

138 FERC ¶ 61,049
UNITED STATE OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

City of Azusa, California

Docket No. ER12-489-000

ORDER CONDITIONALLY ACCEPTING PROPOSED TRANSMISSION
REVENUE REQUIREMENT AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued January 24, 2012)

1. On November 30, 2011, the City of Azusa, California (Azusa) submitted revisions to its Transmission Owner Tariff (TO Tariff). Azusa requests that the Commission approve its (1) revised base Transmission Revenue Requirement (TRR), (2) revised Transmission Revenue Balancing Account Adjustment (TRBAA), (3) revised High Voltage Transmission Revenue Requirement (High Voltage TRR), (4) modified Gross Load calculation, and (5) implementation of new provisions for the pass-through of costs associated with Azusa's Existing Transmission Contracts (ETC) with Southern California Edison Company (SoCal Edison).¹ In addition, Azusa requests that the Commission approve several ministerial changes to reflect the implementation of the California Independent System Operator Corporation's (CAISO) Market Redesign and Technology Update (MRTU) initiative.

2. Azusa requests an effective date of December 1, 2011, and consents to return any payments it receives from the CAISO for Azusa's revised rates in excess of those ultimately approved by the Commission.² As discussed below, we conditionally accept Azusa's revised TO Tariff rates for filing, effective December 1, 2011, and set the matter for hearing and settlement judge procedures.

¹ The mechanism for the pass-through of Azusa's ETC costs is referred to herein as the ETC Pass-Through Clause.

² Azusa Petition at 24 and note 12.

I. Background

3. Azusa is not a public utility, but it is a Participating Transmission Owner (Participating TO) in the CAISO. Azusa is reimbursed for its TRR by the CAISO through CAISO's collection of a Transmission Access Charge (TAC) from all users of the CAISO grid. The TAC rate is a formula rate based on the TRRs of all Participating TOs. Rate changes that impact the CAISO TAC require a section 205 filing under the Federal Power Act (FPA)³ and full review by this Commission to ensure that the inclusion of these rate revisions will result in a just and reasonable TAC rate charge by the CAISO.⁴

4. Section 26.1.1 of the CAISO tariff requires non-jurisdictional Participating TOs to file with the Commission their proposed High Voltage TRR. In 2003, Azusa filed, and the Commission subsequently accepted, Azusa's initial TO Tariff.⁵ This tariff included Azusa's base TRR, TRBAA, and resultant High Voltage TRR⁶ to be used to calculate the TAC paid by CAISO transmission customers for service over Azusa's facilities and Entitlements (as defined in the CAISO tariff). Since joining the CAISO in 2003, Azusa has filed with the Commission an annual update to its TRBAA which results in a revised base TRR, effective January 1st of each year.⁷ The currently-effective base TRR of \$1,500,000 was established by a settlement agreement, which was approved by the Commission.⁸

³ 16 U.S.C. § 824d (2006).

⁴ *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, at P 42-44, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

⁵ *City of Azusa, California, et al.*, 105 FERC ¶ 61,293 (2003).

⁶ As Azusa notes, the High Voltage TRR is "produced by adding the TRBAA credit (either positive or negative) to the [base] TRR." Azusa Petition at n.3.

⁷ Azusa states that its current TRBAA of \$133,495.98 was accepted by the Commission and made effective as of January 1, 2011 via a letter order issued in Docket No. NJ11-10-000 on February 1, 2011. Azusa Petition at 6.

⁸ *See Offer of Settlement and Settlement Agreement, City of Azusa, California, et al.*, Docket No. EL03-14-00 (filed July 18, 2003); *City of Azusa, California*, 105 FERC ¶61,293 (approving Offer of Settlement and Settlement Agreement).

