

154 FERC ¶ 61,118
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Pacific Gas and Electric Company

Docket No. ER15-2294-001

ORDER DENYING CLARIFICATION AND REHEARING

(Issued February 18, 2016)

1. On September 30, 2015, the Commission issued an order that accepted for filing Pacific Gas and Electric Company's (PG&E) proposed rate increase under its transmission owner tariff (TO Tariff), suspended the proposed rates for five months to become effective on March 1, 2016, subject to refund, and established hearing and settlement judge procedures (TO17 Order).¹ On October 29, 2015, the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities), submitted a request for clarification, or, in the alternative, a request for rehearing. On October 30, 2015, the California Public Utilities Commission (CPUC) submitted a request for rehearing. For the reasons discussed below, we deny as premature Six Cities' request for clarification and deny the CPUC's request for rehearing.

I. Background

2. On July 29, 2015, PG&E submitted its seventeenth TO Tariff filing seeking an increase to its transmission service rates, effective October 1, 2015. In its filing, PG&E proposed, among other things, a return on equity (ROE) of 10.96 percent, comprised of a base return of 10.46 percent plus a requested 50 basis point incentive adder for its continued participation in CAISO.² The Commission's preliminary analysis found 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.

¹ *Pac. Gas and Elec. Co.*, 152 FERC ¶ 61,252 (2015) (TO17 Order).

² PG&E, Transmission Owner Tariff Filing, Docket No. ER15-2294-000 at Exhibit PGE-1, at 6 (filed July 30, 2015).

Therefore, the Commission accepted and suspended PG&E's proposed TO Tariff filing, subject to refund, and established hearing and settlement judge procedures.³ In addition, the Commission summarily granted PG&E's request for the 50 basis point ROE incentive adder for PG&E's continued CAISO membership.⁴

II. Request of Six Cities and CPUC

3. Six Cities states that the Commission's TO17 Order allows PG&E's proposed rates to become effective subject to refund; however, the order did not specify that PG&E would be required to pay interest on the refunds paid to customers. Six Cities states that the Commission routinely requires the payment of interest on amounts refunded to customers and that the Commission's silence on the matter of payment of interest was unintentional. Therefore, Six Cities requests clarification that interest should be paid on the refunds ordered in this proceeding and the level of interest should be based on interest rates calculated pursuant to section 35.19a of the Commission's regulations.⁵ If the Commission declines to provide this clarification, Six Cities requests that the Commission grant rehearing of the TO17 Order to provide that interest shall be paid on any refunds paid by PG&E in this proceeding. Six Cities argues that the Commission has explained that "wholesale customers are entitled to the time value of the monies collected from them in the past that are . . . refunded,"⁶ and "[t]he payment of interest is necessary to ensure that ratepayers are made whole."⁷ Without interest on the refunds paid, Six Cities argues, PG&E will retain a windfall in the form of the time value of the money it has over-collected from customers.

4. The CPUC seeks rehearing of the Commission's decision in the TO17 Order to summarily grant PG&E's request for the 50 basis point incentive adder for participation in CAISO. The CPUC asserts that the Commission erred in summarily granting the incentive on five grounds. First, the CPUC contends that the Commission erred by

³ TO17 Order, 152 FERC ¶ 61,252 at PP 21-22.

⁴ *Id.* P 23 (citing *Pac. Gas and Elec. Co.*, 121 FERC ¶ 61,227, at P 20 (2013); *Pac. Gas and Elec. Co.*, 141 FERC ¶ 61,168, at P 24 (2012)).

⁵ 18 C.F.R. § 35.19a (2015).

⁶ Six Cities Request at 4 (citing *Cajun Elec. Power Coop., Inc.*, 55 FERC ¶ 61,272, at 61,870 (1991)).

⁷ *Id.* (citing *Georgia Power Co.*, 57 FERC ¶ 61,353, at 62,152 n.10 (1991)).

exceeding the statutory authority of section 219(c) of the Federal Power Act (FPA).⁸ The CPUC explains that the plain language of section 219(c) provides that incentives shall be available to utilities that “join” transmission organizations.⁹ The CPUC argues that the Commission erred by extending this provision to provide the incentive not only to utilities that join transmission organizations, but also to utilities who became members of transmission organizations before adoption of the statute and utilities for their continued membership in such organizations.

