

129 FERC ¶ 61,202  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER10-36-000

ORDER ACCEPTING TRANSMISSION OWNER  
TARIFF BALANCING ACCOUNT REVISIONS

(Issued December 4, 2009)

1. On October 6, 2009, Pacific Gas and Electric Company (PG&E) filed three rate changes to PG&E's Transmission Owner Tariff, to be effective for 2010: (1) an annual update to the Transmission Revenue Balancing Account Adjustment (TRBAA); (2) an annual update to the Reliability Services rate; and (3) an update to the end-use customer refund adjustment rate (2010 Annual Update Filing). This order accepts the revised rates, effective as requested, and grants PG&E's request for waiver of the notice period.

**I. Background and Filing**

2. The TRBAA is the mechanism by which transmission revenue credits associated with transmission service from the California Independent System Operator Corporation (CAISO) are flowed through to transmission customers under PG&E's Transmission Owner (TO) Tariff. The TRBAA is the sum of (a) the balance in the account on September 30 of each year; (b) the forecast of transmission revenue credits for the following year; (c) the interest on the balance; and (d) franchise fees and uncollectible accounts. For PG&E's end-use retail customers, the TRBAA is divided by the total kilowatt-hour deliveries to produce an adjusted per-kWh rate. For PG&E's wholesale customers, the updated TRBAA is used to revise the high voltage and low voltage transmission revenue requirements for use by the CAISO to calculate its Transmission Access Charge rates. PG&E explains that the effective TRBAA rate for 2010 is negative \$0.00054 per kWh compared to the present rate of negative \$0.00021 per kWh.

3. The Reliability Services Balancing Account (RSBA) is designed to recover reliability services costs that PG&E incurs from the CAISO. The RSBA is the sum of

(a) the retail carryover for the current year;<sup>1</sup> (b) a forecast of reliability services costs for the following year; (c) interest on the RSBA monthly balance through September 30; and (d) franchise fees and uncollectible accounts. The resultant rate is determined by dividing these components by a forecast of total kilowatt-hour deliveries. PG&E explains that the 2010 RSBA rates will be based on a total revenue requirement of \$52,901,499, compared to the 2009 revenue requirement of \$35,584,392.

4. The end-use customer refund adjustment (ECRA) is a mechanism to pass on Commission-ordered refunds to end-use customers. Once a refund has been ordered by the Commission, PG&E calculates the total amount due to PG&E's end-use customers, including interest, and uses this amount to calculate a rate component of end-use customer rates for a 12-month period beginning January 1 of the year following the date that the Commission orders a refund to retail customers. PG&E explains that it will refund a total amount of \$38,283,096 through the ECRA.

5. PG&E requests an effective date of January 1, 2010, for the updated rate adjustments based on the TO-11 transmission revenue requirement.<sup>2</sup> However, on March 1, 2010, PG&E's base transmission rates will change from its TO-11 rates to its TO-12 rates, which have a different revenue requirement.<sup>3</sup> PG&E requests a March 1, 2010 effective date for the adjustments based on the TO-12 revenue requirement. Thus, PG&E requests that the Commission waive section 35.3 of its regulations to permit this filing to be made more than 120 days in advance of the proposed March 1, 2010 effective date for the TO-12 rates.<sup>4</sup> In addition, PG&E requests that the Commission issue an order by December 4, 2009, to allow PG&E time to comply with certain California

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<sup>1</sup> The retail carryover amount is the difference between revenues that were collected based on forecasted costs and revenues that should have been collected based on actual costs.

<sup>2</sup> The term TO-11 refers to PG&E's eleventh Transmission Owner Rate Filing, which proposed rate changes for wholesale and retail electric base transmission rates. Similarly, the term TO-12 refers to PG&E's twelfth Transmission Owner Rate Filing.

<sup>3</sup> See *Pacific Gas and Elec. Co.*, 128 FERC ¶ 61,288 (2009) (setting PG&E's TO-12 filing for hearing and settlement procedures); *Pacific Gas and Elec. Co.*, 127 FERC ¶ 61,252 (2009) (approving settlement of the TO-11 rate filing, including the TRBAA) (*TO-11 Settlement Order*).

<sup>4</sup> 18 C.F.R. § 35.3(a) (2009).

Public Utilities Commission (CPUC) regulations,<sup>5</sup> and to allow PG&E to perform installation and testing of the new rates in PG&E's retail billing system.

