

144 FERC ¶ 61,227
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.

Pacific Gas and Electric Company

Docket Nos. ER13-2022-000
EL13-90-000

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

(Issued September 24, 2013)

1. In this order, we will accept for filing, suspend, and set for hearing a proposed rate filing under the Transmission Owner Tariff (TO Tariff) of Pacific Gas and Electric Company (PG&E) to become effective on October 1, 2013, subject to refund. In addition, because a further decrease in rates may be warranted, we will institute a proceeding under section 206 of the Federal Power Act (FPA) in Docket No. EL13-90-000 and establish a refund effective date on the date of publication in the *Federal Register* of the notice of the Commission's initiation of its investigation.¹

I. Background

2. On September 28, 2012, PG&E submitted its fourteenth TO Tariff filing (TO14) requesting an increase in TO Tariff transmission service rates,² effective December 1, 2012. On November 29, 2012, the Commission accepted PG&E's TO14 rates for filing, suspended the rate increase for five months to become effective on

¹ 16 U.S.C. § 824e (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 that reflects PG&E's costs of constructing and owning its transmission system.

May 1, 2013, subject to refund, and established hearing and settlement judge procedures.³ In addition, the Commission directed PG&E to submit a compliance filing within 30 days of the date of the November 29 Order revising its proposed rates to reflect a median-based return on equity (ROE).⁴ On December 21, 2012, PG&E filed revised rates based on an 8.6 percent ROE, which resulted in a retail revenue requirement of \$1.101 billion and a wholesale revenue requirement of \$1.090 billion (TO14 Compliance Rates).⁵

3. On July 24, 2013, PG&E submitted the instant, fifteenth TO Tariff filing (TO15), proposing a decrease in its TO Tariff transmission service rates to become effective October 1, 2013. PG&E states that it has chosen to voluntarily reduce its network transmission revenue requirement, which results in a rate decrease compared to its currently effective TO14 Compliance Rates for retail and wholesale transmission service, in order to achieve a nominal suspension of its proposed rates. PG&E states that, despite its request for a rate decrease in order to achieve a nominal suspension, it continues to need to recover the costs associated with significant electric transmission infrastructure expansion and replacement that has occurred in 2013 to date, and will occur during the balance of 2013 and in 2014. Thus, PG&E forecasts that it will invest \$810.4 million in capital projects in 2013 and an additional \$998.3 million in capital projects in 2014.⁶

4. PG&E states that its 2014 Period II rate base is \$4.57 billion, a 21 percent increase from its 2012 Period I rate base of \$3.77 billion. PG&E states that its projected revenue requirement for retail network transmission service for 2014 is \$1.197 billion; however, in order to secure a nominal suspension, PG&E states that it has reduced its total retail network transmission rate request to \$1.072 billion. Similarly, PG&E states that it has voluntarily reduced its request for wholesale transmission revenue recovery by proposing rates based on a \$1.060 billion annual revenue requirement, rather than the \$1.185 billion

³ *Pacific Gas and Electric Co.*, 141 FERC ¶ 61,168, at P 22 (2012) (November 29 Order). We note that the Commission summarily accepted PG&E's request for a 50 basis-point adder for participation in CAISO and a 200 basis-point adder and ten-year depreciable life for PG&E's share of the Path 15 upgrade project. *Id.* P 24.

⁴ *Id.* P 23.

⁵ PG&E, Compliance Filing, Docket No. ER12-2701-001, at Attachment 3, Table PGE-2-8 (filed December 29, 2012).

