

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Pacific Gas and Electric Company

Docket Nos. ER06-836-000
and ER06-836-001

ORDER ACCEPTING REVISIONS TO TRANSMISSION OWNER TARIFF

(Issued August 31, 2006)

1. In response to the Commission's December 20, 2005 Order in Docket Nos. ER97-2355, *et al.*,¹ on April 4, 2006, as amended on June 22, 2006,² Pacific Gas and Electric Company (PG&E) submitted for filing an amendment to its Transmission Owner Tariff (TO Tariff) in order to recover, through its Transmission Revenue Balancing Account Adjustment (TRBAA), the difference between the costs that PG&E incurred as the Scheduling Coordinator (SC) for its Existing Transmission Contracts (ETCs) and the revenues it received from ETC customers (ETC Cost Differentials). As discussed below, the Commission accepts PG&E's tariff revisions effective September 1, 2006, as requested.³

¹ *Pacific Gas and Elec. Co.*, 113 FERC ¶ 61,296 (2005) (Remand Order).

² In response to a deficiency letter issued on May 26, 2006, PG&E provided additional information on the charge types as well as narrative explanations and workpapers detailing the nature and calculation of nine "adjustments" listed on the workpapers of its April 4, 2006 filing.

³ PG&E had originally requested an effective date of July 1, 2006 for its retail TO Tariff customers and June 10, 2006 for its wholesale TO customers but revised its requested effective date to September 1, 2006 to coincide with PG&E's first planned retail rate change subsequent to the 60-day prior notice period for this filing.

Background

2. As a result of the restructuring of California's electric industry, PG&E, Southern California Edison Company (SoCal Edison) and San Diego Gas & Electric Company (collectively, Companies) turned over the operation of their transmission systems to the California Independent System Operator Corporation (CAISO). The CAISO operates those facilities and provides transmission service pursuant to the CAISO Tariff, which is on file with the Commission. For a transitional period, the Companies have continued providing transmission service under pre-restructuring ETCs with certain wholesale customers, who pay transmission rates set by those contracts. At the same time, under the Responsible Transmission Ownership Agreement, the Companies were obligated to be the SC for their ETC Customers. Additionally, under the terms of the CAISO Tariff, the Companies must also file individual TO Tariffs to determine the specific rates they will charge to recover their costs from their TO Tariff customers for services provided by the CAISO.

3. In 1998, in the TRBAA Proceeding, the Companies filed with the Commission the non-rate terms and conditions of their TO Tariffs.⁴ The Companies pointed out that there are mismatches between their ETC charges under the existing contracts and the CAISO Tariff charges billed to them as the SC for the ETCs for ancillary services, neutrality, unaccounted for energy, and transmission losses. The Companies argued that such cost shortfalls or surpluses (*i.e.*, ETC Cost Differentials), resulting from the difference between charges governed by the ETCs and charges under the CAISO Tariff, should be recovered or credited through the TRBAA of the TO Tariffs and billed to the TO Tariff customers. Thus, they sought the Commission's approval to recover the cost differentials from their TO Tariff customers, rather than by attempting to charge their ETC customers. On the other hand, the TO Tariff customers maintained that those costs, arising as they do from the ETCs, should be billed to the ETC customers.

⁴ See Docket No. ER97-2358-000, *et al.* The TRBAA is the mechanism by which transmission revenue credits associated with transmission service from the CAISO are flowed through to transmission customers under PG&E's TO Tariff. The TRBAA is the sum of: (a) the balance in the account on September 30 of each year; (b) the forecast of transmission revenue credits for the following year; (c) the interest on the balance; and (d) franchise fees and uncollectible accounts. Each year, PG&E files an annual update to the TRBAA. For end-use retail customers, the TRBAA is divided by the total kilowatt-hour deliveries to produce a negative per-kWh rate. For wholesale customers, the updated TRBAA is used to revise the High Voltage and Low Voltage transmission revenue requirements for use by the CAISO to calculate the Transmission Access Charge (TAC) rates.

