

132 FERC ¶ 61,272
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Pacific Gas and Electric Company

Docket No. ER10-2026-000

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF CHANGES AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 30, 2010)

1. This order addresses a proposed rate increase by Pacific Gas and Electric Company (PG&E) under its Transmission Owner Tariff (TO Tariff). Pursuant to the Commission's authority under section 205 of the Federal Power Act (FPA)¹, we accept the proposal for filing, suspend the rate increase for five months to become effective on March 1, 2011, subject to refund, and establish hearing and settlement judge procedures.

I. Description of Filing

2. On July 28, 2010, PG&E submitted its thirteenth TO Tariff filing (TO-13), in which it requests an increase in TO rates,² effective October 1, 2010, to recover the costs associated with significant electric transmission infrastructure expansion and replacement that has occurred in 2010 to date, and is projected by PG&E to occur during the balance of 2010 and in 2011. PG&E forecasts that it will invest \$765 million in capital projects before the end of 2010 and an additional \$810 million in 2011. PG&E states that its 2011

¹ 16 U.S.C. § 824d (2006).

² PG&E adopted the TO Tariff in 1997 after turning over operation of its electrical transmission facilities to the California Independent System Operator Corporation (CAISO). The TO Tariff establishes the jurisdictional transmission revenue requirement (TRR) that reflects PG&E's costs of constructing and owning its transmission system.

Period II rate base of \$3.752 billion is a 23 percent increase over the 2009 Period I network transmission rate base of \$3.046 billion. PG&E states that the projected revenue requirement for PG&E's retail Network Transmission Services for 2011 is \$1,025.9 million, a 17 percent increase over the \$873.6 million in annual revenues that are expected to be produced by the current Network Transmission retail rates.³

3. PG&E states that sales for the first half of 2010 are significantly lower than were forecasted in current rates. Consequently, PG&E's TO-13 sales forecast is lower than the TO-12 sales forecast that was incorporated into the current TO Tariff rates. PG&E states that it has decided to use a non-econometric sales forecast for TO-13 due to the unprecedented levels of uncertainty regarding the path to economic recovery.⁴

4. PG&E proposes five adjustments to its network Transmission Revenue Requirement (TRR) to determine its wholesale TRR: (1) an adjustment for estimated transmission expenses to others; (2) a reduction to reflect transmission revenues received from third parties; (3) a reduction for new products and services; (4) an increase for a 200 basis-point rate of return incentive related to PG&E's investment in the Path 15 upgrade project; and (5) an increase for miscellaneous transmission expenses. In addition, for end-user charges, PG&E proposes two additional increases, for deferred taxes and uncollectible expenses.

5. PG&E also requests changes to the terms and conditions of its TO Tariff to conform it to the currently effective CAISO Tariff. Specifically, PG&E proposes to omit and update certain non-rate terms and conditions to align them with the terms and conditions of the CAISO Tariff.⁵

³ *Pacific Gas and Electric Co.*, 127 FERC ¶ 61,252 (2009) (approving the settlement filed in PG&E's previous rate case).

⁴ According to PG&E, a non-econometric approach is appropriate for near-term forecasting and non-econometric models typically fit well to the historic data and produce forecasts that are consistent with the most recently available observed sales data.

⁵ PG&E proposes to omit section 3.77 (definition of Power Exchange), and section 3.107 (definition of Usage Charge); update section 3.106 (definition of Uncontrollable Force), section 6 (Ancillary Services – Applicability and Charges), section 7.3 (Wheeling and Usage Charge Revenues Requirements); and Appendix IV (Rates for Certain Ancillary Services and Replacement Reserve).

6. PG&E proposes a return on equity of 12.0 percent, comprised of a base return on equity of 11.5 percent plus a 50 basis point adder as an incentive for its continuing membership in the CAISO.

7. PG&E requests that the Commission waive PG&E's obligation to provide the information required in Statement BC, Reliability Data, on the ground that these matters are now handled by the CAISO rather than PG&E. PG&E also requests that the Commission grant a waiver of the requirement that it supply information needed for Statement AH, because its TO-13 filing does not propose to change any power, fuel clause, or production-related service or rate.

II. Notice of Filing and Responsive Pleadings

8. Notice of PG&E's filing was published in the *Federal Register*⁶ with interventions, comments, and protests due on or before August 18, 2010.

9. Timely motions to intervene were filed by Energy Producers and Users Coalition, Southern California Edison Company, and Western Area Power Administration. Turlock Irrigation District (TID) filed a motion to intervene out of time.

10. The California Public Utilities Commission (CPUC) filed a notice of intervention, protest, and request for hearing. Timely motions to intervene and protests were filed by the Six Cities;⁷ Modesto Irrigation District (MID); Northern California Power Agency (NCPA); Sacramento Municipal Utility District (SMUD); the State Water Contractors and Metropolitan Water District of Southern California (SWC/Metropolitan); California Department of Water Resources State Water Project (SWP); the Cities of Redding and Santa Clara, California; and the M-S-R Public Power Agency (Cities/M-S-R); and Transmission Agency of Northern California (TANC).⁸ PG&E filed a motion for leave

⁶ 75 Fed. Reg. 47,299 (2010).

