

142 FERC ¶ 61,155
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket Nos. ER13-616-000
ER13-616-001
ER13-616-002
ER12-2701-000
(Consolidated)

ORDER ACCEPTING AND SUSPENDING REVISED TRANSMISSION
AGREEMENTS, ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES, AND CONSOLIDATING PROCEEDINGS

(Issued February 28, 2013)

1. This order addresses Pacific Gas and Electric Company's (PG&E) proposed revisions to transmission agreements for three existing contract customers. Pursuant to the Commission's authority under section 205 of the Federal Power Act (FPA),¹ we accept the proposed revisions for filing, suspend them for five months, to be effective August 1, 2013, subject to refund, and establish hearing and settlement judge procedures. Finally, we consolidate PG&E's filing in this docket with the ongoing proceeding involving PG&E's fourteenth update to its Transmission Owner (TO14) Tariff currently pending in Docket No. ER12-2701-000.²

¹ 16 U.S.C. § 824d (2006).

² See *Pacific Gas and Elec. Co.*, 141 FERC ¶ 61,168 (2012) (TO14 Hearing Order).

I. Background

2. PG&E provides firm transmission service to certain customers under existing transmission contracts (ETC).³ On December 21, 2012, PG&E filed revisions to three customers' ETCs.⁴ PG&E proposes to increase the rates for all three ETC customers to reflect its current cost of providing wholesale transmission service. PG&E explains that it last revised its transmission revenue requirement for these customers in 2007.⁵ PG&E states that the proposed rate changes are designed to recover \$4 million in additional revenues on an annual basis. PG&E notes that the cost support data provided in this filing is identical to the cost-of-service data filed in its TO14 rate proceeding.⁶

3. PG&E also proposes to update the mechanism it uses to pass-through third-party costs it incurs from providing scheduling service to BART. PG&E explains that all

³ An ETC is a contractual obligation of a California Independent System Operator Corporation (CAISO) Participating Transmission Owner (PTO), established prior to the start-up of CAISO, to provide transmission service to another party in accordance with terms and conditions specified in the contract, utilizing transmission facilities owned by the PTO that have been turned over to CAISO's operational control.

⁴ The agreements include: PG&E Rate Schedule FERC No. 77 between PG&E and California Department of Water Resources State Water Project (State Water Project), designated Docket No. ER13-616-000; PG&E Rate Schedule FERC No. 143 between PG&E and Transmission Agency of Northern California (TANC), designated Docket No. ER13-616-001; and the service to San Francisco Bay Area Rapid Transit District (BART) under PG&E's Open Access Transmission Tariff (OATT), designated Docket No. ER13-616-002.

⁵ See *Pacific Gas and Elec. Co.*, 125 FERC ¶ 61,084 (2008).

⁶ On December 21, 2012, PG&E submitted a compliance filing to revise its rates using a median-based return on equity (ROE), as directed by the Commission in the TO14 Hearing Order. The revenue requirement used to calculate rates in the instant filing corresponds to the revised revenue requirement PG&E filed to comply with the TO14 Compliance Filing in Docket No. ER12-2701-001 (TO14 Compliance Filing). PG&E states that the wholesale transmission revenue requirement under its Transmission Owner Tariff increased from \$706 million in test year 2008 to \$1,185 million for test year 2013 in its original TO14 rate case. The TO14 wholesale transmission revenue requirement was subsequently revised to \$1,090 million in the TO14 Compliance Filing.

scheduling coordinator activities for BART are performed by a third-party agent, the Automated Power Exchange (APX), and are passed-through to BART pursuant to Schedule 1 of BART's Network Integration Transmission Service Agreement. PG&E proposes to remove the current cap of \$20,500 per month to ensure that any and all charges PG&E incurs for BART's scheduling coordinator activities are appropriately passed-through to BART.

4. Finally, PG&E proposes to revise its ETC with State Water Project to include additional billing data.

5. PG&E requests that the Commission accept the revised ETCs for filing, effective March 1, 2013, with a minimum one-day suspension. PG&E also requests that the Commission direct issues related to its cost-of-service be litigated or settled as part of its TO14 rate proceeding. PG&E asserts that any changes resulting from that litigation or settlement should be reflected in the rates sought in this docket without further proceedings regarding cost-of-service. In addition, PG&E requests that non-rate issues continue to be heard in this docket.