## **II. Notice of Filing and Pleadings**

6. Notice of PG&E's filing was published in the *Federal Register*, 74 FR 53734 (Oct. 20, 2009), with interventions and comments due on or before October 27, 2009. Timely motions to intervene were filed by the California Department of Water Resources State Water Project and the Modesto Irrigation District. A motion to intervene one day out of time was filed by the Six Cities of California (Six Cities).<sup>6</sup> A timely motion to intervene and protest was filed by the City of Santa Clara, California, doing business as Silicon Valley Power, and the M-S-R Public Power Agency (SVP/M-S-R). On November 12, 2009, PG&E filed an answer to SVP/M-S-R's protest.

### **SVP/M-S-R Protest**

7. In their protest, SVP/M-S-R raise concerns about the 2010 Annual Update Filing's proposal to correct an error in last year's TRBAA rate filing. SVP/M-S-R explain that, as part of PG&E's calculation of its proposed TRBAA for 2010 of negative \$0.00054/kWh, it performed an adjustment to account for an incorrect rate that it used in its 2009 Annual Update Filing.<sup>7</sup> SVP/M-S-R assert that PG&E's witness, Mr. Martin H. Fisher,<sup>8</sup> only superficially addresses the issue and the 2010 Annual Update Filing's transmittal letter itself does not mention it. SVP/M-S-R are concerned that PG&E's attempt to correct this prior error may violate the filed rate doctrine and constitute retroactive ratemaking, because it was unclear whether PG&E was simply correcting an accounting error or was using this filing as a vehicle to retroactively charge transmission customers for foregone revenues. Further, SVP/M-S-R argue that, even if PG&E were allowed to correct for this

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<sup>5</sup> CPUC Resolution E-3930, which requires PG&E to submit its revised bundled retail rate design incorporating the new Commission-jurisdictional transmission rates and any other proposed CPUC-jurisdictional retail rate changes for approval by the CPUC concurrently or as soon as possible after a Commission ruling on the proposed Commission-jurisdictional rates. *See* 2010 Annual Update Filing, Transmittal Letter at 2.

<sup>6</sup> The Six Cities are Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside.

<sup>7</sup> PG&E made its annual update filing for 2009 on October 6, 2008, in Docket No. ER09-34-000 (2009 Annual Update Filing). The filing was accepted in a letter order issued by the Commission on December 4, 2008. *Pacific Gas and Elec. Co.*, 125 FERC ¶ 61,261 (2008).

<sup>8</sup> *See* 2010 Annual Update Filing, Exh. PGE-1 at 7-8.

earlier error, it still has not demonstrated that its adjustment is just and reasonable. SVP/M-S-R again cite to what they characterize as Mr. Fisher's conclusory statements regarding the error. In addition, SVP/M-S-R contend that the relevant workpapers included in the 2010 Annual Update Filing are insufficient for SVP/M-S-R or the Commission to quantify the impact of the error and evaluate the reasonableness of the adjustment.

8. SVP/M-S-R also contend that PG&E's calculation of its TRBAA may be inconsistent with section 5.5 of the TO Tariff, which governs the TRBAA calculation. SVP/M-S-R state section 5.5 provides that one component of the TRBAA calculation is a forecast of transmission revenue credits for the following calendar year. SVP/M-S-R then point to Mr. Fisher's explanation of how the TRBAA was calculated, where he states that he "used record period retail volumes for this calculation rather than a test year sales forecast as provided by the terms of Section 5.5 of the TO Tariff."<sup>9</sup> SVP/M-S-R state that, without further information, it appears PG&E's TRBAA calculation is inconsistent with section 5.5 of the TO Tariff.

9. Further, SVP/M-S-R note section 5.5 requires PG&E to calculate the TRBAA rate by dividing the TRBAA components by total gross load (measured in kilowatt-hours). SVP/M-S-R state that in this case, PG&E calculated the TRBAA rate by using a denominator of 85,799,798,631 kWh. However, SVP/M-S-R state that the denominator used to calculate the TRBAA in PG&E's TO-12 filing is 89,586,591,251 kWh. SVP/M-S-R argue that PG&E did not explain why it used a different denominator in the two TRBAA calculations and, therefore, it is not clear whether PG&E appropriately calculated the TRBAA rate.

10. Next, SVP/M-S-R argue that PG&E's transmittal letter states that the proposed 2010 retail TRBAA revenue requirement is negative \$45,951,675, but that the relevant tariff revisions state that the 2010 retail TRBAA revenue is negative \$46,538,644. SVP/M-S-R state that PG&E should be required to explain this discrepancy.

