

165 FERC ¶ 61,194  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur and Richard Glick.

Pacific Gas and Electric Company

Docket No. ER19-13-000

ORDER ACCEPTING AND SUSPENDING PROPOSED FORMULA RATE FILING,  
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued November 30, 2018)

1. On October 1, 2018, Pacific Gas and Electric Company (PG&E) filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> revisions to its Transmission Owner Tariff (TO Tariff)<sup>2</sup> to implement a formula rate (Formula Rate) for the costs associated with its transmission facilities. PG&E is also including a proposed 2019 base TRR and associated retail and wholesale transmission rates based on the Formula Rate. In this order, the Commission accepts PG&E's proposed Formula Rate and related 2019 TRR, suspends it for five months, to become effective May 1, 2019, subject to refund, and establishes hearing and settlement judge procedures.

**I. Background and the Instant Filing**

2. On October 1, 2018, PG&E submitted its twentieth TO Tariff filing (TO20), requesting a rate increase and proposing to replace its stated rates with a Formula Rate to calculate its TRR. PG&E's proposed Formula Rate calculates a TRR based on prior year costs from PG&E's Form No. 1, supplemented by PG&E records as needed, a true-up mechanism, plus certain additional costs that PG&E forecasts to incur, and any one-time cost adjustments.

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 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, through stated rates, the jurisdictional transmission revenue requirement (TRR) that reflects PG&E's cost of constructing, owning, and maintaining its transmission system.

3. Specifically, PG&E proposes to revise its TO Tariff by adding a new Appendix VIII, Formula Rate, which contains two new components: (1) the Model and (2) the Protocols. PG&E states that these two components comprise the Formula Rate and are included in Exhibit No. PGE-0022 of its filing. PG&E also states that it is providing a populated version of the Model for its proposed 2019 rates in Exhibit No. PGE-0023. PG&E states that it also proposes changes to the Base TRR, access charges, and wholesale and retail electric transmission rates previously shown in Appendices I, II, and III of its TO Tariff, based on the results of the Model derived in accordance with the Protocols.<sup>3</sup>

4. PG&E explains that its proposed Formula Rate operates using three calendar periods: (1) the Prior Year, which is the most recent calendar year prior to the Filing Year (for this filing, the Prior Year is 2017); (2) the Filing Year, which is the year when PG&E files its annual update (or in this case, the initial Formula Rate) with the Commission (for this filing, the Filing Year is 2018); and (3) the Rate Year, which is the year in which the rates will be effective and is the year immediately following the Filing Year (for this filing, the Rate Year is 2019).<sup>4</sup> PG&E states that following the Commission's acceptance of the Formula Rate in this filing, PG&E will file an informational filing to update to its TO Tariff on or before December 1 of each year beginning in 2019 for rates and charges to become effective January 1 of the following year.

5. PG&E explains that the proposed Formula Rate calculates a Base TRR, which consists of a Wholesale Base TRR, plus Retail Tax Adjustment, plus Retail Uncollectible Expense.<sup>5</sup> PG&E states that the Wholesale Base TRR is calculated by taking the Prior Year TRR (representing actual costs from PG&E's FERC Form No. 1 supplemented by PG&E company records as needed), plus an Incremental TRR (representing the additional costs that PG&E forecasts to incur during the period of time the Base TRR will be in effect), plus an Annual True-up Adjustment (which is the difference between PG&E's actual transmission costs and revenues received, plus interest), plus a One-Time Cost Adjustment when applicable.<sup>6</sup> PG&E explains that the One-Time Cost Adjustment is an adjustment that PG&E may make if a one-time cost of service item exceeding a \$35 million occurs during the Prior Year or the first six months of the Filing Year, and is not expected to recur in the Rate Year. PG&E states that the purpose of this adjustment

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<sup>3</sup> PG&E Transmittal Letter at 5.

<sup>4</sup> *Id.* at 5-6.

<sup>5</sup> *Id.* at 6.

