

156 FERC ¶ 61,238
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Pacific Gas and Electric Company

Docket No. ER16-2320-000

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

(Issued September 30, 2016)

1. On July 29, 2016, pursuant to section 205 of the Federal Power Act (FPA),¹ Pacific Gas and Electric Company (PG&E) submitted proposed tariff revisions to implement a rate increase under its Transmission Owner Tariff (TO Tariff).² In this order, we accept PG&E's tariff revisions for filing, suspend them for five months to become effective on March 1, 2017, subject to refund, and establish hearing and settlement judge procedures.

I. Background

2. On July 29, 2016, PG&E submitted in the instant filing its eighteenth TO Tariff filing (TO18), requesting an increase in TO Tariff transmission service rates, effective October 1, 2016. PG&E states that the proposed rate increase will allow it to recover the costs associated with significant electric transmission infrastructure expansion and replacement that has occurred in 2016 to date and the costs it expects to occur for the remainder of 2016 and 2017. PG&E forecasts that it will invest \$1.209 billion in capital projects in 2016 and an additional \$1.296 billion in 2017.³

¹ 16 U.S.C. § 824d (2012).

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

³ PG&E July 29, 2016 TO Tariff Filing at 2 (PG&E TO18 Filing).

3. PG&E states that its 2017 Period II network transmission rate base is \$6.71 billion, a 29 percent increase from its 2015 Period I rate base of \$5.20 billion.⁴ PG&E states that its projected revenue requirement for retail network transmission service for 2017 is \$1.718 billion, a 15.4 percent increase over the \$1.489 billion in annual revenues that PG&E expects its current network transmission retail rates to produce.⁵ PG&E projects a wholesale network transmission revenue requirement of \$1.705 billion.⁶ PG&E anticipates collecting \$189.3 million in CAISO wheeling revenues for 2017, a 10.2 percent increase over the \$171.8 million in wheeling revenues it expects to collect under its current rates.⁷

4. PG&E proposes a return on equity (ROE) of 10.9 percent, comprised of a base return of 10.4 percent plus a requested 50 basis point incentive adder for its continued participation in CAISO.⁸ PG&E states its proposed ROE is calculated consistent with the Commission's two-step Discounted Cash Flow (DCF) methodology set forth in Opinion No. 531.⁹ In addition to relying on the results of the two-step DCF model, PG&E states that it applied "alternative methods" (e.g., the risk premium, capital asset pricing model (CAPM), and expected earnings method) to confirm the reasonableness of a 10.4 percent base ROE. PG&E asserts that these alternative methods demonstrate that PG&E's request for an ROE in the upper end of the DCF range, is consistent with the Commission's recent findings and is warranted in light of the anomalous capital market conditions that characterized the Opinion No. 531 record period.¹⁰

⁴ *Id.*

⁵ *Id.*; PG&E TO18 Filing, Ex. PGE-2 at 16.

⁶ PG&E TO18 Filing, Ex. PGE-2 at 14.

⁷ PG&E TO18 Filing at 2.

⁸ PG&E TO18 Filing, Ex. PGE-14 at 6.

⁹ PG&E TO18 Filing, Ex. PGE-14. *See also Martha Coakley, Mass. Att'y Gen. v. Bangor Hydro-Electric Co.*, Opinion No. 531, 147 FERC ¶ 61,234 (2014) (Opinion No. 531), *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *order on reh'g*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015).

¹⁰ PG&E TO18 Filing, Ex. PGE-14 at 8.

5. PG&E asserts that it is eligible for the ROE adder because its participation in CAISO is ongoing and the Commission has not placed an expiration date on this incentive.¹¹ Further, PG&E argues that the adder is reasonable because the resulting 10.9 percent overall ROE falls below the 11.97 percent upper bound of the ROE zone of reasonableness.¹² PG&E also proposes to increase its depreciation rate from the current level of 2.52 percent to 3.26 percent. In support of this request, PG&E states that the low depreciation rates the Commission has approved in previous rate cases place PG&E at risk of deferring cost recovery into the future, leading to intergenerational inequity as future customers will be responsible for costs incurred today.¹³

