

141 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Pacific Gas and Electric Company

Docket No. ER12-2687-000

ORDER ACCEPTING AND SUSPENDING REVISED TARIFF RECORDS, SUBJECT
TO REFUND, AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued November 20, 2012)

1. On September 26, 2012, pursuant to section 205 of the Federal Power Act,¹ Pacific Gas and Electric Company (PG&E) filed revised records to its service agreement with Western Area Power Administration (Western) under PG&E's Wholesale Distribution Tariff (WDT Service Agreement),² adding a meter reading rate for one of Western's customers and cost-of-ownership rates to apply to facilities at Western's points of interconnection. As discussed below, we accept the revisions with respect to the proposed meter reading rate, effective October 1, 2012, as requested. We accept the revisions with respect to the proposed cost-of-ownership rates, suspend them for a nominal period, to be effective November 26, 2012, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. The WDT Service Agreement with Western was filed as part of a comprehensive 2004 settlement involving a number of agreements and approved by the Commission effective January 1, 2005.³ The WDT Service Agreement establishes the terms and conditions of PG&E's wholesale distribution service to Western, and the mechanism for

¹ 16 U.S.C. § 824d (2006).

² The WDT Service Agreement is Service Agreement No. 17 under PG&E's Wholesale Distribution Tariff, FERC Electric Tariff Volume No. 4.

³ *Pac. Gas & Elec. Co.*, 109 FERC ¶ 61,255 (2004).

PG&E to recover its costs of constructing, owning and maintaining facilities for Western's benefit. Western uses the service under the WDT Service Agreement to deliver power that it sells to three of its wholesale power customers: Tuolumne Public Power Agency (Tuolumne), Calaveras Public Power Agency (Calaveras) and the Power and Water Resources Pooling Authority (Pooling Authority).

3. The WDT Service Agreement also describes the parties' rights to add, subtract or modify delivery points for the wholesale distribution service and PG&E's right to collect cost-of-ownership charges for facilities serving these delivery points. Customer-specific rates for wholesale distribution service and operation and maintenance (O&M) of facilities under the WDT Service Agreement were filed in a 2006 settlement between PG&E, Western, and certain of Western's customers, and approved by the Commission effective January 1, 2005.⁴ The settlement also provided that Calaveras and Tuolumne will continue to read their own members' meters, unless and until either gives PG&E at least 90 days' notice that it wishes PG&E to assume meter reading responsibilities. In that event, PG&E agrees to read such party's meters and to supply timely meter data, for an initial rate not to exceed \$1.20 per meter per month.

4. The WDT Service Agreement also provides for PG&E to make a biannual filing with the Commission to reflect all load and delivery point modifications rather than make individual filings for each change.⁵

II. Instant Filing

5. PG&E proposes revisions to the WDT Service Agreement to add a meter reading rate for Calaveras, and cost-of-ownership rates to be used for the calculation of cost-of-ownership charges for facilities at Western's points of interconnection. PG&E states that Calaveras has provided 90-days' notice requesting that PG&E assume the responsibility of reading Calaveras' meters beginning October 1, 2012. PG&E proposes a revision that provides for PG&E to perform the service at the approved rate of \$1.20 per meter per month, effective October 1, 2012.

6. The proposed cost-of-ownership rates consist of a rate of 0.48 percent for customer-financed facilities and a rate of 1.20 percent for utility-financed facilities, which PG&E proposes to apply to the installed cost of facilities in order to calculate cost-of-ownership charges. PG&E states that the cost-of-ownership rates will be applied to:

⁴ *Pac. Gas & Elec. Co.*, 117 FERC ¶ 61,154 (2006).

⁵ WDT Service Agreement, Section 13. PG&E submits biannual filings on or before the last day of May or November each year, reflecting modifications made by the parties during the previous six months.

