

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company	Docket Nos. ER97-2358-007 ER00-565-010 ER00-565-012 ER00-565-013 ER04-1233-000 ER04-1233-001
Southern California Edison Company	ER97-2355-012  ER98-2322-006
San Diego Gas & Electric Company	ER97-2364-004 ER97-2364-006 ER97-2364-007 ER97-4235-003 ER97-4235-005 ER98-497-003 ER98-497-005 ER98-497-006 ER98-2371-001 ER98-2371-003

ORDER ON REMAND

(Issued December 20, 2005)

1. In light of a recent decision by the United States Court of Appeals for the District of Columbia Circuit<sup>1</sup> vacating the Commission's orders that denied recovery by Southern California Edison Company, Pacific Gas and Electric Company (PG&E), and San Diego

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<sup>1</sup> *Southern Cal. Edison Co. v. FERC*, 415 F.3d 17 (D.C. Cir. 2005) (D.C. Circuit Remand).

Gas and Electric Company (collectively, Companies)<sup>2</sup> of cost differentials from its transmission owner (TO) Tariff customers, the Commission allows the Companies to recover such costs through the Transmission Revenue Balancing Account Adjustment (TRBA) in their TO Tariffs.

2. Accordingly, this order: (1) grants in part motions that request that the Commission, given the D.C. Circuit Remand, issue an order directing PG&E to allocate the cost differentials at issue to its TO Tariff customers through the TRBA of its TO Tariff; (2) dismisses the proceeding concerning PG&E's alternate tariff mechanism, its Scheduling Coordinator Services Tariff (SCS Tariff), for recovering the cost differentials at issue; and (3) terminates the dockets concerning the Companies refund reports required by Opinion Nos. 458 and 458-A.<sup>3</sup>

### **Background**

3. As a result of the restructuring of California's electric industry, the Companies turned over the operation of their transmission systems to the California Independent System Operator (CAISO). The CAISO operates those facilities and provides transmission service pursuant to the CAISO Tariff, which is on file with the Commission. For a transitional period, the Companies have been providing service under existing (pre-restructuring) transmission contracts (Existing Contracts) with certain wholesale customers, who pay transmission rates set by those contracts. At the same time, under the terms of the CAISO Tariff, the Companies must also file individual TO Tariffs to determine the specific rates they will charge to recover their costs from their TO Tariff customers for services provided by the CAISO.

### **TRBA Proceeding**

4. In 1998, the Companies filed with the Commission the non-rate terms and conditions of their TO Tariffs in the TRBA Proceeding.<sup>4</sup> The Companies pointed out in their TO Tariff filings that there are mismatches between their Existing Contract charges and the CAISO Tariff charges for ancillary services, neutrality, unaccounted for energy,

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<sup>2</sup> The Companies function as the CAISO's scheduling coordinators (SC) for transmission customers that have existing transmission contracts with the Companies. As the SCs for those customers, the Companies are billed by the CAISO for the costs that the CAISO incurs in providing them access to the CAISO grid.

<sup>3</sup> *Pacific Gas and Elec. Co.*, 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).

<sup>4</sup> *See* Docket No. ER97-2358-000, *et al.*

and transmission losses. The Companies argued that such cost shortfalls or surpluses (*i.e.*, cost differentials), resulting from the difference between charges governed by the Existing Contracts and charges under the CAISO Tariff, should be recovered or credited through the TRBA of the TO Tariffs and billed to the TO Tariff customers. Thus, they sought the Commission's approval to recover the cost differentials from their TO Tariff customers, rather than by attempting to charge their Existing Contract customers. On the other hand, the TO Tariff customers maintained that those costs, arising as they do from the Existing Contracts, should be billed to the Existing Contract customers.

