

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Pacific Gas and Electric Company Docket Nos. ER04-337-000
ER04-337-001
ER04-337-002
ER04-337-003

ORDER ACCEPTING TARIFF REVISIONS

(Issued April 16, 2004)

1. On December 24, 2003, as amended on January 6, January 26, and March 1, 2004, Pacific Gas and Electric Company (PG&E) filed annual updates and revisions to three balancing accounts under its Transmission Owner Tariff (TO Tariff).¹ In this order, we accept the annual updates and revisions to two of the balancing accounts. In addition, we accept the annual update and revision to a third balancing account, subject to refund and to the outcome of a hearing in another docket. This order thus allows PG&E to update its balancing account rates while protecting customers' rights.

I. Background

2. PG&E files annual updates to its Transmission Revenue Balancing Account Adjustment (TRBAA), Reliability Services Balancing Account (RSBA) and Transmission Access Charge Balancing Account Adjustment (TACBAA), pursuant to section 5 of its TO Tariff. Generally, each account reflects the principal balance in the account as of September 30 of the year prior to the commencement of the January billing cycle, a forecast of annual billings from the California Independent System Operator Corporation (ISO) and the interest balance on the account. The resultant rate for each account is then determined by dividing these components by either the metered load or a forecast of deliveries.

¹ Annual updates and rate revisions were made to the following balancing accounts: (1) the Transmission Revenue Balancing Account Adjustment and the associated Transmission Revenue Requirement, (2) the Reliability Services Balancing Account, and (3) the Transmission Access Charge Balancing Account Adjustment.

3. The filings at issue are the latest in a series of annual filings that update and revise these accounts.²

4. On January 5 and January 26, 2004, PG&E filed errata to correct inadvertent errors to its filing. On March 1, 2004, PG&E filed an amendment to its filing to implement its proposed TACBAA rate as discussed below.

II. Notices of Filings and Pleadings

5. Notices of PG&E's various filings were published in the Federal Register, 69 Fed. Reg. 2132 (2004); 69 Fed. Reg. 2710 (2004); 68 Fed. Reg. 5969 (2004); 69 Fed. Reg. 11612 (2004), with comments, protests, and interventions due on or before March 22, 2004.

6. The Modesto Irrigation District; the Sacramento Municipal Utility District; the California Department of Water Resources State Water Project; and the ISO filed timely motions to intervene. Southern California Edison Company filed a timely motion to intervene and comments. Western Area Power Administration; the Northern California Power Agency (NCPA); the Transmission Agency of Northern California (TANC); and the Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency³ (Cities/M-S-R) filed timely motions to intervene and protests.

7. On January 23, 2004, PG&E filed an answer. On January 30, 2004, NCPA filed an answer to PG&E's answer.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest, and an answer to an answer, unless otherwise ordered by the decisional authority. We will accept PG&E's and NCPA's answers because they have provided information that assisted us in our decision-making.

² E.g., Pacific Gas and Electric Company, 103 FERC ¶ 61,026 (2003); Pacific Gas and Electric Company, 98 FERC ¶ 61,297 (2002); Pacific Gas and Electric Company, 94 FERC ¶ 61,140 (2001).

³ The members of the M-S-R Public Power Agency are the Modesto Irrigation District, the City of Redding, California and the City of Santa Clara, California.

B. Transmission Revenue Balancing Account Adjustment

9. The TRBAA is the mechanism by which transmission revenue credits associated with transmission service from the ISO are flowed through to transmission customers, through a negative rate. PG&E states that the proposed revisions to the TRBAA are intended to reflect: (1) its annual revision of the TRBAA rate for retail service rendered on and after January 1, 2004; and (2) the revised High Voltage and Low Voltage transmission revenue requirements for use by the ISO to calculate the ISO Transmission Access Charge rates, specifically the 2004 High Voltage Access Charges and Transition Charges under the ISO Tariff.

10. The new TRBAA revenue requirement consists of the Transmission Revenue Balancing Account (TRBA) balance as of September 30, 2003 (\$2,338,605 credit), the interest on the TRBA balance (\$7,340,919 credit), and the forecasted 2004 TRBA amount (\$30,965,169 credit). PG&E states that the corresponding rate is negative \$0.00052 per kWh, compared to the present rate of negative \$0.00230 per kWh. PG&E states that the increase in rates (smaller negative rate) results from restoring the TRBAA to its typical calculation results of transmission revenue credits received from the ISO, and excludes a one-time, significant adjustment incorporated into the calculation of the 2003 TRBAA rate that was necessary to remove Scheduling Coordinator costs.