⁷ The Six Cities are Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

⁸ Cities/M-S-R, MID, NCPA, and SMUD support TANC's arguments and requests for relief. Cities/M-S-R August 18, 2010 Protest at 7; MID August 18, 2010 Motion to Intervene and Request for Maximum Suspension and Hearing; NCPA August 18, 2010 Motion to Intervene, Protest, and Request for Maximum Suspension and Hearing at 3; and SMUD August 18, 2010 Motion to Intervene, Protest, and Request for Maximum Suspension and Hearing at 3.

to answer protests and an answer to the comments and protests. TANC filed an answer to PG&E's motion for leave to file an answer .

III. Protests and Comments

11. TANC and SMUD assert that PG&E's requested General Plant expense is excessive which results in an overstated Network Base Transmission Revenue Requirement.⁹ In addition, TANC, SMUD, Six Cities, and the CPUC allege that PG&E misallocated Operations and Maintenance (O&M) expenditures to transmission customers while significantly overstating its forecasted Period II O&M expenses,¹⁰ failed to justify its proposed 2010 electric short-term incentive program expense,¹¹ failed to provide adequate support for its proposed pensions and benefits contribution,¹² and overstated its network transmission capital expenditures¹³ based on overly optimistic projections of operative date. The CPUC also alleges that PG&E overstated O&M expenses, and SWP questions PG&E's O&M expenses.¹⁴

12. TANC, Six Cities, the CPUC, SMUD, SWC/Metropolitan, and SWP argue that PG&E's proposed return on common equity is excessive.¹⁵ TANC asserts that the requested return on equity is unjustified based on a flawed proxy group of comparable companies, PG&E's significant revenue stream, and PG&E's safe investment credit ratings and promising financial outlook.¹⁶

⁹ TANC Protest at 9-11 and SMUD Protest at 4.

¹⁰ TANC Protest at 11-16, SMUD Protest at 4-5, Six Cities Protest at 11-20, and CPUC Protest at 7-8.

¹¹ TANC Protest at 17-19 and SMUD Protest at 5.

¹² TANC Protest at 19-20 and SMUD Protest at 5.

¹³ TANC Protest at 20-27 and SMUD Protest at 6.

¹⁴ CPUC Protest at 7-8 and SWP Protest at 15-16.

¹⁵ TANC Protest at 27-44, Six Cities Protest at 3-10, CPUC Protest at 4-6, SMUD Protest at 6-7, SWC/Metropolitan Protest at 7-9, and SWP at 6-7.

¹⁶ TANC Protest at 27-44.

13. TANC argues that PG&E failed to justify the continued need for the 200 basis point incentive adder for the Path 15 upgrade which is included in PG&E's wholesale revenue requirement.¹⁷

14. TANC, Six Cities, the CPUC, SMUD, SWC/Metropolitan, and SWP argue that PG&E is requesting excessive amounts of depreciation expense.¹⁸ TANC argues that the excessive amount is the result of PG&E's overstating its cost of removal estimates, failing to accurately account for monies in the accumulated depreciation accounts, and significantly understating certain proposed service lives for transmission plant and equipment.¹⁹

15. TANC and SMUD allege that PG&E erroneously used outdated labor factors to calculate the residual asset allocation despite having 2009 recorded adjusted data for Period I.²⁰ Six Cities argue that PG&E's proposed treatment of its cash working capital allowance does not comport with its lead-lag study.²¹ SWP alleges that PG&E's forecast of a load drop is not supported as PG&E reports lower sales each year than it did in the previous year.²²

16. SWC/Metropolitan asserts that there are several issues that may require further scrutiny such as PG&E's projected O&M expenses, administrative and general (A&G) expenses, network transmission capital expenses, depreciation expenses, development of rate base and wholesale transmission cost allocation.²³

¹⁷ TANC Protest at 44-46.

¹⁸ TANC Protest at 46-57, Six Cities Protest at 10, CPUC Protest at 6-7, SMUD Protest at 7-8, SWC/Metropolitan Protest at 9-10, and SWP Protest at 18-19.

¹⁹ TANC Protest at 46-57.

²⁰ TANC Protest at 57-58 and SMUD Protest at 8.

²¹ Six Cities at 22-24.

²² SWP at 12-15.

²³ SWC/Metropolitan at 9.

17. SWP asserts that other issues that may need to be considered and developed are PG&E's projected A&G expenses; overall rate base components; level of treatment of existing transmission contracts revenues; and non-tariff products and services.²⁴

18. TANC, Six Cities, the CPUC, SMUD, SWC/Metropolitan, and SWP request that the Commission suspend PG&E's TO-13 Tariff for the maximum period, order the rates to be effective subject to refund, and establish hearing procedures.²⁵

IV. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁶ the notice of intervention and the timely, unopposed motions to intervene, serve to make the parties who filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,²⁷ the Commission will grant TID's late-filed motion to intervene given TID's interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure²⁸ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept PG&E's answer or TANC's answer to PG&E's answer and will, therefore, reject them.