⁶ PG&E July 24, 2013 Transmission Owner Tariff Filing at 2 (PG&E TO15 Filing).

that its cost of service supports. PG&E asserts that its proposal will benefit its customers by reducing the currently effective TO14 rates that are in place, subject to refund.⁷

5. PG&E requests a base ROE of 10.4 percent, which PG&E states is derived from the average of a median group of utilities' ROE results. PG&E asserts that this approach is similar to the approach approved by the Commission in a recent San Diego Gas and Electric Company rate proceeding.⁸ In addition, PG&E requests a 50 basis-point adder to its ROE for its participation in CAISO, resulting in an ROE of 10.9 percent. PG&E asserts that it remains eligible for the 50 basis-point ROE adder even though PG&E has been a member of CAISO for many years and has not indicated that it will abandon its CAISO membership without the adder, consistent with Commission policy.⁹ PG&E also proposes to increase its depreciation rate from the current level of 2.56 percent, which was established in PG&E's TO13 rate proceeding, to 3.26 percent.¹⁰

6. PG&E requests that the Commission waive its obligation to provide the information required in Statement BC, Reliability Data, noting that CAISO has been responsible for setting reliability standards and tracking reliability data since March 31, 1998. In addition, PG&E states that it has not proposed changes to any power, fuel clause, or production-related service or rate. Therefore, PG&E requests waiver of the Commission's requirement that it supply information needed for Statement AH.¹¹

7. PG&E requests that the Commission issue an order on its filing no later than September 24, 2013, with a proposed effective date for the TO15 rates of October 1,

⁷ PG&E TO15 Filing at 2-3.

⁸ PG&E TO15 Filing, Ex. PGE-1, 7:6-12 (citing *San Diego Gas & Elec. Co.*, 143 FERC ¶ 61,245, at P 6 (2013)).

⁹ PG&E explains that the Commission has specifically stated that the 50 basis-point adder for participation in a regional transmission organization (RTO) or as an independent system operator (ISO) is justified regardless of the date that the utility joined the RTO/ISO. PG&E TO15 Filing, Ex. PGE-1, 8:13-15 (citing Order No. 679-A, 117 FERC ¶ 61,345 at P 86 (2006)). PG&E states that the Commission reaffirmed this finding in its TO13 rate proceeding. *Id.* at 8:15-20 (citing *Pacific Gas and Electric Company*, 124 FERC ¶ 61,305, at P 20 (2008)).

¹⁰ PG&E notes that the depreciation rate for its TO14 rate proceeding has not yet been determined. Thus, the 2.56 percent rate represents the depreciation rate authorized in PG&E's TO13 rate proceeding. PG&E TO15 Filing, Ex. PGE-10, Table PGE-10-2.

¹¹ *Id.* at 2-3.

2013. PG&E explains that expedited action is necessary because its internal testing procedures require approximately seven dates for implementing rates in its retail billing system. PG&E also requests a nominal suspension for its proposed rates and states that, without such suspension, it will collect less than its revenue requirement in rates.

II. Notice of Filing and Responsive Pleadings

8. Notice of PG&E's filing was published in the *Federal Register*, 78 Fed. Reg. 46,933 (2013), with protests or interventions due on or before August 14, 2013.

9. The California Public Utilities Commission (CPUC) filed a notice of intervention and protest. Timely motions to intervene were filed by Southern California Edison Company, Trans Bay Cable LLC, and Energy Producers and Users Coalition. Timely motions to intervene and protests were filed by the California Department of Water Resources State Water Project (SWP); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency (Cities/M-S-R); Modesto Irrigation District (Modesto); Northern California Power Agency (NCPA); Sacramento Municipal Utility District (SMUD); State Water Contractors (SWC); and the Transmission Agency of Northern California (TANC) (collectively, Protestors).¹² San Francisco Bay Area Rapid Transit District (BART) filed a motion to intervene out of time. On August 23, 2013, PG&E submitted an answer.

III. Protests and Comments

10. Protestors assert that PGE's proposed TO15 network transmission revenue requirements of \$1,072 and \$1,060 million for retail and wholesale rates, respectively, are overstated and will not result in a decrease from the currently effective rate, which is subject to refund.¹³ Protestors assert that PG&E should not be able to claim a rate decrease when the prior rate is still subject to refund.¹⁴ Moreover, Protestors argue that because PG&E's currently effective transmission rate is subject to an ongoing settlement, the Commission cannot determine whether PG&E's proposed rate will be lower.¹⁵ As

¹² NCPA and SWC support the SWP October 19, 2012 Protest (SWP Protest). Cities/M-S-R, Modesto, and SMUD support the TANC October 19, 2102 Protest (TANC Protest).