<sup>6</sup> *Id.* at 6-7.

is to acknowledge the singularity of such a cost of service item and adjust the Base TRR for the Rate Year to accelerate the effects of the item in the Annual True-up Adjustment, effectively smoothing the swings from over-recovery to under-recovery. PG&E contends that the One-Time Cost Adjustment is beneficial because it provides greater rate stability for customers.<sup>7</sup>

6. PG&E states that the Protocols included in its Formula Rate provide parties with time and opportunity to: (1) review PG&E's proposed rates before they become effective; (2) request information; (3) participate in a technical conference; and (4) propose changes to PG&E.<sup>8</sup> The Protocols provide for PG&E to make an annual update informational filing with the Commission on or before December 1 of each year for rates and charges to become effective January 1 of the following year.

7. Under its proposal, PG&E may make a single-issue FPA section 205 filing to revise the Formula Rate under a limited number of circumstances which include: (1) changes to FERC Form No. 1 or Uniform System of Accounts; (2) changes in retail transmission rates that are required as a result of a California Public Utilities Commission (CPUC) order; (3) changes to the depreciation rates; (4) changes to reflect any future transmission incentives granted by the Commission; (5) revisions to the return on equity (ROE); and (6) revisions to the calculation of the capital structure as appropriate.<sup>9</sup>

8. PG&E states that due to increased wildfire risks and the doctrine of inverse condemnation,<sup>10</sup> which PG&E argues threaten its ability to attract and maintain the capital necessary to adequately support the needs of its system, it is proposing an increase to its ROE compared to its recent TO Tariff filings.<sup>11</sup> Specifically, PG&E proposes a base ROE of 12 percent, plus a 50-basis point adder for continuing participation in

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<sup>7</sup> *Id.* at 7; PG&E Filing, Ex. PGE-0022, app. VIII, Attachment I: Protocols § 9.

<sup>8</sup> PG&E Transmittal Letter at 7-8; PG&E Filing, Ex. PGE-0022, app. VIII, Attachment I: Protocols § 5.

<sup>9</sup> PG&E Transmittal Letter at 8-9; PG&E Filing, Ex. PGE-0022, app. VIII, Attachment I: Protocols § 11.

<sup>10</sup> PG&E explains that under the inverse condemnation doctrine, if PG&E's electric equipment contributes to a wildfire, PG&E can be required to pay the costs of all damages, regardless of fault. *See* PG&E Filing, Ex. PGE-0007 at 7.

<sup>11</sup> *Id.* at 3.

CAISO, for a total proposed ROE of 12.5 percent.<sup>12</sup> PG&E contends that its testimony included in Exhibit Nos. PGE-0001, PGE-0017, PGE-0018, and PGE-0019 demonstrates that the ROE requested in this proceeding is just and reasonable, and fully satisfies the Commission's and Supreme Court's policies and precedent.<sup>13</sup> PG&E states that its testimony describes in detail the "new normal" of California wildfires and existing state inverse condemnation policies that have resulted in downgrades in PG&E's credit rating, as well as a loss in the last year of approximately \$11.9 billion for common equity investors.<sup>14</sup>

9. In testimony included with the filing, PG&E provides two separate analyses regarding the appropriate ROE. For its first analysis, PG&E uses the Commission's two-step discounted cash flow (DCF) methodology as set forth in Opinion Nos. 531<sup>15</sup> and 551<sup>16</sup> to estimate the cost of equity for a proxy group of 19 electric utilities.<sup>17</sup> PG&E supplements the DCF studies with additional quantitative analyses (e.g., risk premium analysis, capital asset pricing model, expected earnings method, and state-approved ROEs) to arrive at a base ROE of 10.5 percent of a utility of average risk.<sup>18</sup>

10. However, PG&E contends that due to wildfires and California's inverse condemnation doctrine, its risks are substantially different than other utilities outside of California, and thus the application of the Commission's traditional DCF approach does not result in a just and reasonable base ROE. Therefore, PG&E provides a second analysis demonstrating that the specific risks currently faced by PG&E's common equity investors, and alternative ROE benchmarks relevant to an evaluation of a just and

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<sup>12</sup> PG&E Filing, Ex. PGE-0001 at 11.

<sup>13</sup> PG&E Transmittal Letter at 3-4 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,302, at P 13 (2004)).

