

128 FERC ¶ 61,290
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

City of Pasadena, California

Docket No. EL09-67-000

ORDER ON PETITION FOR DECLARATORY ORDER AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 30, 2009)

1. On August 7, 2009, the City of Pasadena, California (Pasadena), filed a petition for declaratory order requesting the Commission to approve its revised Base Transmission Revenue Requirement (TRR) and its revised High Voltage Transmission Revenue Requirement (High Voltage TRR), to become effective October 1, 2009, subject to refund if appropriate. Pasadena also requests that the Commission waive the filing fee for the petition and the sixty-day notice requirement. Additionally, Pasadena consents to return payments it receives from the California Independent System Operator Corporation (CAISO) for amounts collected in excess of those ultimately approved by the Commission in this proceeding.¹ As discussed below, the Commission accepts Pasadena's revised TRR and the associated tariff sheet, effective October 1, 2009, as requested, subject to the outcome of hearing procedures. We also establish settlement judge procedures.

I. Background

2. Pasadena states that it is a non-jurisdictional, publicly-owned utility that has placed its transmission facilities and entitlements under the CAISO's operational control as a Participating Transmission Owner (Participating TO) in the CAISO.² Pasadena explains that its TRR includes its costs for transmission facilities and entitlements that have been transferred to the CAISO's operational control, and its TRR is included in the CAISO's Transmission Access Charge (TAC) rate paid by CAISO transmission

¹ Petition at 16.

² *Id.* at 4, 15.

customers.³ Thus, Pasadena states that its TRR forms the basis for payments to Pasadena from the CAISO for use of Pasadena's transmission facilities and entitlements.

3. In 2004, pursuant to the section 26.1.1 of the CAISO Tariff, Pasadena filed its initial Transmission Owner Tariff (TO Tariff) and proposed TRR with the Commission.⁴ The Commission established hearing and settlement judge procedures, and later approved an uncontested settlement establishing Pasadena's TO Tariff rates.⁵

4. In addition, Pasadena states that since becoming a Participating TO in the CAISO it has filed with the Commission annual revisions to its TO Tariff to update its Transmission Revenue Balancing Account Adjustment (TRBAA).⁶ Pasadena's current TRBAA (\$3,187,906) was approved by the Commission via a letter order issued on February 4, 2009.⁷ While Pasadena has not filed to revise its TRBAA in this proceeding, Pasadena explains its relevance is that Pasadena's proposed High Voltage TRR is calculated by deducting Pasadena's current TRBAA on file with the Commission from Pasadena's proposed TRR.⁸

II. Description of Filing

5. In its petition for declaratory order, Pasadena proposes to increase its TRR from \$9,984,279 to \$12,617,585 (a \$2,633,306 increase).⁹ Thus, Pasadena's resulting High Voltage TRR, after application of Pasadena's current TRBAA offset, will be

³ *Id.* at 5, 7, Ex. No. PWP-1 at 6.

⁴ *Id.* at 5-6.

⁵ *City of Pasadena, Cal.*, 109 FERC ¶ 61,386 (2004) (accepting Pasadena's filing subject to refund and established hearing and settlement judge procedures); *City of Pasadena, Cal.*, 112 FERC ¶ 61,126 (2005) (approving Pasadena's uncontested settlement).

⁶ Petition at 4.

⁷ *Id.* (citing *City of Pasadena, Cal.*, Docket No. EL09-28-000 (Feb. 4, 2009) (unpublished letter order)).

⁸ *Id.* at 2.

⁹ *Id.* at 8.

\$9,429,679.¹⁰ Additionally, Pasadena states its forecasted Gross Load associated with its proposed TRR is 1,295,096 MWh.¹¹

6. Pasadena explains that it has entitlements to (1) three transmission projects through the Southern California Public Power Authority; (2) five transmission lines pursuant to various agreements with the Los Angeles Department of Water and Power, including the McCullough-Victorville Line in which Pasadena claims an “ownership-like” entitlement; (3) a 2.0377 percent or 72 MW ownership interest in the Pacific DC Intertie; and (4) 200 MW of transmission service with Southern California Edison (SoCal Edison) between the Sylmar Substation and the T.M Goodrich Receiving Station.

7. Pasadena states that its proposed TRR was derived by using a projected 12-month period of July 1, 2009 through June 30, 2010 (2010 Test Year) and data from actual invoices for the 12-month period ending December 31, 2008 (2008 Test Year), and that its proposed TRR reflects differences between the annualized TRRs of these test years. With respect to the Pacific DC Intertie and the McCullough-Victorville Line, Pasadena has included a return on its investments in these facilities of 9.41 percent and a depreciation expense based on a 2.5 percent depreciation rate. According to Pasadena, these figures were taken directly from SoCal Edison’s rate proposal in Docket No. ER08-1343-000.¹² Additionally, Pasadena’s proposed TRR includes an estimate of administrative and general costs, based on a total of ten personnel committing 5 to 25 percent of their time on transmission issues (or \$165,134), and \$237,585 in regulatory expenses.

