

128 FERC ¶ 61,288
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. ER09-1521-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF CHANGES AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 30, 2009)

1. This order addresses a proposed rate increase by Pacific Gas and Electric Company (PG&E) under its Transmission Owner Tariff (TO Tariff). Pursuant to the Commission's authority under section 205 of the Federal Power Act (FPA), we accept the proposal for filing, suspend the rate increase for five months to become effective on March 1, 2010, subject to refund, and establish hearing and settlement judge procedures.

I. Description of Filing

2. On July 30, 2009, PG&E submitted its twelfth TO Tariff filing (TO12), in which it requests an increase in TO rates,¹ effective October 1, 2009, to recover the costs associated with significant electric transmission infrastructure expansion and replacement that has occurred in 2009 to date, and is projected by PG&E to occur during the balance of 2009 and in 2010. PG&E forecasts that it will invest \$651 million in capital projects before the end of 2009, and an additional \$809 million in 2010. PG&E states that its 2010 Period II rate base of \$3.3 billion is a 22 percent increase over the 2008 Period I network transmission rate base of \$2.7 billion. PG&E states that the projected revenue requirement for PG&E's retail Network Transmission Services for 2010 is \$946.4

¹ PG&E adopted the TO Tariff in 1997 after turning over operation of its electrical transmission facilities to the California Independent System Operator Corporation (CAISO). The TO Tariff establishes the jurisdictional transmission revenue requirement (TRR) that reflects PG&E's costs of constructing and owning its transmission system.

million, a 27 percent increase over the \$743.9 million in annual revenues which are expected to be produced by the current Network Transmission retail rates.²

3. PG&E states that sales for the first half of 2009 are significantly lower than were forecasted in current rates. As a result, PG&E's TO12 sales forecast is nearly 4 percent lower than the TO11 sales forecast that was incorporated into the current TO Tariff rates. PG&E states that an adjustment to the current TO Tariff rates is necessary to account for this significant, unanticipated shortfall in sales.

4. PG&E proposes five adjustments to its network TRR to determine its wholesale TRR including: (1) an adjustment for estimated transmission expenses to others; (2) a reduction to reflect transmission revenues received from third parties; (3) a reduction for new products and services; (4) an increase for a 200 basis-point rate of return incentive related to PG&E's investment in the Path 15 upgrade project; and (5) an increase for miscellaneous transmission expenses. In addition, for end-user charges, PG&E proposes two additional increases, for deferred taxes and uncollectible expenses.

5. PG&E also requests the following changes to the terms and conditions of its TO Tariff: (1) changes related to conforming the TO Tariff to the CAISO Market Redesign and Technology Upgrade (MRTU) Tariff; and (2) changes to the Transmission Revenue Balancing Account Adjustment (TRBAA) to reflect an Existing Transmission Contract (ETC) Revenue Adjustment mechanism for ETC-related revenues that PG&E expects to receive in 2010.

6. PG&E proposes a return on equity of 12.3 percent, comprised of a base return on equity of 11.8 percent plus a 50 basis point adder as an incentive for its continuing membership in the CAISO.

7. PG&E requests the Commission grant a waiver from its obligation to provide the information required in Statement BC, Reliability Data, on the ground that these matters are now handled by the CAISO rather than PG&E. PG&E also requests a waiver from the Statement AH filing requirement, because its TO12 filing does not propose to change any power, fuel clause, or production-related service or rate.

II. Notice of Filing and Responsive Pleadings

8. Notice of PG&E's filing was published in the *Federal Register*³ with interventions, comments and protests due on or before August 20, 2009. A notice of

² *Pacific Gas and Electric Co.*, 127 FERC ¶ 61,252 (2009) (approving the settlement filed in PG&E's previous rate case).

