

144 FERC ¶ 61,078  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company

Docket No. ER13-941-000  
ER13-941-001

ORDER ON REQUEST FOR REHEARING AND MOTION FOR CLARIFICATION

(Issued July 31, 2013)

1. On June 20, 2013, the Commission issued an order conditionally accepting for filing San Diego Gas & Electric Company's (SDG&E) new formula rate mechanism under SDG&E's Transmission Owner tariff (TO4 formula rate), suspending the tariff revisions for five months, and establishing hearing and settlement judge procedures.<sup>1</sup> On June 28, 2013, SDG&E filed a motion for clarification. On July 15, 2013, the Joint Intervenors<sup>2</sup> filed a request for rehearing as well as an answer to SDG&E's motion for clarification. For the reasons discussed below, the Commission grants the Joint Intervenors' request for rehearing, suspends SDG&E's proposed TO4 formula rate tariff for a nominal period, to be effective September 1, 2013, subject to refund, and subject to the hearing and settlement judge procedures established in our previous order. Finally, we deny SDG&E's motion for clarification as moot.

**I. Background**

2. On February 15, 2013, SDG&E filed its new TO4 formula rate to supersede its currently-effective formula rate, and requested an effective date of September 1, 2013 for the proposed formula. SDG&E argued that the TO4 formula rate should become

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<sup>1</sup> *San Diego Gas & Electric Company*, 143 FERC ¶ 61,246 (2013) (June 20 Order).

<sup>2</sup> The Joint Intervenors include the cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; M-S-R Public Power Agency, the city of Santa Clara, California; the city of Redding, California; Northern California Power Agency, California Department of Water Resources State Water Project, and the California Public Utilities Commission (CPUC).

effective subject to refund on September 1, 2013, because this effective date would provide for a seamless transition between the end of the TO3 formula<sup>3</sup> and the start of the TO4 formula.<sup>4</sup>

3. Protestors argued that the rates proposed by SDG&E in its TO4 formula rate were excessive and contended that SDG&E's TO4 formula rate proposal should be suspended. The CPUC expressly requested that the tariff be suspended for five months.<sup>5</sup>

4. In the June 20 Order, the Commission found that SDG&E's rates had not been shown to be just and reasonable and that the proposed rates may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Moreover, the Commission's preliminary analysis indicated that the proposed rates may be substantially excessive. Therefore, the Commission accepted the proposed rates for filing, determined that the proposed rates should be suspended for five months from the proposed effective date, to be effective February 1, 2014 subject to refund and set them for hearing and settlement judge procedures.<sup>6</sup>

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<sup>3</sup> On December 1, 2006, SDG&E filed tariff revisions to implement a new Transmission Owner formula rate mechanism (TO3) to supersede the TO2 formula rate. On March 27, 2007, SDG&E filed an uncontested offer of settlement (TO3 Settlement). See SDG&E Offer of Settlement, filed in Docket Nos. ER07-284-000, *et al.* Pursuant to the terms of the TO3 Settlement, the effective term of the TO3 Settlement was from July 1, 2007 – August 31, 2013. After the initial year, the rates established under the TO3 Settlement took effect on September 1 of each year and ran through August 31 of the subsequent year. The terms of the TO3 Settlement are set to expire on August 31, 2013, with a final true-up adjustment occurring after the expiration of the TO3 formula rate. The Commission approved the settlement on May 18, 2007. *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,169 (2007).

<sup>4</sup> See SDG&E, Transmittal Letter, Docket No. ER13-941-000, at 5 (filed February 15, 2013). SDG&E also contended that their proposed rate increase under the TO4 formula, when measured against the currently effective TO3 cycle 6 rates, was approximately 5.86 percent. However, SDG&E conceded that the TO3 cycle 6 rates were currently being collected subject to refund. *Id.*

<sup>5</sup> On July 15, 2013, the CPUC filed a Motion to Withdraw its Request for a Five-Month Suspension. CPUC Motion to Withdraw Requested Five-Month Suspension at 1-2.

<sup>6</sup> June 20 Order, 143 FERC ¶61,246 at P 22.