<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Coakley v. Bangor Hydro-Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234, *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), *vacated sub nom. Emera Me. v. FERC*, 854 F.3d 9 (D.C. Cir. 2017).

<sup>16</sup> *Ass'n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 551, 156 FERC ¶ 61,234 (2016).

<sup>17</sup> PG&E Filing, Ex. PGE-0017 at 39-62.

<sup>18</sup> PG&E Filing, Ex. PGE-0001 at 11; PG&E Filing, Ex. PGE-0017 at 62-107.

reasonable ROE for PG&E, support a 13.5 percent ROE.<sup>19</sup> Finally, PG&E states that it recommends that the Commission adopt the mid-point between the two analyses, which would result in a base ROE of 12.0 percent.<sup>20</sup>

11. PG&E states that the Commission has indicated that it will grant an incentive ROE adder for entities that are members of Independent System Operators and Regional Transmission Organizations,<sup>21</sup> and PG&E believes that such incentives are appropriate. In this filing, PG&E is requesting that the Commission apply a 50 basis-point incentive adder to PG&E's base ROE for its continuing participation in CAISO. PG&E acknowledges that the ROE incentive adder is the subject of a remand order from the United States Court of Appeals for the Ninth Circuit (Ninth Circuit),<sup>22</sup> and states that if either the Commission or the courts determine that PG&E is not eligible for the ROE incentive adder, PG&E will remove it from its Formula Rate.<sup>23</sup>

12. PG&E's states that the projected TO20 base TRR used to calculate access charges for retail network transmission services for 2019 is \$1.96 billion compared to the TO19 as-filed base TRR of \$1.79 billion, with an average increase in rates from the as-filed TO19 rates of 9.5 percent.<sup>24</sup> PG&E projects the annual revenues from CAISO wheeling under the TO20 rates at \$240.7 million compared to \$227.2 million expected under the TO19 rates.

13. PG&E requests an effective date of December 1, 2018 for its filing; however, PG&E requests that the Commission suspend the use of the Formula Rate for one month

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<sup>19</sup> PG&E Filing, Ex. PGE-0001 at 12; PG&E Filing, Ex. PGE-0017 at 5, 30-39.

<sup>20</sup> PG&E Filing, Ex. PGE-0001 at 12-13.

<sup>21</sup> PG&E Transmittal Letter at 10, n.15 (citing *Promoting Transmission Investment through Pricing Reform*, 119 FERC ¶ 61,062, at P 19 (2007); *ISO New England Inc. v. New England Power Pool*, 106 FERC ¶ 61,280 (2004); *Proposed Pricing Policy for Efficient Operation and Expansion of the Transmission Grid*, 102 FERC ¶ 61,032 (2003)).

<sup>22</sup> See *Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,121 (2018).

<sup>23</sup> PG&E Transmittal Letter at 10.

<sup>24</sup> *Id.*

to January 1, 2019, to coincide with the calendar year true-up period corresponding to PG&E's FERC Form No. 1 reporting.<sup>25</sup>

14. Finally, PG&E requests waiver of the Commission's cost support regulations under 18 C.F.R. § 35.13 (2018), including waiver of the full Period I and Period II data requirements. PG&E asserts that good cause exists for such waiver because the statements, testimony, and exhibits accompanying the filing, together with PG&E's publicly-available FERC Form No. 1 information, provide ample support for the reasonableness of the proposed Formula Rate.<sup>26</sup>

## **II. Notice of Filing and Responsive Pleadings**

15. Notice of PG&E's filing was published in the *Federal Register*, 83 Fed. Reg. 50,358 (2018), with interventions and protests due on or before October 22, 2018. The California Public Utilities Commission (CPUC) filed a notice of intervention and protest. Timely motions to intervene were filed by San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SoCal Edison), GridLiance West Transco LLC, Imperial Irrigation District, and California Municipal Utilities Association. Timely motions to intervene and protests were filed by the City of Santa Clara, California and the M-S-R Public Power Agency (collectively, Santa Clara/M-S-R), the State Water Contractors (Water Contractors), California Department of Water Resources State Water Project (SWP), Modesto Irrigation District (Modesto), Northern California Power Agency (NCPA), City and County of San Francisco (San Francisco), Transmission Agency of Northern California (TANC),<sup>27</sup> Sacramento Municipal Utility District (SMUD), and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities). On November 6, 2018, PG&E filed an answer to the motions to reject and an answer to the protests. On November 13, 2018, Energy Producers and Users Coalition (EPUC) filed a motion to intervene out-of-time. On November 21, 2018,

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<sup>25</sup> *Id.* at 11.