¹³ CPUC Protest at 6; Six Cities Protest at 3; SWP Protest at 8; TANC Protest at 10.

¹⁴ CPUC Protest at 3-5; SWP Protest at 9.

¹⁵ SWC Protest at 8-9; SWP Protest at 8-13; TANC Protest at 50.

such, Six Cities and TANC request that the Commission suspend PG&E's proposed rates for at least a nominal one-day period; SWP and CPUC request the maximum suspension period of five-months.¹⁶

11. Protestors argue that PG&E's requested 10.4 percent ROE is unjust and unreasonable. First, Protestors contend that, in an attempt to inflate its ROE, PG&E calculated its ROE based on the average of the medians of the discounted cash flow (DCF) analysis, along with the medians of a number of other methodologies, instead of the Commission's well-established policy of only using the medians of the DCF analysis. In addition, Protestors argue that PG&E's calculation of its ROE departs from Commission policy in several other ways, including the development of the DCF proxy group and calculation of growth rates.¹⁷

12. CPUC and TANC also dispute PG&E's request to include in its ROE the full 50 basis-point incentive adder for its participation in CAISO.¹⁸ TANC argues that PG&E has been a member of CAISO since 1998 and that there is no basis in the existing record to conclude that PG&E would withdraw its membership without the full 50 basis-point adder. Thus, TANC requests that the Commission reconsider whether PG&E has justified its request for the full 50 basis-point incentive adder.¹⁹

13. Protestors generally assert that PG&E's proposed increase in its depreciation rate from the current 2.56 percent, which was established in PG&E's TO13 rate proceeding, to 3.26 percent is excessive and unjustified. Specifically, TANC asserts that PG&E's depreciation study overstates removal costs, understates plant services lives, and is inconsistent with PG&E's retirement history.²⁰ In addition, Six Cities assert that PG&E's depreciation study is inconsistent with the prior year's study, and that the study's recommendation to increase depreciation expense is inconsistent with the fact that PG&E's rate base has increased.²¹ SWP argues that PG&E failed to provide the Commission with adequate information to determine a just and reasonable depreciation

¹⁶ CPUC Protest at 3-4; Six Cities Protest at 47; SWP Protest at 6-13; TANC Protest at 50.

¹⁷ Six Cities Protest at 5-9; TANC Protest at 31-35.

¹⁸ CPUC Protest at 7; TANC Protest at 38-40.

¹⁹ TANC Protest at 40.

²⁰ TANC Protest at 43-45, 47-48.

²¹ Six Cities Protest at 27-29.

rate and, therefore, hearing procedures are necessary to develop a full factual record on this issue.²²

14. Protestors argue that several other components of PGE's TO15 transmission revenue requirement are excessive, including PG&E's forecasted capital additions for 2013 and 2014, operations and maintenance expenses, and administrative and general expenses. Protestors generally assert that PG&E has historically overstated these rate components and has similarly done so in the instant filing. Further, Protestors contend that PG&E's TO15 filing lacks the information necessary for interested parties and the Commission to properly verify the amounts that PG&E has proposed. In order to address these concerns, Protestors request that the Commission suspend PG&E's TO15 filing, subject to refund, and establish hearing and settlement judge procedures in order to allow for further review and discovery. In addition, Protestors request that the Commission initiate an investigation under section 206 of the FPA in order to evaluate whether a further reduction in PG&E's transmission revenue requirement is appropriate.²³

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant BART's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept PG&E's answer and will, therefore, reject it.

B. Commission Determination

18. Our preliminary analysis indicates that PG&E's proposed rates have not been shown to be just and reasonable and may be unjust and unreasonable, unduly discriminatory or preferential, or otherwise lawful. Accordingly, we will accept PG&E's

²² SWP Protest at 18.