III. Notice of Filing and Responsive Pleadings

8. Notice of Pasadena’s filing was published in the *Federal Register*, 74 FR 42067 (2009), with interventions, comments and protests due on or before September 8, 2009.

9. A notice of intervention was filed by the California Public Utilities Commission. Timely motions to intervene with no substantive comments were filed by the City of Santa Clara, California and the M-S-R Public Power Agency; the Northern California Power Agency; Modesto Irrigation District; the California Department of Water Resources State Water Project; and San Diego Gas & Electric Company. Timely motions to intervene, comments and protests were filed by Pacific Gas and Electric Company

¹⁰ *Id.* at 2.

¹¹ *Id.* at 14.

¹² *Id.* at Ex. PWP-1 at 19.

(PG&E) and SoCal Edison. Pasadena filed a motion for leave to answer and answer to SoCal Edison and PG&E's protests.

10. PG&E states that Pasadena has not adequately documented its forecasted existing transmission contract expenses proposed to be included in its TRR. PG&E also states that it needs additional information to evaluate Pasadena's proposed return on investment and depreciation expenses for its interest in the Pacific DC Intertie and its "ownership-like" entitlement in the McCullough-Victorville Transmission Line.¹³ Thus, PG&E asks that the Commission establish hearing and settlement judge procedures.

11. SoCal Edison argues that because Pasadena is a non-jurisdictional utility not directly subject to Commission refund orders, the Commission should not allow Pasadena's proposed TRR increase to go into effect until the Commission authorizes the increase in an order. SoCal Edison argues that the CAISO Tariff requires that the Commission authorize a TRR before it can be used to develop the CAISO TAC.¹⁴ Thus, SoCal Edison suggests that the Commission either delay the effectiveness of the TRR until the increase is authorized in a Commission order, or alternatively, that the Commission direct the CAISO to act as an escrow such that the CAISO will collect the proposed increase but not release the amount of the increase until the Commission issues an order authorizing the TRR. While SoCal Edison acknowledges that the Commission recently rejected the suggestion of an escrow account for refunds as outside its jurisdiction,¹⁵ SoCal Edison urges the Commission to consider the option of delaying inclusion of the proposed TRR in CAISO's rates and also suggests that the CAISO may use its set-off remedy to invoice a non-jurisdictional after a TRR has been authorized.

12. In addition, SoCal Edison argues that Pasadena's proposed TRR increase should be set for discovery and hearing procedures. SoCal Edison states that Pasadena has proposed a rate of return of 9.41% apparently to match SoCal Edison's request in SoCal Edison's recent TO rate case, and that this return on rate base for Pasadena is unreasonable and unjustified.¹⁶ Moreover, SoCal Edison proffers that Pasadena, through a joint protest, opposed its return component in that docket and argued for an outcome that would have equated to 130 basis points lower than Pasadena's proposed rate of

¹³ PG&E September 8, 2009 Comments at 3-4.

¹⁴ SoCal Edison September 8, 2009 Comments at 4.

¹⁵ *Id.* at 5 (citing *City of Riverside, Cal.*, 128 FERC ¶ 61,207, at P 26 (2009) (*Riverside*)).

¹⁶ *Id.* at 6 (citing SoCal Edison's return on rate base request in Docket No. ER08-1343).

return in this proceeding. SoCal Edison adds that Pasadena has not provided an analysis supporting its cost of capital and SoCal Edison believes that Pasadena's cost of debt is likely to be far lower than SoCal Edison's because of Pasadena's access to tax-exempt financing.

13. Pasadena's answer responds to SoCal Edison's arguments by reiterating that Pasadena has consented to refund procedures for the purposes of this proceeding and historically has repaid to the CAISO amounts the Commission has determined Pasadena over-collected pending the outcome of its TRR proceeding.¹⁷ Thus, Pasadena states that SoCal Edison's concerns over refunds are exaggerated and lack merit. Regarding SoCal Edison's opposition to Pasadena's proposed rate of return, Pasadena states that its proposal is consistent with a previous Commission order upholding the use by City of Vernon of SoCal Edison's capital structure as a proxy.¹⁸ In response to PG&E's comments, Pasadena states that if the Commission establishes hearing and/or settlement procedures, Pasadena is agreeable to responding to discovery requests.¹⁹

IV. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Pasadena's answer because it has provided information that assisted us in our decision-making process.