6. PG&E requests that the Commission waive its obligation to provide the information required in Statement BC – Reliability Data, Statement BI – Fuel Cost Adjustment Factors, and Statement AH – Operation and Maintenance (O&M) Expenses. In support of its request, PG&E states that it no longer maintains the data requested in Statement BC because CAISO has been responsible for setting reliability standards and tracking reliability data since March 31, 1998.¹⁴ PG&E also argues that filing Statement BI is unnecessary because its proposed tariff revisions do not include a fuel cost adjustment clause.¹⁵ Finally, PG&E explains that its Statement AH does not include recorded or forecasted monthly fuel, water for power, and purchased power because it does not propose to change any power, fuel clause, or production-related service or rate.¹⁶

7. Finally, PG&E notes that it adopted a new cost model on January 1, 2016 that will affect the allocation of certain costs in the instant filing.¹⁷ PG&E explains that its previous cost model used a fully inclusive labor rate that factored in all support and

¹¹ PG&E TO18 Filing, Ex. PGE-1 at 9.

¹² *Id.* at 8. *See also* PG&E TO18 Filing, Ex. PGE-14 at 14.

¹³ PG&E TO18 Filing, Ex. PGE-10 at 13-15.

¹⁴ PG&E TO18 Filing at 2.

¹⁵ *Id.* at 2-3.

¹⁶ *Id.* at 3.

¹⁷ PG&E TO18 Filing, Ex. PGE-1 at 4-6. PG&E defines a cost model as “the structure by which costs are assigned and allocated to certain processes and activities in the Company. PG&E’s cost model is used for budgeting, tracking and forecasting costs for internal management purposes as well as for external reporting purposes.” *Id.* at 5.

overhead costs. The support and overhead costs included benefits, payroll taxes, supervision, engineering, technical, business, and financial support, and office space. PG&E asserts that its new cost model uses a “labor only” labor rate that no longer includes support and overhead costs. Responsibility for the support and overhead costs are now managed in the budgets of the organizations from which they originate. PG&E states that in the new cost model, support and overhead costs are budgeted and recorded through separate line items for the expense programs. For capital costs, PG&E explains that the new cost model allocates the proportionate amount of the support and overhead costs to the project, as required by the Commission’s Uniform System of Accounts.¹⁸

8. PG&E requests that the Commission accept its proposed rates to be effective October 1, 2016, subject to a nominal, one-day suspension.

II. Notice of Filing and Responsive Pleadings

9. Notice of PG&E’s filing was published in the *Federal Register*, 81 Fed. Reg. 51,435 (2016), with interventions and protests due on or before August 19, 2016.

10. The California Public Utilities Commission (CPUC) submitted a timely notice of intervention and protest. Timely motions to intervene were filed by the City and County of San Francisco; Imperial Irrigation District; Energy Producers and Users Coalition; and Southern California Edison Company. Protests were submitted by California Department of Water Resources State Water Project (CDWR); Modesto Irrigation District (Modesto); the City of Santa Clara and the M-S-R Public Power Agency (Santa Clara/M-S-R); Northern California Power Agency (NCPA); Sacramento Municipal Utility District (SMUD); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); State Water Contractors (SWC); and the Transmission Agency of Northern California (TANC)¹⁹ (collectively, Protestors). On August 22, 2016, Trans Bay Cable LLC (Trans Bay) filed a motion to intervene out-of-time. On September 2, 2016, PG&E filed an answer. On September 9, 2016, as revised on September 12, 2016, the CPUC submitted an answer to PG&E’s answer. On September 19, 2016, TANC submitted an answer to PG&E’s answer.

¹⁸ PG&E TO18 Filing, Ex. PGE-1 at 5.

¹⁹ Modesto, Santa Clara/M-S-R, and SMUD support and join in TANC’s Protest.