4. In Opinion Nos. 458 and 458-A,⁵ the Commission concluded that the CAISO Tariff provides no basis for the Companies to shift the costs in question from the ETC customers to the TO Tariff customers. The Commission went on to reject the Companies' contention that the plain meaning of the CAISO Tariff's provisions required the recovery of the costs at issue through the TO Tariffs' TRBAA.

5. On appeal of those orders, the D.C. Circuit found that the CAISO Tariff does permit the use of the TRBAA to recover the ETC Cost Differentials and that the TO Tariffs conform with the CAISO Tariff.⁶ Accordingly, the court vacated Opinion Nos. 458 and 458-A and remanded the case to the Commission for further proceedings consistent with the CAISO Tariff.⁷ In the Remand Order, the Commission found that the TRBAA mechanism in the TO Tariffs is an appropriate mechanism for the recovery of the ETC Cost Differentials at issue and that the Companies could recover the ETC Cost Differentials through either bilateral negotiations between the parties to the ETCs or through the TRBAA in the TO Tariffs.⁸

Proposed Tariff Revisions

6. Here PG&E has filed, consistent with the Remand Order, an amendment to its TO Tariff to recover ETC Cost Differentials through its TRBAA. PG&E proposes to recover the ETC Cost Differentials that were incurred from April 1, 1998 to September 30, 2005, over a 40-month period from September 1, 2006 through December 31, 2009⁹ in rate

⁵ *Pacific Gas and Elec. Co.*, Opinion No. 458, 100 FERC ¶ 61,156, *reh'g denied*, Opinion No. 458-A, 101 FERC ¶ 61,151 (2002).

⁶ *Southern Cal. Edison Co. v. FERC*, 415 F.3d 17, 18 (D.C. Cir. 2005) (D.C. Circuit Remand).

⁷ *Id.* at 23.

⁸ Remand Order, 113 FERC ¶ 61,296 at P 18.

⁹ PG&E initially proposed to recover the ETC Cost Differentials over a forty-two month period from July 1, 2006 through December 31, 2009. In its June 22, 2006 amendment PG&E revised its requested effective date from July 1, 2006 to September 1, 2006, resulting in a 40-month amortization period.

surcharges to the TRBAA.¹⁰ The proposed surcharges will, in essence, reduce the applicable revenue credit during the 40-month amortization period. Additionally, under PG&E's proposal, any ETC Cost Differentials paid by PG&E on or after October 1, 2005 will be recovered in the TRBAA in the same manner as other transmission revenue credits.

7. PG&E's April 4, 2006 filing (April 4 Filing) includes worksheets showing the calculation of the amounts to be recovered and testimony regarding PG&E's methodologies. PG&E describes nine adjustments¹¹ associated with transactions in which PG&E engaged while acting as SC for the ETC customers. PG&E states that because it engaged in these transactions, the net invoices from the CAISO¹² included associated credits and charges. PG&E explains, that because these specific credits and charges are for transactions for which PG&E does not seek recovery through the TRBAA, PG&E adjusted the CAISO invoice amounts to prevent double-counting.

8. In its June 22, 2006 filing (June 22 Filing), PG&E provides a month-to-month breakdown of the CAISO invoice amounts by charge type, definitions of the charge types utilized, and detailed explanations of the nine adjustments. PG&E also provides

¹⁰ PG&E states that, in accordance with the CAISO Tariff, Appendix F, Schedule 3, section 8.2., it is not seeking recovery of ETC Cost Differentials from its wholesale TO customers for periods prior to January 1, 2001, the date that the TAC rate methodology became effective. Thus the wholesale transmission rates include PG&E's ETC cost differentials incurred from January 1, 2001 through September 30, 2005.

