

136 FERC ¶ 61,134  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

City of Banning, California

Docket No. ER11-3962-000

ORDER ACCEPTING PROPOSED TRANSMISSION  
REVENUE REQUIREMENT AND ESTABLISHING HEARING AND  
SETTLEMENT JUDGE PROCEDURES

(Issued August 29, 2011)

1. On June 30, 2011, the City of Banning, California (Banning) submitted revisions to its Transmission Owner Tariff (TO Tariff). Banning requests that the Commission approve its: (1) increase to its Transmission Revenue Requirement (TRR) from \$1,221,453.99 to \$1,825,878.99; (2) modified Gross Load calculation, and (3) implementation of new provisions for the pass-through of costs associated with Banning's Existing Transmission Contracts (ETC) with Southern California Edison Company (SoCal Edison).<sup>1</sup> In addition, Banning requests that the Commission approve several ministerial changes to reflect the implementation of the California Independent System Operator Corporation's (CAISO) Market Redesign and Technology Update (MRTU) initiative. Banning requests an effective date of July 1, 2011, and consents to return any payments it receives from the CAISO for Banning's revised rates in excess of those ultimately approved by the Commission. As discussed below, we accept Banning's revised TO Tariff rates for filing, effective July 1, 2011, and set the matter for hearing and settlement judge procedures.

**I. Background**

2. Banning is not a public utility, but it is a Participating Transmission Owner (Participating TO) in the CAISO. Banning is reimbursed for its TRR by the CAISO through CAISO's collection of a Transmission Access Charge (TAC) from all users of

---

<sup>1</sup> The mechanism for the pass-through of Banning's ETC costs is referred to herein as the ETC Pass-Through Clause.

the CAISO grid. The TAC rate is a formula rate based on the TRRs of all Participating TOs. Rate changes that impact the CAISO TAC require a section 205 filing under the Federal Power Act (FPA)<sup>2</sup> and full review by this Commission to ensure that the inclusion of these rate revisions will result in a just and reasonable TAC rate charge by the CAISO.<sup>3</sup>

3. Section 26.1.1 of the CAISO tariff requires non-jurisdictional Participating TOs to file with the Commission their proposed High Voltage TRR. In 2003, Banning filed, and the Commission subsequently accepted, Banning's initial TO Tariff.<sup>4</sup> This tariff included Banning's base TRR, the Transmission Revenue Balancing Account Adjustment (TRBAA), and the High Voltage TRR to be used to calculate the TAC paid by CAISO transmission customers for service over Banning's facilities and Entitlements (as defined in the CAISO tariff). Since joining the CAISO in 2003, Banning has filed with the Commission an annual update to its TRR. The current TRR of \$1,221,453.99 reflects an adjustment to the TRBAA, which was accepted by the Commission to be effective as of January 1, 2011.<sup>5</sup>

4. In this docket, Banning proposes a High Voltage base TRR of \$1,739,072 per year and a Low Voltage base TRR of \$63,000 per year. Banning states that its proposed High Voltage TRBAA will be \$23,806.99<sup>6</sup> and its proposed Low Voltage TRBAA will be \$0. Accordingly, the revised High Voltage TRR is \$1,762,878.99 and the revised Low Voltage TRR is \$63,000 for an increase in Banning's TRR of \$604,425. Banning also proposes an increase in its Gross Load to 144,652 MWh. According to Banning, its

---

<sup>2</sup> 16 U.S.C. § 824d (2006).

<sup>3</sup> Banning Petition at 8, citing *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, at P 42-44, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

<sup>4</sup> *City of Banning, California*, 105 FERC ¶ 61,293 (2003).

<sup>5</sup> *City of Banning, California*, Docket No. NJ11-8-000 (February 1, 2011) (delegated letter order).

<sup>6</sup> Banning states that its High Voltage and Low Voltage TRBAA is being modified as a result of the proposed changes to the way in which Banning recovers costs associated with its SoCal Edison ETCs.

Gross Load is determined by using a forecasting process based on variables such as weather observations, economic conditions, and seasonal load patterns.<sup>7</sup>

5. Banning states that its revised base TRR is based upon projected annualized costs of the Banning transmission Entitlements for fiscal year 2012 (July 1, 2011 through June 30, 2012) and an historic test period of calendar year 2010. The base TRR also reflects Banning's projected Administrative and General (A&G) costs, regulatory expenses, and a portion of the Banning Electricity Utility Department's payment to the City's General Fund.

