

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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| Pacific Gas and Electric Company | Docket Nos. | ER97-2358-006 ER98-2351-005 |
| Pacific Gas and Electric Company | | ER00-565-000 ER00-565-003 ER00-565-010 ER04-1233-000 ER05-480-000 |
| Southern California Edison Company | | ER97-2355-012 ER98-2322-006 |
| San Diego Gas & Electric Company | | ER97-2364-007 ER97-4235-006 ER98-497-006 ER98-2371-004 |

ORDER HOLDING PROCEEDING IN ABEYANCE

(Issued November 3, 2005)

1. On September 23, 2005, the Sacramento Municipal Utility District (SMUD) and Modesto Irrigation District (Modesto) (collectively, Joint Movants) filed a joint motion that requests that the Commission, in light of a recent decision by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit),¹ issue a remand order that directs the Pacific Gas and Electric Company (PG&E)² to allocate the cost differentials at

¹ *Southern Cal. Edison Co., et al. v. FERC*, 415 F.3d 17 (D.C. Cir. 2005) (D.C. Circuit Remand).

² PG&E functions as the California Independent System Operator's (CAISO) scheduling coordinator (SC) for transmission customers that have existing transmission contracts (ETC) with PG&E. (ETCs are contracts that predate the formation of the CAISO.) As the SC for ETC customers, PG&E is billed by the CAISO for the costs that the CAISO incurs in providing the existing ETC customers access to the CAISO's grid.

issue in the Transmission Revenue Balancing Account proceeding (TRBA Proceeding)³ and the Scheduling Coordinator Service proceeding (SCS Proceeding)⁴ through the TRBA of its Transmission Owner (TO) Tariff and not through the SCS Tariff. In addition, the Joint Movants ask the Commission to hold in abeyance the SCS Proceeding.⁵ With respect to the first request, since the Commission is still considering its response to the D.C. Circuit Remand, we defer further consideration of the issue of the allocation of the cost differentials and will address the merits of the Joint Movants' request regarding this issue in a future order. As for the second request, we grant Joint Movants' motion to hold the SCS Proceeding in abeyance pending the Commission's action on the D.C. Circuit Remand.

Background

A. TRBA Proceeding

2. On March 31, 1997, PG&E submitted for Commission approval its TO Tariff in the TRBA Proceeding. PG&E pointed out in its TO Tariff filing that there are mismatches between its ETC charges and the CAISO Tariff charges for ancillary services, neutrality, unaccounted for energy, and transmission losses. PG&E sought approval to recover such cost differentials from its TO Tariff customers by means of its TRBA, rather than by attempting to charge its ETC customers.

³ See Docket No. ER97-2358-000, *et al.*

⁴ See Docket No. ER00-565-000, *et al.* In the TRBA and SCS Proceedings, PG&E sought recovery of identical costs but proposed different mechanisms in each of the proceedings for recovering the costs.

⁵ In the Joint Motion, the Joint Movants ask the Commission to stay the SCS Proceeding. Since there is no final order to stay, we will treat their request as a request to hold the SCS Proceeding in abeyance. See, e.g., *City of Klamath Falls*, 69 FERC ¶ 61,188 at 61,781 (1994) (“A stay delays the effectiveness of an order issued by the Commission. Since we have not taken any action with regard to the application in question, there is no order to be stayed. Instead, the appropriate relief here is an order holding the proceeding in abeyance.”); *Montana Power Company*, 77 FERC ¶ 61,110 at 61,433 & n.4 (1996) (holding a proceeding in abeyance, rather than granting a stay, as a “[a] stay [was] not required, because there [was] no pending requirement on Montana Power to be stayed”).

3. In Opinions Nos. 458 and 458-A, the Commission found that the CAISO Tariff provides no basis for PG&E to shift the costs in question from the ETC customers to the TO Tariff customers.⁶ On appeal of those orders, the D.C. Circuit found that the CAISO Tariff permits the use of the TRBA to recover the cost differentials and that the TO Tariffs conform with the CAISO Tariff.⁷ Accordingly, the court vacated Opinion Nos. 458 and 458-A and remanded the case to the Commission for further proceedings consistent with the CAISO Tariff.⁸

B. SCS Proceeding

4. PG&E filed the SCS Tariff in attempt to recover certain costs associated with its role as the SC for eight of its customers (collectively, the SC Customers)⁹ that receive transmission service pursuant to ETCs. On January 11, 2000, the Commission accepted the SCS Tariff, suspended the filing for a nominal period, and established hearing procedures.¹⁰ The Commission held the hearing in abeyance pending resolution of PG&E's attempt to recover the cost differentials in the TRBA Proceeding and accepted PG&E's proposal to defer billing under the SCS Tariff until such resolution.¹¹

⁶ *Pacific Gas and Elec. Co., et al.*, 88 FERC ¶ 63,007 (1999) (Initial Decision), 100 FERC ¶ 61,156 at P 28 (Opinion No. 458), *reh'g denied*, 101 FERC ¶ 61,151 at P 23 (2002) (Opinion No. 458-A), *order on remand*, 107 FERC ¶ 61,115 (2004), *sub nom.* D.C. Circuit Remand, 415 F.3d 17.

⁷ D.C. Circuit Remand, 415 F.3d at 21.

⁸ *Id.* at 23.