III. Protests and Answers

A. Protests

11. Protestors generally argue that PG&E's proposed rate increase is unjust, unreasonable, and substantially excessive, and, as such, the Commission should suspend PG&E's proposed rates for the maximum five-month period, subject to refund.²⁰ Protestors also assert that PG&E's TO18 Filing presents numerous issues that require formal discovery and, thus, request that the Commission set PG&E's proposed rates for hearing and settlement procedures, as discussed below. NCPA and CDWR further request that the Commission initiate an investigation pursuant to section 206 of the FPA,²¹ because their preliminary analyses indicates that PG&E's total cost of service will be less than \$1.452 billion, which is the amount pending in PG&E's seventeenth revised transmission owner tariff (TO17) filing submitted in 2015.²²

12. Protestors object to the proposed base ROE of 10.4 percent, which PG&E states is based on the methodology that the Commission adopted in Opinion No. 531, as unjust and unreasonable. Protestors argue that the ROE should be calculated using the median of the range of reasonableness for the proxy group and they assert that PG&E has included entities that should have been screened out. Protestors also state that PG&E has failed to demonstrate that either anomalous market conditions or unusual circumstances exist to warrant an upward adjustment to its base ROE, as the Commission found in Opinion No. 531.²³ Specifically, Protestors argue that the circumstances presented in Opinion No. 531 are distinguishable to those in the instant filing because PG&E, unlike the merchant transmission owners in Opinion No. 531, is a single utility of average risk and thus, faces a different risk profile. Protestors further argue that the Commission's determination in Opinion No. 531 was based on specific, unique market conditions that

²⁰ CDWR Protest at 5-6; CPUC Protest at 3-4; Modesto Protest at 6-7; Santa Clara/M-S-R Protest at 7; NCPA Protest at 5-6; Six Cities Protest at 48-50; SMUD Protest at 7; SWC Protest at 14-15; TANC Protest at 154-158.

²¹ 16 U.S.C. § 824e (2012).

²² NCPA Protest at 5-6 and CDWR Protest at 6-7 (citing *Pac. Gas and Elec. Co.*, 144 FERC ¶ 61,227, at P 21 (2013)).

²³ CDWR Protest at 10; TANC Protest at 34, 75, 92; CPUC Protest at 5-6; Six Cities Protest at 29-34; SWC Protest at 10-11; NCPA Protest at 5.

existed during the period of October 2012 to March 2013 and applied to that particular case. Instead, several Protestors contend that the Commission should require PG&E to calculate its ROE using the median of its DCF analysis, which results in a base ROE of 8.56 percent and lowers PG&E's revenue requirement by approximately \$114 million.²⁴

13. The CPUC also disputes PG&E's request for a 50 basis point ROE adder for its continued participation in CAISO, which according to the CPUC comprises \$30 million of PG&E's requested revenue requirement.²⁵ The CPUC asserts that the ROE adder is not justified for three reasons. First, the CPUC contends that PG&E's continued participation in CAISO is not voluntary and is required by both CPUC order and California state law.²⁶ Second, the CPUC argues that the 50 basis point ROE adder has become a "generic adder," for participation in transmission organizations, because the Commission has repeatedly granted this adder without any substantive discussion.²⁷ Finally, the CPUC argues that denying the 50 basis point ROE adder is in the public interest because the Commission's two most recent approvals of this incentive in PG&E's sixteenth revised transmission owner tariff (TO16) and TO17 rate filings²⁸ are currently on appeal before the United States Court of Appeals for the Ninth Circuit (Ninth Circuit).²⁹ Accordingly, the CPUC states that it would be inappropriate for the Commission to summarily affirm PG&E's request in this proceeding.

²⁴ See CDWR Protest at 9; NCPA Protest at 4; TANC Protest at 74; Six Cities Protest at 9, 11, 13; SWC Protest at 6-11. CPUC argues for an ROE "no more than 8.56%" and possibly as low as 8.52 percent for a reduced revenue requirement of \$110.7 million. CPUC Protest at 6.

²⁵ CPUC Protest at 9-17; SMUD Protest at 6-7; CDWR Protest at 14; TANC Protest at 120-124.

²⁶ CPUC Protest at 11-15.

²⁷ *Id.* at 15-17 (citing *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006) (Order No. 679), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007) (Order No. 679-A)).

²⁸ See *Pac. Gas and Elec. Co.*, 152 FERC ¶ 61,252 (2015); *Pac. Gas and Elec. Co.*, 148 FERC ¶ 61,245 (2014).

²⁹ CPUC Protest at 10-11. See also *Cal. Pub. Utils. Comm'n v. FERC*, No. 16-70481 (9th Cir. filed Feb. 22, 2016).

