

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Pacific Gas & Electric Company Docket No. ER04-1233-000

Pacific Gas & Electric Company Docket No. ER00-565-010

ORDER CONDITIONALLY ACCEPTING TARIFF AMENDMENTS FOR FILING,
ESTABLISHING HEARING PROCEDURES, AND CONSOLIDATING
PROCEEDINGS

(Issued November 12, 2004)

1. On September 15, 2004, PG&E filed proposed amendments to Schedule 2 of its Scheduling Coordinator (SC) Tariff. PG&E conditionally filed these amendments under section 205 of the Federal Power Act (FPA),¹ asserting that it has the unilateral right to file these amendments to the SC Tariff, as they do not reflect a change in the manner in which PG&E incurs SC costs. In this order, we accept for filing, nominally suspend PG&E's proposed SC Tariff amendments, make them effective November 15, 2004, subject to refund, and set them for hearing. Because the instant filing raises issues similar to those already being litigated in the ongoing hearing proceeding concerning PG&E's original SC Tariff in Docket Nos. ER00-565-010, we consolidate this docket with that one. This order benefits customers by assuring an orderly process for deciding the allocation of charges by the California Independent System Operator (CAISO) among its customers.

¹ 16 U.S.C. § 824d (2000).

Background

2. The history of this proceeding began on September 1, 1999, when an Initial Decision was issued in Docket No. ER97-2358, holding, among other things, that the costs that PG&E incurs as a Scheduling Coordinator under the CAISO Tariff for its existing contract customers could not be recovered under its Transmission Owner (TO) Tariff (from its TO Tariff customers).² Thereupon, on November 12, 1999, PG&E filed its SC Tariff to ensure full recovery of all SC costs from its contract customers in the event that the Initial Decision was affirmed by the Commission. On January 11, 2000, the Commission accepted the SC Tariff for filing, suspended it and set it for hearing, but held the hearing in abeyance, pending the outcome in Docket No. ER97-2358.³

3. On August 5, 2002, the Commission issued Opinion No. 458 in Docket No. ER97-2358, affirming the Initial Decision.⁴ As a result, on May 15, 2003, the Commission issued an order reactivating the SC Tariff proceeding and establishing hearing procedures.⁵ The presiding judge subsequently divided the SC Tariff proceeding into two phases: liability issues would be addressed in Phase I, while cost allocation issues were to be addressed in Phase II. Phase I of that proceeding is complete: on October 28, 2004, the Commission issued Opinion No. 477, affirming in part and reversing in part the Initial Decision.⁶ Phase II proceedings are presently underway before the presiding judge, albeit in an early stage.

² *Pacific Gas & Electric Co.*, 88 FERC ¶ 63,007 (1999).

³ *Pacific Gas & Electric Co.*, 90 FERC ¶ 61,010 (2000), *reh'g denied*, 95 FERC ¶ 61,247, *clarified*, 96 FERC ¶ 61,072 (2001).

⁴ *Pacific Gas & Electric Co., et al.*, 100 FERC ¶ 61,156 (2002).

⁵ *Pacific Gas & Electric Co.*, 103 FERC ¶ 61,180 (2003).

⁶ *Pacific Gas & Electric Co.*, 109 FERC ¶ 61,093 (2004).

4. In its filing, PG&E states that the SC Tariff provides for a pass-through of costs imposed by the CAISO on PG&E in its role as Scheduling Coordinator for the existing contract customers. To allocate these costs, the ISO has created a series of charge types, which are the basis upon which it bills PG&E as a Scheduling Coordinator. PG&E explains that the instant filing was necessary because the CAISO, in connection with its proposed market redesign, notified market participants that it intended to implement a series of new charge types on October 1, 2004. These new charge types include some to replace charge types the CAISO intends to retire, as well as others for charges that did not previously exist.⁷

5. PG&E maintains that nothing in the SC Tariff requires PG&E to make a section 205 filing each time the CAISO creates a new charge type or imposes a new charge on PG&E. Rather, PG&E asserts, an SC Tariff amendment under section 205 would only be necessary when the CAISO changes the manner in which PG&E incurs charges passed through under the tariff, which is not the case here.

