

129 FERC ¶ 61,129
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Pacific Gas and Electric Company

Docket No. ER08-733-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued November 19, 2009)

1. On July 10, 2009, Pacific Gas & Electric Company (PG&E) submitted an Offer of Settlement and Stipulation (Settlement) on behalf of itself and the Turlock Irrigation District (Turlock). On July 29, 2009, Commission Trial Staff filed comments in support of the Settlement. On August 18, 2009, the Settlement Judge certified the uncontested Settlement to the Commission.¹ The Settlement fully resolves the issues set for hearing. In this order, we approve the uncontested Settlement.

I. Background

2. On March 28, 2008, PG&E initiated this docket by unilaterally filing a Replacement Interconnection Agreement (Replacement IA) between Turlock and PG&E intended to replace the then-effective 1987 Interconnection Agreement (1987 IA).² According to PG&E, there are two key differences between the Replacement IA and the 1987 IA. First, under the Replacement IA, PG&E would not provide transmission service to Turlock. Instead, Turlock was to obtain transmission service from the California Independent System Operator Corporation (CAISO). Second, the Replacement IA would treat jointly-owned Turlock and Modesto Irrigation District (MID) interconnection facilities and equipment as part of Turlock's electric system for purposes of determining liability. PG&E conceded that this new treatment of the jointly-

¹ *Pacific Gas and Electric Company*, 128 FERC ¶ 63,011(2009).

² PG&E also filed a Notice of Cancellation of the 1987 IA.

owned facilities would potentially expand Turlock's obligations and liability with respect to the facilities it owns jointly with MID, relative to the 1987 IA.

3. On April 18, 2008, Turlock protested PG&E's proposed Replacement IA, claiming that certain provisions were unjust, unreasonable, and unduly discriminatory.³ Turlock requested that the Commission summarily reject the Replacement IA and deny cancellation of the 1987 IA. If the Commission did not summarily reject the Replacement IA, Turlock requested alternatively that the Commission suspend PG&E's filing for the maximum period allowed under the Federal Power Act, and to set it for hearing. Turlock also asked the Commission to hold the hearing in abeyance while the Parties continued to negotiate a successor agreement with the aid of a settlement judge.

4. On May 30, 2008, the Commission accepted PG&E's filing, suspended the filing for five months, made the cancellation of the 1987 IA and acceptance of the Replacement IA subject to refund, effective on November 1, 2008, and establishing hearing and settlement judge procedures.⁴ Over the next year, the parties and Commission Trial Staff engaged in substantive negotiations that resulted in the instant Settlement filed on July 10, 2009.

II. Summary of Settlement, Comments and Certification

5. As a result of the Settlement, the Replacement IA would be revised to include new provisions that describe the allocation of liability between Turlock and MID for various facilities that are jointly-owned by Turlock and MID, including Turlock's interconnection facilities.⁵ The Settlement also revised the Replacement IA to include updated provisions describing the process for establishing the operational limitations of the parties' electric systems as well as the inclusion of the principles of a Balancing Authority Controller Adjustment Agreement between the CAISO, PG&E's balancing authority and Turlock.⁶

6. The revised Replacement IA includes updated descriptions of PG&E's and Turlock's interconnection and related facilities, as well as a new definition for "Westley

³ MID also filed a timely motion to intervene and protest. On April 23, 2008, the California Public Utilities Commission filed a motion to intervene out of time.

⁴ *Pacific Gas and Electric Co.*, 123 FERC ¶ 61,228 (2008).

⁵ §§25.5, 25.6 and 25.7 of the Replacement IA.

⁶ *Id.* § 9.3.