11. No issues were raised by any intervenor with regard to the revised TRBAA.

12. PG&E has revised its TRBAA consistent with the requirements of the TO and ISO Tariffs, and with Opinion No. 458.⁴ Therefore, we will accept PG&E's proposed revisions to the TRBAA, as amended and as designated, effective January 1, 2004, as requested.

⁴ In Opinion No. 458, see Pacific Gas and Electric Company, et al., 100 FERC **&61,156** reh'g denied, 101 FERC **&61,151** (2002), the Commission denied Participating Transmission Owners (TOs) the recovery of certain transmission and ancillary service-related costs through the TRBAA. PG&E has therefore removed all Scheduling Coordinator costs associated with existing transmission contracts from the TRBAA for ratemaking purposes and has made the necessary refunds to its TO Tariff customers.

C. Reliability Services Balancing Account Charge

13. The RSBA is a mechanism to ensure that Reliability Services (RS) costs billed to PG&E by the ISO are allocated and billed to retail customers taking service under the TO Tariff.⁵ According to section 5.6 of the TO Tariff, RSBA rates consist of three components: (1) the principal balance in the RSBA as of September 30 of the prior year; (2) the interest amount associated with the balance; and (3) a forecast of RS costs in the coming year by the ISO. In addition, PG&E has calculated an allocation of RS costs for Western,⁶ and states that it is submitting the rates to collect these RS costs subject to refund and to the outcome of the hearing established in Docket No. ER04-1639-004.

14. The total revenue requirement PG&E used in the development of the retail 2004 RS rates under the TO Tariff consists of the 2003 balance of \$52.7 million, the interest on that balance of \$704,414, and the 2004 forecast of \$259 million, less \$9.5 million for RS costs allocated to Western. PG&E also submitted revised sheets to its Reliability Service Tariff (RS Tariff) reflecting the proposed allocation to Western.

⁵ In Opinion No. 459, see Pacific Gas and Electric Company, 100 FERC ¶61,160 reh'g denied, 101 FERC ¶61,139 (2002), the Commission denied PG&E the recovery of Reliability Services (RS) charges from existing transmission contract customers and TO Tariff wholesale customers. Opinion No. 459 also approved a partial settlement which allowed PG&E to continue to recover RS charges from TO Tariff retail customers. In February 2003, PG&E made the necessary refunds.

⁶ In March 2001, in Docket No. ER01-1639-000, PG&E filed proposed changes to energy and transmission rates it charges to Western under its long-standing Contract 2948A (Western Contract). Included in the rate changes was a proposed collection of RS charges billed to PG&E by the ISO. PG&E's filing was set for hearing, Pacific Gas and Electric Company, 95 FERC ¶ 61,273, reh'g denied, 96 FERC ¶ 61,102 (2001). In an order issued in October 2001, the Commission upheld the administrative law judge's (ALJ) Initial Decision, which determined that PG&E did not have the right to change the energy rates, and that PG&E had had not met the joint review requirement under the Western Contract that would allow it to change the transmission rates, Pacific Gas and Electric Company, 97 FERC ¶ 61,082, reh'g denied, 97 FERC ¶ 61,335 (2001). The case was remanded to the Commission from a decision of the United States Court of Appeals for the District of Columbia Circuit, Pacific Gas and Electric Company v. FERC 326 F.3d 243 (D.C. Cir. 2003), for further consideration of whether PG&E met a joint review requirement under the Western Contract before it filed new transmission rates. On September 15, 2003, in Docket No. ER01-1639-004, the Commission issued an order on remand establishing hearing procedures before the ALJ that presided over the earlier hearing in the case, Pacific Gas and Electric Company, 104 FERC ¶ 61,284 (2003). The proceeding is currently pending.

