



coordinator) would act as Western's scheduling coordinator for transactions under two existing contracts between PG&E and Western that remained in effect after January 1, 2005; namely, (1) the Transmission Service Contract for the New Melones Project (New Melones contract) and (2) the Transmission Service Contract for the San Luis Unit (San Luis contract).<sup>3</sup> PG&E stated that the Western SCS Tariff is necessary because neither the New Melones nor the San Luis contract requires PG&E to act as a scheduling coordinator or to provide scheduling coordinator services, and that scheduling of transmission service for these contracts previously had been done under Contract 2948A, which terminated on December 31, 2004.

3. PG&E explained that, as a scheduling coordinator, it is required to submit schedules to the California Independent System Operator Corporation (California ISO) and is invoiced by the California ISO for costs associated with these schedules. Under the Western SCS Tariff, PG&E will pass through to Western all charges and credits it receives from the California ISO for transactions scheduled on behalf of Western. Specifically, PG&E proposed to pass through to Western: (1) the charges/credits it is invoiced by the California ISO for Western's transactions; (2) the costs of establishing and maintaining a scheduling coordinator interconnection agreement; and (3) any costs PG&E incurs retaining a designated scheduling coordinator if it elects to do so.

4. On October 28, 2004, the Commission issued Opinion No. 477, concerning another SCS Tariff originally filed by PG&E in Docket No. ER00-565-000, to recover scheduling coordinator costs for eight of its customers who receive transmission service under contracts that predate the California ISO.<sup>4</sup> In Opinion No. 477, the Commission found that services provided by PG&E under its SCS Tariff represent a "new service" to its existing contract customers, which was not covered by the terms of those contracts.

5. In the December 30 Order, the Commission found the scheduling services performed by PG&E under the New Melones and San Luis contracts to be unclear. Accordingly, the Commission set for hearing the issue of whether any scheduling services being performed by PG&E on behalf of Western in the proposed Western SCS Tariff fall under the definition of a "new service" as discussed in Opinion No. 477. The Commission also found that the charge types and the costs in the Western SCS Tariff had not been shown to be just and reasonable and set them for hearing.

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<sup>3</sup> The New Melones contract expires by its terms in 2032, and the San Luis contract in 2016.

<sup>4</sup> *Pacific Gas and Elec. Co.*, Opinion No. 477, 109 FERC ¶ 61,093 (2004).

### **Requests for Rehearing and Notice of Error**

6. NCPA requests rehearing, arguing that the Commission erred by failing to reject PG&E's proposed Western SCS Tariff as violating the *Mobile-Sierra* protections<sup>5</sup> in the New Melones and San Luis contracts, and instead setting this issue for hearing on the "new service" question. NCPA argues that the contracts were structured as prepaid transmission contracts under which PG&E had already received all of the compensation to which it was entitled, in advance, for fifty years of service. NCPA argues that, by resorting to its "new service" doctrine rather than grappling with the *Mobile-Sierra* issue, the Commission attempts to gloss over the fact that it is allowing the imposition of new charges on contracts for services where the contracts make no provision for a rate change. NCPA contends that the Commission seeks to impose a duty to pay more for the service than allowed in the contracts simply because changed circumstances may make it more expensive for PG&E to provide the contracted for service. NCPA argues that PG&E assumed that risk. NCPA states that the Commission has strained its "new service" doctrine in order to abrogate existing transmission service contracts, and should grant rehearing and reject the Western SCS Tariff for the two contracts.

7. Modesto states that it believes that the Commission did not rule on Modesto's request that this proceeding be held to be non-prejudicial to the matters pending in Docket Nos. ER00-565 and ER04-1233, and on Modesto's arguments that PG&E's proposed Western SCS Tariff does not qualify as a formula rate. Modesto requests that the Commission find that (1) any rulings in this proceeding will not be prejudicial to the matters pending in Docket Nos. ER00-565 and ER04-1233 and (2) it did not rule on whether the Western SCS Tariff constitutes a formula rate, but that such issue will be part of the hearing established in this proceeding.

