma* interconnection procedures and agreement, which in this case are the CAISO's Standard Large Generator Interconnection Procedures ("LGIP") and Standard Large Generator Interconnection Agreement ("LGIA"). Accordingly, the CAISO respectfully requests that the Commission reject PG&E's filing and require Geysers to execute LGIAs for the four Geysers plants under the CAISO Tariff.

I. BACKGROUND

The four Geysers facilities that are the subject of the June 30 Filing consist of Aidlin Power Plant, Bear Canyon Power Plant, Calistoga Power Plant, and West Ford Flat Power Plant. These plants were acquired by Geysers as part of a series of transactions involving the sale of a number of geothermal facilities by PG&E to Geysers during 1999 and 2000. Prior to July 1, 2008, these four plants sold their entire electrical output to PG&E pursuant to CPUC-jurisdictional PPAs. Because they sold their entire output to PG&E, the agreements by which

they were interconnected to PG&E's transmission system were also subject to CPUC rather than FERC jurisdiction. The PPAs and associated CPUC-jurisdictional interconnection agreements expired on June 30, 2008. The expiration of these agreements, and Geysers' desire to sell the output of the four plants at wholesale, triggered the need to make various technical and legal arrangements, including transitioning the interconnection arrangements for the four plants from CPUC-jurisdictional agreements to FERC-jurisdictional agreements.

For several months prior to June 30, 2008, Geysers, PG&E and the CAISO worked to finalize the necessary arrangements to allow the four Geysers plants to make wholesale sales over the CAISO Controlled Grid, including installing metering and communications equipment, submitting updates to Geysers' Meter Service Agreement and Participating Generator Agreement to list the four facilities, and providing the CAISO with an affidavit in accordance with Article 25.1.2 of the CAISO Tariff representing that the generating capability and electrical characteristics of the four plants will remain substantially unchanged.

The only issue as to which the parties could not reach agreement is the proper form of FERC-jurisdictional interconnection service. PG&E and Geysers have taken the position, as reflected in the June 30 Filing, that the four plants should take FERC-jurisdictional interconnection service under the terms of the GFSA and GIA, which PG&E filed with FERC in December 2003 in order to govern the terms of the FERC-jurisdictional interconnection service provided by PG&E for other geothermal facilities purchased by Geysers from PG&E in 1999

and 2000. The CAISO, on the other hand, asserted and continues to maintain that the four Geysers plants should take interconnection service pursuant to the terms of the CAISO's LGIP and LGIA, consistent with the provisions of the CAISO Tariff and FERC's interconnection policies. On June 30, 2008, PG&E filed with the Commission proposed amendments to the GFSA and GIA in order to include terms relating to the four Geysers facilities. As a result of the continuing dispute as to the appropriate terms of interconnection service for the Geysers facilities, the CAISO is filing the enclosed protest. The CAISO is also filing, on this date, an unexecuted LGIA for each of the Geysers plants, with a request for waiver of the Commission's 60 day notice and comment requirements so as to allow these LGIAs go into effect as of July 1, 2008.³ Finally, the CAISO is also filing a motion, supported by PG&E and Calpine, to consolidate the above-captioned docket with the dockets that the Commission will assign to the four LGIAs.

II. BASIS FOR MOTION TO INTERVENE

The CAISO is a non-profit public benefit corporation organized under the laws of the State of California. The CAISO is responsible for the reliable operation of a grid comprising the transmission systems of Southern California Edison Company, San Diego Gas & Electric Company, Pacific Gas and Electric Company, the Cities of Vernon, Pasadena, Anaheim, Azusa, Banning, and Riverside, California, and, with regard to the Path 15 transmission lines in

³ Geysers has agreed not to object to this request for waiver and the CAISO understands that PG&E would also not object.

California, Atlantic Path 15, LLC (formerly Trans-Elect NTD Path 15, LLC), the Western Area Power Administration, Sierra Nevada Region, and Startrans LLC.

The CAISO tariff governs the FERC-jurisdictional interconnection of facilities to the CAISO Controlled Grid, including the four facilities at issue in this proceeding. As such, the CAISO has a significant interest in this proceeding that cannot adequately be represented by any other party. The CAISO therefore requests that it be permitted to intervene in this proceeding.