Protests

15. Western, Cities/M-S-R and NCPA request that the Commission reject the filing to the extent that PG&E is intending to establish a rate increase to Western under the Western Contract in this filing.⁷ They state that, in Opinion No. 459, the Commission rejected PG&E's proposal to pass through RS charges to existing transmission contract (ETC) customers unless it first unbundles the rates in its ETCs and provides a full cost of service analysis supporting the unbundled rates. They argue that, since PG&E has neither unbundled the rates under the Western Contract, nor provided a cost of service, PG&E cannot pass through the \$9.5 million in RS charges to Western. Furthermore, they state that Article 32 of the Western Contract permits changes to transmission rates only when the condition precedent of joint review has been satisfied, and only within a five-year rate change window, the last of which closed on April 1, 2001.⁸

16. NCPA states that an additional reason for rejection is that the Western Contract is nearly forty years old and is scheduled to expire at the end of this year, and thus any new proceeding to change rates for the final year is likely to last well beyond the remaining term of the Western Contract. NCPA requests that, if the Commission does not reject the filing, it suspend the filing for a full five months and set it for hearing.

17. TANC alleges that PG&E's filing over-allocates RS charges to Western by using an incorrect allocation factor. TANC states that Western's load ratio share for the allocation of 2004 RS charges should be based only on load served by the ISO-Controlled

⁷ NCPA states that it is unclear whether PG&E seeks to increase rates under the Western Contract by the indirect method of the instant filing, or whether it is attempting to construct some sort of placeholder credit in the event it succeeds in establishing a right to collect RS costs from Western in Docket No. ER01-1639-004. NCPA states that it does not object to the concept of a placeholder, though it does not concede the accuracy of any actual number, so long as the ultimate determination of whether such a credit is allowed is understood to be dependent on the outcome of Docket No. ER01-1639-004.

⁸ PG&E filed its rate change to the Western Contract in Docket No. ER01-1639-000 on March 27, 2001, just before the end of the last five-year rate change window. The Commission conditionally accepted the filing and made it effective on October 28, 2001, subject to refund, and set it for hearing. *Pacific Gas and Electric Company*, 95 FERC ¶ 61,273, reh'g denied, 96 FERC ¶ 61,102 (2001).

Grid; however, TANC contends that PG&E appears to allocate RS charges based upon total Western loads (ISO-Controlled Grid loads and non-grid loads).⁹

18. In addition, TANC asserts that PG&E's filing fails to support the proposed 2004 RS charges, arguing that, although the filing includes a summary of the Reliability Must-Run (RMR) costs used in the calculation of the 2004 RS costs forecast and a discussion of the formula used to calculate those costs,¹⁰ it fails to provide the underlying data necessary to support and justify those costs. TANC requests that the Commission suspend the filing for a full five months and set it for hearing.

Answers

19. PG&E responds that the issues of whether PG&E has the right to pass through the RS charges to Western, and whether the allocation of RS costs is just and reasonable, are currently being addressed in the hearing in Docket No. ER01-1639-004. PG&E argues that the instant filing simply updates the filed RS rates and does not affect parties' abilities to argue, in Docket No. ER01-1639-004, that PG&E is precluded from recovering any RS charges under the Western Contract. Furthermore, PG&E states that there is no harm to Western from accepting the instant filing because the RS charges will be collected subject to refund.

20. PG&E also states that TANC's allegation that PG&E appears to over-allocate RS charges to Western is incorrect and unsupported, and that TANC's request for suspension and hearing should be denied. PG&E asserts that it has not included direct connects or non-grid Western loads in the calculation of RS costs allocated to Western, contending that its Statement BB properly reflects only Western's use of PG&E's transmission facilities that have been turned over to ISO operational control. PG&E also objects that TANC's statement that PG&E should provide further data to support RMR costs is unexplained and unsupported; PG&E states that it has made balancing account filings for three years with the very same quality of cost support without any party suggesting that such cost support was insufficient, and that the Commission has accepted each of those filings. PG&E further notes that, since the collection of RS costs occurs in a balancing

⁹ TANC cites to Exhibit PGE-8 at 2-3, attached to the instant filing, which contains Period II Statement BB demands for Western as included in PG&E's most recent TO Tariff rate case, filed in Docket No. ER04-109-000. That rate case was recently accepted by the Commission, suspended and made effective January 1, 2004, subject to refund, and set for hearing. *Pacific Gas and Electric Company*, 105 FERC ¶ 61,389 (2003).

¹⁰ See Exhibits PGE-2 and PGE-2-1.

account that tracks actual costs and revenues, any forecast errors or differences from actual amounts will be reflected in rates set in the next update.

