

124 FERC ¶ 61,305
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. ER08-1318-000

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

(Issued September 30, 2008)

1. This order addresses a proposed rate increase by Pacific Gas and Electric Company (PG&E) under its Transmission Owner Tariff (TO Tariff). Pursuant to the Commission's authority under section 205 of the Federal Power Act (FPA),¹ we accept the proposal for filing, suspend the rate increase for five months to become effective on March 1, 2009, subject to refund, and establish hearing and settlement judge procedures.

I. PG&E's Proposal

2. PG&E adopted the TO Tariff in 1997 after turning over operation of its electrical transmission facilities to the California Independent System Operator Corporation (CAISO). The TO Tariff establishes the jurisdictional transmission revenue requirement (TRR) that reflects PG&E's costs of constructing and owning its transmission system.

3. On July 30, 2008, PG&E submitted its eleventh TO Tariff filing (TO-11), stating that its filing provides the cost support for its requested increase in wholesale and retail electric transmission rates. PG&E requests an effective date of October 1, 2008, and states that the rate increase is necessary to recover its costs of expanding infrastructure for new generation interconnections and replacing aging facilities during the years 2008 and 2009. PG&E forecasts that it will invest \$595 million in capital projects by the end of 2008 and an additional \$658 million in 2009. With the additional expenditures, PG&E's 2008 rate base would be \$3.02 billion, a 22 percent increase over PG&E's 2007 rate base of \$2.48 billion. PG&E states that these investments and other cost adjustments

¹ 16 U.S.C. § 824d (2006).

produce a TO-11 wholesale TRR from October 1, 2008 to February 28, 2009 of \$817.6 million² and then \$837.6 million³ beginning March 1, 2009, compared with the proposed TO-10 wholesale TRR of \$749.6 million.⁴

4. PG&E proposes five adjustments to its network TRR to determine its wholesale TRR including: (1) an adjustment for estimated transmission expenses to others; (2) a reduction for transmission revenues received from third parties; (3) a reduction for new products and services; (4) an increase for the continued use of a ten-year depreciable life for the Path 15 upgrade project; and (5) an increase for miscellaneous transmission expenses. In addition, for end-user charges, PG&E proposes two additional increases, for deferred taxes and uncollectible expenses.

5. PG&E makes specific requests regarding several of the above adjustments. First, in the adjustment for new products and services, PG&E requests the Commission continue its prior approval of PG&E's 50-50 sharing between ratepayers and shareholders for revenues generated by new products and services.⁵

6. For the Path 15 upgrade incentive adjustment, PG&E requests the Commission continue to approve 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.⁶

7. PG&E requests a change to the terms of its tariff that is also an adjustment affecting the wholesale TRR. PG&E proposes to remove the one-year interim rate components involving the PacifiCorp intertie lease payments that are currently collected under a separate rate schedule expiring February 28, 2009.⁷ Thus, effective March 1, 2009, PG&E requests an increased TRR to include this \$20 million/yr payment.

² Ex. PGE-2, Table PGE-2-14 at line 23.

³ Ex. PGE-2, Table PGE-2-14 at line 21.

⁴ *Pacific Gas and Electric Co.*, September 2, 2008 Explanatory Statement in Support of Offer of Settlement, Docket No. ER07-1213-000 at 1.

⁵ Citing *Pacific Gas and Elec. Co.*, 121 FERC ¶ 61,174 (2007); *Pacific Gas and Elec. Co.*, 106 FERC ¶ 61,058 (2004); *Pacific Gas and Elec. Co.*, 90 FERC ¶ 61,314, at 62,039 (2000).

⁶ Citing *Western Area Power Admin.*, 99 FERC ¶ 61,306 (2002) (accepting letter agreement); *reh'g denied*, 100 FERC ¶ 61,331 (2002).

⁷ Citing *Pacific Gas and Electric Co.*, 121 FERC ¶ 61,278 (2007) (approving uncontested settlement agreement).

8. PG&E requests a second change to the terms and conditions of its TO Tariff, proposing to remove the revenue tracking mechanism for standby demand revenues collected from generators eligible to self-provide station power. PG&E explains that beginning with its TO-8 rate case its actual standby transmission demand revenues were credited through compliance filings. PG&E states that a small number of customers have elected to self-provide and these revenues have stabilized. PG&E proposes to return to forecasting its annual standby transmission demand revenues using its pre-TO-8 methodology.