¹¹ The nine adjustments are: (1) adjustments for payments made by PG&E to ETC holders for "sleeved transactions"; (2) adjustment for regulation service provided to PG&E by the Western Area Power Administration (Western) under Contract 2948A; (3) adjustment for SC-to-SC trades of energy for the purpose of balancing City and County of San Francisco (CCSF) schedules; (4) adjustment for charges and revenue under certain Silicon Valley Power (SVP) agreements; (5) adjustment for costs associated with the California Oregon Transmission Project which are to be refunded by the CAISO; (6) adjustment for costs related to Bay Area Rapid Transit (BART) to reflect a settlement; (7) adjustment for costs related to the Turlock Irrigation District and the CCSF to reflect settlements; (8) adjustments to reflect non-refundable settlement payments that PG&E received from certain ETC holders in resolution of the SCS Tariff case; and (9) adjustments for miscellaneous items including wheeling charges that should not have been included in CAISO invoices, and costs for providing service to Western for the New Melones and San Luis Projects.

¹² PG&E states that it established a single SC Identification Number for the ETCs (ETC SC ID) to which the CAISO billed its invoices.

worksheets illustrating, for a period of four consecutive months, the derivation of the nine adjustments.

9. For example, PG&E explains that sleeved transactions include ETC customers selling or buying into the CAISO imbalance energy market, which occurred through the ETC SC portfolio, but did not involve PG&E and were not associated with normal service under the ETCs themselves. PG&E explains that, although these were not ETC transactions, the CAISO passed through the credits and charges associated with these transactions to PG&E, resulting in the credits and charges being embedded in the net ETC SC ID invoice amount. PG&E states that it has already settled and passed through to the ETC customers these embedded credits and charges, and that it has made an adjustment in order to avoid double recovery.

10. PG&E also explains that, under the terms of its ETC with CCSF, PG&E allows “banking” and “unbanking” of energy by CCSF.¹³ PG&E states that this banking/unbanking caused PG&E to incur costs and credits due to SC-to-SC trades in which PG&E engaged in order to manage the process. According to PG&E, the net costs associated with banking/unbanking transactions by CCSF are the costs it incurred for the energy acquired via SC-to-SC trades, less the revenues PG&E received by selling energy via SC-to-SC trades.

11. PG&E explains that it performed these SC-to-SC trades for the CCSF banking/unbanking first utilizing the California Power Exchange (PX) market and then later utilizing SC-to-SC trades in the CAISO Day Ahead and Hour Ahead markets with a separate SC ID that it had established for its ETC with Western (the Western SC ID). According to PG&E, from April 1998 to January 2001 (when the PX was in operation) the trades were valued at the specific PX hourly Day Ahead or Hour Ahead market price multiplied by the MW that were traded with the PX. SC-to-SC trades with the Western SC ID were valued at the specific hourly Intercontinental Exchange price for NP-15 multiplied by the MWs that were traded.

12. To calculate the ETC Cost Differentials for each month in the period, PG&E first takes the amounts that the CAISO invoiced to the ETC SC ID, and subtracts the revenues

¹³ PG&E states that during times when CCSF has excess generation, PG&E “banks” the energy for CCSF, and that CCSF can make a withdrawal of this “banked” energy (*i.e.*, “unbank”) when it has a shortfall. In order to manage this process, PG&E procures energy to enable withdrawals and disposes of energy for deposits. PG&E explains that, from a CAISO settlements perspective, this results in smaller energy deviations, (*i.e.*, credits and charges), and accordingly reduces the costs that the CAISO imposes on the ETC SC ID portfolio for charge types that use energy deviations as a billing determinant.

that PG&E received from the ETCs for ancillary services and other services (except base transmission service). PG&E then adjusts the resulting amount to reflect the nine adjustments.

13. PG&E states that the total amount of the ETC Cost Differentials for end-use retail customers is \$109 million, excluding interest. To recover this cost plus interest, PG&E proposes that, effective September 1, 2006, a surcharge of \$0.00061 per kWh be added to the otherwise-applicable retail customer TRBAA rate set forth in the TO Tariff. This surcharge would remain in effect until December 31, 2009. PG&E also proposes to create a sub-account to track the collection of ETC Cost Differentials separately from the overall TRBAA. At the end of the amortization period, any remaining balance in the sub-account will be added to the overall balance.