<sup>26</sup> *Id.* at 11-12.

<sup>27</sup> Santa Clara/M-S-R, Modesto, and SMUD adopt and incorporate TANC's protests and arguments into their filings by reference and request that the Commission grant the relief requested by TANC. Santa Clara/M-S-R Protest at 7; Modesto Protest at 7; SMUD Protest at 5.

California Parties<sup>28</sup> filed an answer opposing PG&E's motion for leave to file an answer and answer.

**A. Protests**

16. Several protestors filed motions to reject PG&E's TO20 filing.<sup>29</sup> Protestors argue that PG&E's proposed Formula Rate fails to adhere to key Commission policies and precedent, and is insufficiently supported by verifiable data. They allege that PG&E's filing does not comply with FPA section 205 or Part 35 of the Commission's regulations in that it lacks critical cost components, including full Period I and Period II data. Protestors also allege that PG&E's filing does not comply with the Commission's formula rate policies in that the TO20 filing relies on data found in company records and lacks transparency.<sup>30</sup> Protestors also oppose PG&E's request for waivers, arguing that, while the Commission has granted waivers of the cost support required by 18 C.F.R. § 35.13 in formula rate cases involving FERC Form No. 1 data, the Commission has rejected such requests where there are questions regarding the inputs to the formula.<sup>31</sup> Here, protestors point out, PG&E will be using internal business records and other unverifiable material rather than relying on FERC Form No. 1 data.<sup>32</sup>

17. In addition, protestors generally argue that PG&E's proposed rate increase is unjust, unreasonable, and substantially excessive, and presents numerous issues that require formal discovery.<sup>33</sup> Accordingly, protestors assert that the Commission should

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<sup>28</sup> California Parties include CPUC, Modesto, NCPA, San Francisco, Santa Clara/M-S-R, SMUD, SWP, TANC, and Water Contractors.

<sup>29</sup> CPUC Protest at 3-19; SWP Protest at 4-5; TANC Protest at 12-28; Water Contractors Protest at 7-9.

<sup>30</sup> CPUC Protest at 12-15; TANC Protest at 21-24.

<sup>31</sup> See, e.g., CPUC Protest at 10-11 (citing *Tampa Elec. Co.*, 133 FERC ¶ 61,023, at PP 53-54 (2010) (*Tampa Electric*); *Duke Energy Carolinas, LLC*, 152 FERC ¶ 61,028, at P 16 (2015) (*Duke Energy*); *N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004, at PP 192-193 (2015) (*NYISO*)).

<sup>32</sup> *Id.* at 8-12, 19; TANC Protest at 17-21, 28; Water Contractors Protest at 8.

<sup>33</sup> CPUC Protest at 20-22, 47-48; NCPA Protest at 4; San Francisco Protest at 3; Six Cities Protest at 1-2, 53-55; SWP Protest at 1, 14; TANC Protest at 28-31; Water Contractors Protest at 9.

suspend PG&E's proposed rates for the maximum five-month period, subject to refund, and establish hearing and settlement judge procedures.<sup>34</sup>

18. Protestors object to PG&E's proposed base ROE as unjust and unreasonable.<sup>35</sup> First, they argue that PG&E improperly adjusted its proposed base ROE upward to 12 percent based on a misrepresentation of the risks PG&E faces due to wildfires and anomalous market conditions. Protestors note that the California legislature has introduced legislation to reduce PG&E's wildfire liability, and also note that this Commission may abandon its prior anomalous market condition analysis. Some protestors further argue that PG&E has not demonstrated that its transmission infrastructure faces greater risk than its distribution investment or the investments made by other companies in its proxy group, all of which face risks associated with natural disasters. Based on their own analyses, CPUC, Six Cities, and TANC contend that PG&E's base ROE should be no higher than 8.56 percent, 8.48 percent, and 8.52 percent, respectively.<sup>36</sup> Protestors further assert that PG&E's proxy group was improperly developed and includes entities that should have been screened out and excludes entities that should have been included.<sup>37</sup>