(1) new points of interconnection; or (2) new Direct Assignment Facilities at existing points of interconnection added to Western's WDT Service Agreement, beginning with the points or facilities added in the November 2012 biannual filing. PG&E states that the cost-of-ownership rates would be used to recover the ongoing costs associated with owning, operating and maintaining facilities for the sole benefit of Western and Western's customers. The cost-of-ownership charges would be calculated by multiplying the installation costs of the direct assignment facilities at a particular point of interconnection to the applicable cost-of-ownership rate.⁶ PG&E explains that the proposed rates are consistent with the currently effective and Commission-approved cost-of-ownership rates for PG&E's other distribution customers.⁷ Furthermore, PG&E has provided cost-support for its proposed rates using data from PG&E's most recently accepted Transmission Owner Tariff rate case in Docket No. ER10-2026-000.⁸

7. PG&E requests that the Commission grant waiver of the prior notice requirements to allow the revisions to the WDT Service Agreement to become effective October 1, 2012.

III. Notice of Filing and Responsive Pleadings

8. Notice of PG&E's filing was published in the *Federal Register*, 77 Fed. Reg. 60,975 (2012), with interventions, comments, and protests due on or before October 17, 2012. Western, Calaveras and Tuolumne, and Pooling Authority (collectively, Intervenors) filed timely motions to intervene and protests. PG&E filed a motion for leave to answer and answer on November 1, 2012.

A. Protests

9. Intervenors support PG&E's proposed \$1.20 per meter per month rate for meter reading services for Calaveras and the proposed effective date of October 1, 2012. Tuolumne also requests that the same rate be made applicable to Tuolumne in the event that it gives a similar 90-day notice while the \$1.20 rate remains in effect. Tuolumne

⁶ In lieu of a monthly cost-of-ownership charge, Western may elect to pay an equivalent one-time payment for any facility, which is calculated by multiplying the installed costs of the facility, the annualized cost-of-ownership rate and a present worth factor.

⁷ See PG&E filing at 3. PG&E attached to its filing a list of numerous other WDT Service Agreements that contain the same cost-of-ownership rates.

⁸ *Pac. Gas & Elec. Co.*, 136 FERC ¶ 61,095 (2011).

explains that by making the rate applicable to both Calaveras and Tuolumne, PG&E could avoid the need to submit a new section 205 filing.⁹

10. Calaveras and Tuolumne argue that the 2006 settlement already obligates them to pay cost-of-ownership charges, and that PG&E's failure to terminate or supersede the existing settlement provisions would result in duplicate recovery of essentially the same rates.¹⁰ The Intervenors also protest the propriety of assessing cost-of-ownership charges when a delivery point previously served under a retail tariff is converted to wholesale service under the WDT Service Agreement, because the costs of these facilities may already be included in PG&E's distribution rate base.¹¹ Pooling Authority argues that PG&E does not maintain separate distribution rate bases for retail and wholesale ratemaking, and PG&E offers no justification for how it plans to address the double recovery of PG&E's O&M costs.¹²

11. Intervenors argue that PG&E's filing has failed to include cost justification for its proposed cost-of-ownership charges. Specifically, the Intervenors are unclear on how PG&E intends to assess: (1) the original installed cost of any existing facilities on which it proposes to collect cost-of-ownership charges; (2) whether the facilities were customer-financed or utility-financed; (3) whether such facilities serve only a single distribution customer or instead serve multiple delivery points; or (4) if multiple loads are served by a single set of facilities, how the installed costs of the facilities will be allocated among delivery points.¹³ Pooling Authority states that without information addressing its prospective cost-of-ownership liability, it cannot make decisions on whether to add additional points of interconnection to the WDT Service Agreement.

12. Intervenors are unclear on the prospective effective date of PG&E's cost-of-ownership rates, and oppose the Commission granting any waiver that would enable the rates to retroactively take effect. Calaveras and Tuolumne request that the Commission suspend the proposed cost-of-ownership rates for five months, and set them for hearing and settlement judge procedures.

⁹ Calaveras and Tuolumne Protest at 5.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 5, 7-8 and Pooling Authority Protest at 4.

¹² Pooling Authority Protest at 5-6.

¹³ Calaveras and Tuolumne Protest at 8 and Pooling Authority Protest at 6.

13. Western protests PG&E's use of a generic cost-of-ownership charge, stating that it cannot determine whether customers are already paying for these costs under the existing WDT Service Agreement. Western contends that it would not be appropriate for Western's customers to pay the entire cost-of-ownership charge for a facility if it continues to benefit PG&E. Western emphasizes that the cost-of-ownership charge should be examined on a case-by-case basis between all affected parties, in order to establish a fair allocation of the costs associated with facilities. Western requests that the Commission dismiss the filing as it pertains to cost-of-ownership charges, or, in the alternative, set the matter for a settlement judge proceeding.

