

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER03-358-001

ORDER DENYING REHEARING

(Issued February 15, 2007)

1. This order addresses a request for rehearing and motion for stay, filed by Pacific Gas and Electric Company (PG&E), of the Commission's February 27, 2003 Order¹ which, among other things, accepted and suspended and made effective, subject to refund, twelve sets of generator interconnection agreements (IAs) filed by PG&E, including agreements with Delta Energy Center LLC (Delta), and set certain issues for settlement judge procedures and hearing. For the reasons set forth below, the Commission will deny PG&E's request for rehearing and request for a stay of the February 27 Order.

I. Background

2. On December 31, 2002, PG&E filed the IAs with the Commission, including IAs with Delta, which were previously accepted pursuant to delegated authority.² The Delta IAs directly assigned the cost of network upgrades originally funded by Delta, with no provision for credits.

3. In the February 27 Order, the Commission directed PG&E to modify the Delta IAs and provide Delta with transmission credits, plus interest, for the costs associated with

¹ *Pacific Gas and Electric Company*, 102 FERC ¶ 61,232 (2003) (February 27 Order).

² *Pacific Gas and Electric Company*, Docket No. ER01-1399-000 (May 1, 2001) (unpublished letter order).

network upgrades, consistent with Commission policy and precedent.³ On July 9, 2004, the Commission accepted an uncontested settlement which disposed of the issues set for hearing.⁴

II. Procedural Matters

4. On March 31, 2003, PG&E filed a request for rehearing of the February 27 Order and the Commission's finding that PG&E was required to provide transmission credits to Delta for upgrades necessary to interconnect Delta's generating facility to PG&E's transmission system. PG&E also requested a stay of the February 27 Order pending rehearing and any appellate review of that order and the Commission's orders in the *Duke Hinds* proceedings.⁵ On April 15, 2003, Calpine Corporation (Calpine)⁶ filed an answer to PG&E's request for a stay.⁷

5. By letter dated December 21, 2006, PG&E was asked to notify the Commission within 30 days if, in light of the Commission's recent action in *Duke Hinds III* and *PG&E III*,⁸ the instant docket required further Commission proceedings. If no such notice was filed, the above-referenced docket would be closed.

6. On January 22, 2006, PG&E filed a letter recognizing that the issues had been resolved by *Duke Hinds III* and *PG&E III*, but nonetheless requesting that the

³ February 27 Order at P 15.

⁴ *Pacific Gas and Electric Company*, 108 FERC ¶ 61,038 (2004).

⁵ *Duke Energy Hinds, LLC v. Entergy Services, Inc.* 102 FERC ¶ 61,068 (2003) (*Duke Hinds II*), *order on reh'g*, 117 FERC ¶ 61,210 (2006) (*Duke Hinds III*).

⁶ Calpine owns Delta.

⁷ The Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2006), prohibit answers to requests for rehearing, and, accordingly, we will reject the Calpine's answer.

⁸ *Pacific Gas and Electric Company*, 117 FERC ¶ 61,294 (2006) (*PG&E III*).

Commission defer taking any action in this proceeding, pending further settlement discussions between PG&E and Calpine and judicial review of the Commission's *Duke Hinds* orders.⁹

7. On that same day, Calpine filed a letter notifying the Commission that Calpine and Delta both agreed that all issues in PG&E's rehearing request have been decided in other Commission proceedings, and requesting that the Commission issue an order denying PG&E's request for rehearing based on the rationale of the prior orders.

III. Commission Determination

8. As noted above, since PG&E filed its request for rehearing and motion for stay, the Commission has taken action in the *Duke Hinds* and *PG&E* proceedings. On November 17, 2006, the Commission issued *Duke Hinds III*, which denied in part and granted in part rehearing of *Duke Hinds II*. On December 18, 2006, the Commission issued *PG&E III*, a basket order that addressed IAs, including certain PG&E IAs,¹⁰ which had provisions similar to those at issue in *Duke Hinds II*. *PG&E III* upheld the Commission's findings in *Duke Hinds III*.

9. As those orders dispose of PG&E's arguments in the instant proceeding,¹¹ we find them to be controlling and will not discuss these issues further herein. Therefore, in

⁹ PG&E states that, in light of its January 16, 2007 filing for judicial review of the Commission's *Duke Hinds* orders in *Pacific Gas and Electric Company v. FERC*, D.C. Circuit No. 07-1006, it believes that the Commission could be required to act on PG&E's rehearing request, which concerns a refund of approximately \$14.6 million in network upgrade costs to Calpine's Delta Energy Center.

¹⁰ In the underlying order, *Pacific Gas and Electric Company*, 101 FERC ¶ 61,079 (2002), the Commission directed PG&E to modify a proposed interim crediting mechanism that PG&E proposed to apply to all generators, subject to the outcome of the *Duke Hinds* proceeding.

¹¹ *Duke Hinds III*, 117 FERC at P 22-26 (upholding the Commission's long-standing transmission service pricing policy and that when a generator pays for upgrades located "at or beyond" the point of interconnection to the transmission grid, it is entitled to credits, with interest, because these are network upgrades); P 28 (upholding the Commission's finding in *Duke Hinds II* that the Commission has the authority to require changes if the contracts are unjust and unreasonable); P 32-36, 40 (finding that *Duke Hinds II* did not violate the filed rate doctrine and the rule against retroactive ratemaking by requiring refunds).

accordance with our determinations in *Duke Hinds III* and *PG&E III*, we will deny PG&E's request for rehearing. We also deny PG&E's request for a stay for the same reasons we denied its request for stay of *PG&E II* in *PG&E III*.¹²

The Commission orders:

PG&E's requests for rehearing and stay are hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹² 117 FERC ¶ 61,294 at P 62-63.