

141 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER12-2701-000

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

(Issued November 29, 2012)

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 May 1, 2013, subject to refund, and establish hearing and settlement judge procedures. We also direct PG&E to submit a compliance filing within thirty (30) days of the issuance of this order, as discussed below.

I. Background

2. On September 28, 2012, PG&E submitted its fourteenth TO Tariff filing (TO14), requesting an increase in TO Tariff transmission service rates,² effective December 1, 2012, to recover the costs associated with significant electric transmission infrastructure expansion and replacement that has occurred in 2012 to date, and that PG&E expects to occur during the balance of 2012 and in 2013. PG&E forecasts that it

¹ 16 U.S.C. § 824d (2006).

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 that reflects PG&E's costs of constructing and owning its transmission system.

will invest \$782.8 million in capital projects in 2012 and an additional \$836.9 million in capital projects in 2013.³

3. PG&E states that its 2013 Period II rate base is \$4.46 billion, a 23.6 percent increase from its 2011 Period I rate base of \$3.61 billion.⁴ PG&E states that its projected revenue requirement for retail network transmission service for 2013 is \$1.1976 billion,⁵ a 26.9 percent increase over the \$944 million of annual revenues PG&E expects its current network transmission retail rates to produce. For wholesale customers, PG&E proposes wheeling revenues of \$94.8 million for 2013 compared to its projected annual revenues of \$83.3 million under current rates.⁶

4. PG&E proposes a return on equity (ROE) of 11.5 percent, comprised of a base return of 11.0 percent plus a 50 basis-point incentive adder for its continued participation in CAISO.⁷ In addition, PG&E has included, and is reapplying for, the continued use of a 200 basis-point ROE adder and a 10-year depreciable life related to its investment in the Path 15 upgrade project.⁸ PG&E also proposes to increase its depreciation rate from the current level of 2.56 percent to 3.54 percent.⁹

5. PG&E requests that the Commission waive its obligation to provide the information required in Statement BC, Reliability Data, noting that CAISO has been responsible for setting reliability standards and tracking reliability data since March 31, 2008. In addition, PG&E states that it has not proposed changes to any power, fuel clause, or production-related service or rate. Therefore, PG&E requests waiver of the Commission's requirement that it supply information needed for Statement AH.¹⁰

³ PG&E September 28, 2012 Transmission Owner Tariff Filing at 2 (PG&E TO14 Filing).

⁴ The Period I rate base includes the cost of service data for 2011. The Period II rate base includes cost of service data that is occurring or projected to occur in 2012 and 2013.

⁵ PG&E TO14 Filing, Ex. PGE-1, 2:9-12.

⁶ *Id.* at 2.

⁷ PG&E TO14 Filing, Ex. PGE-1, 8:22-28.

⁸ *Id.*, Ex. PGE-1, 8:7-11.

⁹ *Id.*, Ex. PGE-10, 18:25-26.

¹⁰ *Id.* at 2-3.

II. Notice of Filing and Responsive Pleadings

6. Notice of PG&E's filing was published in the *Federal Register*, 77 Fed. Reg. 60,976 (2012) with protests or interventions due on or before October 19, 2012.

7. Timely motions to intervene were filed by Southern California Edison Company, Trans Bay Cable LLC, and Energy Producers and Users Coalition. San Diego Gas & Electric Company filed a motion to intervene out of time.

8. The California Public Utilities Commission (CPUC) filed a notice of intervention and protest. Timely motions to intervene and protests were filed by the California Department of Water Resources State Water Project (SWP); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency (Cities/M-S-R); Modesto Irrigation District (Modesto); Northern California Power Agency (NCPA); Sacramento Municipal Utility District (SMUD); State Water Contractors (SWC); and the Transmission Agency of Northern California (TANC) (collectively, Protestors).¹¹ On November 5, 2012, PG&E submitted an answer. On November 13, 2012, Cities/M-S-R, SMUD, and TANC filed an answer to PG&E's answer.