B. Standard of Review

16. Rate changes that impact the CAISO TAC require a section 205 filing under the Federal Power Act (FPA)²⁰ and full review by the Commission to ensure that the

¹⁷ Pasadena September 23, 2009 Answer at 3 (citing Pasadena, Letter Confirming Payment of Refunds, Docket No. EL05-18-001 (filed Oct. 11, 2005)).

¹⁸ *Id.* at 7-8 (citing *City of Vernon, Cal.*, 109 FERC ¶ 63,057, at P 110-126 (2004), *aff'd*, Opinion No. 479, 111 FERC ¶ 61,092, at P 84 (2005)).

¹⁹ *Id.* at 8.

²⁰ 16 U.S.C. § 824d (2006).

inclusion of these rate revisions will result in a just and reasonable TAC rate charged by the CAISO.²¹ As recently discussed in *City of Riverside, Cal.* and *City of Vernon, Cal.*,²² the Commission has statutory authority to review a municipally-owned utility's TRR "to the extent necessary to ensure that the CAISO rates are just and reasonable."²³ The court has upheld the Commission's decision that subjecting the TRRs of non-jurisdictional utilities to a full section 205 review is "the only way to ensure that CAISO's rate is just and reasonable."²⁴

17. Therefore, while Pasadena is not within the Commission's traditional jurisdiction under FPA section 205, we find that, based on the court's rulings, it is appropriate for review purposes to apply the just and reasonable standard of FPA section 205 to Pasadena's TRR. To determine the justness and reasonableness of Pasadena's TRR, including but not limited to Pasadena's return on investments in the Pacific DC Intertie and the McCullough-Victorville Transmission line, and Pasadena's projected administrative and general costs and regulatory expenses, we find that hearing procedures are appropriate.

18. The Commission declines to pursue the two avenues proposed by SoCal Edison to delay implementation of Pasadena's proposed rate increase. SoCal Edison made the same arguments in *Riverside*, and the Commission found that "any requests that the Commission suspend [a non-jurisdictional municipal's] proposed TRR for the maximum period of five months and, alternatively, require refunds or an escrow account for refunds are outside our jurisdiction."²⁵ Here, as in *Riverside*, Pasadena is not wholly subject to the Commission's jurisdiction under FPA section 205, and the Commission reiterates its finding from *Riverside* that it is not within our authority to direct Pasadena to comply with any suspension, refund, or escrow account pursuant to FPA section 205. However, we note Pasadena's explicit agreement to return any payment it receives from the CAISO

²¹ *City of Vernon, Cal.*, 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).

²² *Riverside*, 128 FERC ¶ 61,207 at P 23-25; *City of Vernon, Cal.*, 128 FERC ¶ 61,235, at P 21-22 (2009).

²³ Opinion No. 479, 111 FERC ¶ 61,092 at P 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

²⁴ *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007).

²⁵ *Riverside*, 128 FERC ¶ 61,207 at P 26.

in excess of the rates ultimately approved by the Commission, and its history of complying with such a commitment.²⁶

C. Hearing and Settlement Judge Procedures

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

20. Our preliminary analysis indicates that Pasadena's rate proposal 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 Pasadena's proposed Base TRR, High Voltage TRR, and Gross Load amounts, and the associated tariff sheet for filing, effective October 1, 2009, as requested, and set the proposed rate changes for hearing and settlement judge procedures.

21. 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 hearing procedures are commenced. To aid the parties in their settlement efforts, and in accordance with PG&E's request, 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.²⁷ 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.²⁸ 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.

²⁶ To the extent that Pasadena has an obligation to make such repayment, but fails to do so, the affected parties may seek to enforce any such obligation in the appropriate forum. *Bonneville Power Admin. v. FERC*, 422 F.3d 908, 925 (9th Cir. 2005).

²⁷ 18 C.F.R. § 385.603 (2009).

²⁸ 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 this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

D. Waiver of Filing Fees

22. We will grant Pasadena's petition for waiver of the filing fee. The Commission's regulations provide that municipalities are exempt from the filing fees required in Part 381.²⁹ Pasadena explains that it is a municipal utility organized under the laws of California. Accordingly, Pasadena is exempt from the filing fee required for a petition for declaratory order.

The Commission orders:

(A) Pasadena's proposed Transmission Owner Tariff Base Transmission Revenue Requirement, High Voltage Transmission Revenue Requirement and Gross Load amounts, as shown in its proposed tariff sheet are hereby conditionally accepted for filing, effective October 1, 2009, subject to hearing and settlement judge procedures, as discussed in the body of this order.

(B) Pasadena's petition 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 Pasadena's Transmission Owner Tariff Base Transmission Revenue Requirement, High Voltage Transmission Revenue Requirement and Gross Load amounts. 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 (2009), 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

²⁹ 18 C.F.R. § 381.108 (2009).

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, N.E., 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.