6. Banning states that it participates in and has Entitlements to two transmission projects through the Southern California Public Power Authority (SCPPA). These two SCPPA projects are the Mead-Adelanto Project and the Mead-Phoenix Project, whose total annualized cost for Banning's Entitlements are projected to be \$401,837 during fiscal year 2012. Banning also states that it has an Entitlement to transmission capacity pursuant to an agreement with the Los Angeles Department of Water and Power (LADWP). The cost of this Entitlement, which is based upon a rate established by LADWP, is projected to be \$52,680 during fiscal year 2012. Finally, Banning states that it has contractual Entitlements to transmission capacity pursuant to four ETC agreements with SoCal Edison. Banning states that the cost of these four Entitlements, based upon the currently-effective High Voltage Existing Contract Access Charge (HVECAC) total \$951,000. Banning states that a portion of the costs of these Entitlements are priced according to SoCal Edison's Low Voltage Existing Control Access Charge (LVECAC) rate of \$63,000.<sup>8</sup>

7. Banning estimates that its A&G expenses related to transmission and regulatory expenses will total \$54,856 and \$114,875, respectively. Additionally, Banning states that for fiscal year 2012, the general fund transfer amount will be ten percent of Banning's annual gross electric operating revenue or \$163,825. Banning asserts that the general fund transfer is conceptually similar to a franchise tax that would be allocable to the transmission function as well as an appropriate substitute for a return on equity. For these reasons, Banning asserts that it is both reasonable and appropriate for it to recover a portion of its general fund transfer through its TRR.<sup>9</sup>

---

<sup>7</sup> Banning states that its proposed Gross Load is consistent with the forecast Banning provided to the California Energy Commission.

<sup>8</sup> Banning Petition at 11-16.

<sup>9</sup> *Id.* at 13-15.

8. Banning also proposes to establish an ETC Pass-Through Clause.<sup>10</sup> Using this mechanism, Banning will recover its ETC costs, which will be calculated using a combination of its forecasted ETC costs and a true up of its actual ETC costs from the prior year. On an annual basis, Banning will submit its ETC costs to the Commission as a separately-stated component of its High Voltage and Low Voltage base TRRs. Banning explains that because its ETC costs are priced according to SoCal Edison's HVECAC and LVECAC, whenever SoCal Edison's TRR changes, Banning must reflect these changes in its ETC costs. Banning also explains that the ETC Pass-Through Clause is intended to be straightforward for Banning to implement and sufficiently transparent that affected parties will readily understand the costs that are being flowed through the mechanism.<sup>11</sup>

9. Additionally, Banning proposes several additional revision to its TO Tariff that it states are largely ministerial in nature and are required to conform Banning's TO Tariff to the new market structures contained in the CAISO Tariff due to the implementation of MRTU. Banning proposes to: (1) delete the definition of Net FTR Revenue; (2) modify the definition of Transmission Revenue Credit to delete references to Net FTR Revenues and Usage Charge Revenues; (3) delete the reference to Transition Period; and (4) delete references to Usage Charge Revenues and FTR auction proceeds.<sup>12</sup>

10. As a municipality, Banning argues that it is exempt from the fees otherwise imposed under Part 381 of the Commission's regulations.<sup>13</sup> Accordingly, Banning requests that the Commission waive any fee associated with this filing.

---

<sup>10</sup> Banning's TO Tariff describes the ETC Pass-Through Clause as "[t]he mechanism that adjusts Banning's High Voltage and Low Voltage TRRs for changes in the costs associated with certain ETCs, consisting of Banning's projected annual cost of its ETCs with SoCal Edison for the next calendar year, based upon the stated HVECAC and LVECAC rates in effect at the time of Banning's annual filing, plus true-up of the prior year's costs of such ETCs as compared with the projected ETC costs for the same period, including interest on the true-up amount at the rate computed by the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 35.19a." Banning TO Tariff, section 3.3, Appendix I.

<sup>11</sup> Banning Petition at 17-21.