21. NCPA argues that PG&E's proposal to collect RS costs from Western in this proceeding is in violation of the Western Contract and should be rejected as violating the Mobile-Sierra doctrine.¹¹ NCPA states that Article 32 of the Western Contract requires that rates and charges be jointly reviewed and adjusted as appropriate every five years, with the last rate change window having closed on April 1, 2001. NCPA argues that the January 1, 2004, effective date proposed in this filing violates the contractual requirement that proposed rate changes take effect April 1 on the five-year anniversary dates, the last of which was April 1, 2001. NCPA also asserts that the October 28, 2001 effective date applied to the rates filed in Docket No. ER01-1639-000 does not comport with the contractual requirements of Article 32 and should be rejected on Mobile Sierra grounds in the remanded proceeding in Docket No. ER01-1639-004.

Commission's Finding

22. We agree that the issues of whether PG&E has the right to pass through RS charges to Western under the Western Contract, and whether the allocation of RS costs to Western is just and reasonable, are currently being addressed in Docket No. ER01-1639-004. The updated RSBA simply reflects the proposed RS charges to Western which are the subject of the other docket. Furthermore, aside from the proposed allocation of RS charges to Western, PG&E has calculated the proposed RS rates consistent with its TO Tariff. Accordingly, we will accept PG&E's proposed revisions to the RSBA, as designated, effective January 1, 2004, and, consistent with PG&E's commitment in its filing in this regard, subject to refund and subject to the outcome of the hearing in Docket No. ER01-1639-004.

D. Transmission Access Charge Balancing Account Adjustment

23. The TACBAA is designed to ensure that the costs shifted from new Participating TOs to existing TOs will be recovered from PG&E's end-use customers. PG&E states that the 2004 TACBAA rate was developed by combining the Transmission Access Charge Balancing Account (TACBA) balance plus interest as of September 30, 2003, of \$9.6 million, and the forecasted 2004 TACBA costs of \$16.6 million. PG&E states that the resultant TACBAA revenue requirement is \$26.2 million and the corresponding rate is \$0.00034/kWh.

¹¹ See *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

24. In its comments, SoCal Edison states that it does not oppose PG&E's filing, but notes that PG&E over-stated its TACBA forecast for 2004 by only reflecting the cost-shifts associated with existing high voltage facilities and not considering the cost-shift impact associated with new high voltage facilities. SoCal Edison states that because of the comparatively high costs of new high voltage facilities, the net cost-shift impact PG&E can expect in 2004 is not positive \$16.6 million, but rather negative \$1.4 million. In its answer, PG&E confirmed that it erred in its 2004 TACBA forecast and stated that it would make a corrective filing. On January 26, 2004, PG&E made a filing correcting the error. The corrected TACBAA revenue requirement is \$8.2 million and the corresponding rate is \$0.00011/kWh.

25. In its original filing, PG&E explained that, because rates to its retail customers remained frozen under California law, it was not requesting that the TACBAA rate be made effective, but that it had filed the TACBAA rate only for illustrative purposes. PG&E stated that it expects rates to be unfrozen sometime in 2004, and that it would make an additional filing with the Commission at that time to implement the TACBAA rate. In its March 1, 2004 amended filing, PG&E explained that on February 26, 2004, the California Public Utilities Commission ended the rate freeze. Thus PG&E requests that the Commission make the TACBAA rates effective as of March 1, 2004.

26. Other than SoCal Edison's filing discussed above, no intervenor raised any issues with regard to the revised TACBAA.

27. PG&E has revised its TACBAA consistent with the requirements of its TO Tariff. Therefore, we will accept PG&E's proposed revisions to the TACBAA, as designated, effective March 1, 2004, as requested.

E. Waiver of Notice

28. PG&E requests waiver of the Commission's 60-day prior notice requirement to permit the proposed effective dates of its revised tariff sheets. In support of this request, PG&E states that, because this filing seeks effective dates that are prescribed by a pre-existing agreement on file with and accepted by the Commission, waiver of notice is appropriate in this instance. Consistent with our precedent, we will grant PG&E's request for waiver, and allow the proposed tariff sheets to become effective as requested.¹²

¹² See Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶61,106, reh'g denied, 61 FERC ¶61,089 (1992).

The Commission orders:

(A) PG&E's proposed TRBAA update to its TO Tariff is hereby accepted for filing, effective January 1, 2004.

(B) PG&E's proposed RSBA update to its TO Tariff and proposed revisions to its RS Tariff are hereby accepted for filing, effective January 1, 2004, subject to refund, and subject to the outcome of the hearing in Docket No. ER01-1639-004.

(C) PG&E's proposed TACBAA update to its TO Tariff is hereby accepted for filing, effective March 1, 2004.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.