III. Protests and Comments

9. Protestors argue that PG&E has overstated its TO14 costs and has requested excessive rates. Thus, Protestors argue that the Commission should suspend the proposed rates for the maximum five-month period permitted by the FPA.¹² Protestors assert that under *West Texas Utilities Company*,¹³ the Commission will suspend rates for the full five month period if "more than ten percent of the proposed increase is found to be excessive."¹⁴ Protestors generally contend that a PG&E's proposed transmission revenue requirement increase is excessive by more than ten percent¹⁵ and, therefore,

¹¹ NCPA supports the SWP October 19, 2012 Protest (SWP Protest). Cities/M-S-R, Modesto, and SMUD support the TANC October 19, 2102 Protest (TANC Protest).

¹² 16 U.S.C. § 824d(e) (2006).

¹³ 18 FERC ¶ 61,189 (1982) (*West Texas*).

¹⁴ *See, e.g.*, TANC Protest at 97 (citing *West Texas*, 18 FERC ¶ 61,189 at 61,375).

¹⁵ For example, Six Cities estimate that PG&E's proposed transmission revenue requirement increase may be excessive by at least 76 percent. Six Cities October 19, 2012 Protest at 3 (Six Cities Protest).

should be suspended for the maximum five-month period, subject to refund. Protestors also request that the Commission establish hearing and settlement judge procedures, as discussed below.¹⁶

10. Protestors argue that PG&E's requested 11 percent base ROE is unjust and unreasonable. First, Protestors contend that PG&E has calculated its ROE based on an analysis that does not use the Commission's required discounted cash flow (DCF) methodology. Protestors explain that, under the DCF methodology, PG&E must determine its ROE based on the median of a national proxy group of utility companies comparable to PG&E. Instead, Protestors claim that PG&E has incorrectly used the midpoint of the DCF in order to achieve a higher ROE.¹⁷ TANC requests that the Commission grant summary disposition on this issue and direct PG&E to use the median instead of the midpoint. TANC argues that pursuant to Rule 217, the Commission should summarily dispose of this issue because PG&E has failed to meet its burden of proof in support of its use of the midpoint. TANC asserts that there are no material facts in dispute with regard to the required methodology that prevents summary disposition by the Commission.

11. In addition, Protestors contend that PG&E has applied inappropriate screening criteria to its proxy group in order to eliminate certain utilities and develop a range of reasonableness that exceeds PG&E's true financial risk.¹⁸ Protestors also assert that PG&E has used other empirical analysis techniques in addition to the DCF methodology to derive its ROE, all of which the Commission has rejected.¹⁹

12. TANC also disputes PG&E's continued use of both the 200 basis-point adder and accelerated depreciation for the Path 15 upgrade project and the 50 basis-point adder for its participation in CAISO. TANC contends that the 50 basis-point adder for PG&E's participation in CAISO is no longer necessary to induce its membership, arguing that there is no risk PG&E will leave CAISO for at least two years.²⁰ TANC also argues that incentive rate treatment for the long-completed Path 15 upgrade project is no longer

¹⁶ CPUC October 19, 2012 Protest at 2-4 (CPUC Protest), Six Cities Protest at 28, SWC October 19, 2012 Protest at 9 (SWC Protest), SWP Protest at 9, TANC Protest at 5.

¹⁷ CPUC Protest at 5, Six Cities Protest at 4, SWC Protest at 6, SWP Protest at 10, TANC Protest at 18 (all citing *Southern California Edison Company*, 131 FERC ¶ 61,020 (2010)).

¹⁸ Six Cities Protest at 3-4, SWC Protest at 6-7, TANC Protest at 96.

¹⁹ Six Cities Protest at 8-15.