14. PG&E states that the total amount of ETC Cost Differentials to be reflected in calculating wholesale transmission rates is \$30 million, excluding interest.¹⁴ PG&E has calculated that an annualized revenue requirement surcharge amount of \$14.5 million is necessary to recover this total cost over the period from September 1, 2006 to December 31, 2009.¹⁵

Notice of Filing and Responsive Pleadings

15. Notices of PG&E's filings were published in the *Federal Register*, 71 Fed. Reg. 23,913 (2006) and 71 Fed. Reg. 37,931 (2006), with interventions and protests due on or before April 25, 2006 and July 13, 2006, respectively. San Diego Gas & Electric Company, the California Electricity Oversight Board, SoCal Edison, Turlock Irrigation District, the City of Redding and the M-S-R Public Power Agency, and the Transmission Agency of Northern California filed motions to intervene. The California Public Utilities Commission (CPUC) filed a notice of intervention and comments. The Modesto Irrigation District (MID) filed a motion to intervene and comments. The California Department of Water Resources State Water Project (SWP) filed a motion to intervene and supplemental comments/request for adjustment. The Sacramento Municipal Utility District (SMUD) filed a motion to intervene and an answer to SWP's comments. CCSF filed a motion to intervene and protest to the April 4 filing and a protest to the June 22

¹⁴ PG&E states that since the wholesale transmission rates do not have a separate TRBAA rate component, the wholesale amount will be reflected as an increase in the wholesale TRBAA, and thus, the Transmission Revenue Requirement.

¹⁵ For TAC purposes, the CAISO Tariff requires that the TRBAA amount be divided between High Voltage and Low Voltage transmission revenue requirements. PG&E states that the increase to the current revenue requirements will be \$7.3 million for High Voltage and \$7.2 million for Low Voltage.

filing. The Northern California Power Agency (NCPA) filed a motion to intervene and comments to the April 4 filing and a protest to the June 22 filing. SVP filed a motion to intervene, comments, a motion for partial summary judgment and an answer. On May 26, 2006, PG&E filed an answer to SWP's comments. On July 28, 2006, PG&E filed an answer to the protests and comments filed by NCPA, CCSF, MID and SVP. On August 18, 2006, PG&E filed an answer to SVP's motion for partial summary judgment. On August 24, 2006 SVP filed a notice of withdrawal of its motion for partial summary judgment and answer.

Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits answers to protests and answers to answers unless otherwise ordered by the decisional authority. We will accept PG&E's answers, SMUD's answer, and SVP's answer because they have provided information that has assisted us in our decision-making process.

B. Cost Support

17. NCPA, MID, SVP and CCSF argue that PG&E has not supplied sufficient cost support, and argue that PG&E has not justified its inclusion of sleeved transactions (described above) and SC-to-SC trades of energy (also described above).

18. MID and SVP object to PG&E's characterization of the sleeved transactions as involving sales from the ETC customers to the CAISO, arguing that some of the sales were to PG&E. MID also points out an error in the sleeved transaction data for MID submitted by PG&E. NCPA objects to any sleeved transaction amounts which may be included for sales by NCPA in December 2000 and January 2001, stating that it has not yet received payment for sales of emergency energy in those months in the amount of \$3.2 million, and noting that the claim is tied up in bankruptcy court.¹⁶

19. CCSF and NCPA argue that PG&E has not demonstrated that the SC-to-SC trades for CCSF's banking/unbanking are "cost differentials" that should be included. They

¹⁶ NCPA notes that it does not object to the inclusion of the amounts shown for the four-month test period data in PG&E's Table 2A (July through October 2000), because NCPA received payment for those amounts, and the data appears to be accurate.

question whether PG&E's valuing of these trades at the specific hourly Intercontinental Exchange price for NP-15 ignores PG&E's cost of actually providing the energy, whether PG&E has developed any hedging mechanisms regarding these transactions, and whether PG&E may meet its banking obligations by scheduling its own resources. They further state that CCSF's agreement did not contemplate any payment for the energy used in the banking arrangements, but that the banking/unbanking was done fundamentally as an exchange of energy MWh for MWh, by time periods. Finally, they state that it is not clear from the four months of data whether PG&E included offsetting revenues, but acknowledge that these revenues may have been aggregated with other revenues.