6. PG&E argues that its position is consistent with Commission precedent regarding pass-through tariffs and formula rates. Under a formula rate, certain categories of costs are passed through to the customers, even if the components or amounts of those costs vary. PG&E views the SC Tariff as a formula rate, with no change being proposed here in that formula.

7. PG&E observes that the Commission has not yet made a determination on whether the SC Tariff is a formula rate. Therefore, PG&E is conditionally filing the SC Tariff amendments pursuant to FPA section 205. In this regard, PG&E requests that the

⁷ PG&E states that these charge types include Excess Cost Neutrality Allocation; Unrecovered Cost Neutrality Allocation, Minimum Load Cost Allocation due ISO; No-Pay Charge – Spinning Reserve; No-Pay Charge – Non-Spinning Reserve; Instructed Energy; Unaccounted For Energy (UFE) Settlement; Uninstructed Energy; Transmission Loss Obligation; Excess Cost for Instructed Energy; Allocation of Excess Cost for Instructed Energy; Allocation of Excess Cost for Instructed Energy; and Unrecovered Cost Payment.

SC Tariff amendments be made effective on October 1, 2004, the date the CAISO will impose the new charge types. However, PG&E points out, under the terms of the SC Tariff, the customers will not actually be charged for the costs associated with these new charge types “until after December 1, 2004.”⁸

8. Notice of PG&E’s filing was published in the *Federal Register*, 69 Fed. Reg. 59,912 (2004), with interventions, and protests due on or before October 6, 2004. Motions to intervene and/or protests were filed by the California Electricity Oversight Board (Electricity Board), the Sacramento Municipal Utility District (SMUD), Southern California Edison Company (SoCal Edison), Turlock Irrigation District (Turlock); the Transmission Agency of Northern California (TANC), and the City and County of San Francisco (San Francisco).

9. The Electricity Board argues that PG&E’s proposed amendments should be treated as a section 205 filing. In this regard, the Electricity Board points out that whether or not all SC Tariff charges should be treated as direct pass-through of CAISO charges incurred by PG&E is currently being litigated in the SC Tariff proceeding. It further states that insufficient information is provided in PG&E’s filing to determine what costs are contained within the twelve new charge types and whether application of the formulas as set forth by PG&E results in proper allocation and ultimately just and reasonable rates.

10. TANC also argues that PG&E’s filing must be made under section 205 of the FPA. TANC asserts that the formula rate exception does not apply: because the current SC Tariff contains a unique calculation for each existing charge type, PG&E must create a new formula (i.e., new rates) to include any new charge type. Furthermore, TANC states that the Commission has never found that the SC Tariff is a formula rate.

11. Turlock agrees with the Electricity Board that the issue of whether the SC Tariff costs represent a direct pass-through of CAISO costs is still being litigated in the SC Tariff proceeding. Therefore, Turlock requests that the instant docket be consolidated with the SC Tariff proceeding.

⁸ PG&E Filing at 6.

12. SMUD requests that the Commission reject PG&E's filing on the ground that the SC Tariff does not represent a new service. SMUD goes on to attack the Initial Decision's determination to the contrary in Docket No. ER00-565-010. Alternatively, SMUD moves the Commission to consolidate the instant case with those dockets, in which the issue of whether the SC Tariff must be amended to add new charge types is being decided.

13. San Francisco argues that the Commission should deny PG&E's request for an October 1, 2004 effective date. San Francisco urges the Commission to reject PG&E's argument that the notice is sufficient because customers would not actually receive bills until at least 60 days from the September 15 filing date. San Francisco asserts that PG&E's position is inconsistent with section 205, as it would result in customers having only a 15-day notice period before they started incurring the new charges, even if they did not receive actual invoices until later.

