

167 FERC ¶ 61,227
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

NextEra Energy, Inc.
NextEra Energy Partners, L.P.

Docket Nos. EL19-35-002

v.

Pacific Gas & Electric Company

Exelon Corporation

EL19-36-002

v.

Pacific Gas & Electric Company

(consolidated)

ORDER GRANTING OUT-OF-TIME MOTION TO INTERVENE AND
DISMISSING AS MOOT REQUEST FOR REHEARING

(Issued June 17, 2019)

1. On March 15, 2019, the Official Committee of Unsecured Creditors of PG&E Corp. and Pacific Gas and Electric Company (PG&E) (the Committee)¹ filed a motion to intervene out-of-time (Motion) in Docket No. EL19-36-000. On May 21, 2019, the Committee requested rehearing of a Commission order issued on May 1, 2019,² insofar

¹ The Committee is comprised of entities that are among the largest holders of unsecured claims against debtors PG&E Corp. and PG&E, including BOKF, N.A., as indenture trustee under unsecured bond indentures, Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas, Mizuho Bank, Ltd., NextEra Energy, Inc., Roebbelen Contracting, Inc., The Davey Tree Expert Company, Davey Tree Surgery Company, and DRG, Inc., G4S Secure Solutions (USA) Inc. and G4S Secure Integration LLC, International Brotherhood of Electrical Workers, Local 1245, and Pension Benefit Guaranty Corporation. Motion at 2, n.5.

² *NextEra Energy, Inc. v. Pac. Gas & Elec. Co.*, 167 FERC ¶ 61,096 (2019) (May 2019 Order). The May 2019 Order also consolidated Docket Nos. EL19-35-000 and EL19-36-000 given the similarity in issues between the two.

as the May 2019 Order did not address the Committee's motion to intervene out-of-time (Rehearing Request). In this order, we grant the Committee's Motion and dismiss as moot the Committee's Rehearing Request.

I. Background

2. On January 22, 2019, Exelon Corporation filed a petition for declaratory order and complaint (Exelon Petition) against PG&E requesting that the Commission find that, if PG&E files for bankruptcy, PG&E may not abrogate, amend, or reject in a bankruptcy proceeding any rates, terms and conditions of its wholesale power purchase agreements subject to the Commission's jurisdiction without first obtaining approval from the Commission under FPA sections 205 and 206.³ The Commission issued an order on the Exelon Petition on January 28, 2019.⁴ PG&E sought rehearing of the Commission's order on February 25, 2019. On March 15, 2019, the Committee filed its Motion to intervene out-of-time. On May 1, 2019, the Commission denied PG&E's request for rehearing of the Commission's order finding that the Commission and the bankruptcy courts have concurrent jurisdiction to review and address the disposition of wholesale power contracts sought to be rejected through bankruptcy.⁵ The May 2019 Order did not address the Committee's Motion.

II. Motion to Intervene Out-Of-Time and Rehearing Request

3. The Committee argues that good cause exists for the Commission to grant its Motion under Rule 214(d)(1).⁶ The Committee states that PG&E filed for bankruptcy on January 29, 2019, and that the Committee was created on February 12, 2019,⁷ after the Commission's initial order in the Exelon Petition proceeding, which issued

³ 16 U.S.C. §§ 824d, 824e (2012).

⁴ *Exelon Corp. v. Pac. Gas & Elec. Co.*, 166 FERC ¶ 61,053 (2019) (*Exelon v. PG&E*). On February 11, 2019, the Secretary of the Commission issued an errata notice in both Docket No. EL19-36-000 to include parties that were inadvertently omitted from the issued order.

⁵ *NextEra Energy v. PG&E*, 167 FERC ¶61,096.

⁶ 18 C.F.R. 385.214(d)(1) (2018).

⁷ The Committee explains that the Acting United States Trustee for Region 3 appointed the Committee, pursuant to 11 U.S.C. § 1102(a) in the PG&E bankruptcy proceeding. The Committee is comprised of eight entities representing the unsecured creditors of PG&E. Motion at 2.

on January 28, 2019.⁸ Thus, the Committee explains, it was impossible for it to intervene before the end of the comment period set by the Commission in this proceeding.⁹ The Committee further states that no other party can adequately represent its interest. The Committee asserts that it is the sole authority appointed by the office of the United States Trustee to properly advocate for PG&E's unsecured creditors.¹⁰ Finally, the Committee states that it will accept the record of this proceeding as developed prior to its intervention.¹¹

4. With regard to its rehearing request, the Committee states the May 2019 Order failed to make a finding as to its Motion, which the Committee contends amounts to a denial of the Motion.¹² The Committee argues that the Commission erred by failing to state the grounds for denying the Motion and by failing to include in the May 2019 Order the "appropriate rule, order, sanction, relief or denial" of the Committee's Motion.¹³ The Committee further argues that the Commission erred by denying the Motion because good cause existed to grant the Motion.¹⁴

III. Commission Determination

5. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. Given the unique situation presented here, we find that the Committee has met this higher burden of justifying its late intervention and we therefore grant the Committee's motion to intervene out of time.

6. Specifically, we find that good cause exists to grant the Motion because the Committee was not appointed by the Acting United States Trustee for Region 3 until after the date for intervention had passed, and, thus, it could not timely intervene. Further, as the Committee notes, it alone has the authority conferred upon it by the office of the

⁸ *Id.* at 2.

⁹ The intervention and comment deadline for Docket No. EL19-36-000 ended on January 24, 2019. Motion at 3-4.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 5.

¹² Rehearing Request at 2-3.

¹³ *Id.* (citing 18 C.F.R. § 385.703(b) (2018)).

¹⁴ *Id.* at 4.

United States Trustee to advocate on behalf of the Debtors' unsecured creditors and represent their interest. We further find that granting the Committee's motion to intervene out-of-time will not prejudice other parties or disrupt the proceeding, as the Committee states that it will accept the record as developed prior to its intervention. Accordingly, given the unique circumstances described above, we grant the Committee's motion to intervene out-of-time.

7. Because we grant the Committee's Motion, we dismiss the Committee's request for rehearing as moot.

The Commission orders:

(A) The Committee's motion to intervene out-of-time is hereby granted, as discussed in the body of this order.

(B) The Committee's request for rehearing is hereby dismissed as moot, as discussed in the body of this order.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.