20. The protestors also object that PG&E has provided only four months of data and workpapers related to the adjustments, arguing that the failure to include data for the entire recovery period prevents parties and the Commission from verifying the data. They state that PG&E should be required to submit data for the whole period, and not just a four-month "snapshot." SVP also points out an apparent inconsistency between the testimony of PG&E witness Kozlowski, which states that the ETC Cost Differentials amount for wholesale ratemaking purposes is \$30 million, and the testimony of PG&E witness Fisher, which states that the amount will be \$22.4 million for High Voltage facilities and \$22.1 million for Low Voltage facilities (a total of \$44.5 million). SWP notes that the interest amounts appeared high compared to the interest amounts in the TRBAA filing of SoCal Edison in Docket No. ER06-788-000.

21. The CPUC states that it appreciates PG&E's proposal to recover the amounts over an extended period of time. The CPUC states, however, that it continues to study the impacts of the increased collections on ratepayers, and may recommend alternate cost recovery mechanisms which assure that all PG&E transmission ratepayers, both retail and wholesale, pay their fair share of these newly imposed costs.

22. PG&E responds that none of the protests or comments raises substantive challenges to the derivation of the ETC Cost Differentials. PG&E adds that the deficiency letter did not request that PG&E supply data for the entire period and to verify all the calculations of all the amounts, but required PG&E to supply data sufficient to explain the derivation of the adjustment amounts. PG&E states that none of the parties raises any fact-based claims that the data is untrustworthy or any other reason why the sample data is not adequate.¹⁷

23. PG&E states that the characterization of the sleeved transactions and the issue of who sold to whom does not affect the validity of adjusting the TRBAA amount by removing these transactions. With respect to the error pointed out by MID, PG&E

¹⁷ PG&E notes that, if the Commission believes that further data is needed, PG&E will supply it.

responds that, as stated in its footnote to Table 2A of its June 22 filing, it commits to correct the error in its next TRBAA filing. In addition, PG&E confirms that it has not included emergency sales made by NCPA in December 2000 and January 2001 in the TRBAA, and will not do so until there is a resolution in the bankruptcy court involving these amounts.

24. PG&E also indicates that it has met its burden of showing why the SC-to-SC trades of energy result in costs appropriately included in the TRBAA consistent with the Remand Order. PG&E argues that its actions were designed to reduce overall ETC Cost Differentials by reducing the costs being incurred by the CAISO. With respect to offsetting revenues, PG&E confirms that the revenues from SC-to-SC trades are aggregated with the other revenues.¹⁸

Commission Determination

25. Our review of the filing indicates that PG&E has justified the proposed amendment to its TO Tariff. As discussed above, the filing, as amended, identifies the amount of ETC Cost Differentials for each month in the period, the calculation of the accrued interest on those amounts, and the amortization of those amounts over the recovery period. In addition, the filing, as amended, offers detailed explanations of each of the nine adjustments to the ETC Cost Differentials. Further, we note that PG&E has illustrated its methodology for calculating the amounts it seeks to recover sufficiently to allow us to determine the reasonableness of the proposed surcharges to the TRBAA rates.¹⁹

26. With respect to the apparent inconsistency raised by SVP, the \$30 million applicable to wholesale rates is the total amount for all the months from January 2001 through September 2005 before any interest calculations, while the \$44.5 million includes the accrued interest and franchise fees and uncollectible accounts amounts. Our review indicates that PG&E calculated interest using an interest rate pursuant to section 35.19(a) of the Commission's regulations.²⁰ Regarding SWP's concern about the amount of total accrued interest, Exhibit PGE-3 at pages 3-7 shows that there were very large ETC Cost Differentials amounts in the first few months of 2001, and much lower

¹⁸ PG&E states that revenue associated with SC-to-SC trades is \$28.2 million of the \$31 million for all ETC Revenues shown on Exhibit PGE-3 at 7, of the April 4 Filing.

¹⁹ We add that PG&E has agreed to supply data for the entire period if requested. While we will not require PG&E to file the data with the Commission, if a party wishes to review the data, PG&E should supply the data to that party upon request.