14. SoCal Edison states that it supports PG&E's filing. SoCal Edison states that it agrees that it is consistent with PG&E's pass-through formula rate that no section 205 filing is required to amend tariffs each time the ISO adds a new charge type applicable to SCs. SoCal Edison states that the costs assessed by the ISO to the SC include only those charge types that have been authorized by the Commission in the ISO Tariff as just and reasonable.

15. On October 21, 2004, PG&E filed an answer to the motions to consolidate.⁹ PG&E agrees with SMUD and Turlock that the issues raised in this proceeding and the ongoing SC Tariff Proceeding overlap, so that consolidation is appropriate.

⁹ PG&E's pleading also contained an answer to the protests that were filed. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), prohibits answers to protests unless otherwise ordered by the decisional authority. We are not persuaded to accept PG&E's answer to the protests, and reject this aspect of PG&E's pleading.

Discussion

16. Pursuant to Rule 214(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(c) (2004), the timely, unopposed motions to intervene filed by Electricity Board, SMUD, SoCal Edison, Turlock, TANC, and San Francisco serve to make them parties to this proceeding.

17. The Commission agrees with the protestors that the questions of whether PG&E's underlying SC Tariff is a formula rate and whether amendments to the tariff to include new charge types require a section 205 filing are at issue in Phase II of the ongoing SC Tariff proceeding, Docket No. ER00-565-010. Therefore, we will grant the unopposed requests by SMUD and Turlock to consolidate the ongoing SC Tariff Phase II hearing with the hearing that we order *infra*. While the Phase II proceeding is at a relatively early stage, we believe it is appropriate to defer to the presiding judge for modifications to the existing procedural schedule necessitated by this consolidation.

18. The Commission finds that PG&E's SC Tariff amendments raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below.

19. Our preliminary analysis indicates that the SC Tariff amendments have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept the SC Tariff amendments for filing, suspend them for a nominal period, to be effective November 15, 2004 (after 60-days notice),¹⁰ subject to refund, and set them for hearing, subject to the conditions of this order. As stated previously, we will consolidate this hearing with the ongoing hearing of the SC Tariff in Docket No. ER00-565-010.¹¹

¹⁰ We agree with San Francisco that PG&E has made no showing that a waiver of the statutory prior notice period is appropriate. *See Central Hudson Gas and Electric Corp., et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹¹ PG&E has designated the revised tariff sheets in the attachment to its filing. We find that the rate schedule designations are acceptable.

20. The Commission denies SMUD's motion to reject PG&E's filing, as the new service issue was resolved in PG&E's favor in Opinion No. 477.

The Commission orders:

(A) PG&E's tariff amendments are hereby accepted for filing, suspended for a nominal period, to become effective November 15, 2004, subject to refund and subject to the conditions set forth in the 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 concerning the justness and reasonableness of the PG&E's filing of amendments to the SC Tariff.

(C) The aforesaid hearing is to be consolidated with the on-going hearing in Docket No. ER00-565-010, for purposes of hearing and decision. 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 Kelliher dissented with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

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Docket Nos. ER04-1233-000
ER00-565-010

(Issued November 12, 2004)

Joseph T. KELLIHER, Commissioner *dissenting*:

I dissent from the assumption relied on in this order that PG&E is performing a new service for its wholesale transmission contract customers, known as Control Area Agreement customers, effectively allowing PG&E to pass through to them certain CAISO charges: in this case, costs associated with PG&E's role as a Scheduling Coordinator. In my view, the transmission service that these Control Area Agreement customers receive is not a new service warranting the imposition of costs that would otherwise be unrecoverable under the existing transmission contracts. Through these existing transmission contracts, PG&E is obligated to provide firm transmission service. The creation of the CAISO did not relieve PG&E of that obligation. I believe the provision of firm transmission service under the grandfathered Control Area Agreements encompasses scheduling services. Accordingly, I would reject the proposed amendments to Schedule 2 of PG&E's Scheduling Coordinator Tariff.

Joseph T. Kelliher