²³ Six Cities at 47-48; TANC Protest at 50-51.

proposed rates for filing, suspend them, make them effective subject to refund, and set them for hearing and settlement judge procedures, as directed below.

19. Ordinarily, the Commission does not suspend rate decreases. Here, however, given that the pre-existing rates are the subject of an ongoing proceeding in Docket No. ER12-2701-000, *et al.* that is not yet final and are being collected subject to refund, it is not possible to determine at this time whether the proposed rates will, in fact, be a rate decrease or will be a rate increase. Thus, we find that suspension is appropriate in this case. However, in order to give customers the immediate benefit of what PG&E has characterized as proposed lower rates, we will impose a nominal suspension and make PG&E's proposed rates effective, subject to refund in the event the final rates approved in this proceeding reflect an increase compared to the rates ultimately approved as just and reasonable in the pending Docket ER12-2701-000. Accordingly, we will accept PG&E's proposed rates for filing, suspend them for a nominal period, to become effective on October 1, 2013, subject to refund, and set them for hearing.

20. We find that PG&E's filing raises issues of material fact that, to the extent not summarily disposed of in this order, are more appropriately addressed at hearing, as discussed further below. The Commission will, however, accept PG&E's request for a 50 basis point ROE incentive for participation in CAISO and waiver of the obligation to provide the information in Statement BC and Statement BH.²⁴ We note, however, that issues of material fact remain with regard to, among other things, PG&E's calculation of a just and reasonable ROE and that these issues are more appropriately addressed at hearing, as ordered below.

21. Furthermore, because refunds may still be warranted upon completion of the hearing and settlement procedures initiated here, even if the TO15 rate proves to be a decrease from the TO14 rate, we will institute an investigation under section 206 of the FPA in Docket No. EL13-90-000 with respect to the justness and reasonableness of PG&E's proposed TO15 rates. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires the Commission to establish a refund effective date that is no earlier than the publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date. Here, we will establish a refund effective date of the earliest date possible in order to provide maximum protection to customers, i.e., the date of the publication of the notice of the Commission's initiation of the investigation in Docket No. EL13-90-000 in the *Federal Register*.

22. Section 206(b) of the FPA also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206

²⁴ November 29 Order, 141 FERC ¶ 61,168 at P 24.

proceeding, the Commission shall state the reasons why it has failed to do so and shall make its best estimate as to when it reasonably expects to make such a decision. To implement this requirement, we will direct the presiding administrative law judge (judge) to provide a report to the Commission no later than 15 in advance of the conclusion of the 180-day period in the event the presiding judge has not by that date: (1) certified to the Commission a settlement which, if approved, would dispose of the proceeding; or (2) issued an initial decision. The judge's report, if required, shall advise the Commission of the status of the investigation and provide an estimate of the expected date of certification of a settlement or issuance of an initial decision.

23. Finally, because there are common issues of law and fact, we shall consolidate Docket Nos. ER13-2022-000 and EL13-90-000 for purposes of hearing and decision.

C. Hearing and Settlement Judge Procedures

24. Other than the issue summarily resolved above, PG&E's proposed rates raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing ordered below.

25. 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 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.²⁵ 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.²⁶ The settlement judge shall report to the Chief Judge and the Commission within thirty 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

²⁵ 18 C.F.R. § 385.603 (2013).

²⁶ 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 (5) 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>).

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 rates are hereby accepted for filing and suspended for a nominal period, to become effective on October 1, 2013, subject to refund, and subject to hearing and settlement judge procedures, 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, 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 in Docket No. ER13-2022-000 concerning the justness and reasonableness of PG&E's TO15 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 (2013), 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.

(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.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402 of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 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 Docket No. EL13-90-000 concerning the justness and reasonableness of PG&E's proposed rates.

(G) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the investigation under section 206 of the FPA in Docket No. EL13-90-000.

(H) The refund effective date in Docket No. EL13-90-000, established pursuant to Section 206(b) of the FPA, will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (F) above.

(I) Docket Nos. ER13-2022-000 and EL13-90-000 are hereby consolidated for purposes of hearing and decision.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.