III. PROTEST

The June 30 Filing states that PG&E and Geysers would have included the four plants at issue in the GFSA and GIA when they were filed in 2003, but could not do so due to the fact that their interconnection agreements were at that time subject to CPUC jurisdiction. PG&E states that because of this fact, it and Geysers agreed to include in the GFSA a provision (Section 11) providing that upon termination or expiration of the CPUC-jurisdictional agreements, “PG&E would provide the transitioning QFs FERC-jurisdictional service pursuant to the Geysers GSFA.”⁴ Based on discussions held between the CAISO, PG&E and Geysers, the CAISO understands that this provision is the reason PG&E and Geysers assert that the interconnection of the four geothermal plants should be governed by the terms of the GFSA and GIA, rather than the CAISO’s LGIP and LGIA.

⁴ June 30 Filing, Transmittal Letter at 3.

This rationale fails for several reasons. First, Section 11 of the GFSA, does not affirmatively require PG&E to add the four facilities, or any other generators, to the GFSA. Section 11(b) provides that upon receipt of a notice that Geysers intends to add another geothermal facility to the GFSA, PG&E “shall determine *whether or not such facility should be included* in this Agreement and the GIA.” (emphasis added). Thus, even if there were no other considerations except for the language of the GFSA itself, PG&E is under no contractual obligation to provide FERC-jurisdictional interconnection service pursuant to the terms of the GFSA to the four Geysers plants. Section 11 provides PG&E with the discretion to determine whether or not to include additional facilities under the GFSA and GIA, and given the requirements of the CAISO’s Tariff and Commission interconnection precedent, it is not appropriate for PG&E to agree to include the four Geysers plants under the GFSA and GIA.

Regardless of the obligations set forth in the GFSA, the CAISO Tariff makes clear that generators such as the four Geysers plants that are seeking FERC jurisdictional interconnection service must do so pursuant to the standard interconnection procedures and agreements set forth in the LGIP and LGIA.

Specifically, Section 25.1 of the CAISO Tariff provides that

This Section 25 and the Standard Large Generator Interconnection Procedures (LGIP) set forth in ISO Tariff Appendix U, the Small Generator Interconnection Procedures (SGIP) set forth in ISO Tariff Appendix AA, or ISO Tariff Appendix W, as applicable, shall apply to: (d) each existing qualifying facility Generating Unit connected to the ISO Controlled Grid whose total Generation was previously sold to a Participating TO or on-site customer but whose Generation, or any portion thereof, will now be sold in the wholesale market, subject to Section 25.1.2 below.

Section 25.1.2 provides that if the owner of a QF in Section 25.1(d) represents that its total capacity and electrical characteristics will be substantially unchanged, and the CAISO and PTO confirm such representation, then the QF's request will not be placed into the interconnection queue. However, the owner of the QF "will be required to execute a [LGIA] in accordance with Section 11 of the LGIP." In short, the CAISO Tariff requires that QFs interconnected to the CAISO Controlled Grid who desire to begin making sales into the wholesale market, such as the four Geysers plants, must take interconnection service under the LGIP and LGIA.

As a result, PG&E's proposal to include the four Geysers plants under the GFSA and GIA directly conflicts with the requirements of Section 25 of the CAISO Tariff. Under such circumstances, the CAISO Tariff must prevail. The relevant language in Section 25 directly implements the Commission's ruling that Order No. 2003⁵ applies to QFs interconnected to a transmission system that historically sold their total output to an interconnected utility or on-site customer and subsequently plan to sell their output to a third party in the wholesale market, although such QFs need not submit new interconnection requests if they represent "that the output of the generating facility will be substantially the same as before."⁶ In accordance with this ruling, when the CAISO proposed the tariff language in Section 25 regarding a QF's interconnection obligations, it explained

⁵ Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), 68 Fed. Reg. 49,846 (August 19, 2003) ("Order No. 2003").

⁶ Order No. 2003 at P 815.

that while QFs that simply change the marketing of their power would not be required to submit a new interconnection request, they would still be required to sign an LGIA.⁷ The Commission approved this language in its order issued on July 1, 2005 regarding the CAISO's LGIP and LGIA.⁸ Thus, the requirements of Section 25 are controlling, and they make no exceptions for units that might have otherwise been covered under CPUC-jurisdictional pre-existing interconnection arrangements pursuant to a contract between a transmission owner and generator.