5. In Opinions Nos. 458 and 458-A, the Commission found that the CAISO Tariff provides no basis for the Companies to shift the costs in question from the Existing Contract customers to the TO Tariff customers. The Commission went on to reject the Companies' contention that the plain meaning of the CAISO Tariff's provisions required the recovery of the costs at issue through the TO Tariffs' TRBA.

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.<sup>5</sup> 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.<sup>6</sup>

### **SCS Proceeding**

7. On November 12, 1999, PG&E filed the SCS Tariff in an attempt to recover certain costs associated with its role as the SC for eight of its customers (collectively, the SC Customers)<sup>7</sup> that receive transmission service pursuant to Existing Contracts. On January 11, 2000, the Commission accepted the SCS Tariff, suspended the

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<sup>5</sup> *Id.* at 21.

<sup>6</sup> *Id.* at 23.

<sup>7</sup> 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 Irrigation District (Modesto), the Sacramento Municipal Utility District (SMUD), and the 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 an appropriate mechanism for recovering the cost differentials, PG&E will refund the settlement amounts agreed to in the settlements.

filing for a nominal period, and established hearing procedures.<sup>8</sup> 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.<sup>9</sup>

8. On December 16, 2002, PG&E asked the Commission to reactivate the SCS Proceeding, since the Commission's Opinion No. 458-A found that PG&E could not recover the cost differentials through the TRBA.<sup>10</sup> On May 15, 2003, the Commission issued an order granting that request and establishing hearing procedures.<sup>11</sup> On August 11, 2003, the Commission's presiding administrative law judge issued an order splitting the proceeding into two phases: Phase I to address liability issues, and Phase II to address cost allocation issues.

9. The Phase I Initial Decision was issued on May 6, 2004.<sup>12</sup> In Opinion No. 477, the Commission reviewed the Phase I Initial Decision, affirmed the determination that the SCS Tariff was a new service, and reversed the determination that extraordinary circumstances justified waiver of the notice needed to make the SCS Tariff effective some sixteen months before it was filed with the Commission.<sup>13</sup> On December 27, 2004, the Commission tolled the rehearing requests related to the Phase I proceeding. Phase II Initial Decision was originally scheduled to be issued by November 22, 2005, but, as discussed further below, it was held in abeyance in view of the D.C. Circuit Remand.

### **Joint Motion I**

10. On September 23, 2005, SMUD and Modesto (collectively, Joint Movants I) filed a joint motion (Joint Motion I) that asked the Commission to hold in abeyance the SCS Proceeding until it issued an order addressing the D.C. Circuit Remand in the TRBA Proceeding. They stated that the Commission should hold in abeyance the SCS

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<sup>8</sup> *Pacific Gas and Elec. Co.*, 90 FERC ¶ 61,010 (2000), *reh'g denied*, 95 FERC ¶ 61,247, *clarification and reh'g denied*, 96 FERC ¶ 61,072 (2001).

<sup>9</sup> 96 FERC ¶ 61,072 at Ordering Paragraph (C).

<sup>10</sup> *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 those costs.

<sup>11</sup> *Pacific Gas and Elec. Co.*, 103 FERC ¶ 61,180 (2003).

<sup>12</sup> *Pacific Gas and Elec.*, 107 FERC ¶ 63,030 (2004) (Phase I Initial Decision).

<sup>13</sup> 109 FERC ¶ 61,093 at P 54 (Opinion No. 477).

Proceeding, since it “will be obviated absolutely by effect of the [D.C. Circuit Remand].”<sup>14</sup>

11. The Joint Movants I also argued that the D.C. Circuit Remand clearly establishes that the Commission-approved CAISO Tariff allows PG&E to recover cost differentials through its TO Tariff. Therefore, they requested that the Commission, in light of that decision, issue an order on remand that directs PG&E to allocate the cost differentials at issue through the TRBA mechanism of its TO Tariff, rather than through its SCS Tariff.

12. The City of Santa Clara, California (Santa Clara), SVP, NCPA, and San Francisco submitted an answer in support of the Joint Movants I’s 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 its TO Tariff.