<sup>12</sup> *Id.* at 22.

<sup>13</sup> *Id.*, citing 18 C.F.R. § 381.108 (2011).

11. Banning requests an effective date of July 1, 2011, to allow the revised base TRR and TO Tariff revisions to be placed into service as soon as possible.

## **II. Notice of Filing and Responsive Pleadings**

12. Notice of Banning's filing was published in the *Federal Register*, 76 Fed. Reg. 41,776 (2011), with interventions, comments, and protests due on or before July 21, 2011. M-S-R and the City of Santa Clara Public Power Agency, and Modesto filed motions to intervene. The California Department of Water Resources (SWP), Pacific Gas and Electric Company (PG&E), and Southern California Edison Company (SoCal Edison) filed motions to intervene and protest. San Diego Gas & Electric Company (SDG&E) filed a motion to intervene out-of-time. Banning filed an answer to the protests.

### **A. Protests**

13. SoCal Edison asserts that it is not clear that Banning developed its forecast for regulatory expenses, which includes legal and consulting fees, using methodology that is consistent with Commission policy. SoCal Edison asserts that Banning should provide verification that these legal and consultant fees are legitimately regulatory expenses,<sup>14</sup> and PG&E argues that Banning has not demonstrated that the significant increase for these expenses is just and reasonable.<sup>15</sup>

14. Further, PG&E, SWP, and SoCal Edison raised objections to Banning's proposal to transfer ten percent of Banning's metered sales to the City's General Fund. They argue that CAISO ratepayers should not be required to pay a TAC rate that includes funding for city services benefitting only the residents of Banning and not the CAISO ratepayers.<sup>16</sup> Further, SoCal Edison maintains that, even if the general fund fee assessment should apply to CAISO ratepayers, it is not evident that the ten percent general fund fee is a reasonable rate.<sup>17</sup> SWP asserts that this general fund fee is not similar to a return on equity for investor-owned utilities and, further, investor-owned utilities do not benefit from the same tax-favored status that applies to Banning.<sup>18</sup> PG&E

---

<sup>14</sup> SoCal Edison Protest at 3-4.

<sup>15</sup> PG&E Protest at 4.

<sup>16</sup> *Id.* at 3; SWP Comment at 7; SoCal Edison Protest at 3-4.

<sup>17</sup> SoCal Edison Protest at 4.

<sup>18</sup> SWP Comment at 7.

asserts that Banning should recover its general fund fee through its retail electric rates because these rates are charged to the Banning residents who directly benefit from the transfer.<sup>19</sup> PG&E also argues that the ten percent general fund fee is subject to annual revision by the Banning City Council and, therefore, has not been shown to be just and reasonable.<sup>20</sup> Finally, PG&E and SoCal Edison argue that, given the factual issues raised, the Commission should accept Banning's TRR, subject to refund, and set these issues for hearing.<sup>21</sup>

**B. Answer**

15. Banning filed an answer to SoCal Edison's and PG&E's protests. Banning asserts that it is not reasonable for intervenors to object to its calculation of its projected regulatory expenses using historic invoiced costs for these expenses. However, in an effort to resolve this issue, Banning agrees to provide supplemental documentation of its costs to parties that sign a non-disclosure certificate and agree to abide by the terms of the Commission's Model Protective Order.<sup>22</sup>

16. Further, Banning asserts that the intervenors have not justified their objection to Banning including in its proposed TRR the payment it makes to the City's General Fund. Banning argues that municipal law requires that ten percent of its metered sales be transferred to the City on an annual basis.<sup>23</sup> Furthermore, Banning asserts that this transfer to the City's General Fund represents a return on investment to Banning residents as shareholders in the City utility system, and is appropriately analogized to the payment that the CAISO transmission customers pay to SoCal Edison and PG&E shareholders in compensation for their investments.<sup>24</sup>

---

<sup>19</sup> PG&E Protest at 3.

<sup>20</sup> *Id.* at 4.

<sup>21</sup> PG&E Protest at 5; SoCal Edison Protest at 2 and 5.

<sup>22</sup> Banning Answer at 6.

<sup>23</sup> *Id.* at 7.