5. Second, the CPUC argues that the 50 basis point adder is not justified because PG&E’s participation in CAISO is not voluntary.¹⁰ The CPUC states that PG&E turned over operational control of its transmission system to CAISO on March 31, 1998, in compliance with state law and pursuant to CPUC Order,¹¹ and that PG&E cannot withdraw from CAISO without CPUC authorization.¹²

6. Third, CPUC asserts that the Commission failed to explain why a 50 basis point adder, instead of lower adder, is appropriate. The CPUC contends that the 50 basis point ROE adder is unreasonable given the magnitude of the CAISO grid management charge

⁸ 16 U.S.C. § 824s (2012). Section 219(c) states:

Incentives – in the rule issued under this section, the Commission shall, to the extent within its jurisdiction, provide for incentives to each transmitting utility or electric utility that joins a Transmission Organization. The Commission shall ensure that any costs recoverable pursuant to this subsection may be recovered by such utility through the transmission rates charged by such utility or through the transmission rates charged by the Transmission Organization that provides transmission service to such utility.

⁹ CPUC Rehearing Request at 4, 16-17 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326 (“we will approve, when justified, requests for ROE-based incentives for public utilities that join and/or continue to be a member of an [independent system operator] (ISO), [regional transmission organization] (RTO), or other Commission-approved Transmission Organization.”)).

¹⁰ *Id.* at 22.

¹¹ *Id.* at 2 (citing Cal. Pub. Util. Code §§ 330m, 365 (West 2014); CPUC Decision 95-12-063, December 20, 1995, Ordering Paragraph 1).

¹² *Id.* at 3, 23 (citing Cal. Pub. Util. Code § 851 (West 2014)).

paid by PG&E's customers.¹³ Further, by foreclosing consideration of whether a lower ROE adder would be appropriate, the CPUC states the Commission has violated the Fifth Amendment administrative due process rights of the interested parties and section 553 of the Administrative Procedure Act by changing the Commission's rules without notice or opportunity for comment.¹⁴

7. Fourth, the CPUC argues that the Commission erred by granting a generic 50 basis point incentive adder for PG&E's participation in CAISO, contrary to the Commission's established policy.¹⁵ Instead, the CPUC asserts that the Commission has adopted a generic 50 basis point incentive for nearly any utility that continues to participate in a transmission organization for as long as that participation continues.¹⁶ Finally, the CPUC contends that rewarding PG&E for doing something it has already done, or is required to do, is contrary to both Commission precedent and the public interest.¹⁷

III. Discussion

8. We deny as premature Six Cities' request for clarification. The TO17 Order made a preliminary finding on the justness and reasonableness of the proposed rates, and we find it premature to address whether interest would be collected on any portion of the proposed rates or charges. However, we clarify that the Commission's longstanding practice is to require that interest be included in any refunded amounts, pursuant to section 35.19a of the Commission's regulations.¹⁸

¹³ The CPUC's argument regarding the ROE in relation to the magnitude of the CAISO grid management charge was previously addressed in the TO17 Order. *See* TO17 Order at PP 12, 24 (finding that the Commission granted the request for the incentive adder under the criteria set forth in Order No. 679 and that analysis is not tied to CAISO's grid management charge).

¹⁴ CPUC Rehearing Request at 31 (citing 5 U.S.C. § 553 (2012); *Tennessee Gas Pipeline Co. v. FERC*, 969 F.2d 1141 (D.C. Cir. 1992); *Bell Lines v. U.S.*, 263 F. Supp. 40 (S.D.W.Va. 1967)).

¹⁵ *Id.* at 27 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326).

¹⁶ *Id.* at 28.

¹⁷ *Id.* (citing *New England Power Pool*, 97 FERC ¶ 61,093, at 61,477 (2001) ("This decision is in the public's interest as it does not unjustly reward [New England Power Pool] for doing what it is supposed to do, i.e., to adequately maintain its facilities in a prudent, cost-effective manner.")).

¹⁸ 18 C.F.R. § 35.19a (2015).

9. We deny the CPUC's rehearing request. We first address CPUC's reliance on PG&E's participation in CAISO now being mandatory under state requirements.