³ 74 Fed. Reg. 39,685 (2009).

intervention was filed by the California Public Utilities Commission (CPUC) and timely motions to intervene were filed by Southern California Edison Company; Western Area Power Administration; Six Cities;⁴ Golden State Water Company; the Transmission Agency of Northern California (TANC); the California Department of Water Resources, State Water Project (SWP); the Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency (Cities/M-S-R); the State Water Contractors and the Metropolitan Water District of Southern California (SWC/ Metropolitan); San Diego Gas & Electric Company; the Sacramento Municipal Utility District (SMUD); Modesto Irrigation District (MID); the Northern California Power Agency (NCPA); and the Bay Area Municipal Transmission Group (BAMT).⁵ Comments and protests were filed by the CPUC, TANC, SWP, Cities/M-S-R,⁶ SWC/Metropolitan, and Six Cities. TANC also filed a Request for Maximum Suspension and Hearing.⁷ On August 21, 2009, the Energy Producers & Users Coalition (EPUC) filed a Motion to Intervene out of time. On September 4, 2009, PG&E filed a Motion for Leave to Answer and Answer to the Comments and Protests. On September 9, 2009, TANC filed a Request to Disregard the Answer of PG&E.

III. Protests and Comments

9. TANC is concerned about PG&E's ETC adjustment clause proposal, which seeks formulary rate treatment for one category of its transmission costs.⁸ According to

⁴ The Six Cities are Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California.

⁵ SMUD, MID, NCPA and BAMT did not file a separate Protest, but adopted TANC's filing as their own.

⁶ Cities/M-S-R also adopted the arguments and requests for relief proposed by TANC. Cities/M-S-R August 20, 2009 Motion to Intervene, Protest and Request for Suspension and Hearing at 6.

⁷ The CPUC, Six Cities, SWC/Metropolitan and SWP also request that PG&E's proposal be suspended for five months and set for hearing. CPUC August 20, 2009 Notice of Intervention and Protest at 2-4 and 9; Six Cities August 20, 2009 Protest at 26-29; SWC/Metropolitan August 20, 2009 Motion to Intervene, Protest and Request for Maximum Suspension and Hearing at 9-10; SWP August 20, 2009 Motion to Intervene, Protest, Comments and Motion for Evidentiary Hearing at 7-10.

⁸ TANC August 20, 2009 Motion to Intervene, Protest and Request for Maximum Suspension and Hearing at 11 – 13. SWP also objects to the ETC mechanism. SWP Protest at 12.

TANC, by creating a rate design that allows for changes to a single cost component and combines a stated and a formula rate, PG&E's proposal ignores potential offsetting cost changes that may reduce its overall rates.⁹ TANC cites to Order No. 890 to note that automatic recovery of costs of credits is contrary to the Commission's long-standing policy concerning single-issue rate adjustments.¹⁰ TANC argues that automatic cost recovery of a single component could cause a mismatch with other costs that may also have changed but will not be adjusted until the fixed part of the rate is adjusted.¹¹ According to TANC, the ETC revenue adjustment mechanism shifts the burden to customers to review PG&E's ETC revenues and file a complaint to correct errors, rather than requiring PG&E to justify changes in expenses.¹² TANC contends that the ETC revenue adjustment mechanism violates established policy and is unjust and unreasonable.

10. TANC, SWP, Six Cities, and the CPUC contend that PG&E is requesting excessive amounts of depreciation expense.¹³ TANC argues that this excessive request is a result of overstating its cost of removal estimates,¹⁴ failing to accurately account for monies accumulated in the depreciation accounts, and understating certain proposed service lives for transmission plant and equipment.¹⁵

11. TANC, SWP, SWC/Metropolitan, Six Cities, and the CPUC argue that PG&E's requested return on common equity is excessive.¹⁶ TANC contends that the requested return on equity is not justified based on a flawed proxy group of comparable companies,

⁹ TANC Protest at 12.

¹⁰ *Id.* citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

¹¹ TANC Protest at 12.

¹² *Id.* at 13.

¹³ TANC Protest at 37-45; SWP Protest at 15-16; Six Cities Protest at 16-17; CPUC Protest at 5.

¹⁴ The CPUC also raises this argument. CPUC Protest at 6.

¹⁵ TANC Protest at 37-45.

¹⁶ TANC Protest at 26-37; SWP Protest at 10-11; SWC/Metropolitan Protest at 7-8; Six Cities Protest at 3-16; CPUC Protest at 4-5.