## **II. Motion for Clarification**

5. In its motion for clarification, SDG&E requests that the Commission clarify that the current formula rates will remain in effect during the five-month suspension period imposed by the June 20 Order.<sup>7</sup> SDG&E states that its current formula rates expire on August 31, 2013. According to SDG&E, the TO3 Settlement established a finite term for the TO3 formula rate. SDG&E notes that the TO3 formula rate commenced on July 1, 2007 and will cease to be effective on September 1, 2013, unless the Commission accepts or approves the rates remaining in effect beyond August 31, 2013.<sup>8</sup> SDG&E contends that the June 20 Order did not specify what rate would be in effect during the period between the expiration of the current formula rate and the effective date of the new TO4 formula rate.

6. SDG&E also requests that the Commission clarify that the final true-up required under the current TO3 formula rate is extended by an additional five months to coincide with the suspension period imposed, because these rates would remain in effect until January 31, 2014, rather than expiring on August 31, 2013.<sup>9</sup>

7. In their answer to the motion for clarification, the Joint Intervenors request that the Commission deny SDG&E's request for clarification to the extent that SDG&E requests that the TO3 formula rate remains in effect through the suspension period. Instead, the Joint Intervenors request that the Commission grant their concurrently filed request for rehearing and reduce the suspension period from five months to one day.<sup>10</sup>

## **III. Request for Rehearing**

8. In their request for rehearing, the Joint Intervenors request that the TO4 formula rate be suspended for only a nominal period and be permitted to go into effect on September 1, 2013, subject to refund.<sup>11</sup> The Joint Intervenors note that the TO3 formula rate's return on equity (ROE) is higher than the proposed ROE in the TO4 formula (11.35 percent versus 11.3 percent).<sup>12</sup> According to the Joint Intervenors, suspending the

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<sup>7</sup> SDG&E Motion for Clarification at 2-3.

<sup>8</sup> SDG&E, Offer of Settlement, Docket No. ER07-284-000, at 5 (filed March 28, 2007).

<sup>9</sup> SDG&E Motion for Clarification at 4.

<sup>10</sup> Joint Intervenors Answer to Motion for Clarification at 4-5.

<sup>11</sup> Joint Intervenors Request for Rehearing at 5-6.

<sup>12</sup> Joint Intervenors Request for Rehearing at 5.

TO4 formula rate for five-months keeps the higher TO3 formula rate ROE in effect. The Joint Intervenors add that, other than the CPUC, they did not seek the maximum suspension period in their original protests to SDG&E's proposed TO4 formula rate.

#### IV. Discussion

9. We will grant the Joint Intervenors' request for rehearing such that the TO4 formula rate proposal will be suspended for the nominal suspension period, to be effective on September 1, 2013, subject to refund, and set for hearing and settlement judge procedures, rather than be suspended for a five-month period ending February 1, 2014 .

10. Often when our preliminary analysis indicates that the proposed rates may be unjust, unreasonable, and may be substantially excessive, we impose a five-month suspension.<sup>13</sup> The purpose of this suspension policy is to provide protection to those parties subject to proposed rates that may possibly be excessive.<sup>14</sup> In SDG&E's initial filing, it indicated that its proposed rates would be an increase for both its wholesale and retail customers. We have, however, recognized that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.<sup>15</sup>

11. In this instance, we have the unusual circumstance where the parties affected by SDG&E's proposed rates essentially are requesting that the Commission waive the protection afforded them under our *West Texas* policy. The protestors themselves, who will be subject to the new rates, do not find that the protection of a five-month suspension period is necessary. In light of this new information, we will grant the Joint Intervenor's request for rehearing and allow the proposed TO4 formula rate, in this instance, to be suspended for a nominal period, to be effective September 1, 2013, subject to refund.

12. SDG&E's motion for clarification solely pertained to what rates and processes should be in effect during the five-month suspension period. In light of our decision to grant rehearing and reduce the suspension period, we deny SDG&E's motion for clarification as moot.

13. Finally, we grant the CPUC's motion to withdraw its request for a five-month suspension because no party will be prejudiced by this withdraw.

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<sup>13</sup> See *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982).

<sup>14</sup> *Tucson Elec. Co.*, 76 FERC ¶ 61,235, at 62,147 (1996).

<sup>15</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980).

The Commission orders:

(A) The Joint Intervenors' Request for Rehearing is hereby granted, as discussed in the body of this order.

(B) SDG&E's proposed TO4 formula rate tariff is hereby suspended for a nominal period, to become effective September 1, 2013, subject to refund, as discussed in the body of this order.

(C) SDG&E's Motion for Clarification is hereby denied as moot.

(D) The CPUC's Motion to Withdraw its Requested Five-Month Suspension is hereby granted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.