5. In this docket, Azusa proposes a revised base TRR of \$2,230,280.00 per year, or an increase of \$730,280.00 (48.7 percent) on an annual basis.⁹ Azusa states that its proposed TRBAA will be positive \$66,295.98 through the end of calendar year 2011.¹⁰ Adding the modified TRBAA amount to the revised base TRR results in a High Voltage TRR for Azusa of \$2,296,575.98. Azusa also proposes an increase in its Gross Load to 257,416 MWh.¹¹ According to Azusa, its Gross Load is determined by using a forecasting process based on variables such as weather observations, economic conditions, and seasonal load patterns.¹²

6. Azusa states that its revised base TRR is based upon projected annualized costs of the Azusa transmission Entitlements for fiscal year 2012 (July 1, 2011 through June 30, 2012) and a historic test period of fiscal year 2011 (July 1, 2010 through June 30, 2011).¹³ The base TRR reflects Azusa's projected Administrative and General (A&G) costs, regulatory expenses, and a portion of the Azusa Light and Water Department's payment to the City's General Fund (General Fund).¹⁴

7. Azusa states that it participates in and has Entitlements to two transmission projects through the Southern California Public Power Authority (SCPPA), the Mead-Adelanto Project and the Mead-Phoenix Project.¹⁵ The total annualized cost for Azusa's Entitlements in these SCPPA projects is projected to be \$623,461.00 during fiscal year 2012. Azusa also states that it has an Entitlement to transmission capacity pursuant to an

⁹ Azusa Petition at 11. All of Azusa's transmission facilities and Entitlements placed under the CAISO's operational control are high voltage facilities as defined by the CAISO Tariff. *See* Azusa Petition, revised TO Tariff, Appendix 1.

¹⁰ *Id.* at 15. Azusa states that its TRBAA is being modified as a result of the proposed changes to the way in which Azusa recovers costs associated with its SoCal Edison ETCs.

¹¹ *Id.* at 16.

¹² *Id.* Azusa states that its proposed Gross Load is consistent with the forecast Azusa provided to the California Energy Commission, and used in Azusa's internal resource planning and procurement decisions.

¹³ *Id.* at 11.

¹⁴ *Id.*

¹⁵ *Id.*

agreement with the Los Angeles Department of Water and Power (LADWP).¹⁶ The cost of this Entitlement, which is based upon a rate established by LADWP, is projected to be \$75,360.00 during fiscal year 2012. Finally, Azusa states that it has contractual Entitlements to transmission capacity pursuant to four ETC agreements with SoCal Edison.¹⁷ Azusa states that the cost of these four Entitlements, based upon SoCal Edison's currently-effective High Voltage Existing Contract Access Charge (HVECAC), totals \$1,141,200.00.¹⁸

8. Azusa estimates that its A&G expenses related to transmission will total \$70,504.00 during fiscal year 2012.¹⁹ Regulatory expenses related to its transmission activities during fiscal year 2012 are estimated to be \$32,002.00.²⁰ In addition, Azusa anticipates that it will incur \$170,000.00 in regulatory expenses related to litigation and/or settlement of the instant proceeding, which Azusa proposes to amortize over two years,²¹ resulting in a cost of \$85,000.00 per year.²² Additionally, Azusa states that for fiscal year 2012, Azusa's General Fund transfer amount will consist of two annual transfers. The first transfer is a franchise fee calculated as two percent of retail sales, and the second is an "in-lieu" fee of eight percent of retail sales,²³ which will total \$40,551.00 and \$162,202.00 respectively,²⁴ for a total transfer amount of \$202,753.00.

9. Azusa also proposes to change the way it recovers its ETC costs. Specifically, Azusa proposes to establish an ETC Pass-Through Clause.²⁵ Under this mechanism,

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 13.

¹⁸ *Id.* at 11-14.

¹⁹ *Id.* at 14.

²⁰ *Id.*

²¹ *Id.* at 14-15.

²² Azusa Petition, Exhibit No. AZU-1, Direct Testimony of Robert C. Smith (Smith Test.) at 26:9-11.

²³ Azusa Petition at 15.

²⁴ Smith Test. at 27:8-11.

²⁵ Azusa's revised TO Tariff describes the ETC Pass-Through Clause as "[t]he mechanism that adjusts Azusa's High Voltage Base TRR for changes in the costs

(continued...)

