

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER04-337-004

ORDER DENYING CLARIFICATION AND REHEARING

(Issued September 22, 2004)

1. On May 17, 2004, Northern California Power Agency (NCPA), and the California Cities of Redding and Santa Clara, and M-S-R Public Power Agency jointly, (Cities/M-S-R), requested clarification or, in the alternative, rehearing of the Commission's April 16, 2004 order in this proceeding.¹ In that order the Commission accepted Pacific Gas and Electric Company's (PG&E) annual update and revision to the Reliability Services Balancing Account (RSBA) under PG&E's Transmission Owner Tariff (TO Tariff), and made it effective subject to refund and the outcome of a hearing in another docket.² For the reasons discussed below, the Commission denies NCPA and Cities/M-S-R's requests for clarification and rehearing.

I. Background

2. PG&E files annual updates to the three balancing accounts, including the RSBA, pursuant to section 5 of its TO Tariff. Generally, these accounts reflect the principal balance in the account as of September 30 of the year prior to the beginning of the January billing cycle, a forecast of annual billings from the California Independent System Operator Corporation (CAISO) and the interest balance on the account. The resultant rate for each account is then determined by dividing these components by either

¹ Pacific Gas and Electric Company, 107 FERC ¶ 61,038 (2004) (April 16 Order).

² The Commission also accepted annual updates and revisions involving two other balancing accounts, the Transmission Revenue Balancing Account and the Transmission Access Charge Balancing Account.

the metered load or a forecast of deliveries. The RSBA, specifically, is a mechanism to ensure that Reliability Services (RS) costs billed to PG&E by the CAISO are allocated and billed to retail customers taking service under the TO tariff.³

3. In March 2001, in Docket No. ER04-1639-000, PG&E filed proposed changes to energy and transmission rates it charged to the Western Area Power Administration (Western) under its long-standing Contract 2948A (Western Contract).⁴ Included in the changes was a proposed collection of RS charges billed to PG&E by the CAISO. PG&E's filing was set for hearing, and the Commission subsequently upheld the administrative law judge's Initial Decision determining that PG&E did not have the right to change the energy rates and that PG&E had not met the joint review requirement under the Western Contract that would allow it to change the transmission rates.⁵ PG&E appealed and the decision was remanded to the Commission for further consideration of whether PG&E met the joint review requirement under the Western Contract before it filed new transmission rates.⁶ On remand, in Docket No. ER01-1639-004, the Commission issued an order establishing hearing procedures, which are currently ongoing, to determine whether PG&E met the condition precedent to proposing transmission rate changes under the Western Contract.⁷

4. In this docket, in its calculation of the revised RSBA, PG&E calculated and included an allocation of RS costs for Western, stating that it was submitting the rates to collect these RS costs subject to refund and the outcome of the hearing pending in Docket No. ER01-1639-004. In the April 16 Order, the Commission accepted and suspended PG&E's revised RSBA and made it effective subject to refund and to the outcome of the hearing in Docket No. ER01-1639-004.

³ In Opinion No. 459, *see* Pacific Gas and Electric Company, Opinion No. 459, 100 FERC ¶ 61,160, *reh'g denied*, Opinion No. 459-A, 101 FERC ¶ 61,139 (2002), the Commission denied PG&E recover of 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.

⁴ Pacific Gas and Electric Company, 95 FERC ¶ 61,273, *reh'g denied*, 96 FERC ¶ 61,102 (2001).

⁵ Pacific Gas and Electric Company, 97 FERC ¶ 61,082, *reh'g denied*, 97 FERC ¶ 61,335 (2001).

⁶ Pacific Gas and Electric Company v. FERC, 326 F.3d 243 (D.C. Cir. 2003)

⁷ Pacific Gas and Electric Company, 104 FERC ¶ 61,284 (2003).

II. Discussion

A. Requests for Rehearing

5. NCPA states that the April 16 Order is unclear as to whether the allocation of RS costs to Western included in the RSBA is a new rate to Western under the Western Contract, or simply a placeholder pending the outcome of Docket No. ER01-1639-004. NCPA states that it wishes to establish that the April 16 Order did not purport to accept for filing new rates or a new basis for collecting rates from Western as of January 1, 2004, separate from whatever comes out of Docket No. ER01-1639-004. Thus, NCPA requests that the Commission clarify that acceptance of PG&E's filing does not give PG&E the right to collect any new or different rates from Western other than those PG&E may collect subject to refund pending the outcome of Docket No. ER01-1639-004. In the alternative, NCPA requests rehearing, contending that the order fails to address contractual bars to changing the rate and the lack of cost support.

6. Cities/M-S-R argue that, by accepting the revised RSBA subject to refund, the Commission allowed PG&E to inappropriately revise the TO Tariff to include charges which have not yet been deemed just and reasonable. Cities/M-S-R request rehearing and request that the Commission reject PG&E's revised RSBA as premature, or, at least, hold such revisions in abeyance until the appropriateness of the RS charges to Western is determined. Cities/M-S-R contend that this will allow for the determination of just and reasonable rates in Docket No. ER01-1639-004 as well as consideration thereafter of any issues related to implementation of such charges under the TO Tariff. Cities/M-S-R request that, if the Commission did not intend to accept the revisions to the RSBA until resolution of Docket No. ER01-1639-004, that the Commission so clarify.

B. Commission Decision

7. The Commission will deny the requests for clarification and rehearing. In the April 16 Order, the Commission stated: "[w]e 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."⁸ Arguments that PG&E should not be allowed to include the RS allocation to Western until the Commission resolves Docket No. ER01-1639-004 assumes that the Commission will rule in Western's favor, and, in any event, amounts to a request that the rate be suspended for an indefinite period. The FPA does not authorize the Commission to indefinitely suspend rates.⁹

⁸ April 16 Order at P 22.

⁹ 16 U.S.C. § 824d (2000).

Furthermore, since rate the proposed updates and revisions were accepted and suspended, and made effective subject to refund, parties ultimately will suffer no harm from the Commission's making the proposed rate and revisions effective before the final resolution of Docket No. ER01-1639-004.

The Commission orders:

We deny NCPA and Cities/M-S-R's requests for clarification and rehearing as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.