PG&E's revenue stream and investment credit ratings, and PG&E's promising financial outlook.¹⁷ Six Cities claim that PG&E violated Commission policy by failing to use the single-stage DCF methodology.¹⁸ SWC/Metropolitan and Six Cities both contend that PG&E erred when it used the midpoint of the proxy group range rather than the median.¹⁹

12. TANC also claims that PG&E has overstated its network transmission capital expenditures based on overly optimistic projections of operative dates while understating its billing determinants.²⁰ SWP similarly objects to PG&E's projected capital expenditures.²¹

13. TANC contends that PG&E has significantly overstated its proposed retail uncollectible factor for Period II,²² misallocated operations and maintenance (O&M) expenses to transmission customers while overstating its forecasted O&M expenses,²³ failed to justify its 2010 electric short-term incentive program expense,²⁴ and failed to support its pensions and benefits contribution.²⁵ SWP and SWC/Metropolitan object to PG&E's load forecasts.²⁶ Similarly, Six Cities contends that there is a "disconnect" between the declining load forecast and the primary reason for capital expenditures, which is capacity additions to accommodate system load growth.²⁷ Finally, TANC

¹⁷ TANC Protest at 26-37.

¹⁸ Six Cities Protest at 4-15.

¹⁹ SWC/Metropolitan Protest at 8; Six Cities Protest at 15-16.

²⁰ TANC Protest at 20-26, 56-60.

²¹ SWP Protest at 13-15.

²² TANC Protest at 48-49

²³ *Id.* at 16-18, 49-56. The CPUC and Six Cities also raise similar arguments regarding PG&E's claimed O&M expenses. CPUC Protest at 7-8; Six Cities Protest at 17-23.

²⁴ TANC Protest at 18-19.

²⁵ *Id.* at 19-20.

²⁶ SWP Protest at 11-13; SWC/Metropolitan Protest at 8-9.

²⁷ Six Cities Protest at 23-24.

argues that PG&E is seeking to recover \$900,000 for prior period costs in violation of the rules against retroactive ratemaking.²⁸

14. TANC, SWP, SWC/Metropolitan, Six Cities, and the CPUC request that the PG&E proposed tariff be suspended for the maximum five-month period based on the issues raised by the filing.²⁹

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³⁰ the notice of intervention and the timely, unopposed motions to intervene, serve to make them parties to this proceeding. Similarly, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,³¹ the Commission will grant EPUC's late-filed motion to intervene given EPUC's interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure³² 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. In light of this action, we dismiss TANC's Request to Disregard the Answer of PG&E as moot.

B. Commission Determination

17. PG&E's filing raises issues of material fact regarding capital additions, depreciation expenses, and other rate setting issues. All issues raised by the filing, if not summarily disposed of in this order, shall be addressed at the hearing, including, but not limited to the appropriate return on equity component, the capitalization rate, and the range of reasonableness.

²⁸ TANC Protest at 45-48.

²⁹ TANC Protest at 61-62; SWP Protest at 7-10; SWC/Metropolitan Protest at 9-10; Six Cities Protest at 26-29; CPUC Protest at 2-4. TANC also requests a Track III schedule. TANC Protest at 62.

³⁰ 18 C.F.R. § 385.214 (2009).

³¹ 18 C.F.R. § 385.214(d) (2009).

³² 18 C.F.R. § 385.213(a)(2) (2009).

18. Consistent with previous Commission orders, the Commission summarily accepts the following components of PG&E's filing: (1) PG&E's request for a 50 basis-point incentive for participation in the CAISO; (2) PG&E's request for a 200 basis-point ROE incentive and a ten-year depreciable life for PG&E's share of the Path 15 upgrade project; (3) PG&E's request for continued acceptance of the revenue-sharing mechanism for secondary products and services; and (4) PG&E's request for waiver of the obligation to provide the information in Statement BC and Statement AH. In addition, the Commission accepts PG&E's ministerial changes to conform the TO Tariff to the CAISO MRTU Tariff.