14. Protestors also dispute certain aspects of PG&E's DCF analysis, such as the inclusion of El Paso Electric Company (El Paso) and Eversource Energy (Eversource) in its base proxy group, and the inclusion of Avangrid, Inc. (Avangrid) in its expanded proxy group. Specifically, Protestors contend that El Paso should be excluded because it does not have \$1 billion in revenues and Eversource should be excluded because its Standard & Poor's credit rating is an A, which is more than one notch above PG&E's credit rating (BBB). Protestors further argue that Avangrid should be excluded from PG&E's expanded proxy group because it is not part of the national group of companies considered electric utilities by Value Line. In addition, Protestors note several other flaws in PG&E's proposed ROE, such as its use of non-DCF methodologies, which Protestors contend all combine to distort the results upwards, leading to an unreasonably high ROE.³⁰

15. Protestors also assert that PG&E's proposed 3.26 percent depreciation rate is excessive and represents an unjustified increase from its currently authorized depreciation rate of 2.52 percent.³¹ Protestors contend that PG&E's depreciation study contains several erroneous assumptions, such as overstating the negative net salvage estimate and understating the reasonably expected service lives of certain asset categories. Moreover, Protestors claim that PG&E has historically overstated its proposed depreciation rate, despite the fact that its authorized depreciation rate remained at 2.56 percent from 2011 to 2014 and was then reduced to 2.52 percent as part of the settlement of PG&E's TO16 rate filing.³² TANC argues that the Commission should use a composite depreciation rate that is no greater than 2.17 percent.³³

16. Protestors generally argue that PG&E's TO18 Filing raises several other issues that require both the maximum five-month suspension and formal hearing procedures. For example, Protestors assert that PG&E has historically overestimated its capital additions and continues to do so in the instant filing by including capital projects that will not likely be in service by the end of the Period II time frame (i.e., December 31, 2017).³⁴

³⁰ CDWR Protest at 9-11; Six Cities Protest at 17-34; SWC Protest at 6-11; TANC Protest at 111-119.

³¹ CPUC Protest at 21; NCPA Protest at 5; CWDR Protest at 14-15; TANC Protest at 129-132; Six Cities Protest at 34; SWC Protest at 11-12.

³² See PG&E TO18 Filing, Ex. PGE-10 at 14.

³³ TANC Protest at 131.

³⁴ CDWR Protest at 15; CPUC Protest at 18-19; Six Cities Protest at 45-46, SWC Protest at 12-13; TANC Protest at 2-3, 46-47.

In addition, Protestors contend that PG&E has both overstated and failed to justify increases in its O&M and administrative and general expenses (A&G), particularly if PG&E expects its total load to decrease.³⁵ TANC also points to PG&E's proposed pensions and benefits expenses, as well as its short-term incentive program as other expenses that lack sufficient justification and warrant further investigation.³⁶

17. Finally, TANC contends that PG&E's filing relies on a new cost model that fails to include sufficient detail with regard to how the model calculates and derives the costs that PG&E seeks to recover through its rates. For example, TANC states that PG&E does not use its actual recorded costs for Period I, but rather uses a "recast" of its actual expenses as the basis for the instant filing. TANC contends that the Commission and parties to the proceeding have no basis for confirming Period I data (2015), which calls into question the justness or reasonableness of its Period II (2017) expenses. TANC states that because PG&E has not adequately explained such charges, the Commission should find that the filing is deficient.³⁷

B. Answers

18. In response, PG&E argues that its filing is not deficient because the revised methodology for allocating overhead costs is aptly supported and, as such, the Commission should deny TANC's request to find the filing deficient. First, PG&E explains that its new cost model represents a minor change in the methodology it uses to record certain support and overhead costs in PG&E's financial system. Specifically, PG&E explains, under the previous cost system, costs such as overheads, chargebacks, and supervision (collectively, "overhead costs") were allocated to a standard rate for labor account. In order to provide more transparency and improve accountability for those departments responsible for providing internal (indirect) services, PG&E states that the new cost model records the overhead costs under a "Supervision and Engineering" account based on the organizations from which they originate.³⁸

³⁵ CDWR Protest at 16-19; CPUC Protest at 21-23; Six Cities Protest at 34-47; SWC Protest at 12-13; TANC Protest at 3, 52-65.