Azusa will perform a forecast of its ETC costs, and at the same time calculate its actual ETC costs as invoiced by SoCal Edison for a prior, typically twelve-month period. Each year Azusa will file its forecast and the true-up calculation (which will include interest on over- and under-collections at the Commission-approved rates) with the Commission as a separately-stated component of its base TRR. Azusa explains that because its ETC costs are priced according to SoCal Edison's HVECAC, whenever SoCal Edison's TRR changes, Azusa must reflect these changes in its ETC costs.²⁶ Azusa explains that the ETC Pass-Through Clause is intended to be both simple and transparent so that it is straightforward for Azusa to implement and affected parties can readily understand the costs that are being flowed through the mechanism.²⁷

10. Additionally, Azusa proposes several additional revisions to its TO Tariff that it states are largely ministerial in nature and are required to conform Azusa's TO Tariff to the new market structures contained in the CAISO Tariff due to the implementation of MRTU. Azusa proposes to (1) delete the definition of Net FTR Revenue; (2) modify the definition of Transmission Revenue Credit by deleting references to Net FTR Revenues and Usage Charge Revenues; (3) delete a reference to the Transition Period in the definition of Transmission Revenue Credit; and (4) delete references to Usage Charge revenues and FTR auction proceeds.²⁸

11. As a municipality, Azusa argues that it is exempt from the fees otherwise imposed under Part 381 of the Commission's regulations.²⁹ Accordingly, Azusa requests that the Commission waive any fee associated with its filing.

associated with certain [ETCs], consisting of Azusa's projected annual cost of its ETCs with [SoCal Edison] for the next calendar year, based upon the stated [HVECAC] rate in effect at the time of Azusa's annual ETC filing, plus the true-up (positive or negative) of the prior year's costs of such ETCs (as invoiced to Azusa by [SoCal Edison] during the period of October through September) as compared with the projected ETC costs for the same period, including interest on the true-up amount at the rate computed by the Federal Energy Regulatory Commission pursuant to 18 C.F.R. § 35.19a." Azusa TO Tariff, proposed section 3.3. *See also* Azusa TO Tariff, Appendix I.

²⁶ Azusa Petition at 17. Azusa notes that SoCal Edison's TRR has changed at least once a year and sometimes more often due to updates to SoCal Edison's base TRR and TRBAA.

²⁷ *Id.* at 17-19.

²⁸ *Id.* at 21-22.

²⁹ *Id.* at 22 (citing 18 C.F.R. § 381.108 (2011)).

12. Azusa requests an effective date of December 1, 2011, and waiver of the Commission's notice requirements to the extent necessary, to allow the revised base TRR, TRBAA, High Voltage TRR, and accompanying TO Tariff revisions to be placed into effect as soon as possible.³⁰

II. Notice of Filing and Responsive Pleadings

13. Notice of Azusa's filing was published in the *Federal Register*, 76 Fed. Reg. 76,393 (2011), with interventions, comments, and protests due on or before December 21, 2011. Trans Bay Cable LLC; the City of Santa Clara, California and the M-S-R Public Power Agency; and the Modesto Irrigation District filed motions to intervene. Pacific Gas and Electric Company (PG&E) and SoCal Edison filed motions to intervene and protests.

A. Protests

14. PG&E objects to Azusa including in its base TRR payments to the Azusa General Fund. PG&E argues that CAISO ratepayers, who are located throughout California, should not be required to pay a TAC rate that includes fee amounts that Azusa uses to provide services solely for the benefits of its residents.³¹ PG&E suggests that Azusa should recover any required General Fund transfers through its retail electric rates, which are charged to Azusa residents who directly benefit from the transfer.³² SoCal Edison also argues that Azusa has not established that it is appropriate for CAISO ratepayers to be responsible for paying the fees that Azusa assesses.³³ SoCal Edison maintains that, even if the General Fund fee assessment should apply to CAISO ratepayers, it has not been shown that the 10 percent General Fund fee is a reasonable rate. SoCal Edison notes that Azusa has provided no analysis or evidence that the resulting amount of revenue generated by the General Fund transfer would yield a just and reasonable return when applying the traditional rate base model used by the Commission.³⁴

³⁰ *Id.* at 23.

³¹ PG&E Protest at 3.

³² *Id.*

³³ SoCal Edison Protest at 3.

