

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER05-1284-000

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

(Issued September 26, 2005)

1. In this order, we accept for filing a proposed rate increase by Pacific Gas and Electric Company (PG&E) under its Transmission Owner Tariff (TO Tariff), as well as a proposed non-rate change in the terms and conditions that addresses Amendment No. 68 to the California Independent System Operator Corporation's (CAISO) tariff, and suspend the requested changes for five months, to become effective March 5, 2006, subject to refund. We also establish hearing and settlement judge procedures.

**Background**

2. On August 5, 2005, in its eighth TO Tariff rate filing (TO-8), PG&E requested an increase to its TO Tariff rates. PG&E states that the requested increase reflects the costs associated with significant infrastructure expansion and replacement that has occurred in 2005 to date and will occur during the balance of 2005 and in 2006. PG&E proposed one change to the non-rate terms and conditions of the TO Tariff, namely, to the definition of the end-use customer refund adjustment (ECRA). PG&E states that this change is intended to address and account for the effect of the CAISO's Amendment No. 68 regarding self-supply of station power.

3. To accomplish the necessary expansion, integrate new generation, and replace aging facilities that are in need of replacement, PG&E forecasts that it will expend \$454 million before the end of 2005 and \$479 million more in 2006. PG&E states that the 2004 Period I network transmission rate base was \$1.75 billion; this compares to the 2006 Period II rate base of \$2.25 billion, a 29 percent increase.

4. PG&E notes that, in its seventh TO Tariff rate filing (TO-7) in Docket No. ER04-109-000, the Commission approved a settlement wherein the network transmission retail rates were designed to produce \$519.4 million in annual revenues.<sup>1</sup> PG&E states that the projected revenue requirement for its retail network transmission service for 2006 is \$654 million.

5. Among other things, PG&E's proposal includes: (1) an adjustment for transmission expenses paid to others for transmission rights obtained by PG&E under existing contracts; (2) a request for a 10-year depreciable life and 200 basis point rate of return incentive for its project facilities associated with the Path 15 Upgrade Project; (3) a return on equity of 12 percent; and (4) a 50 basis point adder to return on equity. PG&E states that the Commission has indicated that it will grant a 50 basis point adder to a transmission provider's return on equity as an incentive for participation in a regional transmission organization (RTO), and that such an incentive adder is appropriate in the instant proceeding because the CAISO has been found to meet the independence requirements in Order No. 2000 for RTOs.

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

6. Notice of PG&E's filing was published in the *Federal Register*, 70 Fed. Reg. 48,388 (2005), with interventions and protests due on or before August 22, 2005.

7. The California Public Utilities Commission (California Commission) filed a notice of intervention and a separate protest. Southern California Edison Company, San Diego Gas & Electric Company, Turlock Irrigation District, Trans-Elect NTD Path 15, LLC, Lassen Municipal Utility District, the City and County of San Francisco, Western Area Power Administration filed timely motions to intervene.

8. The following parties filed timely interventions and protests: the Transmission Agency of Northern California (TANC); the Sacramento Municipal Utility District (SMUD); the Modesto Irrigation District; the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency; the California Department of Water Resources State Water Project (DWR-SWP); and the Northern California Power Agency and the Cogeneration Association of California together with the Energy Producers and Users Coalition.

9. The protestors object to various aspects of PG&E's proposal including, among other things, PG&E's proposed 12 percent return on equity, specific capital additions, forecasted transmission operation and maintenance expenses, depreciation expense, and

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<sup>1</sup> *Pacific Gas and Electric Co.*, 108 FERC ¶ 61,290 (2004).

cost allocation methodology for the standby class.<sup>2</sup> The protestors also argue that PG&E's request for the RTO incentive of a 50 basis point adder for return on equity should be rejected, because the CAISO is not an RTO. Several protestors request that PG&E's proposals be set for hearing.

10. TANC states that PG&E's proposed existing transmission contract revenue credit methodology is correct. TANC also states that the Commission could ensure a benefit to PG&E's customers and promote judicial economy by summarily accepting PG&E's revenue credit methodology.

11. On September 6, 2005, PG&E filed an answer to the protests. PG&E also requested that this Commission instruct the California Commission to remove Sudheer K. Gokhale from this case and that the California Commission provide adequate assurance that Mr. Gokhale shall not communicate with any California Commission personnel (or anyone else) regarding any issue in TO-8.

## **Discussion**

### **Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PG&E's answer because it has provided information that assisted us in our decision-making process.

### **Hearing and Settlement Judge Procedures**

14. PG&E's proposed changes to its TO Tariff raise issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

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<sup>2</sup> In regards to the protest of PG&E's proposed methodology for allocating costs to the standby customer class, we note that this issue was litigated in PG&E's TO6 rate case and is awaiting an order on the Judge's initial decision. *See* Docket No. ER03-409-000.

15. Our preliminary analysis indicates that PG&E's proposed changes 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 PG&E's proposed changes for filing, suspend them for five months, make them effective March 5, 2006, subject to refund, and set them for hearing and settlement judge procedures.

16. In *West Texas Utilities Company*,<sup>3</sup> the Commission explained that when our preliminary analysis indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, the Commission generally would impose a maximum suspension. In the instant proceeding, our preliminary analysis indicates that PG&E's proposed rates may be substantially excessive. Therefore, we will suspend PG&E's proposed changes for the maximum five-month period.

17. 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.<sup>4</sup> 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.<sup>5</sup> 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.

18. With respect to PG&E's request that the Commission instruct the California Commission to remove Sudheer K. Gokhale from appearing in these proceedings, given the present state of the record, this is a matter best addressed by the presiding judge in the hearing ordered below.

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<sup>3</sup> *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982).

<sup>4</sup> 18 C.F.R. § 385.603 (2005).

<sup>5</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 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](http://www.ferc.gov) – click on Office of Administrative Law Judges).

The Commission orders:

(A) PG&E's proposed changes in the terms and conditions are hereby accepted for filing and suspended for a five-month period, to become effective March 5, 2006, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning PG&E's proposed TO Tariff changes. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within sixty (60) 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.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street,

N.E., 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.

( S E A L )

Magalie R. Salas,  
Secretary.