11. Finally, SVP/M-S-R state that the TO-11 settlement TRBAA,<sup>10</sup> which is based on the 2009 TRBAA revenue requirement, was negative \$96,114,039; however, the 2010 Annual Update Filing states that the 2009 TRBAA revenue requirement was negative \$71,411,984. SVP/M-S-R argue that PG&E should be required to explain why such a large difference exists.

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<sup>9</sup> SVP/M-S-R Protest at 9 (quoting 2010 Annual Rate Update Filing, Exh. PGE-1 at 6).

<sup>10</sup> The TO-11 Settlement TRBAA refers to the TRBAA rate included in the TO-11 Settlement that the Commission accepted in the *TO-11 Settlement Order*.

### **PG&E's Answer**

12. In response to SVP/M-S-R's protest, PG&E argues that its proposed adjustment to the TRBAA calculation is a correction to an accounting error it made when it submitted its previous TRBAA annual update filing. PG&E explains that when it made the 2009 Annual Update Filing, it should have used a Commission-approved rate for the time period of August-December 2007. According to PG&E, these rates were approved by the Commission as part of PG&E's 2007 annual update filing in Docket No. ER07-16-000. Instead, PG&E states that it used incorrect rates for both high voltage and low voltage facilities for that time period. PG&E asserts that it adequately supported this correction in the 2010 Annual Update Filing, both in Mr. Fisher's testimony and in Exhibit PGE-6A, which sets forth the TRBAA rate calculation. Further, PG&E argues that the correction is just and reasonable, because the correction is consistent with section 5.5 of the TO Tariff, stating that if it did not make the correction to the balancing account, it would not be in compliance with section 5.5. Finally, PG&E contends that its correction of the earlier error does not violate the filed rate doctrine or the prohibition on retroactive ratemaking. PG&E emphasizes that the adjustment was intended to correct its TRBAA rate by using the rate approved by the Commission in Docket No. ER07-16-000 for the relevant time period, and thus does not violate the bar on retroactive ratemaking.

13. With respect to the other issues raised by SVP/M-S-R, PG&E argues that these issues reflect a misunderstanding of the October 6 Filing. PG&E explains that it calculated the TRBAA in accordance with section 5.5 of the TO Tariff, contrary to SVP/M-S-R's contention that this was not the case. Regarding the question of the different denominators used in the 2010 Annual Update Filing and in the TO-12 filing, PG&E explains that the difference exists because the retail TRBAA rate is based on record period gross load, while the wholesale rate is based on a forecast of gross load, which was accepted by the Commission in PG&E's rate case pursuant to Appendix F, Schedule 3 of the CAISO's tariff. Finally, PG&E addresses SVP/M-S-R's argument regarding the discrepancy between the transmittal letter's statement that the 2010 Retail TRBAA Revenue is negative \$45,951,675 and the negative \$46,538,644 included on the relevant tariff sheet. PG&E asserts that SVP/M-S-R is confusing retail and wholesale TRBAA revenue requirements, noting that the *retail* TRBAA revenue requirement for 2010 is \$45,951,675 and the *wholesale* TRBAA revenue requirement is \$46,538,644.

### **III. 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 timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2009), the Commission will grant the late-filed motion to intervene of the

Six Cities, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

15. Rule 213 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 PG&E's answer because it has provided information that has assisted us in our decision-making process.

### **B. Substantive Matters**

16. We accept PG&E's proposed changes to the TRBAA, RSBA, and ECRA rates, effective as requested. For the reasons discussed below, we reject the arguments raised in SVP/M-S-R's protest.

17. First, we find that PG&E's proposal to calculate the 2010 TRBAA to account for an earlier error does not violate the filed rate doctrine or the rule against retroactive ratemaking.<sup>11</sup> We have verified that the corrected rate components that PG&E proposes to use in this filing were the components that we accepted for the August-December 2007 time period in PG&E's TRBAA rate filing for 2007 in Docket No. ER07-16-000.<sup>12</sup> Thus, PG&E is simply applying the filed rate on a prospective basis. Although PG&E applied the incorrect rate for the August-December 2007 time period in its earlier filing, PG&E's customers, including SVP/M-S-R, had prior notice of the rate that should have been applied. Therefore, because PG&E's customers had such prior notice, the proposed correction does not violate the rule against retroactive ratemaking. We have carefully examined the 2010 Annual Update Filing, and we find that the proposed adjustment to correct the earlier error is reasonable.