²⁰ TANC Protest at 73-74.

appropriate or necessary, even though the project itself remains useful. TANC explains that the incentive does not provide financial support to PG&E, as PG&E bears little risk as an 18 percent project compared to its other sponsors. TANC adds that the incentive has not encouraged PG&E to undertake the development of other non-routine transmission projects, as PG&E is not currently engaged in any large, non-routine transmission investment. Thus, TANC argues that the Commission should not grant PG&E's request for the incentive due to PG&E's failure to demonstrate its on-going appropriateness of and continued need for the 50 and 200 basis-point adders.²¹

13. Protestors generally assert that PG&E's proposed increase in its depreciation rate from the current 2.56 percent rate reached in the TO13 settlement to 3.54 percent is both excessive and unjustified.²² TANC argues that PG&E's proposed depreciation rate uses a methodology that contains numerous errors, such as overstating its removal costs and net salvage rate, failing to account for previously-collected depreciation amounts, and the use of an understated service life for plants and equipment.²³ In addition, Six Cities explains that depreciation rate should not be higher than previous years because its significant transmission plant additions should ultimately lower the average service life of all PG&E facilities.²⁴ By overstating the depreciation rate, Protestors claim that PG&E has proposed a transmission revenue requirement that is unjust and unreasonable.

14. Protestors contend that PG&E has historically overestimated its capital additions and continues to do so in the instant filing by including capital projects that will likely not be in service by the end of the Period II time frame; i.e., end-of-year 2013.²⁵ CPUC and SWP assert that a number of the in-service dates for the included transmission projects are unattainable, particularly those with December 31, 2013 in-service dates. CPUC and TANC argue that they need additional time and discovery in order to verify that PG&E has obtained the required permits, reviews, and approvals of the capital projects it includes in its transmission revenue requirement.²⁶

²¹ TANC Protest at 77-78.

²² CPUC Protest at 6, Six Cities Protest 15-16, SWP Protest at 14, TANC Protest at 82-83.

²³ TANC Protest at 82-83.

²⁴ Six Cities Protest at 16.

²⁵ CPUC Protest at 8-9, Six Cities Protest at 24-25, SWC Protest at 7-8, SWP Protest at 17-18, TANC Protest at 17-18.

²⁶ TANC Protest at 23-25.

15. Similarly, Protestors argue that PG&E historically overstates its projected operations and maintenance (O&M) expenses and has continued to do so in the instant filing.²⁷ Specifically, CPUC asserts that the increase in PG&E's Period I and II O&M expenses exceeds the rate of inflation and outpaces forecasted load growth in its service area.²⁸ Protestors also dispute the number of additional personnel and non-labor dollars PG&E states is necessary to comply with NERC and FERC-related reliability standards. Protestors note that such additions require justification since PG&E has complied with these standards for years.²⁹ In addition, CPUC and Six Cities add that particular program expenses, such as yearly maintenance costs, are overstated by almost \$16 million and warrant further discovery.³⁰

16. Protestors further argue that PG&E's projected Period II administrative and general (A&G) expenses are excessive. SWP and TANC argue that PG&E has incorrectly used a labor allocator from 2008, even though more recent data is available, which results in an overstated A&G expenses.³¹ Six Cities and TANC argue that PG&E's proposed Short Term Incentive Plan, various employee benefits, and personnel increases warrant further review.³²

17. In order to address these concerns, Protestors generally request that the Commission suspend PG&E's TO14 Filing for the maximum five-month period, subject to refund, and establish hearing and settlement judge procedures.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

²⁷ CPUC Protest at 7, Six Cities Protest at 16-17, SWC Protest at 8, SWP Protest at 14, TANC Protest at 32-38.

²⁸ CPUC Protest at 7.

²⁹ Six Cities Protest at 22, CPUC Protest at 8, TANC Protest at 46-49.

³⁰ Six Cities Protest at 21, CPUC Protest at 8.

³¹ SWP Protest at 18, TANC Protest at 24-25.

³² Six Cities Protest at 23, TANC Protest at 38, 41-42.

19. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant San Diego Gas & Electric's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept PG&E and TANC's answers and, therefore, reject them.

B. Commission Determination

21. 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 for the maximum five-month period, subject to refund, and set them for hearing and settlement judge procedures.

22. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by the statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.³³ It is our policy to suspend a requested rate increase for the maximum period in those cases where our preliminary analysis indicates that ten percent or more of the requested increase appears to be excessive.³⁴ We recognize, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.³⁵ Here, our preliminary analysis indicates that PG&E's proposed rates may be substantially excessive. Therefore, we will suspend PG&E's proposed rates for the maximum five-month period to become effective May 1, 2013.