²⁰ 18 C.F.R. § 35.19a (2006).

amounts (including many negative amounts) in later months.²¹ The fact that there were large amounts early in the period allowed for accrued interest to add up more quickly than if the amounts had been more evenly spread out over the period.

27. With regard to sleeved transactions, we find it appropriate to include these transactions as adjustments to the ETC Cost Differentials. We note that there appears to be a dispute over who sold to whom the energy associated with the sleeved transactions.²² However, aside from the characterization of these transactions, the fact is that charges and credits for these transactions are embedded in the ETC SC ID invoice amounts, even though PG&E has already settled those transactions with the ETC customers. In other words, PG&E is simply removing the amounts from the ETC Cost Differentials that have already been paid or passed on by PG&E.

28. We are also satisfied with PG&E's explanation of the adjustment for SC-to-SC trades for CCSF. This banking/unbanking caused PG&E to incur costs and credits due to the SC-to-SC trades in which PG&E engaged in order to manage the process. According to PG&E, the banking/unbanking could have resulted in deviations in the CAISO imbalance energy market. By conducting the SC-to-SC trades, PG&E sought to minimize CAISO-imposed costs (that use CAISO-computed deviations as a billing determinant) in order to protect the ETC SC ID from exposure to volatile CAISO real-time prices.

29. In addition, we are satisfied with PG&E's clarification that the net adjustment amounts for SC-to-SC trades include offsetting revenues, with its commitment to correct the error in its sleeved transaction data for MID in a future TRBAA filing, and with PG&E's confirmation that it has not included in its adjustment for sleeved transactions sales made by NCPA that are the subject of a bankruptcy court proceeding and that have not been paid by PG&E.

C. Adjustment Related to the New Melones and San Luis Contracts

30. PG&E is reflecting as an adjustment to the TRBAA charges and credits related to transmission service provided to Western under two ETCs for the New Melones Project and the San Luis Project.²³ In Docket No. ER05-229-000, PG&E filed its Western

²¹ The first seven months of 2001 had \$56.4 million in ETC Cost Differentials.

²² Both SVP and PG&E acknowledge that the issue of who sold to whom in these transactions is currently pending before the United States Bankruptcy Court for the Northern District of California. SVP comments at 4; PG&E answer at 6.

²³ See Kozlowski testimony at 32-33. The amount is a credit of \$1.4 million.

Scheduling Coordinator Services (SCS) Tariff, under which it proposed to pass through to Western all charges and credits it receives from the CAISO for transactions scheduled on behalf of Western, including any SC costs. Whether costs related to these two contracts may be recovered under PG&E's Western SCS Tariff, or through the TRBAA, is currently at issue in that docket. The deficiency letter asked PG&E to explain how the outcome of that proceeding will be reflected given PG&E's inclusion of these amounts as an adjustment in this filing.

31. PG&E states that if, in Docket No. ER05-229-000, the Commission finds that PG&E can recover the CAISO-imposed SC costs it incurs related to ETCs, including the New Melones and San Luis contracts, through the TRBAA, no adjustment to the TRBAA amounts in this filing will be necessary. However, PG&E states that, if the Commission finds that the New Melones and San Luis Project contracts' SC costs should be recovered as originally proposed by PG&E in the Western SCS Tariff filing made prior to the Remand Order, PG&E will make a subsequent filing as part of its annual TRBAA update to remove the CAISO charges and credits related to the New Melones and San Luis Project contracts. We find PG&E's approach and explanation to be reasonable.

D. Settlements in the SCS Proceeding

32. CCSF seeks clarification that PG&E will refund the total amount paid by CCSF under a settlement involving the SCS Tariff in Docket No. ER00-565-000, and clarification that PG&E will credit or charge CCSF, as appropriate, for SCS services beginning January 1, 2004, after the period covered by the settlement. NCPA states that it generally supports the methodology by which PG&E proposes to recover the ETC Cost Differentials. Similarly, NCPA seeks to ensure that it receives the full provided-for refund of the settlement amount it paid to PG&E.