³⁶ TANC Protest at 68-73.

³⁷ *Id.* at 14-22.

³⁸ PG&E Answer at 2-3; *see also* PG&E TO18 Filing, Ex. PGE-1 at 5.

19. PG&E disagrees with TANC's contention that PG&E does not use its actual recorded costs for Period I, but rather uses a "recast" of its actual expenses as the basis for the instant filing. PG&E asserts that it has provided all of its actual recorded costs for Period I, and that the recorded expenses shown in PG&E's FERC Form 1 for 2015 have been independently audited and recorded in PG&E's books and records using the same cost allocation methodologies in effect during the previous period. PG&E states that the recast data used for Period I (2015) is illustrative only and is not a restatement of PG&E's books and records for 2015.³⁹

20. PG&E further contends that the CPUC's and TANC's request for summary disposition should be denied. PG&E argues that its proposed ROE, as well as its use of the midpoint of the top half of the DCF range, was determined in accordance with the Commission's policy in Opinion No. 531. PG&E explains that it also considered alternative methods cited by the Commission in that Opinion (e.g., risk premium, CAPM, and expected earnings approach) to demonstrate that the median values resulting from the Commission's two-step DCF method are far below investors' required returns and would not produce a just and reasonable end-result. PG&E therefore states that these alternative methodologies support an ROE within the upper end of the DCF range of reasonableness.⁴⁰

21. PG&E disagrees that Avangrid should be excluded because it is not currently included in Value Line's electric utility industry group. PG&E argues that the Protestors' position is inconsistent with the very purpose of the proxy group; namely, to capture the range of investors' expectations for comparable risk utilities. PG&E contends that investors would regard Avangrid as a comparable investment alternative on the basis that it: (1) serves over 2.2 million customers and has established operating subsidiaries that are familiar to investors; (2) has a credit rating within the comparable risk band established by Commission policy; and (3) has the data necessary to apply the Commission's two-step DCF model.⁴¹ While PG&E agrees that Eversource should not have been included in the proxy group based on its credit rating, PG&E asserts that removing Eversource from the proxy group would not change its proposed ROE.⁴²

³⁹ PG&E Answer at 5.

⁴⁰ *Id.* at 7.

⁴¹ *Id.* at 8.

⁴² *Id.* at 9.

22. PG&E further contends that its use of Value Line growth rates are also consistent with Opinion No. 531, which notes that there may be more than one source of valid growth rate estimates and allows for consideration of comparable alternatives to Institutional Brokers' Estimate System (IBES)⁴³ so long as that source is used consistently for all companies in the proxy group.⁴⁴

23. PG&E contends that NCPA and CDWR have failed to justify their requests for the Commission to initiate a section 206 investigation. Rather, PG&E avers that issues addressing the revenue requirement are appropriately resolved in hearing and settlement judge procedures.⁴⁵

24. Finally, PG&E asserts that the Commission should summarily affirm its request for the 50 basis point ROE adder for continued participation in CAISO, noting that the Commission has consistently granted this incentive in previous TO Tariff rate cases. PG&E states that Protestors arguments are misguided in alleging its participation in CAISO is mandated by California state law and CPUC rules and CPUC has presented no new arguments in its current pleading that the Commission has not previously considered and rejected in its two most recent TO Tariff rate filings.⁴⁶

25. In response to PG&E's answer, the CPUC argues that this Commission has failed to previously consider, or substantively address, whether PG&E's participation in CAISO is voluntary in light of California state law and CPUC orders relating to the creation of CAISO. CPUC states that the Commission should reserve judgment on the Regional Transmission Organization (RTO) incentive adder for membership in CAISO until after the Ninth Circuit rules on the appeals of orders addressing PG&E's TO16 and TO17 rate proceedings.⁴⁷ The CPUC further asserts that PG&E fails to demonstrate a nexus between the incentive it seeks (i.e., 50 basis point adder for participating in CAISO) and the action the Commission seeks to induce (i.e., remaining in CAISO). Lastly, the CPUC argues that section 3.3.3 of the Transmission Control Agreement between PG&E and

⁴³ PG&E TO18 Filing, Ex. PGE-14 at 7, n.19. IBES is a growth rate that is compiled and published by Thomson Reuters.