13. PG&E filed an answer to the Joint Motion I, agreeing with Joint Movants I’s suggestion that the TRBA is an appropriate mechanism for PG&E’s recovery of the cost differentials. However, according to PG&E, the D.C. Circuit Remand did not preclude the Commission from considering the SCS Tariff as a mechanism for the cost recovery of the cost differentials.

14. In response to the Joint Movants I’s motion, on November 3, 2005, the Commission issued an order: (1) stating that it was still considering its response to the

D.C. Circuit Remand and, therefore, deferring further consideration of the issue of the allocation of the cost differentials; and (2) holding the SCS Proceeding in abeyance pending its action on the D.C. Circuit Remand.<sup>15</sup>

### **Joint Motion II**

15. On October 28, 2005, Santa Clara, SVP, NCPA, and San Francisco (collectively, the Joint Movants II) filed a joint motion (Joint Motion II), requesting, like the Joint Movants I, that the Commission, in its order addressing the D.C. Circuit Remand, require PG&E to recover the cost differentials through the TRBA of its TO Tariff, rather than through the SCS Tariff. (Joint Motion I and II are referred to herein collectively as the Joint Motions.) Since the Joint Motion II repeats the same arguments raised by the Joint Motion I, we will not further summarize it.

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<sup>14</sup> Joint Motion I at 2.

<sup>15</sup> *Pacific Gas and Electric Company*, 113 FERC ¶ 61,127 (2005).

16. On November 11, 2005, PG&E filed an answer to the Joint Motion II stating that it does not oppose the motion. However, PG&E requested that the Commission, in its order on remand, make clear that PG&E is entitled to the full recovery of the costs it has incurred either through the TRBA of its TO Tariff or some other Commission-approved mechanism so that it does not incur any trapped costs.

### **Discussion**

17. As noted above, on July 12, 2005, the D.C. Circuit Remand vacated the Commission's Opinion Nos. 458 and 458-A and remanded the case to the Commission for further proceedings consistent with the CAISO Tariff.<sup>16</sup> In so doing, the D.C. Circuit determined that the CAISO Tariff explicitly permits the inclusion of an accounting mechanism in the TRBA of the TO Tariffs for the recovery of Existing Contract related-cost differentials.<sup>17</sup> Since the CAISO Tariff permits such an approach, the court concluded that the TO Tariffs, which conform to the CAISO Tariff, could not be deemed by the Commission to be unjust and unreasonable.<sup>18</sup>

18. In view of the D.C. Circuit Remand's holding, we find that the TRBA mechanism in the TO Tariffs is an appropriate mechanism for the recovery of the cost differentials at issue.<sup>19</sup> Therefore, the Companies may recover, consistent with section 2.4.4.4.5 of the CAISO Tariff, the cost differentials through either bilateral negotiations between the parties to the Existing Contracts or the TRBA in the TO Tariffs.<sup>20</sup> However, we note that the CAISO Tariff does not allow the Companies to settle the cost differentials through other means than the two specified.

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<sup>16</sup> D.C. Circuit Remand, 415 F.3d at 23.

<sup>17</sup> *Id.* at 21.

<sup>18</sup> *Id.* at 22.

<sup>19</sup> In Opinion Nos. 458 and 458-A, the Commission did not address the TRBA Initial Decision's determination that an automatic adjustment clause, such as the definition of Transmission Revenue Credits in the TO Tariffs, is not an appropriate means to reflect the shortfalls and surpluses related to transmission losses and ancillary services. *See Pacific Gas and Elec. Co., et al.*, 88 FERC ¶ 63,007 at 65,052 (1999) (TRBA Initial Decision); Order No. 458, 100 FERC ¶ 61,156 at P 32; CAISO Tariff, Definition of Transmission Revenue Credit. Given the D.C. Circuit's holding that the TRBA is an appropriate mechanism for the recovery of *all* cost differentials, we find that issue is settled.