Commission Determination

33. In an order issued on May 22, 2006, the Commission granted PG&E's request for clarification of the Remand Order.²⁴ The Commission explained that when the Remand Order indicated that PG&E could allocate the ETC Cost Differentials to its TO Tariff customers through the TRBAA, it meant that PG&E could recover all of the costs it incurred as the SC for ETCs.²⁵ The Commission also directed PG&E to immediately refund all amounts paid pursuant to the SCS Tariff and provide the Commission with a

²⁴ *Pacific Gas and Elec. Co.*, 115 FERC ¶ 61,226 (2006) (Clarification Order).

²⁵ *Id.* at P 9.

refund report.²⁶ On August 16, 2006 PG&E filed that refund report. Accordingly, this issue is moot.

E. SWP Supplemental Comments and Request for Adjustment

34. SWP, a wholesale transmission customer under the TO Tariff, argues that PG&E's proposal is inconsistent with the contractual arrangements under its ETC with PG&E, unfairly penalizes SWP (which voluntarily assumed responsibility for its own CAISO costs even when operating under an ETC) and would effectively result in SWP being double-charged for services and costs which SWP self-provided or paid. SWP explains that during the entire period at issue, SWP acted as its own SC and paid the CAISO directly for its own SC-related costs. SWP states that PG&E should be required to either refund to SWP the amount of any increase in the CAISO's charges resulting from PG&E's proposal, or refund to SWP the actual charges it paid to the CAISO for the services at issue.

35. PG&E and SMUD respond that SWP's claims are factually erroneous and constitute a collateral attack on the Remand Order. They argue that it is the Remand Order that is the source of SWP's requirement to pay a portion of the costs at issue via the TRBAA, as is required of all other customers taking service under the CAISO and TO Tariffs. They state that SWP is not being double charged for its SC costs because the costs at issue are the costs charged by the CAISO to PG&E. They also contend that SWP is not being unfairly penalized or discriminated against because all TO Tariff customers must pay the TRBAA rate, whether or not those customers paid SC costs associated with their transmission service.

Commission Determination

36. As noted above, the D.C. Circuit determined that the CAISO Tariff explicitly permits the inclusion of an accounting mechanism in the TRBAA of the TO Tariffs for the recovery of ETC Cost Differentials.²⁷ In its decision the court explains:

Because FERC has already approved the mechanism in the [CAISO] Tariff for collecting the [ETC] Cost Differentials from the tariff customers, and cannot retroactively reverse that determination in considering individual TO Tariff filings,

²⁶ *Id.* at P 10.

²⁷ D.C. Circuit Remand at 22.

no argument concerning cost causation, regardless of how compelling, would permit the Commission to disregard the approved [CAISO] Tariff.²⁸

37. In its ruling, the court thus made it clear that the issue of cost causation was immaterial to the Commission's review of an individual TO Tariff filing given that it had already approved the mechanism in the CAISO Tariff for the recovery of the ETC Cost Differentials. In the Remand Order, the Commission, in turn, held that the TRBAA mechanism in the TO Tariffs is an appropriate mechanism for the recovery of the ETC Cost Differentials at issue.²⁹ In addition, as noted above, in the Clarification Order, the Commission explained that when the Remand Order indicated that the Companies could allocate the ETC Cost Differentials at issue to their TO Tariff customers through the TRBAA, it meant that the Companies could recover all of the costs they incurred as the SC for ETCs.³⁰ Neither the court's decision nor the Remand Order make any distinctions for instances where certain customers with ETCs paid for their own SC-related costs while receiving service under their ETCs. Thus, SWP's assertions that it already paid for or self-incurred SC-related costs, and that it did not agree to pay for other ETC customers' costs, are immaterial.

The Commission orders:

(A) PG&E's revisions to its TO Tariff are hereby accepted, effective September 1, 2006, as requested, as discussed in the body of this order.

(B) SVP's withdrawal of its motion for partial summary judgment and answer is hereby granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²⁸ *Id.*

²⁹ Remand Order at P 18.

³⁰ Clarification Order at P 9.