6. Finally, PG&E requests that the Commission waive its obligation to provide the information in Statement BC, Reliability Data, noting that CAISO has been responsible for setting reliability standards and tracking reliability data since March 31, 2008. PG&E also requests waiver of the Commission's requirement that it supply information needed for Statement AH, stating that it has not proposed changes to any power, fuel clause, or production-related service or rate.⁷

II. Notice of Filing and Responsive Pleadings

7. Notice of PG&E's filing was published in the *Federal Register*, 78 Fed. Reg. 296 (2013), with interventions and protests due on or before January 11, 2013.

8. Timely motions to intervene with no substantive comments were filed by Turlock Irrigation District (Turlock) and Trans Bay Cable LLC. The California Public Utilities Commission (CPUC) filed a notice of intervention.

9. Timely motions to intervene and protests were filed by State Water Project; TANC; the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency (Cities/M-S-R); the State Water Contractors (State Water Contractors); Modesto

⁷ PG&E filing at 3. PG&E submitted a similar request in the TO14 rate proceeding.

Irrigation District (Modesto); and BART (collectively, Protestors).⁸ The Sacramento Municipal Utility District (SMUD) submitted a motion to intervene and for partial summary disposition. On January 18, 2013, TANC submitted supplemental comments. On January 24, 2013, CPUC submitted an answer. On January 25, 2013, PG&E submitted an answer.

10. In addition, timely motions to consolidate were filed by TANC⁹, Modesto, State Water Project, State Water Contractors, SMUD, and Cities/M-S-R. CPUC states in its answer that it supports the motions to consolidate.

III. Protests, Comments, and Answers

11. TANC and CPUC request that the Commission accept PG&E's proposed 8.6 percent ROE in connection with the TO14 Compliance Filing, as well as for the instant filing under consideration here.¹⁰ Protestors request that the Commission exclude the revised ROE from the issues for which hearing and settlement procedures are established in the instant filing.¹¹

12. Protestors argue that PG&E has overstated its network wholesale transmission revenue requirement and has requested excessive rates. Protestors request that the Commission suspend the proposed rates for the maximum five-month period permitted by section 205 of the FPA.¹² Protestors assert that under *West Texas Utilities Company*,¹³ the Commission will suspend increased rates for the maximum five-month suspension when "more than ten percent of the proposed increase is found to be excessive."¹⁴ Protestors contend that PG&E's proposed transmission revenue

⁸ State Water Contractors states that it supports State Water Project's January 11, 2013 Protest (State Water Project Protest). Cities/M-S-R, Turlock, Modesto, and SMUD support TANC's January 11, 2013 Protest (TANC Protest).

⁹ Turlock joins in TANC's motion to consolidate.

¹⁰ TANC Protest at 9-10, TANC Supplemental Comments at 4. CPUC Answer at 2.

¹¹ TANC Protest at 9-11, TANC Supplemental Comments at 4.

¹² 16 U.S.C § 824d (2006).

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

¹⁴ *See, e.g.*, TANC Protest at 86, BART Protest at 6 (citing *West Texas*, 18 FERC

requirement increase is excessive by more than ten percent and, therefore, should be suspended for the maximum five-month period, subject to refund. Protestors also argue that the Commission should set the rates proposed in the instant filing on a Track III schedule to address the justness and reasonableness of PG&E's proposed rate increase.

13. TANC and State Water Contractors argue that PG&E has historically overstated its network transmission capital expenditures. TANC contends that PG&E has failed to accurately forecast the expected commercial operation dates for its transmission projects by including projects that will not likely be in service by the end of Period II (2013).¹⁵ Protestors state that a review of PG&E's network transmission capital expenditures is necessary to determine if certain of PG&E's projects should be excluded from PG&E's Period II expenses for purposes of calculating its revenue requirement.¹⁶

14. Protestors further argue that PG&E's proposed administrative and general (A&G) expenses are excessive. SMUD requests that the Commission grant summary disposition on the issues of PG&E's proposed labor cost allocator and method for allocating general plant. Protestors argue that PG&E used a recorded adjusted allocator from 2008, despite the availability of recorded adjusted data for Period I (2011).¹⁷ Further, Protestors argue that PG&E failed to allocate general plant on the basis of labor ratios and, instead, proposed a direct-assignment allocation method. Protestors state that, while the Commission permits deviation from the use of labor ratios, a public utility seeking to use a different methodology has the "burden of demonstrating that labor ratios are unreasonable when applied to that company, not merely that the company's alternative method might be reasonable."¹⁸ Lastly, TANC contends that the short-term incentive program, employee pensions, and benefit expenses included in PG&E's proposed A&G expenses require further review.¹⁹

at 61,375).