19. Some protestors oppose PG&E's eligibility for a 50-basis point ROE adder incentive for its continued participation in CAISO, which CPUC estimates to be worth \$30.7 million of PG&E's requested revenue requirement.<sup>38</sup> These protestors note that

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<sup>34</sup> CPUC Protest at 20-22; NCPA Protest at 8; San Francisco Protest at 7; Six Cities Protest at 1-2, 50-53; SWP Protest at 13-14; TANC Protest at 28-31, 114-121; Water Contractors Protest at 17-18.

<sup>35</sup> CPUC Protest at 27-31; NCPA Protest at 4-5; San Francisco Protest at 4; Six Cities Protest at 4-38; SWP Protest at 5-7; TANC Protest at 32-66; Water Contractors Protest at 9-13.

<sup>36</sup> CPUC Protest at 28; Six Cities Protest at 4; TANC Protest at 34.

<sup>37</sup> CPUC Protest at 28; NCPA Protest at 4-5; San Francisco Protest at 4; Six Cities Protest at 14-20; SWP Protest at 7-8; TANC Protest at 37-46; Water Contractors Protest at 10-11. For example, various protestors argue that several companies that PG&E included, such as Algonquin Power and Utilities, Inc., Avangrid, Inc., El Paso Electric Company, Otter Tail Corporation, and Sempra Energy should be excluded from the proxy group, while companies like Avista Corporation, IDACORP, Inc., and NorthWestern Corp. should be included in the proxy group.

<sup>38</sup> CPUC Protest at 30-31; TANC Protest at 65-66.



PG&E's eligibility for the incentive is pending before the Commission on remand from the Ninth Circuit, and thus the Commission should not summarily grant the request here.

20. Protestors also assert that PG&E's proposed 3.27 percent depreciation rate is excessive and represents an unjustified increase from its currently authorized depreciation rate of 2.52 percent.<sup>39</sup> Protestors contend that PG&E's depreciation study contains several errors, including overstating the expected cost of removal and understating the reasonably expected service lives of certain asset categories. TANC, based on its own analysis, alleges that two basic components of depreciation rate – service lives and net values – were not reasonably determined and that TANC's adjustment to these components results in a reduction of approximately \$121.3 million in PG&E's proposed depreciation rates.<sup>40</sup>

21. Protestors also identify other issues that they argue require the maximum 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 using the same flawed methodology that it has used in recent rate filings.<sup>41</sup> CPUC objects to PG&E's "self-approval" of capital additions that have failed to increase the capacity of the transmission system, as well as the lack of transparency in PG&E's efforts to "fire harden" its system.<sup>42</sup> CPUC also argues that PG&E's rate design provides for non-time dependent rates for retail customers and should be reviewed in light of the increasing penetration of renewable resources on PG&E's system.<sup>43</sup> TANC opposes PG&E's inclusion of high speed rail-related costs in its network transmission rates because PG&E has not shown such costs meet the used and useful ratemaking standard.<sup>44</sup> TANC also argues that PG&E has failed to support its non-tariff new products and

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<sup>39</sup> CPUC Protest at 41-42; NCPA Protest at 5-6; San Francisco Protest at 4-5; SWP Protest at 8-9; TANC Protest at 67-88; Water Contractors Protest at 13-14.

<sup>40</sup> TANC Protest at 85-87.

<sup>41</sup> CPUC Protest at 38-39; TANC Protest at 92-93; Water Contractors Protest at 14-16.

<sup>42</sup> CPUC Protest at 31-37. *See also* TANC Protest at 93-97 (alleging that PG&E's transmission planning process and "self-approval" projects lack transparency and require Commission review).

<sup>43</sup> CPUC Protest at 42-47.