⁴⁴ PG&E Answer at 9. *See also* PG&E TO18 Filing, Ex. PGE-14 at 8-9.

⁴⁵ PG&E Answer at 16-17.

⁴⁶ *Id.* at 12-16.

⁴⁷ CPUC Answer at 3-12.

CAISO, which turns over operational control of PG&E's transmission system to CAISO, does not preempt the CPUC's regulatory authority and thus, requires PG&E to seek approval from this Commission, as well as the CPUC and any other relevant agencies.⁴⁸

26. TANC also filed an answer in response to PG&E's answer, arguing that PG&E's answer confuses the record and misstates Commission precedent with respect to its ROE calculation, mischaracterizes facts from PG&E's TO17 filing, and should be dismissed to the extent it responds to protests rather than the motion for summary disposition.⁴⁹

IV. Discussion

A. Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2016), we grant Trans Bay's unopposed motion to intervene out-of-time, given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

28. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213(a)(2) (2016), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers filed by PG&E, the CPUC, and TANC because they provided information that assisted us in our decision-making process.

B. Commission Determination

29. Our preliminary analysis indicates that PG&E's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that PG&E's filing raises issues of material fact that, to the extent not summarily disposed of here, are more appropriately addressed through hearing and settlement judge procedures. Therefore, we will accept PG&E's proposed rates for filing, suspend them for five months to become effective March 1, 2017, subject to refund. We also establish hearing and settlement judge procedures.

⁴⁸ *Id.* at 10-12.

⁴⁹ TANC Answer at 1-2.

30. In *West Texas Utilities Co.*,⁵⁰ the Commission explained that, when its preliminary examination indicates that proposed rates may be unjust and unreasonable and may be substantially excessive, as defined in *West Texas Utilities Co.*, it would generally impose a five-month suspension.⁵¹ In this proceeding, we find that PG&E's proposed rates may yield substantially excessive revenues. Accordingly, we will suspend PG&E's proposed rates for five months and set them for hearing and settlement judge procedures, as ordered below.

31. We disagree with TANC's assertion that PG&E's filing is patently deficient. PG&E states that its new cost model represents a revised methodology for allocating existing overhead costs (i.e., PG&E's O&M, A&G, and capital spending costs). Under PG&E's new cost model, overhead costs for the applicable expenses are budgeted and recorded to programs from which they originate, rather than using a "standard rate" for overhead costs.⁵² We find that PG&E has provided information to explain its revised methodology consistent with the Commission's regulations for submitting a filing under section 205 of the FPA.⁵³ PG&E's filing includes accounting records of each account and reflects an impact of the new cost model on all affected accounts. We therefore deny TANC's request for a finding of deficiency, and find that PG&E's filing satisfies our minimum threshold filing requirements and is not patently deficient.⁵⁴

32. We also deny NCPA's and CDWR's request for the Commission to initiate an FPA section 206 investigation. The Commission typically initiates a section 206 investigation where a public utility has proposed a revenue requirement below the rate

⁵⁰ *W. Tex. Utils. Co.*, 18 FERC ¶ 61,189 (1982).

⁵¹ *Id.* at 61,375.

⁵² PG&E Answer at 2-3. Under PG&E's previous cost model, PG&E accumulated the costs of various activities into Major Working Categories. Among these categories, PG&E used a "standard rate" for labor that included the direct labor cost plus various allocated overheads, such as benefits expense, payroll taxes, and chargebacks from one organizational group to another for support services (e.g., Corporate Real Estate and Transportation Services). The standard rate also included the cost associated with supervision. PG&E then assigned the amounts accumulated in those Major Working Categories into FERC accounts using settlement rules.

⁵³ 18 C.F.R. pt. 35 (2016).

⁵⁴ *Northern States Power Co.*, 131 FERC ¶ 61,188, at P 37 (2010); *Portland Gen. Elec. Co.*, 84 FERC ¶ 61,216, at 62,044 (1998).

currently in effect (i.e., a rate reduction) to ensure that customers are adequately protected in case a further rate reduction may be warranted beyond what was proposed.⁵⁵ However, in an instance such as this, where PG&E proposes a rate increase under FPA section 205, customers are adequately protected from any excessive rates because the rate increase is subject to refund.⁵⁶ Here, the Commission has accepted PG&E's filing, subject to refund, and suspended it for five months. We find that these actions provide adequate protection for customers.