9. PG&E proposes a return on equity (ROE) of 12.3 percent, comprised of a base ROE of 11.8 percent plus a 50 basis point adder as an incentive for its continuing membership in the CAISO.

10. PG&E requests the Commission grant a waiver from providing the information in Statement BC, Reliability Data, on the ground that these matters are now handled by the CAISO rather than PG&E. PG&E also requests a waiver from filing Statement AH because its TO-11 filing does not propose to change any power, fuel clause, or production-related service or rate.

II. Notice and Responsive Pleadings

11. Notice of PG&E's filing was published in the *Federal Register* with protests or interventions due on or before August 20, 2008.⁸

12. Timely motions to intervene were filed by the Western Area Power Administration (Western), Atlantic Path 15 (Path15), and Southern California Edison Company (SoCal Edison). San Diego Gas & Electric Company (SDG&E), the City and County of San Francisco (San Francisco), and the Bay Area Municipal Transmission Group (BAMx) filed motions to intervene out-of-time.

13. Timely motions to intervene and protest were filed by the six Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (the Cities); California Department of Water Resources State Water Project (SWP); Modesto Irrigation District (Modesto); Northern California Power Agency (NCPA); Transmission Agency of Northern California (TANC); the Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency (Redding Parties); Energy Producers & Users Coalition (EPUC); Sacramento Municipal Utility District (SMUD); and State Water Contractors and the Metropolitan Water District of Southern California (Metropolitan). The California Public Utilities Commission (CPUC) filed a notice of intervention and subsequently filed a protest. PG&E filed an answer to the comments and protests.

⁸ 73 Fed. Reg. 46,621 (2008).

14. EPUC protests PG&E's proposed increase in standby rates, stating that the proposed rates apply an unreasonable and unduly discriminatory cost allocation methodology (the probabilistic methodology based on contract demand) to the standby class. EPUC contends that the standby class imposes costs on PG&E in the same manner as all other classes and should therefore have costs allocated to it using the same allocation methodology (the 12-CP methodology) as every other class. EPUC acknowledges that the Commission has previously denied its motion to permit further litigation on the standby cost allocation issue because it found that EPUC had produced neither new evidence nor any change in circumstances at that time. EPUC asserts that it will present new evidence of cost causation and discriminatory treatment in this case, citing the operations and maintenance (O&M) expense. EPUC states that all the costs in PG&E's revenue requirement, including the O&M expense should be allocated to all classes in the same manner. EPUC argues that the O&M expense and other cost items would constitute new evidence in this case and justify further litigation.

15. In addition, the Protestors object to various aspects of PG&E's proposal, including ROE, depreciation, capital additions, general plant, pensions and benefits, Account Nos. 456 and 566, and labor ratios.

III. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2008), the Commission will grant the late-filed motions to intervene of SDG&E, San Francisco, and BAMx given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PG&E's answer because the answer aided us in our decision making.

B. Commission Determination

18. PG&E's filing raises issues of material fact regarding capital additions, depreciation expenses, and other rate case issues. All issues raised by the filing, if not summarily disposed of in this order, shall be addressed at the hearing, including, but not limited to the appropriate ROE component, the capitalization rate, and the range of reasonableness.

19. Consistent with previous Commission orders, the Commission summarily accepts the following components of PG&E's filing: (1) PG&E's request for a 50 basis-point incentive for participation in the CAISO; (2) 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; (3) PG&E's proposal to remove language providing for an interim rate component that recovered expenses associated with the PacifiCorp intertie lease payment; (4) PG&E's request for continued acceptance of the revenue sharing mechanism for secondary products and services; and (5) PG&E's request for waiver of the obligation to provide the information in Statement BC. In addition, the Commission denies EPUC's challenge to the standby rate cost allocation methodology.

20. As provided in *SDG&E* and *AEP*,⁹ the Commission will grant up to 50 basis points of incentive ROE for participation in the CAISO, subject to suspension and the zone of reasonable returns determined at hearing. The Commission's decision to grant PG&E an incentive ROE for participation in the CAISO is consistent with the stated purpose of FPA section 219 as amended by the Energy Policy Act of 2005¹⁰ and is intended to encourage PG&E's continued involvement in the CAISO.

21. 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.¹¹ This acceptance applies to this instant filing only, and PG&E in future cases will be required to apply for and demonstrate the need for future continued application of any investment incentives.