Moreover, PG&E's proposal finds no support in the grandfathering provisions of Order No. 2003. Therein, the Commission stated that it would not require retroactive changes to individual, nongeneric interconnection agreements filed with the Commission prior to the effective date of Order No. 2003, but that "generic interconnection procedures submitted for approval or approved by the Commission before the effective date of the Final Rule must be resubmitted after being revised to conform to this Final Rule."⁹ Although there is no dispute that the units that were specifically listed in the GFSA and GIA when it was filed in 2003 are grandfathered pursuant to Order No. 2003, the Commission nowhere suggested that additional facilities could be added to such existing agreements after the effective date of Order No. 2003. Moreover, the Commission's reference to *individual, nongeneric* interconnection agreements strongly suggests that the grandfathering provisions of Order No. 2003 apply only to the specific

⁷ Filing of Large Generator Interconnection Procedures of the CAISO, Docket No. ER04-445-006 (January 5, 2005), Transmittal Letter at 33.

⁸ *California Independent System Operator Corp., et al.*, 112 FERC ¶ 61,009 (2005).

units that were covered under jurisdictional interconnection arrangements on file with the Commission at the time that Order No. 2003 became effective. The four Geysers units were not so covered, because prior to July 1, 2008 they took interconnection service pursuant to CPUC-jurisdictional arrangements. These units are seeking to obtain FERC-jurisdictional interconnection service for the first time, and therefore do not qualify for grandfathering treatment, which is, in effect, what the June 30 Filing proposes.

The CAISO's position that the four Geysers units are required to take service under the CAISO LGIP and LGIA also finds support in Commission orders issued after the effective date of Order No. 2003, in which the Commission has required that RTOs become signatories to grandfathered interconnection agreements if they are amended. In *Cinergy Services, Inc.*, Cinergy filed with the Commission an amendment to a generator interconnection agreement that was originally executed before the Midwest ISO existed.¹⁰ The Midwest ISO intervened and suggested that it should properly be a party to any amended interconnection agreement, even if that agreement pre-dated the ISO. The Commission agreed and required the Midwest ISO to become a party to the amended agreement, noting that provisions in the Midwest ISO's operating protocols specifically provided that Midwest ISO has the authority to supersede prior interconnection agreements when such agreements are modified or terminated, and concurring that such a result is appropriate given that Midwest

⁹ Order No. 2003 at P 911.

¹⁰ 107 FERC ¶ 61,260 (2004).

ISO was charged with ensuring the safe and reliable operation of the transmission system.¹¹ The Commission has made similar findings in other cases.¹²

For these reasons, the CAISO respectfully requests that the Commission reject the June 30 Filing, and find that, consistent with Section 25 of the CAISO Tariff, the four Geysers plants must take interconnection service pursuant to the CAISO's LGIP and LGIA.

IV. COMMUNICATIONS

Please address all communications concerning this proceeding to the following persons:

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¹¹ *Id.* at P 13.

¹² See also *American Transmission Co.*, 107 FERC ¶ 61,261 at P 16 (2004) (requiring MISO become a party to an amended interconnection agreement to ensure that it has the ability to operate a safe and reliable transmission system); *American Electric Power*, 110 FERC ¶ 61,276 (2005), *order on reh'g*, 112 FERC ¶ 61,128 (2005) (requiring PJM and MISO to become signatories to an amended wires-to-wires interconnection agreement). The Commission did distinguish this line of cases in *Jersey Central Light & Power Co.* See 110 FERC ¶ 61,273 (2005). In *Jersey Central*, the Commission found that, unlike MISO, PJM's interconnection procedures filed in compliance with Order No. 2003 apply to pre-existing interconnection agreements only when there is an increase in the capacity of the generating facility. Therefore, the Commission did not require PJM to become a signatory to a revised interconnection agreement that only revised certain cost allocation terms. *Id.* at P 12. This result can be distinguished from the current situation because, unlike PJM, the CAISO does have specific tariff provisions that require the four Geysers units at issue to take interconnection service under the LGIP and LGIA.

V. CONCLUSION

Wherefore, the CAISO respectfully requests that the Commission grant its motion to intervene, allow the CAISO to participate in the proceeding with full rights as a party thereto, reject the June 30 Filing, and find that the four Geysers plants at issue be required to take interconnection service pursuant to the CAISO's LGIP and LGIA, as required under Section 25 of the CAISO Tariff.

Respectfully submitted,

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Dated: July 22, 2008

Certificate of Service

I hereby certify that I have this day served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 22nd day of July, 2008 in the District of Columbia.

/s/ Michael Kunselman

Michael Kunselman