<sup>24</sup> *Id.*

### III. Discussion

#### A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2011), the Commission will grant SDG&E's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Banning's answer because it has provided information that assisted us in our decision-making process.

#### B. Standard of Review

20. The Commission has addressed the standard of review to be applied to petitions involving non-jurisdictional TRRs in an opinion reviewing the TRR filed by the City of Vernon, California (Vernon).<sup>25</sup> In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to its FPA section 205 jurisdiction. However, the Commission noted that because Vernon voluntarily submitted its TRR as a component of CAISO's jurisdictional rate, Vernon's TRR is "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."<sup>26</sup> The Commission explained that in *Pacific Gas & Elec. Co. v. FERC*, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission has statutory authority to review Vernon's TRR "to the extent necessary to ensure that the CAISO rates are just and reasonable."<sup>27</sup> Subsequently, the court upheld the Commission's decision that subjecting the TRRs of non-jurisdictional utilities (such as

---

<sup>25</sup> See *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

<sup>26</sup> Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

<sup>27</sup> *Id.* P 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

Vernon) to a full section 205 review is “the only way to ensure that CAISO’s rate is just and reasonable.”<sup>28</sup>

21. However, in *TANC* the court rejected the Commission’s authority to order Vernon to pay refunds under FPA section 205. The court held that the structure of the FPA clearly reflects Congress’s intent to exempt governmental entities and non-public utilities from the Commission’s refund authority under FPA section 205 over wholesale electric energy sales.<sup>29</sup> The court reasoned that FPA section 201(f) exempts from Part II of the FPA “any political subdivision of a state.”<sup>30</sup>

22. Therefore, while Banning is not within the Commission’s jurisdiction under FPA section 205, we find that, based on the court’s rulings, it is appropriate to apply the just and reasonable standard of section 205 to Banning’s TO Tariff rates. To determine the justness and reasonableness of Banning’s TO Tariff rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

23. Furthermore, Banning is not subject to Commission-imposed rate suspension and refund obligations under FPA section 205. However, we note that Banning has agreed to refund any payment it receives from the CAISO for Banning’s revised rates in excess of those ultimately approved by the Commission.<sup>31</sup>

### **C. Hearing and Settlement Judge Procedures**

24. Banning’s proposed TO Tariff rate revisions raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

25. Our preliminary analysis indicates that Banning’s TRR has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept Banning’s TO Tariff revisions for filing, make them effective as of July 1, 2011, as requested, and set all issues, except those decided below, for hearing and settlement judge procedures.

---

<sup>28</sup> *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

<sup>29</sup> *Id.* at 673-74.

<sup>30</sup> *Id.* at 674.

<sup>31</sup> Banning Petition at 24 and note 13.

26. While we are setting these matters 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.<sup>32</sup> 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.<sup>33</sup> 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.

**D. Other Issues**

27. We will accept Banning's proposed revisions to Banning's TO Tariff to implement pass-through treatment of costs associated with Banning's ETCs with SoCal Edison. We find that the implementation of the ETC Pass-Through Clause mechanism is just and reasonable and will ensure that Banning continues to recover, through its TRR, the costs of its transmission entitlements. Further, we will accept Banning's additional revisions to its TO Tariff to conform Banning's TO Tariff to the new market structures contained in the CAISO Tariff due to the implementation of MRTU.

28. Finally, we will grant Banning's petition for waiver of the filing fee. Section 381.108 of the Commission's regulations provides that municipalities are exempt from the filing fees required by Part 381.<sup>34</sup> Banning explains that it is a municipal utility organized under the laws of California. Therefore, Banning is exempt from the filing fee required for a rate filing.

---

<sup>32</sup> 18 C.F.R. § 385.603 (2011).

<sup>33</sup> 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 (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

<sup>34</sup> 18 C.F.R. § 381.108 (2011).

The Commission orders:

(A) Banning's proposed TO Tariff rates, as incorporated in revised tariff provisions, are hereby conditionally accepted for filing, effective July 1, 2011, as discussed in the body of this order.

(B) Banning's request for waiver of the filing fee is hereby granted, as discussed in the body of this order.

(C) 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, particularly sections 205 and 206 thereof, 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 Banning's TO 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.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), 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.

(E) 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.

(F) 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,

NE, 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.