

116 FERC ¶ 61,313
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 No. ER06-1325-000

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

(Issued September 29, 2006)

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), and suspend the requested changes for five months, to become effective March 1, 2007, subject to refund. We also establish hearing and settlement judge procedures.

PG&E Filing

2. On August 1, 2006, in its ninth TO Tariff filing (TO-9 Filing), PG&E filed a request for an increase to its wholesale and retail TO Tariff Rates. PG&E states that the requested increase reflects, among other things, the costs associated with significant infrastructure expansion and replacement that has occurred in 2006 to date and will occur during the balance of 2006 and in 2007, which will enable PG&E to interconnect new generation. PG&E adds that it is not proposing any changes to the non-rate terms and conditions of the TO Tariff in this filing.

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 \$452 million before the end of 2006 and \$638 million more in 2007. PG&E states that its 2005 Period I network transmission rate base was \$2.25 billion; this compares to its 2007 Period II rate base of \$2.575 billion, a 15 percent increase.

4. Among other proposed changes, PG&E asks for the continuation of certain prior Commission action: an adjustment for revenue sharing between ratepayers and

shareholders for non-tariffed New Products and Services;¹ and an adjustment for a 200 basis point rate of return incentive and a ten year depreciable life for PG&E's investment in the Path 15 Upgrade Project previously approved by the Commission.

5. PG&E states that its requested transmission rates reflect the effect of the Commission's orders concerning crediting generators for the costs of certain transmission facilities necessitated by the generator's interconnection to the PG&E system.² PG&E also explains that it is engaging in a multi-year Business Transformation Initiative (BTI) to improve customer service and make its operations more cost-effective, and has included the costs of the BTI in the proposed rates. PG&E notes that, while an estimated \$5.4 million of net BTI costs are included in its TO-9 rates, \$1.15 million of those costs are excluded.³

6. Finally, PG&E states that it seeks a return on equity (ROE) of 12 percent, which it identifies as being near the midpoint of the range resulting from the Commission's traditional method of ROE calculation.⁴

Notice of Filing and Responsive Pleadings

7. Notice of PG&E's filing was published in the *Federal Register*, 71 Fed. Reg. 47,494 (2006), with interventions and protests due on or before August 22, 2006.

8. The California Public Utilities Commission (CPUC) filed a notice of intervention and protest. Timely motions to intervene were filed by the California Electricity Oversight Board, San Diego Gas & Electric Company, the Sacramento Municipal Utility District, Western Area Power Administration, Southern California Edison Company, and collectively, the City of Redding California, and the M-S-R Public Power Agency.

9. The Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (the Southern Cities), filed a motion to intervene. The Southern Cities

¹ This component of PG&E's filing was, according to PG&E, approved by the Commission by prior orders. *Pacific Gas and Electric Co.*, 106 FERC ¶ 61,058 (2004); see also *Pacific Gas and Electric Co.*, 90 FERC ¶ 61,314 (2000).

² See *Pacific Gas and Electric Co.*, 101 FERC ¶ 61,079 (2002); see also TO-9 Filing Ex. 8.

³ See TO-9 Filing Ex. 1.

⁴ See TO-9 Filing Exs. 1 and 14.

subsequently timely filed a protest. Likewise, the California Department of Water Resources State Water Project (SWP)⁵ filed a timely motion to intervene and a separate protest.

10. Timely interventions and protests were filed by: Northern California Power Agency (NCPA); Modesto Irrigation District (MID); Cogeneration Association of California and the Energy Producers and Users Coalition (collectively Cogeneration Parties); the Transmission Agency of Northern California (TANC);⁶ Metropolitan; and the City of Santa Clara (Santa Clara).

11. The Protestors object to various aspects of PG&E's proposal, including PG&E's proposed 12 percent ROE, the accuracy and timing of specific capital additions, forecasted transmission-related operation and maintenance and pension related expenses, depreciation expense, and the cost allocation methodology for the standby service class. Protesters also argue that the Commission should deny PG&E's request for incentive rate consideration pursuant to Order No. 679⁷ because PG&E has not demonstrated that its new transmission facilities satisfy the criteria of Order No. 679 to warrant any incentive rates. SWP also argues that PG&E fails to explain its New Products and Services revenues and expenses and the allocation of New Products and Services Net revenues to ratepayers and between its high and low voltage Transmission Revenue Requirements. Many of the Protestors request the maximum five-month suspension period.