19. As provided in *SDG&E* and *AEP*,³³ the Commission will grant up to 50 basis points of incentive ROE for participation in the CAISO, subject to suspension and the zone of reasonable returns determined at hearing. The Commission's decision to grant PG&E an incentive ROE for participation in the CAISO is consistent with the stated purpose of FPA section 219 as amended by the Energy Policy Act of 2005³⁴ and is intended to encourage PG&E's continued involvement in the CAISO.

20. The Commission will allow the continued use of a 200 basis-point ROE adder and a ten-year depreciable life for PG&E's share of the Path 15 upgrade project.³⁵

21. We reaffirm here our acceptance, in concept, of PG&E's 50-50 revenue sharing mechanism for secondary products and services.³⁶ However, we will not preclude parties from raising issues regarding PG&E's support of forecast and actual revenues and expenses for new products and services at hearing.

22. Lastly, we hereby grant PG&E's request for waiver of the obligation to provide the information in Statement BC because that information is now provided by the CAISO. Similarly, PG&E's request for waiver of the Statement AH filing requirement is granted because that filing requirement applies to proposals to change power, fuel clause, or production-related services or rates. Since PG&E's filing does not include such proposals, Statement AH is not required.

³³ *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 25-26 (2007) (*SDG&E*); *American Elec. Power Serv.*, 120 FERC ¶ 61,205, at P 34 (2007) (*AEP*).

³⁴ 16 U.S.C. § 824s (2006).

³⁵ *Western Area Power Admin.*, 99 FERC ¶ 61,306 (2002) (accepting letter agreement), *reh'g denied*, 100 FERC ¶ 61,331 (2002).

³⁶ *See Pacific Gas and Electric Co.*, 121 FERC ¶ 61,174 (2007).

C. Hearing and Settlement Judge Procedures

23. Other than those issues summarily resolved above, PG&E's proposed TO Tariff rate revisions raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing procedures ordered below.

24. Based upon a review of the filing, we find that the proposed tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we shall accept such tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

25. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by the statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.³⁷ It is our policy to suspend a requested rate increase for the maximum period in those cases where our preliminary analysis indicates that ten percent or more of the requested increase appears to be excessive.³⁸ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.³⁹

26. We do not find that such circumstances exist here. While particular circumstances may warrant shorter suspensions, PG&E has made no such showing. PG&E's only allegation in support of its request for a one-day suspension period is that PG&E will otherwise be collecting less than its proposed revenue requirement in rates. Of course, this circumstance occurs in most rate proceedings. Therefore, we shall exercise our discretion to suspend the rates for a five-month period, permitting the rates to take effect subject to refund on March 1, 2010.

27. This hearing should also consider the reasonableness of PG&E's proposed change to the terms and conditions of its TO Tariff to add an ETC adjustment clause. The judge should consider the threshold issue of whether it is appropriate to separately account for this single rate component through an automatic adjustment clause rather than requiring PG&E to justify changes in this expense through the traditional rate case method.

³⁷ See, e.g., *Boston Edison Company*, 12 FERC ¶ 61,211 (1980).

³⁸ *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982).

³⁹ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980).

According to PG&E, the proposed changes describe a charge or credit to be made to the Transmission Revenue Balancing Account as a part of the 2012 update. This update cannot be made prior to the 2012 update because PG&E will not know the actual 2010 ETC revenues until after it makes its update filing for the 2011 Transmission Revenue Balancing Account Adjustment. Therefore, we find that there is sufficient time to address this issue prior to PG&E's proposed implementation date.

28. 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 the hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁴⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding, otherwise the Chief Judge will select a judge for this purpose.⁴¹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, 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. Should the settlement judge ultimately determine that a hearing is warranted, PG&E shall file a full case in chief pursuant to the Commission's regulations to support its proposed rate structure at hearing.

The Commission orders:

(A) PG&E's proposed Transmission Owner Tariff rates are hereby conditionally accepted for filing and suspended for the maximum five-month period, to become effective March 1, 2010, subject to refund and subject to hearing, 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 and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning PG&E's

⁴⁰ 18 C.F.R. § 385.603 (2009).

⁴¹ 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 the date 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).

Transmission Owner Tariff rates, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.