<sup>20</sup> Specifically, section 2.4.4.4.4.5 of the CAISO Tariff provides that cost differentials may be recovered either "bilaterally or through the relevant TO Tariff."

19. With respect to the Joint Motions' requests, we grant those requests to the extent that they ask us to state that PG&E, consistent with D.C. Circuit Remand, may recover those costs through the TRBA in its TO Tariff but may not recover those costs through its SCS Tariff. Since the D.C. Circuit Remand found that the Commission "cannot retroactively reverse" its "approved . . . mechanism in the [CA]ISO Tariff [*i.e.*, bilateral negotiation or the TRBA] for collecting the cost differentials from the [TO] [T]ariff customers,"<sup>21</sup> the use of PG&E's SCS Tariff to allocate the cost differentials would be impermissible. Thus, we agree with the Joint Motions' assertion that the D.C. Circuit Remand renders the SCS Tariff moot, since there is no need to have an alternative cost recovery mechanism for the cost differentials (*i.e.*, other than the ones provided under the CAISO Tariff).<sup>22</sup>

20. However, we reject the Joint Motions' request that we require that PG&E *must* recover the cost differentials from TO Tariff customers, as to do so would be inconsistent with terms and conditions of the CAISO Tariff. As the D.C. Circuit Remand found, section 2.4.4.4.5 of the CAISO Tariff provides for the election of either of two ways for settling cost differentials.<sup>23</sup> Thus, although the Commission is permitting PG&E and the other Companies to recover the cost differentials through the TRBA in the TO Tariff, they can also seek, consistent with section 2.4.4.4.5 of the CAISO Tariff, to recover the cost differentials through bilateral negotiations with ETC customers.

21. Since we find that the issue of the allocation of cost differentials with respect to PG&E's SCS Tariff is moot, we terminate the SCS Tariff Proceeding (Phases I and II).<sup>24</sup> In addition, as Order Nos. 458 and 458-A were vacated by the D.C. Circuit Remand, we also terminate the dockets in this proceeding relating to the requirement in those orders

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<sup>21</sup> D.C. Circuit Remand, 415 F.3d at 22

<sup>22</sup> We note that PG&E's SCS Tariff provides that if the Commission reverses the TRBA Initial Decision and allows for full recovery of the cost differentials through the TRBA of PG&E's TO Tariff, "the issues raised by [its SCS Tariff] filing would become moot" and it would "withdraw [its] SCS Tariff filing." PG&E SCS Tariff Filing, Docket No. ER00-565-000 at 1-2 (Nov. 12, 1999); *see also Pacific Gas and Elec. Co.*, 90 FERC ¶ 61,010 at n.3.

<sup>23</sup> Specifically, the D.C. Circuit stated: "Section 2.4.4.4.5 of the [CA]ISO Tariff is permissive, allowing the recovery of cost differentials through the TO Tariffs, as well as through bilateral negotiations to reform existing contracts." 415 F.3d at 21.

<sup>24</sup> Therefore, we terminate the following dockets: ER00-565-010, ER00-565-012, ER00-565-013, ER04-1233-000, and ER04-1233-001.

that the Companies submit refund reports detailing refunds of any cost differentials that were recovered through the TRBA of their TO Tariffs from their TO Tariff customers.<sup>25</sup>

The Commission orders:

(A) The Joint Motions are hereby granted in part, as discussed in the body of this order.

(B) PG&E's SCS Tariff Proceeding is hereby dismissed as moot, and all dockets related to that proceeding are hereby terminated, as discussed in the body of this order.

(C) The dockets related to the Companies' refund reports arising from Opinion Nos. 458 and 458-A are hereby terminated, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>25</sup> Accordingly, we also terminate the following dockets: ER97-2358-005, ER97-2364-004, ER97-4235-003, ER98-497-003, ER98-2371-001, and ER98-2371-002.