<sup>44</sup> TANC Protest at 98.

services expenses, and fails to use the correct transmission revenue balancing account adjustment for its 2019 TRR.<sup>45</sup>

22. Six Cities and TANC allege errors in PG&E's calculation of the debt component of its capital structure in that PG&E uses net proceeds to calculate long-term debt.<sup>46</sup> Six Cities also argues that PG&E's rates are overstated because they fail to reflect accrued unfunded reserves in the rate base,<sup>47</sup> include the 50 percent disallowed meals and entertainment expenses, as a component of its income tax calculation, contrary to Commission precedent,<sup>48</sup> and overstate administrative and general expenses, the annual fixed charge rate, and general, common, and intangible plant allocation to network transmission.<sup>49</sup> All told, Six Cities alleges a potential rate reduction of approximately \$369,685,000 based on its preliminary analysis.<sup>50</sup>

23. Turning to PG&E's proposed Protocols, protestors argue that they fail to comply with relevant Commission precedent, lack sufficient transparency, and are thus unjust and unreasonable.<sup>51</sup> Specifically, protestors argue that PG&E has failed to provide clear and accurate sources for many of its calculations and numbers. Protestors also express concern that PG&E is allowing itself to make numerous single-issue rate filings related to, among other categories, depreciation rates and ROE under its Protocols in violation of Commission precedent.<sup>52</sup> Additionally, protestors assert that PG&E's timing and review mechanisms for the annual update process deserve serious scrutiny and do not provide

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<sup>45</sup> *Id.* at 97-98.

<sup>46</sup> Six Cities Protest at 3; TANC Protest at 88-89.

<sup>47</sup> Six Cities Protest at 38-40.

<sup>48</sup> *Id.* at 40-41.

<sup>49</sup> Six Cities Protest at 41-45. *See also* TANC Protest at 89-92 (alleging PG&E fails to adhere to Commission policy in calculating common, general, and intangible expenses).

<sup>50</sup> Six Cities Protest at 51.

<sup>51</sup> CPUC Protest at 22-26; NCPA Protest at 6-7; San Francisco Protest at 5-6; Six Cities Protest at 46-50; SWP Protest at 9-12; TANC Protest at 99-114; Water Contractors Protest at 16-17.

<sup>52</sup> *See, e.g.*, TANC Protest at 105-110 (arguing that Commission precedent disfavors single-issue ratemaking).

sufficient time for input from interested parties. Some protestors also object to the indefinite term of PG&E's proposed Formula Rate with no sunset date, which they assert is contrary to practice in California.<sup>53</sup> CPUC objects to PG&E's proposed annual informational filing, arguing that PG&E is shifting the burden to customers to show that the annual filing is unjust and unreasonable by avoiding having to make an FPA section 205 filing.<sup>54</sup> Along similar lines, TANC argues that the proposed Protocols unlawfully restrict customers' rights to challenge PG&E's annual update filings at the Commission.<sup>55</sup>

## **B. Answers**

24. In response to protests, PG&E filed: (1) an answer to the motions to reject; (2) an answer to protestors' requests for a maximum suspension period; and (3) a motion for leave to answer and answer to the protests. First, in response to the motions to reject, PG&E argues that it has provided more than sufficient cost information to deny the motions to reject. PG&E states that it provided nineteen chapters of testimony describing its costs, a proposed formula rate and model, including a version that is fully populated with data, and twelve additional exhibits of work papers.<sup>56</sup> Moreover, PG&E argues that its TO20 filing complies with Commission precedent and policy relating to formula rates.<sup>57</sup>

25. PG&E notes that protestors tie their motions to reject to their requests that the Commission deny PG&E's waiver requests. However, PG&E argues that rejection of its TO20 filing is not the remedy for denying a waiver request; rather, the appropriate remedy for denial of waiver is to seek that information through discovery.<sup>58</sup> In any event, PG&E argues that its waiver request is appropriate and should be granted.<sup>59</sup> Specifically, PG&E argues that its waiver request is sufficiently specific in that it requests waiver of section 35.13 of the Commission's regulations relating to full Period I and Period II data,

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<sup>53</sup> CPUC Protest at 47; SWP Protest at 12-13.