¹⁵ TANC Protest at 16-23.

¹⁶ State Water Contractors Protest at 9, TANC Protest at 23.

¹⁷ TANC Protest at 23, SMUD Motion to Intervene at 3.

¹⁸ SMUD Motion to Intervene at 5 (citing *Utah Power & Light Co.* 18 FERC ¶ 61,236, at 61,475-76 (1982)). *See also Minn. Power & Light Co.*, 5 FERC ¶ 61,091, at 61,150-51 (1978).

¹⁹ TANC Protest at 36-42.

15. Protestors generally assert that on a cumulative basis, PG&E has historically over-forecasted its Operation and Maintenance (O&M) expenses. TANC asserts that PG&E's forecasted O&M expenses reflect significant variance from the actual recorded amounts between 2006-2011. TANC contends that because PG&E has used the same methodology in this proceeding as employed from 2006-2011, it is reasonable to assume that PG&E's O&M expense for 2013 will be inaccurate. State Water Contractors additionally notes that PG&E has historically misallocated certain O&M expenses to transmission customers when the costs should have been shared with PG&E's distribution customers.²⁰ State Water Project concludes that PG&E's inability to forecast O&M expenses accurately results in O&M costs that are excessive by as much as 22.5 percent.²¹ Protestors generally assert that without the benefit of discovery, they will not be able to review PG&E's proposed O&M expenses for Period II.²²

16. TANC similarly contends that PG&E's proposed depreciation rate uses a flawed methodology by overstating its removal costs and net salvage rate, failing to account for previously-collected depreciation amounts, and understating its proposed service life for plants and equipment.²³ In addition, State Water Project asserts that PG&E's cost-of-service is based on a requested composite depreciation rate that is approximately 98 basis points higher than the rate that is currently in effect.²⁴ By overstating the depreciation rate, Protestors assert that PG&E has proposed a transmission revenue requirement that is unjust and unreasonable.

17. Protestors generally assert that PG&E's request for a full 50 basis point ROE incentive adder for participation in CAISO is excessive and no longer warranted. TANC asserts that, because PG&E will remain a member of CAISO for at least two additional years, the full 50 basis point adder is not necessary to induce PG&E's participation in CAISO. Thus, TANC argues that the Commission should not grant PG&E's request for

²⁰ State Water Contractors Protest at 9.

²¹ State Water Project Protest at 6.

²² TANC Protest at 49-50, State Water Contractors Protest at 9.

²³ TANC Protest at 82-83.

²⁴ State Water Project Protest at 6 (citing State Water Project's October 19, 2012 TO14 Protest at 13-14).

the incentive due to PG&E's failure to demonstrate its on-going appropriateness of and continued need for a full 50 point ROE adder.²⁵

18. BART asserts that PG&E's rate increase cannot be factored into its budgeting process without creating unreasonable complications. Thus, BART requests that the Commission require PG&E to offer a multi-year phase-in mechanism to avoid the rate shock caused by the proposed rate increase.²⁶ Further, BART contests PG&E's proposal to remove the current rate cap, stating that PG&E has failed to demonstrate that there is a need to allow for unknown future cost increases. BART contends that if PG&E is allowed to pass through the APX costs²⁷ without having to bear the burden of providing the justness and reasonableness of these charges, PG&E has no incentive to try and minimize this cost to its ETC customers.²⁸

19. State Water Project protests PG&E's request to require State Water Project to provide additional meter data. State Water Project argues that PG&E's requested tariff revisions incorrectly suggest that PG&E bills State Water Project on expected, rather than actual usage. According to State Water Project, PG&E's problem is not that it lacks data to accurately bill State Water Project, but rather that it lacks data to independently validate the bills.²⁹ State Water Project suggests that the parties should work together to identify the suitable process to allow PG&E to validate State Water Project's bills.

20. In order to address these concerns, Protestors generally request that the Commission suspend the instant filing for the maximum five-month period, subject to refund, and consolidate the instant filing with the TO14 rate proceeding for inclusion in hearing and settlement judge procedures.

²⁵ TANC Protest at 58.

²⁶ BART Protest at 4.

²⁷ APX costs include the costs associated with scheduling and meter data management on behalf of BART. APX currently charges PG&E \$20,500 per month for BART's scheduling services. These costs are directly assignable to BART. *See* PG&E Filing at 5 and PG&E Exhibit 1 at 6.