12. On September 6, 2006, PG&E filed an answer, in which it responded to the protests of TANC (and those parties supporting TANC), SWP, Metropolitan, and the Southern Cities. PG&E argues that the protests contain various errors and misstatements. PG&E also asserts that the arguments regarding its proposed ROE are unfounded because they are based on the misconception that PG&E is relying on Order No. 679 and *Southern California Edison Company*⁸ to justify a higher ROE. PG&E states that it is not relying on Order No. 679, but on the policy and financial considerations supporting that Order, which it says clarify that utilities like PG&E should receive ROE adders for

⁵ Metropolitan Water District of Southern California (Metropolitan) notes and supports the intervention and protest of SWP.

⁶ NCPA, Modesto, and Santa Clara support TANC's Intervention.

⁷ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006).

⁸ 114 FERC ¶ 61,018 (2006).

their ongoing participation in a Transmission Organization. Finally, PG&E requests that the case be set for settlement judge procedures.

Discussion

Procedural Matters

13. 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.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), 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.

Summary Determinations

15. PG&E's filing raises issues regarding, among other things, forecast capital investment, other rate base determinations, company capitalization, and crediting mechanisms that, as discussed below, warrant hearing and settlement judge procedures. However, prior Commission action results in summary determinations as to the following components of PG&E's filing: (1) PG&E's request for a 200 basis-point ROE incentive and a ten year depreciable life for PG&E's share of the Path 15 Upgrade Project;⁹ (2) an adjustment for revenue sharing between ratepayers and shareholders for non-tariffed New Products and Services;¹⁰ and (3) the allocation of standby service-related costs.

16. Regarding Path 15, the Commission will allow the continued use of a 200 basis-point ROE adder and a ten year depreciable life for PG&E's share of the Path 15 Upgrade Project, previously accepted.¹¹ However, as discussed below, the determination of the range of reasonableness for PG&E's ROE component of its capital structure will be set for hearing. In the Order Accepting Letter Agreement, the Commission clarified that the

⁹ *Western Area Power Administration*, 99 FERC ¶ 61,306 (2002) (Order Accepting Letter Agreement), *reh'g denied*, 100 FERC ¶ 61,331 (2002).

¹⁰ *Pacific Gas and Electric Co.*, 106 FERC ¶ 61,058 at P 1 (2004) (New Services II); *see also Pacific Gas and Electric Co.*, 90 FERC ¶ 61,314 (2000) (New Services I).

¹¹ 99 FERC ¶ 61,306 at 62,280.

granting of incentives for PG&E's Path 15 upgrades did not constitute final Commission review of jurisdictional rates associated with the Path 15 Upgrade Project.¹² Therefore, while we will allow a 200 basis-point ROE adder, the appropriate ROE requires the development of an evidentiary record.

17. Likewise, based on prior Commission action, we will accept PG&E's proposed rate treatment of the New Products and Services. In 2004, in *New Services II*, the Commission accepted the extension of the revenue sharing mechanism in *New Services I* for an additional three years.¹³ The Commission further stated that, after that three-year period, PG&E will be required to submit an application for continuance of the revenue sharing mechanism concurrent with its first transmission rate case following that three-year period.¹⁴ Therefore, we will deny SWP's objection to the continuation of the New Products and Services' rate treatment. Review of the rate treatment of these costs and revenues will be in PG&E's first transmission rate filing submitted to the Commission after January 2007; three-years after *New Services II*.

18. However, SWP will be allowed to explore at hearing the forecast of costs and revenues proposed for the 2007 test period. While we accepted PG&E revenue sharing mechanism, including the allocation of costs and revenues, in *New Services I* and allowed for this revenue sharing mechanism to continue in *New Services II*, the claimed amount of costs and revenues is a cost component that is appropriately ripe for review.