22. The Commission accepts PG&E's proposal, effective March 1, 2009, to remove language that references an interim rate component to recover the expense associated with the PacifiCorp intertie lease payment from March 1, 2008 through February 28, 2009, which resulted from the Commission-approved settlement in Docket No. ER08-255-000.¹² We will also accept PG&E's Set 2 retail and wholesale revenue requirements and rates to reflect the five-month suspension.

⁹ *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 25-26 (2007) (*SDG&E*); *American Elec. Power Serv.*, 120 FERC ¶ 61,205, at P 34 (2007) (*AEP*).

¹⁰ 16 U.S.C. § 824s (2006).

¹¹ *Western Area Power Admin.*, 99 FERC ¶ 61,306 (2002) (accepting letter agreement), *reh'g denied*, 100 FERC ¶ 61,331 (2002).

¹² *Pacific Gas and Electric Co.*, 121 FERC ¶ 61,278 (2007).

23. The Commission denies EPUC's request for further litigation of the standby rate cost allocation methodology. This issue was fully litigated in PG&E's TO-6 proceeding.¹³ In that proceeding, the Commission concluded that PG&E's probabilistic methodology fairly allocated the costs of PG&E's transmission system to the standby class and that the 12-CP methodology PG&E used for other classes was not appropriate for the design of PG&E's standby class rates because the standby customer class is not similarly situated with PG&E's other classes of customers.¹⁴ That finding was affirmed by the U.S. Court of Appeals for the D.C. Circuit.¹⁵

24. Subsequently, in the TO-8 proceeding, pursuant to the Settlement reached by all parties, EPUC and the Cogeneration Association of California (Cogen), filed a motion with the Commission to permit further litigation on this issue. The Commission denied the motion, stating that EPUC/Cogen was seeking the same goal it pursued in the TO-6 proceeding, i.e., establishing that the 12-CP methodology is more appropriate for determining standby rates, and that EPUC/Cogen had presented no new evidence or changed circumstances that are relevant to that rate design.¹⁶

25. In this case, EPUC argues that it will present new evidence of cost causation and discriminatory treatment, citing PG&E's O&M expense. PG&E replies that attacking one aspect of its costs does not change the court's ruling that the allocation of those costs using a probabilistic methodology is just and reasonable. We agree. EPUC has not presented sufficient new evidence or changed circumstances to justify committing resources to relitigate issues that have recently been resolved. While EPUC or any other party is free to raise an issue about PG&E's O&M expense or any other costs underlying PG&E's revenue requirement, this cost allocation issue has been resolved and will not be relitigated in this proceeding.

¹³ *Pacific Gas and Electric Co.*, 113 FERC ¶ 61,084 (2005), *order on reh'g*, 114 FERC ¶ 61,324 (2006), *aff'd*, *Cogeneration Ass'n of California v. FERC*, 525 F.3d 1279 (D.C. Cir. 2008).

¹⁴ *Pacific Gas and Electric Co.*, 113 FERC ¶ 61,084 at P 45, 64.

¹⁵ *Cogeneration Ass'n of California*, 525 F.3d 1279.

¹⁶ *Pacific Gas and Electric Co.*, 121 FERC ¶ 61,065, at P 47 (2007).

26. We reaffirm here our acceptance, in concept, of PG&E's 50-50 revenue sharing mechanism for secondary products and services.¹⁷ However, we will not preclude parties from raising issues regarding PG&E's support of forecast and actual revenues and expenses for new products and services at hearing.

27. Lastly, we hereby grant PG&E's request for waiver of the obligation to provide the information in Statement BC because that information is now provided by the CAISO.

C. Hearing and Settlement Judge Procedures

28. 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.

29. 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.

30. 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, 2009, subject to refund.

31. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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;

¹⁷ See *Pacific Gas and Electric Co.*, 121 FERC ¶ 61,174 (2007).

¹⁸ 18 FERC ¶ 61,189 (1982).

¹⁹ 18 C.F.R. § 385.603 (2008).

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 30 days of the date of the appointment of the settlement judge, 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.

The Commission orders:

(A) PG&E's proposed rates are hereby accepted for filing and suspended for the maximum five-month period, to become effective on March 1, 2009, 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 the justness and reasonableness of PG&E's proposed rate increases. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering 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 (2008), 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 appointment of the settlement judge, 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

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).

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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.