B. PG&E's Answer

14. In its answer, PG&E seeks to clarify the Intervenors' concerns regarding the implementation of cost-of-ownership rates. PG&E requests that the Commission set the unresolved issues for hearing and settlement judge procedures.

15. PG&E clarifies that it does not propose to implement a retroactive effective date for its cost-of-ownership rates. PG&E states that the cost-of-ownership rates for new facilities would not apply until sixty days after PG&E submits its November biannual filing, or approximately February 1, 2013.¹⁴

16. Contrary to Western's assertion that PG&E proposes to use a generic cost-of-ownership *charge*, PG&E clarifies that the revised WDT Service Agreement would implement cost-of-ownership *rates*. PG&E states that it intends to use these rates to calculate specific cost-of-ownership charges that would be used to assess each relevant point of interconnection. PG&E explains that it would undertake a case-by-case analysis to ensure that the charges would not result in over collection, double recovery, or duplicate charges. Further, to the extent that a facility is converted from PG&E retail service to wholesale service, PG&E states that it will assess whether the customer has exclusive use of the facilities and the extent to which the customer has previously contributed capital.¹⁵ PG&E emphasizes that the cost-of-ownership rates in this filing have been accepted by the Commission for application to dozens of other PG&E distribution customers.¹⁶

¹⁴ PG&E Answer at 4.

¹⁵ *Id.* at 5.

¹⁶ *Id.* n.3

IV. Discussion

A. Procedural Matters

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁷ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), 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 assisted us in our decision-making process.

B. Commission Determination

19. The Commission here accepts PG&E's revised tariff records to implement meter reading services for Calaveras' points of delivery, effective October 1, 2012, as requested. This implementation is consistent with the terms and rates of the Commission-approved 2006 settlement. In its filing, PG&E requests waiver of the prior notice requirements to allow it to implement a Commission-approved rate of \$1.20 per meter per month for such services, effective October 1, 2012. The Commission generally grants waiver of the sixty-day prior notice requirement for new services if good cause is shown and the filing is submitted before the commencement of service. However, the Commission here finds the newly proposed modified tariff records relating to the new meter reading services only implement services and meter reading rates previously approved by the Commission, and as such no further notice is required herein. Accordingly, the Commission accepts the service request as well as the settlement rate of \$1.20 per meter per month, effective October 1, 2012, as requested.

20. Furthermore, in the event that Tuolumne similarly requests PG&E to assume meter reading responsibilities as Calaveras has here, PG&E must make a similar section 205 filing with the Commission to revise the affected tariff record.

21. With respect to the cost-of-ownership rates, our preliminary analysis indicates that PG&E's proposed cost-of-ownership rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission will accept the proposed cost-of-ownership rates, suspend them for a nominal period, effective November 26, 2012, subject to refund, and set them for hearing and settlement judge procedures, as ordered below.

¹⁷ 18 C.F.R. § 385.214 (2012).

22. Again, PG&E has requested a waiver of the prior notice requirements for these cost-of-ownership rates to become effective October 1, 2012. However, as PG&E states, due to the biannual filing through which it will incorporate such rates, the rates will not be applied until February 1, 2013.¹⁸ Therefore, there is no need for a waiver of the prior notice requirements.

23. 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 hearing procedures are 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.¹⁹ 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.²⁰ The settlement judge shall report to the Chief Judge and the Commission within thirty days 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.

The Commission orders:

(A) PG&E's proposed meter reading service and rate in the revised WDT Service Agreement is hereby accepted, effective October 1, 2012.

(B) PG&E's proposed cost-of-ownership rates in the revised WDT Service Agreement are hereby accepted for filing, and suspended for a nominal period, effective November 26, 2012, subject to refund, 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 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

¹⁸ PG&E Answer at 4.

¹⁹ 18 C.F.R. § 385.603.

²⁰ If the parties decide to request a specific judge, they may 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).

shall be held concerning the justness and reasonableness of the proposed cost-of-ownership rates in the revised Service Agreement. However, the hearing will 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 (2012), 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 in writing or by telephone 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 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 convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such 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.