

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Pacific Gas and Electric Company

Docket Nos. ER04-743-000
ER04-377-000
ER04-377-001

ORDER ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEEDINGS

(Issued May 7, 2004)

1. In this order, we grant Pacific Gas and Electric Company's (PG&E) request to consolidate this Docket No. ER04-743-000¹ with Docket No. ER04-377-000 and set the matter for hearing, but hold the hearing in abeyance, so that the parties may continue their current settlement discussions. This order benefits customers by providing a forum to assure that the rates, terms and conditions for interconnection service are just and reasonable and by encouraging the parties to resolve the issues through direct settlement negotiations.

Background

2. Sunrise Power Company, LLC (Sunrise) has a generating facility that is interconnected by a privately-owned transmission line to the PG&E transmission system. La Paloma Generating Company, LLC (La Paloma) also owns a generating facility that is also interconnected through the same line to the PG&E transmission system.

3. On January 7, 2004 (January 7 Filing), PG&E filed in Docket No. ER04-377-000 a revised Generator Special Facilities Agreement (GSFA) and a Generator Interconnection Agreement (GIA) for Sunrise, La Paloma, and several other interconnection customers.² PG&E's proposed amendments included: (1) a

¹ Originally docketed as Docket No. ER04-377-001.

² The original Agreements were accepted in Pacific Gas and Electric Company, (Docket No. ER01-1912-000) on June 22, 2001 (unpublished Letter Order issued pursuant to delegated authority).

determination as to which facilities are network upgrade facilities subject to the crediting requirement and which interconnection facilities are directly assignable; (2) clarification that PG&E will recover “Cost-of-Ownership”-charges³ on the direct assignment facilities, and not on the network upgrade facilities.

4. In its January 7 Filing, PG&E proposed to revise La Paloma’s GSFA to reflect as directly assignable the two 230 kV circuit breakers that connect La Paloma and Sunrise’s jointly owned line to PG&E’s transmission system. As a result of the change, PG&E proposed to collect Cost-of-Ownership charges from La Paloma, but says that it mistakenly did not revise Sunrise’s GSFA to reclassify these same circuit breakers as directly assignable, nor did it propose to collect Cost-of-Ownership charges from Sunrise.

5. The Commission accepted PG&E’s filing, suspended it for a nominal period, subject to refund, and set the matter for hearing, but held the hearing in abeyance so that the parties could conduct settlement discussions.⁴ In that order, the Commission noted that since Sunrise also uses these breakers, assigning La Paloma all of the Cost-of-Ownership charges may be unjust and unreasonable, and we included that issue in the hearing and settlement judge procedures.

6. In this filing, PG&E says that it mistakenly failed to revise the Sunrise GSFA to reflect that these 230kV circuit breakers are directly assignable to Sunrise. PG&E requests the Commission consolidate this docket with Docket No. ER04-377-000 to allow the parties to settle the costs to be allocated between Sunrise and La Paloma.

Notices and Pleadings

7. Notice of PG&E’s filing was published in the Federal Register, 69 Fed. Reg. 17,139 (2004), with interventions and comments due on or before April 12, 2004.⁵ La Paloma filed a protest, Sunrise filed a motion to intervene and comments, and PG&E filed an answer.

³ The Cost-of-Ownership charges allow PG&E to recover its costs associated with owning, operating, and maintaining the interconnection facilities that are directly assignable to the generator.

⁴ Pacific Gas and Electric Company, 106 FERC ¶ 61,240 (2004).

⁵ On April 22, 2004 public notice was issued re-docketing this filing from ER04-377-001 to ER04-743-000.

8. La Paloma argues that the two 230 kV circuit breakers are network upgrades not directly assignable facilities. La Paloma asserts that PG&E had correctly classified the breakers as network upgrades in the original Agreements, which were accepted by the Commission, and argues that PG&E's claim that the classification was an error is not sufficient support for PG&E's unilateral reclassification.

9. Sunrise supports PG&E's request for consolidation with the ongoing settlement proceedings⁶

Discussion

10. Pursuant to rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept PG&E's answer and will, therefore, reject it.

11. The circuit breakers at issue are shared by La Paloma and Sunrise. The Cost-of-Ownership charges PG&E proposes to assign to La Paloma are part of ongoing settlement discussions between La Paloma and PG&E. The classification of these circuit breakers as to Sunrise and the associated Cost-of-Ownership charges allocated to Sunrise, are issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. Our preliminary analysis indicates that PG&E's classification has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept PG&E's amended Agreements for filing, suspend them for a nominal period, make them effective May 21, 2004, subject to refund, and set them for hearing and settlement judge procedures.

12. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, the hearings will be held in abeyance and a settlement judge shall be appointed, pursuant to rule 603 of the Commission's Rules of Practice and Procedure.⁷ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁶ Sunrise reserves the right to protest any additional issues in this filing. Sunrise motion at p 6.

⁷ 18 C.F.R. § 385.603 (2003).

otherwise the Chief Judge will select a judge for this purpose.⁸ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) PG&E's filing is hereby accepted for filing, suspended for a nominal period, to become effective May 21, 2004, subject to refund, as discussed in the body of this order.

(B) 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 by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulation under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed amendment to the Agreements. However, the hearing will be held in abeyance to provide time for the parties to resolve the issues through settlement judge procedures.

(C) Docket No. ER04-743-000 (originally docketed as Docket No. ER04-377-001) is hereby consolidated with Docket No. ER04-377-000, as discussed in the body of this order.

(D) The settlement judge or the presiding judge in Docket No. ER04-377-000, as appropriate, shall determine the procedure best suited to accommodate the consolidation of Docket No. ER04-743-000 (originally docketed as Docket No. ER04-377-001) with Docket No. ER04-377-000.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁸ 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. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).