Junction” and a new provision that addresses unscheduled flows on the parties’ electric systems.⁷

7. Among other things, the Replacement IA also contains an updated definitions section, including revisions to the definitions of “Adverse Impact,” “Application Requirements,” “Balancing Authority,” and Long Term Change to Operations.”⁸ The Replacement IA includes updated notification procedures and obligations related to proposed modifications, new facilities additions, and long-term changes to operations.⁹ The facilities under construction in each party’s system that are included in the baseline transmission system and generation facilities are described in the new appendix. The parties agree that the facilities listed in the appendix were in service or under construction as of the effective date.¹⁰

8. Under the Settlement, the effective date of the revised Replacement IA shall remain January 1, 2009, as affirmed by the Commission.¹¹ The Replacement IA shall terminate on the occurrence of the 15th anniversary of the effective date; or the end of the twenty-fourth month following the date either party gives the other party notice of termination, which notice will be required to be given prior to the tenth anniversary of the effective date; or as provided in section 20. According to the Settlement, the Commission’s approval of the Settlement shall not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Finally, the applicable standard of review for the Settlement is the just and reasonable standard.¹²

9. The Settlement makes one exception to the above provisions concerning the non-precedential effect of the Settlement: the language concerning jointly-owned facilities will be reflected in the MID Replacement IA that is the subject of Docket No. ER09-625. Specifically, Section 4.20 (Interconnection Facilities), Section 4.33 (System), Section 25.5 (Liability Relating to the Use, Operation, Modification or Construction of Jointly-

⁷ *Id.* §§ 4.40, 7.1, 7.3 and 7.4.

⁸ §§ 4.2, 4.4, 4.5 and 4.24.

⁹ § 9.11.1.

¹⁰ Appendix B to the Replacement IA.

¹¹ On October 31, 2008, the Commission issued a Notice granting the Parties’ request that the effectiveness of the Replacement IA be deferred from November 1, 2008 to January 1, 2009.

¹² PG&E and Turlock, July 10, 2009 Offer of Settlement and Stipulation at 3.

Owned Facilities), Section 25.6 (Allocation of Liability is Controlled by a Letter Agreement Between Turlock and MID) and Section 25.7 (Requirement of PG&E Approval for any Successor Letter Agreement), shall be reflected in the MID Replacement IA, and modified only as necessary as to make the provisions apply to MID.

10. Finally, according to the Settlement, the parties agree that the resolution of any matter in the Settlement shall not be deemed to be a “settled practice” as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980) and shall not be the basis for any decision with regard to the burden of proof in any litigation with regard to such matter.

11. On July 29, 2009, Commission Trial Staff filed comments in support of the Settlement. No other comments were received.¹³ According to Commission Trial Staff, the Settlement is the result of extensive negotiations and numerous revisions.¹⁴ Commission Trial Staff contends that the Settlement fairly addresses the parties’ interests and reflects a balanced agreement that is fair reasonable, and in the public interest.¹⁵

12. On August 18, 2009, the Settlement Judge issued her Certification of Uncontested Settlement,¹⁶ in which she found that the Settlement reflects a fair and reasonable negotiated resolution of all issues in the proceeding.¹⁷ Furthermore, the Settlement Judge concluded that the Settlement resolves all issues raised in the above-captioned docket.¹⁸ Finally, the Settlement Judge determined that the Settlement does not present any genuine issue of material fact and can be found by the Commission to be fair and

¹³ While no other comments were received, PG&E asserts that MID supports the Settlement. PG&E, July 10, 2009 Offer of Settlement and Stipulation, Transmittal Letter at 1.

¹⁴ Commission Trial Staff, July 29, 2009 Comments Supporting Offer of Settlement Agreement and Stipulation at 7.

¹⁵ *Id.* at 9.

¹⁶ *Pacific Gas & Electric Company*, 128 FERC ¶ 63,011 (2009).

¹⁷ *Id.* P 23.

¹⁸ *Id.* P 1 and P 23.

reasonable and in the public interest.¹⁹ Based upon these findings, the Settlement judge certified the Settlement.²⁰

III. Commission Determination

13. The Settlement appears to be fair and reasonable and in the public interest and is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act.²¹ The tariff sheets submitted as part of the Settlement are properly designated, accepted for filing and made effective as specified in the Settlement.²²

14. Given that the parties intend this Settlement to be a full and final settlement of the issues in this proceeding, this order terminates Docket No. ER08-733-000.

The Commission orders:

The Settlement is hereby approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁹ *Id.* P 23.

²⁰ *Id.*

²¹ 16 U.S.C. § 824e (2006).

²² *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).