8. Modesto repeats its argument that the issues in Docket Nos. ER00-565 and ER04-1233 addressing PG&E's other SCS Tariff are fact-specific, should be decided on their own merits, and should not be impacted by the outcome of this proceeding. Modesto urges the Commission to affirm that the rulings in this docket will not prejudice the matters pending in that proceeding. Modesto also repeats its arguments that PG&E's proposed Western SCS Tariff does not meet the Commission's standard for a formula rate. Modesto explains that the so-called "formula" is simply that, for any California ISO charge type that is created by the California ISO that is assessed to PG&E, PG&E may automatically pass through that charge type to Western. Modesto contends that such a formula rate is not specific enough to permit a party to calculate a rate, does not approach the zone of reasonableness, and should be rejected as a formula rate.

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<sup>5</sup> *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *F.P.C. v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

9. Western filed a notice of error, noting that paragraph 12 of the order states that Western filed a motion to intervene in Docket No. ER05-229-000. Western states that it filed its December 6, 2004 protest and comments in order to assist the Commission in its decision making, but that it did not file a motion to intervene and is not a party to Docket No. ER05-229-000.

### **Discussion**

10. NCPA contends that the Commission's invocation of its "new service" doctrine is erroneous where the express terms of the New Melones and San Luis contracts forbid any additional charge for the underlying services for which Western contracted. However, in Opinion No. 477, the Commission explained that the scheduling coordinator services at issue in that proceeding, and similar to services at issue here, constitute new services beyond the existing contracts.<sup>6</sup> A party proposing a new service is not prohibited from proposing to pass through charges for this new service, notwithstanding the contractual protections otherwise afforded by *Mobile-Sierra*.

11. In the December 30 Order, the Commission found that the existing scheduling services performed by PG&E under the contracts were unclear, and set the matter for hearing in order to explicitly determine what services the existing contracts provided for, and consequently, whether the particular services proposed in the Western SCS Tariff fall within the definition of a "new service." This issue is the subject of the hearing established by the December 30 Order; therefore, NCPA's request for rehearing is denied.

12. Modesto urges the Commission to affirm that its rulings in the instant docket are not prejudicial to the matters pending in Docket Nos. ER00-565 and ER04-1233. Modesto added that, as a precaution, it has addressed one substantive issue in PG&E's filing; namely, whether PG&E's Tariff is a formula rate. In the December 30 Order, the Commission noted Modesto's request that the Commission not issue a ruling that would prejudice issues pending in the other proceeding,<sup>7</sup> and did not make a substantive ruling but rather set the matters at issue for hearing. The Commission also did not make any substantive rulings with regard to whether the proposed rate was a formula rate,<sup>8</sup> but again set the issues raised by the proposed Western SCS Tariff for hearing. Accordingly, Modesto's request for rehearing is denied.

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<sup>6</sup> Opinion No. 477, 109 FERC ¶ 61,093 at P 57.

<sup>7</sup> December 30 Order, 109 FERC ¶ 61,392 at P 54.

<sup>8</sup> *See id.* at P 58.

13. In response to Western's notice of error, we clarify that Western did not move to intervene and that Western's submission of comments in this proceeding did not thereby convey party status on Western.<sup>9</sup>

The Commission orders:

NCPA's and Modesto's requests for rehearing are hereby denied as discussed in the body of this order.

By the Commission. Commissioner Kelliher dissenting in part with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>9</sup> 18 C.F.R. § 385.211(a)(2) (2004); December 30 Order, 109 FERC ¶ 61,392 at P 12 (incorrectly labeling Western's submissions as "interventions").

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas & Electric Company

Docket Nos. ER05-116-001  
ER05-130-001  
ER05-132-001  
ER05-229-001

(Issued May 5, 2005)

Joseph T. KELLIHER, Commissioner *dissenting in part*:

As I stated in the December 30 Order, I agree with the Commission's decision to set the proposed Western SCS Tariff for hearing. However, I believe that, rather than focus on whether the service PG&E will provide under the proposed Western SCS Tariff falls under the definition of a "new service" enumerated in Opinion No. 477, the focus of the hearing should be on whether PG&E is obligated to provide this service to Western under the existing New Melones and San Luis contracts. Since I disagreed with the finding that the service provided in Opinion No. 477 constitutes a "new service," I would grant rehearing to NCPA to the extent that it argues that the Commission's invocation of its "new service" doctrine in this proceeding is erroneous.

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Joseph T. Kelliher