<sup>54</sup> CPUC Protest at 24-25.

<sup>55</sup> TANC Protest at 110-111.

<sup>56</sup> PG&E Answer at 4.

<sup>57</sup> *Id.* at 10-13.

<sup>58</sup> *Id.* at 10.

<sup>59</sup> *Id.* at 5-10, 35.

billing determinants, cost-of-service statements, and whether the proposal constitutes a rate increase. Additionally, PG&E points to precedent where the Commission has granted similar requests.<sup>60</sup> PG&E also distinguishes *Tampa Electric*, which is relied on by protestors, arguing that it has provided detailed information for all of its inputs and data used in the formula. PG&E asserts that, unlike in *Tampa Electric*, it does not have a flawed formula.<sup>61</sup>

26. Second, PG&E notes that many protestors request a five-month suspension, but PG&E argues that a one month suspension, as requested, is appropriate and would benefit customers. PG&E states that, under the Commission's *West Texas* suspension policy, "extraordinary circumstances might dictate a shorter suspension regardless of the amount of the increase."<sup>62</sup> PG&E asserts that because the suspension policy is intended to protect customers, a shorter suspension may be reasonable when it is in the customers' interests. PG&E further asserts a one-month suspension here is in the customers' interest because it minimizes the need for a partial year true-up and mid-year rate change. Moreover, PG&E alleges that customers will benefit because the TO20 rates will be trued up to actual costs through the formula rate.<sup>63</sup>

27. Lastly, PG&E states that it does not oppose the Commission establishing hearing and settlement judge procedures to address a variety of issues raised by protestors, including, among other things, ROE, depreciation rates, capital additions, certain expenses, and the Protocols.<sup>64</sup> Nevertheless, PG&E responds to protestors on these matters to address purported errors in the protests and to clarify the record as it relates to many of these issues.<sup>65</sup>

28. California Parties oppose PG&E's motion for leave to file an answer and answer, arguing that PG&E has not demonstrated good cause for waiving Rule 213(a)(2) of the

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<sup>60</sup> *Id.* at 6-7 (citing *S. Cal. Edison Co.*, 136 FERC ¶ 61,074, at P 23 (2011)).

<sup>61</sup> *Id.* at 7-9.

<sup>62</sup> *Id.* at 15 (quoting *W. Tex. Utils. Co.*, 18 FERC ¶ 61,189, at 61,375 (1982) (*West Texas*) (internal quotation marks omitted)).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 16.

<sup>65</sup> *Id.* at 16-35.

Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018).<sup>66</sup> California Parties contend that PG&E's answer rehashes claims made in its original TO20 filing, relies on future discovery and hearing or settlement procedures to resolve concerns, and contains misleading, inaccurate, and contradictory assertions.<sup>67</sup> California Parties also argue that PG&E's answer to the opposition to its cost support waiver fails to add clarity, and instead misrepresents the facts.<sup>68</sup> Finally, California Parties assert that the Commission should disregard PG&E's response to the requests for a five-month suspension.<sup>69</sup>

### **III. Discussion**

#### **A. Procedural Matters**

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), CPUC's notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers because they provided information that assisted us in our decision-making process. We therefore reject California Parties' opposition to PG&E's motion for leave to file an answer.

31. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2018), the Commission will grant EPUC'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.

#### **B. Substantive Matters**

32. Our preliminary analysis indicates that PG&E's proposed Formula Rate and proposed 2019 TRR 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 TO20 filing raises issues of material fact that, to the extent not summarily

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<sup>66</sup> California Parties Answer at 1-2.

<sup>67</sup> *Id.* at 2-6.

<sup>68</sup> *Id.* at 6-8.

<sup>69</sup> *Id.* at 8-9.

disposed of here, cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. In *West Texas*, the Commission explained that, when its preliminary analysis indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, the Commission will generally impose a maximum suspension (i.e., five months).<sup>70</sup> Based on our preliminary analysis, we find that PG&E's proposed rates may yield substantially excessive revenues, and thus suspend them for five months. Therefore, we accept PG&E's proposed Formula Rate and proposed 2019 TRR for filing, suspend them for five months to be effective May 1, 2019, subject to refund, and set all issues not summarily disposed of in this order for hearing and settlement judge procedures.