B. Commission Determination

21. PG&E's filing raises issues of material fact regarding capital additions, depreciation expenses, and other rate setting issues. All issues raised by the filing, if not summarily disposed of in this order, shall be addressed at the hearing, including, but not

²⁴ SWP Protest at 20.

²⁵ Six Cities Protest at 29, CPUC Protest at 2-4 and 9, SMUD Protest at 9-10, SWC/Metropolitan Protest at 9-10, and SWP Protest at 1-3, 6-10, and 20. TANC and SMUD request a Track III Schedule. TANC Protest at 65 and SMUD Protest at 10.

²⁶ 18 C.F.R. § 385.214 (2010).

²⁷ 18 C.F.R. § 385.214(d) (2010).

²⁸ 18 C.F.R. § 385.213(a)(2) (2010).

limited to, the appropriate return on equity component, the capitalization rate, and the range of reasonableness.

22. Consistent with previous Commission orders, the Commission summarily accepts the following components of PG&E's filing: (1) PG&E's request for a 50 basis-point incentive for participation in the CAISO; (2) PG&E's request for a 200 basis-point Return on Equity (ROE) incentive and a ten-year depreciable life for PG&E's share of the Path 15 upgrade project; (3) PG&E's request for continued acceptance of the revenue-sharing mechanism for secondary products and services; and (4) PG&E's request for waiver of the obligation to provide the information in Statement BC and Statement AH. In addition, the Commission accepts PG&E's changes related to conforming its TO Tariff to the currently effective CAISO Tariff.

23. As provided in *SDG&E* and *AEP*,²⁹ the Commission will grant up to 50 basis-points of incentive ROE for participation in the CAISO, subject to suspension and the zone of reasonable returns determined at hearing. The Commission's decision to grant PG&E an incentive ROE for participation in the CAISO is consistent with the stated purpose of FPA section 219 as amended by the Energy Policy Act of 2005³⁰ and is intended to encourage PG&E's continued involvement in the CAISO.

24. The Commission will allow the continued use of a 200 basis-point ROE adder and a ten-year depreciable life for PG&E's share of the Path 15 upgrade project.³¹

25. We reaffirm here our acceptance, as a conceptual framework, PG&E's 50-50 revenue sharing mechanism for secondary products and services.³² However, we will not preclude parties from raising issues regarding PG&E's support of forecast and actual revenues and expenses for new products and services at hearing.

26. Lastly, we hereby grant PG&E's request for waiver of the obligation to provide the information in Statement BC because that information is now provided by the CAISO. Similarly, PG&E's request for waiver of the Statement AH filing requirement is granted because that filing requirement applies to proposals to change power, fuel clause,

²⁹ *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 25-26 (2007) (*SDG&E*); *American Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205, at P 34 (2007) (*AEP*).

³⁰ 16 U.S.C. § 824s (2006).

³¹ *Western Area Power Admin.*, 99 FERC ¶ 61,306 (2002) (accepting letter agreement), *reh'g denied*, 100 FERC ¶ 61,331 (2002).

³² *See Pacific Gas and Electric Co.*, 121 FERC ¶ 61,174 (2007).

or production-related services or rates. Since PG&E's filing does not include such proposals, Statement AH is not required.

C. Hearing and Settlement Judge Procedures

27. Other than those issues summarily resolved above, PG&E'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 procedures ordered below.

28. Based upon a review of the filing, we find that the proposed tariff sheets have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we shall accept such tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

29. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by the statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.³³ It is our policy to suspend a requested rate increase for the maximum period in those cases where our preliminary analysis indicates that ten percent or more of the requested increase appears to be excessive.³⁴ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.³⁵

30. We do not find that such circumstances exist here. While particular circumstances may warrant shorter suspensions, PG&E has made no such showing. PG&E's only allegation in support of its request for a one-day suspension period is that PG&E will otherwise be collecting less than its proposed revenue requirement in rates. Of course, this circumstance occurs in most rate proceedings. Therefore, we shall exercise our discretion to suspend the rates for a five-month period, permitting the rates to take effect subject to refund on March 1, 2011.

31. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the hearing procedures are

³³ See, e.g., *Boston Edison Co.*, 12 FERC ¶ 61,211 (1980).

³⁴ *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982).

³⁵ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980).

commenced. To aid the parties in their settlement efforts, 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.³⁶ 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.³⁷ 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. Should the settlement judge ultimately determine that a hearing is warranted, PG&E shall file a full case in chief pursuant to the Commission's regulations to support its proposed rate structure at hearing.

The Commission orders:

(A) PG&E's proposed Transmission Owner Tariff rates are hereby conditionally accepted for filing and suspended for the maximum five-month period, to become effective March 1, 2011, subject to refund and subject to hearing, as discussed in the body of this order.

(B) 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 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 PG&E's Transmission Owner Tariff rates, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C), (D), and (E) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to

³⁶ 18 C.F.R. § 385.603 (2010).

³⁷ 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 the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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.

(D) 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 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.

(E) 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, NE, 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.