23. We find that PG&E's filing raises issues of material fact that, if not summarily disposed of in this order, shall be addressed at hearing, as discussed further below. The Commission will, however, reemphasize its policy regarding the use of the median versus the midpoint to calculate an ROE. The Commission has previously determined that, with regard to a single utility's proposed base ROE, the use of the median—not midpoint—DCF value from the proxy group selected is the most accurate measure of central

³³ See, e.g., *Boston Edison Co.*, 12 FERC ¶ 61,211 (1980).

³⁴ *West Texas*, 18 FERC ¶ 61,189.

³⁵ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980).

tendency for a single utility of average risk, such as PG&E.³⁶ Therefore, we direct PG&E to use the median to establish the base ROE and file revised rates reflecting a median-based ROE within thirty (30) days of the date of this order. We note, however, that issues of material fact remain with regard to the composition of the appropriate proxy group and that these issues will be among those addressed in the hearing, along with the issue of a just and reasonable ROE based on the median.

24. Consistent with previous Commission orders, we will summarily accept 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; and (3) PG&E's request for waiver of the obligation to provide the information in Statement BC and Statement AH.

25. We will continue to 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. As noted in prior orders addressing this incentive,³⁷ 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 2005³⁸ and is intended to encourage PG&E's continued involvement in the CAISO.

26. 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.³⁹ While we continue to grant the 200 basis-point adder for the Path 15 upgrade, we remind PG&E that any ROE adder is limited to within the range of reasonableness of the ROE; to be determined in the ordered hearing proceeding.⁴⁰ Further, we note that acceptance applies

³⁶ See *Public Service Co. of New Mexico*, 137 FERC ¶ 61,119, at P 13 (2011) (citing *Southern California Edison Co.*, 136 FERC ¶ 61,074, at P 30 (2011)).

³⁷ *Pacific Gas and Electric Co.*, 132 FERC ¶ 61,272, at P 23 (2010).

³⁸ 16 U.S.C. § 824s (2006).

³⁹ *Western Area Power Admin.*, 99 FERC ¶ 61,306 (2002) (accepting letter agreement), *reh'g denied*, 100 FERC ¶ 61,331 (2002).

⁴⁰ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 93 (Order No. 679), *order on reh'g*, Order No. 679-A, FERC Stats & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

to this instant filing only, and PG&E will be required to apply for and demonstrate the need for future continued application of this incentive in any future requests.⁴¹

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. Similarly, we will grant PG&E's request for waiver of the Statement AH filing requirement because that filing requirement applies to proposals to change power, fuel clause, or production-related services or rates. PG&E's filing does not include such proposals and, therefore, Statement AH is not required.

C. Hearing and Settlement Judge Procedures

28. Other than those issues summarily resolved above, PG&E's proposed TO Tariff rate revisions raise issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing procedures ordered below.

29. While we are setting this matter 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.⁴² 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.⁴³ The settlement judge shall report to the Chief Judge and the Commission within thirty (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. Should the settlement judge ultimately determine

⁴¹ While we approve the 200 basis-point adder for the Path 15 upgrade project, so as to end the ten-year depreciable life incentive, we note that parties may review the calculations of the depreciation of the project at hearing.

⁴² 18 C.F.R. § 385.603 (2012).

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

that a hearing is warranted, PG&E shall file a full case in chief pursuant to the Commission's regulations to support its proposed rate structure at hearing.

The Commission orders:

(A) PG&E's proposed transmission owner tariff rates are hereby conditionally accepted for filing and suspended for the maximum five-month period, to become effective May 1, 2013, subject to refund, and subject to hearing and settlement judge procedures, as discussed in the body of this order.

(B) PG&E is hereby directed to submit a compliance filing with revised rates reflecting a median-based rate of return, within thirty (30) days of the date of this order, 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 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 Transmission Owner 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 (C), (D), and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), 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.