²⁸ BART Protest at 5.

²⁹ State Water Project Protest at 8-9. State Water Contractors concurs with State Water Project's argument. State Water Contractors Protest at 10.

21. In its answer, PG&E asserts that the instant filing is based on the same cost-of-service data as the TO14 rate proceeding. PG&E argues that the Commission should deny SMUD's request for summary disposition as not appropriate because the Commission set these issues for hearing in the TO14 Hearing Order. PG&E also argues that there are material issues of fact with respect to both the selection of an appropriate labor allocator and whether it is just and reasonable to allocate general plant based on labor ratios.³⁰

22. PG&E also argues that, contrary to TANC's assertion, the issue of an appropriate ROE has not been removed from the TO14 rate proceeding. PG&E notes that the TO14 Hearing Order found that material issues of fact remain regarding the composition of the appropriate proxy group and that those issues, along with the issue of a just and reasonable ROE based on the median, have been set for hearing.³¹

23. PG&E justifies its method for allocating general plant, explaining that it follows a two-step process to allocate general plant. First, PG&E identifies all general plant that is used by a particular functional area, and directly assigns that plant to the appropriate Unbundled Cost Category. The general plant that is direct-assigned to the electric transmission function includes facilities such as communication equipment used to provide electric transmission service. Any particular item of general plant that cannot be directly assigned is allocated based on labor ratios.³²

24. In its answer, CPUC supports TANC's various motions for consolidation, maximum suspension and hearing, and the proposal to accept PG&E's revised ROE contained in the instant filing and the TO14 rate case.

IV. Discussion

A. Procedural Matters

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

³⁰ PG&E Answer at 5-6.

³¹ See TO14 Hearing Order, 141 FERC ¶ 61,168 at P 23.

³² PG&E Answer at 6-7.

26. 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 will accept the answers filed by PG&E and CPUC, because they provided information that assisted us in our decision-making process.

B. Substantive Matters

27. 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, as ordered below.

28. In *West Texas Utilities Company*,³³ we explained that where our preliminary review indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our examination suggests that the proposed rates may yield substantially excessive revenues. Accordingly, we will suspend the proposed rates for five months, to become effective August 1, 2013, subject to refund.

29. Consistent with previous Commission orders, we will continue to grant up to 50 basis points of incentive ROE for participation in the CAISO. As noted in prior orders addressing this incentive,³⁴ 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 2005³⁵ and is intended to encourage PG&E's continued involvement in the CAISO. However, we remind PG&E that any ROE adder is limited in that the ultimate ROE must be within the zone of reasonableness to be determined in the hearing ordered below.³⁶

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

³³ 18 FERC ¶ 61,189 (1982).

³⁴ *See, e.g., Pacific Gas and Elec. Co.*, 132 FERC ¶ 61,272, at P 23 (2010).

³⁵ 16 U.S.C. § 824s (2006).

³⁶ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, at P 93, *order on reh'g*, Order No. 679-A, FERC Stats & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

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.³⁷

31. PG&E's proposed ETC rates and terms and conditions raise issues of material fact that cannot be resolved based on the record before us, including issues of material fact relating to the selection of an appropriate labor allocator, whether it is appropriate to allocate general plant based on labor ratios, and the appropriate ROE. We are not persuaded by the pleadings submitted that these issues are appropriate for summary disposition, i.e., that they can be resolved on the record before us, but rather we find that they are more appropriately addressed in the hearing procedures ordered below. Accordingly, we deny SMUD's motion for partial summary disposition.

32. We also find that there are common issues of law and fact in this proceeding and in PG&E's TO14 rate proceeding. Therefore, we will consolidate the instant proceeding with the ongoing hearing and settlement judge procedures in Docket No. ER12-2701-000, ordered in the TO14 Hearing Order, for purposes of settlement, hearing, and decision.

The Commission orders:

(A) PG&E's revised ETC rates are hereby accepted for filing and suspended for a five-month period, and set for hearing, to become effective August 1, 2013, 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 rates and rate schedules.

(C) Docket Nos. ER13-616-000, ER13-616-001, and ER13-616-002 are hereby consolidated with the ongoing proceeding in Docket No. ER12-2701-000 for purposes of settlement, hearing and decision.

³⁷ See TO14 Hearing Order, 141 FERC ¶ 61,168 at P 27.

(D) The settlement judge or presiding judge, as appropriate, designated in Docket No. ER12-2701-000 shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.