The fact remains, though, that it is within the Commission's authority to grant incentive adders as described in Order No. 679. Order No. 679 is clear that the Commission may grant incentive adders for public utilities that join and/or continue to remain in an ISO/RTO, and does not preclude the Commission from continuing to grant such adders to PG&E in light of PG&E's initial joining, and continued membership in, CAISO. Nor does Order No. 679 require that the Commission discontinue such adders in the face of arguments like those that the CPUC has made here.

10. In Order No. 679, the Commission authorized an incentive for utilities to join and remain members of RTOs because these organizations benefit consumers by improving congestion management and grid reliability, spurring more efficient regional planning for transmission and generation investments, and helping to eliminate rate pancaking through regional transmission pricing.¹⁹ Presently, CAISO, like other ISOs and RTOs, manages an evolving and complex transmission grid and rapidly evolving power market. As the independent system operator, CAISO's tariff requires it to provide open non-discriminatory transmission service, ensure system reliability, maintain resource adequacy, economically commit and dispatch resources to serve load, address congestion-related issues, mitigate market power, manage the transmission planning and generator interconnection processes, as well as address a variety of other issues, all of which benefit consumers. As CAISO works to fulfill its duties as the transmission organization overseeing this rapidly evolving regional power market, the transmission facilities owned by participating transmission owners, such as PG&E, and operated by CAISO continue to play a critical role in supporting CAISO's efforts to efficiently manage the transmission grid and provide benefits to customers in the entire CAISO footprint. Therefore, we find the requested 50 basis point incentive adder for PG&E's CAISO membership to be justified.

11. Further, we reject the CPUC's arguments that the Commission granted PG&E a "generic" incentive adder to PG&E that was not the product of reasoned decision-making, and that the Commission violated parties' due process rights. Order No. 679 provides that an entity that can demonstrate that it has joined a Commission-approved RTO/ISO and that its membership is ongoing will be presumed eligible for the ROE

¹⁹ See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 312; see also *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,024 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

incentive adder.²⁰ The Commission first granted a 50 basis point adder to PG&E under section 205 of the FPA,²¹ and consistent with Order No. 679's requirements, PG&E demonstrated, and the CPUC concedes, that it is a member of CAISO and that its membership is ongoing. Further, the Commission has found that "the fact that entities request the same level of [the adder] that other entities have been granted does not mean that granting such a request makes the RTO adder the Commission's 'generic' adder."²² We also reject the CPUC's assertion that the Commission changed its rules without an opportunity for notice and comment. Contrary to the CPUC's contention, the Commission did not foreclose arguments on whether a 50 basis point adder was justified; rather, the Commission in the TO17 Order concluded that PG&E had justified its requested adder.²³ Moreover, we note that the TO17 Order explains that the adder granted to PG&E is subject to it being applied to a base ROE that that has been shown to be just and reasonable and subject to the resulting ROE being within the zone of reasonableness, as determined at hearing.²⁴

12. Finally, we reject the CPUC's claim that the Commission's incentive policy exceeds the statutory authority of section 219(c) of the FPA. The CPUC raised this same argument in its rehearing request of Order No. 679 over nine years ago and the Commission rejected it in Order No. 679-A.²⁵ If the CPUC disagreed with the Commission's determination in Order No. 679-A, the appropriate course of action was to seek judicial review of Order Nos. 679 and 679-A under section 313 of the FPA.²⁶ More recently, the Commission held that arguments opposing the granting of an incentive

²⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 326, 331.

²¹ *Pac. Gas & Elec. Co.*, 120 FERC ¶ 61,296 (2007); *see also Pac. Gas and Elec. Co.*, 148 FERC ¶ 61,245, at P 30 (2014).

²² *Midcontinent Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,269, at P 14 (2015) (*MISO*).

²³ TO17 Order, 152 FERC ¶ 61,252 at P 25.

²⁴ *Id.* P 23; *see also MISO*, 151 FERC ¶ 61,269 at P 14.

²⁵ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at PP 80-81, 86.

²⁶ 16 U.S.C. § 8251(b) (2012).

adder for RTO membership to existing RTO members constituted a collateral attack on Order No. 679-A, and we find that the CPUC's assertion here is of the same vein.²⁷

The Commission orders:

(A) Six Cities' request for clarification is hereby denied, as discussed in the body of this order.

(B) The CPUC's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁷ See *Association of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,049, at P 200 (2014).