³⁴ *Id.*

15. SoCal Edison also argues that Azusa's regulatory expenses forecast reveals a significant cost increase.³⁵ SoCal Edison and PG&E both contend that Azusa failed to provide sufficient support showing that such a cost increase for regulatory expenses is just and reasonable.³⁶ SoCal Edison and PG&E state that, given the factual issues raised, it is appropriate for Azusa's filing to be accepted, subject to refund, and set for hearing.³⁷

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 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Standard of Review

17. The Commission has addressed the standard of review to be applied to petitions involving non-jurisdictional TRRs in an opinion reviewing the TRR filed by the City of Vernon, California (Vernon).³⁸ In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to its FPA section 205 jurisdiction. However, the Commission noted that because Vernon voluntarily submitted its TRR as a component of CAISO's jurisdictional rate, Vernon's TRR is "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."³⁹ The Commission explained that in *Pacific Gas & Elec. Co. v. FERC*, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission has statutory authority to review Vernon's TRR "to the extent necessary to ensure that the CAISO rates are just and reasonable."⁴⁰ Subsequently, the court upheld the

³⁵ *Id.* at 4.

³⁶ *Id.* at 4; PG&E Protest at 5.

³⁷ SoCal Edison Protest at 4; PG&E Protest at 5.

³⁸ See *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207, *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297.

³⁹ Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

⁴⁰ *Id.* P 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

Commission's decision that subjecting the TRRs of non-jurisdictional utilities (such as Vernon) to a full section 205 review is "the only way to ensure that CAISO's rate is just and reasonable."⁴¹

18. However, in *TANC* the court rejected the Commission's authority to order Vernon to pay refunds under FPA section 205. The court held that the structure of the FPA clearly reflects Congress's intent to exempt governmental entities and non-public utilities from the Commission's refund authority under FPA section 205 over wholesale electric energy sales.⁴² The court reasoned that FPA section 201(f) exempts from Part II of the FPA "any political subdivision of a state."⁴³

19. Therefore, while Azusa is not within the Commission's jurisdiction under FPA section 205, we find that, based on the court's rulings, it is appropriate to apply the just and reasonable standard of FPA section 205 to Azusa's TO Tariff rates. To determine the justness and reasonableness of Azusa's TO Tariff rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

20. Furthermore, Azusa is not subject to Commission-imposed rate suspension and refund obligations under FPA section 205. However, we note that Azusa has agreed to refund any payment it receives from the CAISO for Azusa's revised rates in excess of those ultimately approved by the Commission.⁴⁴

C. Hearing and Settlement Judge Procedures

21. Azusa's proposed TO Tariff rate revisions 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.

22. Our preliminary analysis indicates that Azusa's TRR has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will conditionally accept Azusa's TO Tariff revisions for filing, make them effective as of December 1, 2011, and set all issues raised by the filing, except those decided below, for hearing and settlement judge procedures.

⁴¹ *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

⁴² *Id.* at 673-74.

⁴³ *Id.* at 674.

⁴⁴ Azusa Petition at 24 and note 12.

23. 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 the 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.⁴⁵ 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.⁴⁶ 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.

D. Other Issues

24. We will accept Azusa's proposed revisions to Azusa's TO Tariff to implement pass-through treatment of costs associated with Azusa's ETCs with SoCal Edison.⁴⁷ We find that the implementation of the ETC Pass-Through Clause mechanism is just and reasonable and will ensure that Azusa continues to recover, through its TRR, the costs of its transmission Entitlements. Further, we will accept Azusa's revisions to its TO Tariff to conform Azusa's TO Tariff to the new market structures contained in the CAISO Tariff due to the implementation of MRTU, effective December 1, 2011, as requested.

25. We will also grant Azusa's petition for waiver of the filing fee. Section 381.108 of the Commission's regulations provides that municipalities are exempt from the filing fees required by Part 381.⁴⁸ Azusa explains that it is a municipal utility organized under the laws of California. Therefore, Azusa is exempt from the filing fee required for a rate filing.

⁴⁵ 18 C.F.R. § 385.603 (2011).

⁴⁶ 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 the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

⁴⁷ *City of Banning, California*, 136 FERC ¶ 61,134, at P 27 (2011); *City of Riverside, California*, 136 FERC ¶ 61,137, at P 31 (2011).

⁴⁸ 18 C.F.R. § 381.108 (2011).

The Commission orders:

(A) Azusa's proposed TO Tariff rates, as incorporated in the subject revised tariff provisions, are hereby conditionally accepted for filing, effective December 1, 2011, as discussed in the body of this order.

(B) Azusa's request for waiver of the filing fee is hereby granted, as discussed in the body of this order.

(C) 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 Azusa's TO Tariff rates, 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 Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), 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.

(E) 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 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.

(F) 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, NE, 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.