33. We grant PG&E's request for waiver of the requirements under section 35.13 of the Commission's regulations regarding the filing of a full Period I and Period II study. We find that granting waiver in this case is consistent with the Commission's precedent granting similar waiver requests by other public utilities in formula rate filings. Contrary to protestors' contentions, the Commission has granted such requests for waiver where, as here, the applicant used both FERC Form No. 1 data and data included in company records.<sup>71</sup> While protestors rely on *Tampa Electric*, we note that the Commission in that case identified specific gaps in the data that were not supported by publicly available documents.<sup>72</sup> Conversely, PG&E seeks to establish a formula rate using a combination of FERC Form No. 1 data and PG&E company records supported by detailed descriptions

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<sup>70</sup> *West Texas*, 18 FERC at 61,374-61,375.

<sup>71</sup> See, e.g., *Pub. Serv. Co. of New Mex.*, 142 FERC ¶ 61,168, at P 29 (2013); *Empire Dist. Elec. Co.*, 140 FERC ¶ 61,087, at P 49 (2012); *S. Cal. Edison Co.*, 136 FERC ¶ 61,074, at P 29; *Xcel Energy Servs., Inc.*, 122 FERC ¶ 61,098, at P 75 (2008); *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205, at PP 40-41 (2007); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 57 (2007); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308, at PP 55-56 (2005), *order on reh'g*, 115 FERC ¶ 61,156 (2006); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at PP 93-94 (2007).

<sup>72</sup> See *Tampa Elec.*, 133 FERC ¶ 61,023 at PP 53-54 (stating that Tampa Electric acknowledges flaws in its formula rate and that a substantial amount of the costs are not based on publicly available documents); *Duke Energy*, 152 FERC ¶ 61,028 at P 16, n.32 (denying a waiver request where Duke Energy failed to support its actual costs and noting that it was unclear whether certain actuarial studies would be publicly available). We note that protestors also cite *NYISO*, 151 FERC ¶ 61,004, but in *NYISO*, much of the applicant's costs in that case would be based on services provided by affiliated transmission owners, which is not the case here. In this case, we find that PG&E provided extensive documentation in its filing that warrants granting its waiver request.

of the formula rate inputs, and, under these circumstances, we find that full Period I and Period II data are not needed for an evaluation of the justness and reasonableness of PG&E's proposed Formula Rate. However, this finding does not preclude parties at hearing from demonstrating the need for additional specific information to allow for a full evaluation of PG&E's proposal.

34. We further deny protestors' motions to reject PG&E's TO20 filing. PG&E's TO20 filing contains a fully populated Formula Rate model, work papers, and testimony in support of its costs. In total, PG&E's TO20 filing consists of over 1,700 pages of such testimony, work papers, and other information, and we believe that any gaps in the filing are best addressed during the hearing and settlement judge procedures ordered below. Having evaluated PG&E's TO20 filing, we find that it satisfies the Commission's threshold filing requirements and is not patently deficient. We therefore deny protestors' motions to reject PG&E's TO20 filing.

35. 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.<sup>73</sup> 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 requirement which determine judges' availability.<sup>74</sup> 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 assignment of the case to a presiding judge.

The Commission orders:

(A) PG&E's proposed Formula Rate and proposed 2019 TRR are hereby accepted for filing and suspended for five months to become effective as of May 1, 2019, subject to refund, as discussed in the body of this order.

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<sup>73</sup> 18 C.F.R. § 385.603 (2018).

<sup>74</sup> 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 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>).

(B) PG&E's requests for waivers are hereby granted, as discussed in the body of this order.

(C) The motions to reject PG&E's proposed Formula Rate and 2019 TRR filed by CPUC, SWP, TANC, and Water Contractors are hereby denied, 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 section 205 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. ER19-13-000 concerning the justness and reasonableness of PG&E's proposed Formula Rate, 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) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2018), 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 McIntyre is not voting on this order.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.