⁹ The SC Customers are as follows: Northern California Power Agency (NCPA), the City and County of San Francisco (San Francisco), Dynegy Power Services, Inc., Turlock Irrigation District, Silicon Valley Power (SVP), Modesto, SMUD, and San Francisco Bay Area Rapid Transit District. The first five SC Customers listed have settled with PG&E regarding the issue of the cost differentials involved in the SCS Proceeding. However, those settlements include a provision that states that if the D.C. Circuit vacates and remands the Commission's determinations in Opinion Nos. 458 and 458-A and the Commission issues a final order stating that the TRBA is the appropriate mechanism for recovering the cost differentials, PG&E will refund the settlement amounts agreed to in the settlements.

¹⁰ *Pacific Gas and Elec. Co.*, 90 FERC ¶ 61,010 (2000), *reh'g denied*, 95 FERC ¶ 61,247, *clarified*, 96 FERC ¶ 61,072 (2001).

¹¹ *Id.*

5. In response to the Commission's issuance of Opinion No. 458-A (*i.e.*, determining that PG&E could not recover the cost differentials through the TRBA), on December 16, 2002, PG&E asked the Commission to reactivate the SCS Proceeding, and, on May 15, 2003, the Commission issued an order granting that request and establishing hearing procedures.¹² On August 11, 2003, the presiding judge issued an order splitting the proceeding into two phases. Phase I was to address liability issues, and Phase II was to address cost allocation issues.

6. The SCS Proceeding Phase 1 Initial Decision was issued on May 6, 2004.¹³ In Opinion No. 477, the Commission, in addressing the SCS Phase 1 Initial Decision: (1) affirmed the determination that the SCS Tariff was a new service; and (2) reversed the determination that extraordinary circumstances justified waiver of notice needed to make the SCS Tariff effective some sixteen months before it was filed with the Commission.¹⁴ On December 27, 2004, the Commission tolled the rehearing requests related to the Phase 1 proceeding. The SCS Proceeding Phase 2 Initial Decision is due to be issued by November 22, 2005.

Joint Motion and Answers

7. The Joint Movants argue that the D.C. Circuit Remand has clearly established that the Commission-approved CAISO Tariff allows PG&E to recover cost differentials through its TO Tariff. Therefore, they assert that the Commission's order addressing the D.C. Circuit Remand should find that PG&E must recover the cost differentials that PG&E incurred in its role as the SC for the ETC holders through the TRBA mechanism in its TO Tariff (*i.e.*, not the SCS Tariff).¹⁵ The Joint Movants also state that the Commission should hold in abeyance the SCS Proceeding, since it "will be obviated absolutely by effect of the [D.C. Circuit Remand]."¹⁶

¹² *Pacific Gas and Elec. Co.*, 103 FERC ¶ 61,180 (2003), *Pacific Gas and Elec.*, 107 FERC 63,030 (2004) (SCS Phase 1 Initial Decision), 109 FERC ¶ 61,093 (2004) (Opinion No. 477), *reh'g pending*.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Since we defer, as discussed below, addressing the merits of this issue, we have not summarized all the Joint Movants' arguments (as well as those in the answers to the Joint Motion) with respect to this issue.

¹⁶ Joint Motion at 2.

8. The City of Santa Clara, California, SVP, NCPA, and San Francisco submitted an answer in support of the Joint Movants' request that the Commission, in its order addressing the D.C. Circuit Remand, require PG&E to recover the cost differentials via the TRBA of PG&E's TO Tariff.

9. PG&E also filed an answer to the Joint Motion. According to PG&E, in the D.C. Circuit Remand, the court did not mandate a particular resolution of the issue remanded and does not preclude the Commission from considering the SCS Tariff as a mechanism for cost recovery of the cost differentials. In addition, PG&E states that while it agrees with Joint Movants' suggestion that the TRBA is an appropriate mechanism for PG&E's recovery of the cost differentials, it does not believe that any further delay in resolution of the SCS Tariff Proceeding is warranted and, therefore, urges the Commission to reject Joint Movants' request to hold that proceeding in abeyance pending the Commission's action on the D.C. Circuit Remand.

Discussion

10. The issue of the allocation of the cost differentials between the ETC charges and the CAISO Tariff charges is at the heart of the concerns that the D.C. Circuit directed the Commission to address on remand. Since we are still considering our response to the D.C. Circuit Remand and in particular that issue, we find it is premature for us to address the Joint Movants' request that the Commission allocate the cost differentials through the TRBA of the TO Tariff, rather than the SCS Tariff. We will speak to that issue in a future order addressing the D.C. Circuit Remand and, therefore, defer further consideration of this issue pending that proceeding.

11. We do agree with the Joint Movants' contention that, in light of the D.C. Circuit Remand, abeyance of the SCS Proceeding is warranted. Since the outcome of the SCS Proceeding is dependent on the Commission's resolution of the D.C. Circuit Remand, the continuance of the SCS Proceeding could result in a waste of the Commission's administrative resources. Therefore, we will hold the SCS Proceeding in abeyance pending the Commission's action on the D.C. Circuit Remand; until that time, this action will preserve the status quo with respect to the SCS Proceeding.¹⁷

¹⁷ We note that our decision here should not be read to mean that we agree with the Joint Movants that the SCS Proceeding "will be obviated absolutely by effect of the [D.C. Circuit Remand]," *see supra* note 16 and accompanying text; that issue is to be decided in the order addressing the D.C. Circuit Remand.

The Commission orders:

(A) Joint Movants' motion for consideration of the impact of the D.C. Circuit Remand on the issue of the cost differentials is hereby deferred, as discussed in the body of this order.

(B) Joint Movants' motion to hold the SCS Proceeding in abeyance pending the Commission's action on the D.C. Circuit Remand is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.