

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Pasadena, California

Docket No. EL05-18-000

ORDER ON PETITION FOR DECLARATORY ORDER AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 30, 2004)

1. In this order, the Commission accepts the City of Pasadena's (Pasadena) proposed Transmission Owner Tariff (TO Tariff) and transmission revenue requirement to become effective the later of January 1, 2005, or the effective date of a Transmission Control Agreement¹ with the California Independent System Operator Corporation (CAISO) that is acceptable to Pasadena, subject to refund and subject to further Commission orders following the outcome of a Commission proceeding² concerning the appropriate standard of review to be applied to Pasadena's filing.³ We also establish hearing and settlement judge procedures. This order benefits customers because it provides the parties with a forum in which to resolve their concerns.

¹ The Transmission Control Agreement is the agreement by which Pasadena would transfer operational control of its transmission entitlements to the CAISO.

² See *City of Vernon*, 101 FERC ¶ 61,353 (2002) (Remand Order) and *City of Azusa*, 101 FERC ¶ 61,352 (2002) (Consolidation Order), *reh'g denied and hearing established*, *City of Azusa*, 106 FERC ¶ 61,143 (2004).

³ Pasadena states that it consents to procedures in the nature of refund obligations for any overpayments it receives from the CAISO for Pasadena's transmission revenue requirement solely for the purposes of this filing.

I. Background

2. On October 29, 2004, Pasadena, a non-public utility, filed a petition for declaratory order asking the Commission to: (1) find that Pasadena's transmission revenue requirement, as approved by its rate-setting body, the Pasadena City Council, is proper for purposes of Pasadena becoming a Participating Transmission Owner (PTO) in the CAISO; (2) approve Pasadena's TO Tariff; (3) waive the filing fee for the petition and; (4) grant any other relief or waivers necessary or appropriate for approval or implementation of Pasadena's transmission revenue requirement and TO Tariff effective as either the later of January 1, 2005 or the effective date of a Transmission Control Agreement acceptable to Pasadena. Pasadena asserts that, upon becoming a PTO, it will turn over operational control of its transmission entitlements to the CAISO and will be reimbursed by the CAISO based upon Pasadena's transmission revenue requirement through the CAISO's collection of a transmission access charge for transmission service provided to the CAISO's customers.

3. Pasadena states that its proposed annual transmission revenue requirement, which was approved by the Pasadena City Council, is approximately \$13 million. Pasadena further states that its filing is based upon and similar to filings made by the Cities of Anaheim, Azusa, Banning, Riverside and Vernon, California whereby those non-jurisdictional entities petitioned the Commission for declaratory orders granting them PTO status in the CAISO market.

4. Pasadena further requests that if the Commission determines that consideration of this filing requires further review or proceedings, the Commission should accept its filing and permit the CAISO to use Pasadena's transmission revenue requirement for rate setting and rate collection purposes subject to refund if the Commission finds in a final order that a different transmission revenue requirement is proper.⁴

II. Notice of Filing and Responsive Pleadings

5. Pasadena's filing was noticed on November 3, 2004, with protests or interventions due on or before November 19, 2004. Timely motions to intervene were filed jointly by the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency; and the Transmission Agency of Northern California. The City of Vernon, California (Vernon) filed a motion to intervene out of time.

⁴ Pasadena states that, solely for purposes of this filing, it consents to procedures in the nature of refund obligations for any overpayments it receives from the CAISO for Pasadena's transmission revenue requirement.

6. Timely motions to intervene and protest or comment were filed by the CAISO,⁵ Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), and the California Department of Water Resources State Water Project (CDWR).

Summary of Protests

7. Several protesters raise issues regarding the standard of review for evaluating Pasadena's filing. PG&E states that the Commission should not determine the appropriate standard of review for the transmission revenue requirements of non-public utilities because the issue is currently being litigated in a proceeding before the Commission⁶ and states that the Commission should defer ruling on Pasadena's proposed transmission revenue requirement until an initial decision is issued in that proceeding. However, PG&E states, if the Commission decides it is necessary to determine the appropriate standard of review in this docket, the Commission should not adopt the comparability standard of review (similar to the standard applied in Order No. 888⁷ for non-public utilities) advocated for by Pasadena in its petition. SDG&E objects to Pasadena's seeking a declaratory order and asserts that Pasadena should be held to the same standard as other PTOs by having to make the appropriate filing under section 205 of the Federal Power Act⁸ to justify their revenues. SDG&E states that Pasadena should at least be required to file the necessary comparable statements to allow the Commission

⁵ The CAISO filed a comment to note that it is currently working with the PTOs to finalize the addition of Pasadena to the Transmission Control Agreement and will file it with the Commission as soon as possible.

⁶ *Citing City of Vernon, Docket No. EL00-105-007 et al.*

⁷ Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats & Regs., Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) (Order No. 888).