33. We accept PG&E's request for a 50 basis point incentive ROE adder for its continued participation in CAISO, subject to it being applied to a base ROE that has been shown to be just and reasonable based on an updated DCF analysis and subject to the resulting ROE being within the zone of reasonableness determined by that updated DCF analysis, as determined at hearing.⁵⁷ As an initial matter, we deny the request by the CPUC that we not rule on this issue given the pending appeal of the TO16 and TO17 filings before the Ninth Circuit. While we recognize that appeal is pending, such an appeal does not operate as a stay of the Commission's consideration of this issue here.

34. On the merits, we find that PG&E's request satisfies the criteria of Order No. 679. We find that PG&E is a member of CAISO, an independent system operator, and its membership is ongoing; therefore, PG&E is presumed to be eligible for this incentive adder in accordance with Order No. 679, and this presumption is un rebutted.⁵⁸ In its protest, the CPUC largely reiterates arguments it has raised with regard to previous PG&E TO Tariff filings. The Commission has considered and rejected those

⁵⁵ See, e.g., *MidAmerican Energy Co.*, 155 FERC ¶ 61,122 (2016); *Startrans IO, LLC*, 153 FERC ¶ 61,360 (2015); *DATC Path 15, LLC*, 147 FERC ¶ 61,035 (2014).

⁵⁶ See 18 C.F.R. § 35.19a (2016) (governing refund requirements for suspended rates and stating “[t]he public utility whose proposed increased rates or charges were suspended shall refund at such time in such amounts and in such manner as required by final order of the Commission the portion of any increased rates or charges found by the Commission in that suspension proceeding not to be justified”); 16 U.S.C. § 824d(e) (2012).

⁵⁷ See, e.g., *Pac. Gas and Elec. Co.*, 144 FERC ¶ 61,227, at P 20 (2013).

⁵⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 327 (“An entity will be presumed to be eligible for the incentive if it can demonstrate that it has joined an RTO, ISO, or other Commission-approved Transmission Organization, and that its membership is on-going.”).

arguments,⁵⁹ and we reject them for the same reasons here. We emphasize that, as stated in Order No. 679-A, “[t]o limit the incentive to only utilities yet to join Transmission Organizations offers no inducement to stay in these organizations for members with the option to withdraw, and hence risks reducing Transmission Organization membership and its attendant benefits to consumers.”⁶⁰

35. We also grant, consistent with Commission precedent, PG&E’s request for waiver of the obligation to provide the information in Statement BC, Statement BI, and Statement AH.⁶¹

36. 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.⁶² 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.⁶³ 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.

⁵⁹ See *Pac. Gas and Elec. Co.*, 152 FERC ¶ 61,252, at PP 24-25 (2015), *order denying reh’g*, 154 FERC ¶ 61,118, at PP 9-11 (2016) (rejecting CPUC’s protest regarding the RTO incentive adder in PG&E’s TO17 filing); *Pac. Gas and Elec. Co.*, 154 FERC ¶ 61,119, at PP 10-13 (rejecting CPUC’s rehearing request regarding the RTO incentive adder in PG&E’s TO16 filing).

⁶⁰ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86.

⁶¹ See *Pac. Gas and Elec. Co.*, 152 FERC ¶ 61,252 at P 25.

⁶² 18 C.F.R. § 385.603 (2016).

⁶³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges’ availability.

The Commission orders:

(A) PG&E's proposed revisions to implement its TO18 Tariff rates are hereby accepted for filing and suspended for five months to become effective March 1, 2017, subject to refund, as discussed in the body of this order.

(B) PG&E's request for a 50 basis point ROE adder for membership in CAISO is hereby granted, as discussed in the body of this order.

(C) PG&E's request for waiver of the obligation to provide the information in Statement BC, Statement BI, and Statement AH is hereby granted, as discussed in the body of this order.

(D) 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. ER16-2320-000 concerning the justness and reasonableness of PG&E's proposed 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 (E), (F), and (G) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2016), 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 a 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.

(F) 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 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.

(G) 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. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.