19. Cogeneration Parties, which take standby service from PG&E, argues that the proposed rates apply an unreasonable and unduly discriminatory cost allocation methodology to the standby class. Cogeneration Parties notes that it objected to the methodology in PG&E's TO-6 Filing (Docket No. ER03-409-000, *et al.*) and PG&E's TO-8 Filing (Docket No. ER05-1284-000). The issue was set for hearing in TO-8 by Commission order, dated September 26, 2005, which accepted the TO-8 rates for filing, and suspended them, to be effective March 1, 2006, subject to refund and set the matter

¹² *Id.*

¹³ *New Services II*, 106 FERC ¶ 61,058 at P 15. The revenue sharing mechanism accepted by the Commission in *New Services I* allowed for the sharing of forecast net revenues equally between ratepayers and shareholders. *See New Services I*, 90 FERC ¶ 61,314 at 62,037.

¹⁴ *New Services II*, 106 FERC ¶ 61,058 at P 15.

for hearing and settlement judge procedures.¹⁵ Subsequently, the Commission approved an offer of settlement in that proceeding that carved out the allocation of standby service-related costs for further proceedings.¹⁶

20. Similar to our discussion regarding the proposed rate treatment of New Products and Services, above, Cogeneration Parties will be able to explore the standby service-related costs in the hearing and settlement judge procedures ordered below. However, the allocation of standby service-related costs will be subject to a final determination by the Commission in TO-8 (Docket No. ER05-1284-000).

Hearing and Settlement Judge Procedures

21. Other than those issues summarily resolved above, PG&E's proposed rates 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.¹⁷

22. Our preliminary analysis indicates that PG&E's proposed rates 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 rates for filing, suspend them and make them effective, subject to refund, and set them for hearing and settlement judge procedures.

¹⁵ *Pacific Gas and Electric Co.*, 112 FERC ¶ 61,336 (2005) (as corrected by the Errata Notice issued on October 5, 2005, which changed the effective date from March 5, 2006 to March 1, 2006).

¹⁶ *Pacific Gas and Electric Co.*, 115 FERC ¶ 63,019 (2006).

¹⁷ In support of its request for a 12 percent ROE, PG&E points us to Order No. 679, and encourages us to take our reasoning in Order No. 679 into account here in accepting its proposal. A utility engaging in infrastructure replacement and modernization is to be commended; however, a citation to Order No. 679 alone is not enough to warrant acceptance of a requested ROE. Here, PG&E has not provided us with the requisite showing that there are no issues of material fact that would enable us to accept its ROE outright. Furthermore, PG&E's citing in its answer to the policy and considerations underlying Order No. 679 as justification for its proposed ROE, does not cure this deficiency.

23. In *West Texas Utilities Company*,¹⁸ the Commission explained that when its 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 to become effective March 1, 2007, subject to refund.

24. In setting these matters for hearing, we specifically direct the presiding judge to investigate whether the PG&E transmission facilities constructed, and proposed to be constructed, and reflected in PG&E's rate base, satisfy the criteria set forth in Order No. 679 to receive incentive rate treatment.

25. 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.¹⁹ 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.²⁰ The settlement judge shall report to the Chief Judge and the Commission within thirty 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.

26. Finally, in cases where a filing utility contemplates the submittal of a rate change as a result of substantial capital additions in transmission and seeks to justify the rate change as an incentive rate treatment pursuant to Commission precedent, filers may seek guidance from the Commission as to how such proposed infrastructure incentives would influence its *West Texas* analysis. Filers could seek a pre-filing declaratory order finding

¹⁸ 18 FERC ¶ 61,189 (1982).

¹⁹ 18 C.F.R. § 385.603 (2006).

²⁰ 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).

that, for instance, a proposed ROE incentive was justified, so that, under the *West Texas* analysis, the ROE incentive would not trigger imposition of a maximum suspension. Alternatively, filers could seek to make a showing in the rate change filing that a proposed incentive was appropriate because the rebuttable presumptions enunciated in Order No. 679 have been clearly met and, in such circumstances, the *West Texas* analysis should not, due to that incentive, lead to a maximum suspension.

The Commission orders:

(A) PG&E's proposed TO-9 Filing is hereby accepted for filing and suspended for five-months, to become effective March 1, 2007, 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-9 Filing. 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 (2006), 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 thirty (30) 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 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.