⁸ 16 U.S.C. § 824(d) (2000).

and other parties to evaluate if the proposed revenue requirement is reasonable. CDWR asserts that the Commission needs to develop procedures for acting on requests for the transfer of non-public utilities to: (1) determine the appropriate level of a non-public utility's transmission revenue requirement, and (2) simultaneously determine whether the CAISO's rates will be just and reasonable upon the inclusion of those associated costs.

8. As a general matter, protesters assert that Pasadena's filing lacks transparency or otherwise provides inadequate information for the parties to evaluate Pasadena's rates. They contend that the numbers provided by Pasadena are predominately high level summaries of data, or, they are annualized based upon short periods of time that may be inappropriate. All of the protesters request further development of the record, supplemental information from Pasadena, and/or a hearing.

9. PG&E asserts that there is a discrepancy of approximately \$700,000 between the transmission revenue requirement proposed in the TO Tariff and the transmission revenue requirement set forth in the petition. In addition, PG&E and SDG&E state that Pasadena has not provided a basis for the proposed General Fund Transfer of approximately \$1,000,000, which they contend would only benefit Pasadena at the expense of the remaining CAISO transmission access charge ratepayers. Also, both PG&E and SCE contend that Pasadena is attempting to over recover operation and maintenance expenses. They also express concern over other expenses that Pasadena is attempting to recover, such as the return on equity, and the classification and allocation of various costs.

10. Generally, the protesters contend that the record should be developed so that parties can verify whether certain facilities are in fact integrated network facilities to be included in the transmission revenue requirement and the CAISO's rates. They also question whether certain facilities will in fact be open for non-discriminatory use. In addition, CDWR asserts that Pasadena has not shown that certain entitlements will be available to market participants other than Pasadena or that they are used and useful to the grid.

11. CDWR contends that Pasadena has not shown that this filing is in the public interest nor has it shown that the CAISO's rates will be just and reasonable after the inclusion of Pasadena's transmission revenue requirement. CDWR asserts that the Commission should hold Pasadena's filing in abeyance until the CAISO files a parallel application demonstrating the justness and reasonableness of the CAISO's rates upon inclusion of Pasadena's facilities and entitlements.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. We will grant Vernon's motion for late intervention given its interest in this proceeding, the early stage of this proceeding, and the absence of any prejudice or undue delay.

B. Analysis

13. Pasadena's filing raises issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. We also note that the standard of review to be used in evaluating a non-public utility's transmission revenue requirement for inclusion in the CAISO's rates is currently being litigated in another proceeding before the Commission.⁹

14. Therefore, we will accept the proposed TO Tariff and transmission revenue requirement, make them effective the later of January 1, 2005 or the effective date of a Transmission Control Agreement acceptable to Pasadena, subject to refund, as requested, and subject to the outcome of the proceeding concerning the appropriate standard of review. We will also set Pasadena's filing for hearing and settlement judge procedures. In addition, the Commission directs Pasadena to notify the Commission, within 10 days of the occurrence of the effective date, that its proposed TO Tariff and transmission revenue requirement have become effective (*i.e.*, January 1, 2005, or the effective date of a Transmission Control Agreement with the CAISO that is acceptable to Pasadena).

15. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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.¹⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁹ See Remand Order, 101 FERC ¶ 61,353 and Consolidation Order, 101 FERC ¶ 61,352.

¹⁰ 18 C.F.R. § 385.603 (2004).

otherwise, the Chief Judge will select a judge for this purpose.¹¹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order 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.

C. Waiver

16. Pasadena requests waiver of the filing fee for the petition. Citing 18 C.F.R. § 381.108 (2004) and Commission precedent, it argues that municipalities are exempt from the fees otherwise required for a petition for declaratory order.

17. We will grant Pasadena's petition for waiver of the filing fees. Section 381.108 of the Commission's regulations provides that municipalities are exempt from the filing fees required in Part 381, 18 C.F.R. § 381.108 (2004), and Pasadena explains that it is a municipal utility organized under the laws of California. Pasadena is therefore exempt from the filing fee required for a petition for a declaratory order.

The Commission orders:

(A) Pasadena's proposed TO Tariff and transmission revenue requirement are hereby accepted, to become effective the later of January 1, 2005, or the effective date of a Transmission Control Agreement that is acceptable to Pasadena, subject to refund and subject to further Commission orders following the outcome of another Commission proceeding, as discussed in the body of this order.

(B) Pasadena is hereby directed to notify the Commission, within 10 days of the TO Tariff and transmission revenue requirement becoming effective, as to the actual effective date, as discussed in the body of this order.

¹¹ 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 days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

(C) Pasadena's petition for waiver of the filing fees 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 Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter 1), a public hearing shall be held concerning Pasadena's proposed TO Tariff and transmission revenue requirement, 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 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 (2004), 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 in writing or by telephone within five (5) days of the date of this order.

(F) Within sixty days of the date of this order, 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.

(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, shall convene a prehearing conference in these proceedings, in a hearing room of the Commission, 888 First St., N.E., Washington, DC 20426. Such 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.

(S E A L)

Linda Mitry,
Deputy Secretary.