18. Second, we find that PG&E calculated the proposed TRBAA for 2010 in accordance with section 5.5 of its TO Tariff. Section 5.5 provides that the TRBAA be calculated using record period retail volumes. SVP/M-S-R may have misunderstood PG&E's summary of how it calculated the TRBAA; however, we find that PG&E used

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<sup>11</sup> The filed rate doctrine "forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate regulatory authority." *Electrical Dist. No. 1 v. FERC*, 774 F.2d 490, 493 (D.C. Cir. 1985) (citing *Arkansas La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981)). The rule against retroactive ratemaking, which is an outgrowth of the filed rate doctrine, prohibits a regulated entity from recovering in current rates costs incurred in providing service in prior periods. *See, e.g., Arkansas La. Gas Co. v. Hall*, 453 U.S. 571, 578 (1981).

<sup>12</sup> *See Pacific Gas & Elec. Co.*, Letter Order, Docket No. ER07-16-000 (Nov. 29, 2006) (accepting PG&E's 2007 annual update filing).

the correct inputs to calculate the TRBAA. We also find that PG&E used the correct denominator for calculating the TRBAA, in accordance with section 5.5 of the TO Tariff, as it explains in its answer.<sup>13</sup>

19. Next, we agree with PG&E that SVP/M-S-R did not account for the difference between the wholesale TRBAA and the retail TRBAA. After evaluating the 2010 Annual Update Filing, including the relevant tariff provisions, we find that the filing makes clear that the negative \$45,951,675 figure refers to the retail TRBAA revenue requirement and the negative \$46,538,644 figure refers to the wholesale TRBAA revenue requirement.

20. We also reject SVP/M-S-R's argument that PG&E should be required to explain the difference between the 2009 TRBAA and the TO-11 Settlement TRBAA. SVP/M-S-R's argument is directed at PG&E's 2009 Annual Update Filing and the TO-11 Settlement TRBAA. SVP/M-S-R are correct that PG&E mentions the 2009 TRBAA revenue requirement in its transmittal letter for the 2010 Annual Update Filing.<sup>14</sup> However, the 2009 TRBAA revenue requirement had already been accepted by the Commission, and this proceeding involves the proposed TRBAA for 2010. Thus, this is not the appropriate proceeding to raise this issue. SVP/M-S-R should have raised the issue in response to the TO-11 Settlement, which the Commission approved in the *TO-11 Settlement Order*.<sup>15</sup> At that time, SVP/M-S-R knew, or should have known, the difference between the 2009 TRBAA and the TO-11 Settlement TRBAA. By raising the issue here, SVP/M-S-R are collaterally attacking the *TO-11 Settlement Order* and we therefore reject their argument.<sup>16</sup>

21. Finally, the Commission grants PG&E's request for waiver of section 35.3 of the Commission's regulations to file certain of its rate schedules early.<sup>17</sup> As PG&E explains, the Commission's issuance of an order on the rate adjustments by December 4, 2009 will allow PG&E time to comply with certain CPUC regulations, and allow PG&E to perform

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<sup>13</sup> See PG&E Answer at 5.

<sup>14</sup> See 2010 Annual Update Filing, Transmittal Letter at 3.

<sup>15</sup> Indeed, the record indicates that SVP and M-S-R either supported or did not oppose the TO-11 Settlement. See *Offer of Settlement and Stipulation*, Transmittal Letter at 1, Docket No. ER08-1318-000 (April 20, 2009) (noting that City of Santa Clara and M-S-R, among other entities, either supported or did not oppose the TO-11 Settlement).

<sup>16</sup> See, e.g., *California Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,015, at P 16-17 (2008) (rejecting collateral attack on prior orders).

<sup>17</sup> 18 C.F.R. § 35.3(a) (2009).

installation and testing of the new rates in PG&E's retail billing system. Accordingly, PG&E's filing is hereby accepted, effective January 1, 2010 for the TO-11 rate update adjustments, and effective March 1, 2010 for the TO-12 rate update adjustments.<sup>18</sup>

The Commission orders:

PG&E's 2010 Annual Update Filing is hereby accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>18</sup> We note that hearing and settlement judge procedures for PG&E's TO-12 rate filing are currently underway. *See* n.3, *supra*.