

105 FERC ¶ 61,389
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Pacific Gas and Electric Company

Docket No. ER04-109-000

Pacific Gas and Electric Company

Docket No. EL04-37-000

ORDER ACCEPTING FOR FILING AND SUSPENDING PROPOSED RATES,
ESTABLISHING HEARING PROCEDURES AND CONSOLIDATING DOCKETS

(Issued December 30, 2003)

1. In this order, we will accept for filing, suspend and set for hearing proposed decreased rates under the Transmission Owner Tariff (TO Tariff) of Pacific Gas and Electric Company (PG&E). In addition, because a further decrease in rates may be warranted, we will institute a proceeding under Section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000). This order benefits customers because it will ensure that transmission rates are just and reasonable.

Background

2. On October 31, 2003, PG&E filed a proposed decrease in its transmission rates under its TO Tariff.¹ In addition, PG&E is proposing a change to the non-rate terms and conditions of the TO Tariff to facilitate any potential refund to its retail transmission customers that may result from this revision to its TO Tariff.

3. PG&E proposes a 2004 revenue requirement of \$530 million for retail transmission service and \$518 million for wholesale transmission service. While PG&E argues that the cost support submitted in this filing for Period I and Period II would support a revenue requirement of \$603 million for retail transmission service and \$591 million for wholesale transmission service, PG&E states that it is proposing a

¹ PG&E notes that this is its seventh TO Tariff request since 1997. PG&E's January 13, 2003 TO Tariff rate filing requesting rates for 2003 Period II is pending in Docket No. ER03-409-000. See Pacific Gas and Electric Company, 102 FERC ¶ 61,270 (2003); see also Pacific Gas and Electric Company, 103 FERC ¶ 61,240 (2003).

reduction in the retail and wholesale transmission service rates in order to avoid the five-month suspension that would otherwise be imposed if the higher, cost-supported rates were requested.²

4. Finally, PG&E proposes three other modifications to its TO Tariff: (1) a 15-year depreciation life for transmission facilities put into service in 2003 and 2004, (2) a 50 basis point adder to the return on common equity, and (3) revisions to reflect the effect of Order No. 2003³ and the Duke Hinds orders⁴ on its crediting mechanism for new generator interconnections.

5. PG&E requests the proposed rates be made effective on January 1, 2004.

Notice and Interventions

6. Notice of PG&E's filing was published in the Federal Register, 68 Fed. Reg. 64,880 (2003), with comments, protests, and interventions due on or before November 21, 2003.

7. Timely unopposed motions to intervene raising no substantive issues were filed by Modesto Irrigation District, Turlock Irrigation District, Cogeneration Association of California and the Energy Producers and Users Coalition, San Francisco Bay Area Rapid Transit District, California Independent System Operator Corporation, the City and County of San Francisco, Southern California Edison Company, San Diego Gas and Electric Company, Sacramento Municipal Utility District, California Department of Water Resources State Water Project, City of Vernon, California.

8. The following parties filed timely interventions and protests: Northern California Power Agency (NCPA), Merced Irrigation District (Merced), Transmission Agency of Northern California (TANC), the City of Redding, California, the City of Santa Clara, California, and the M-S-R Public Power Agency (collectively, Cities/M-S-R),

² West Texas Utilities Co., 18 FERC ¶ 61,189 (1982) (West Texas).

³ Standardization of Generator Interconnection Agreements and Procedures, III FERC Stats. & Regs. ¶ 31,146 at P 698 (2003) (Order No. 2003), reh'g pending.

⁴ Entergy Services, Inc., 98 FERC ¶ 61,290 (2002) (Duke Hinds I); Duke Energy Hinds, LLC, et al., v. Entergy Services, Inc., et al., 102 FERC ¶ 61,068 (2003), reh'g pending, (Duke Hinds II).

Metropolitan Water District of Southern California (Metropolitan), California Department of Water Resources (CDWR), and the California Public Utilities Commission (California Commission).

9. On December 8, 2003, PG&E filed an answer to the protests.

Discussion

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.214 (2003), the timely, unopposed motions to intervene and the notice of intervention referenced above serve to make those submitting them parties to this proceeding.

11. With respect to PG&E's answer, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.213(a)(2) (2003), prohibits the filing of an answer to a protest unless otherwise permitted by the decisional authority. We are not persuaded to allow the answer and, accordingly, will reject it.

12. The protestors object to various aspects of the proposal including, among other things, PG&E's proposed 15-year depreciation life for new transmission additions, forecasted transmission operations and maintenance (O&M) expenses, specific capital additions, and the proposed 13 percent return on equity and 50 basis point return on equity adder. The issues presented by the protestors raise factual matters that are best resolved at the hearing ordered below.

13. Our preliminary analysis indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly we will accept them for filing, suspend them and make them effective subject to refund, and set them for hearing as ordered below.

14. Ordinarily, the Commission does not suspend rate decreases. Here, however, given that the pre-existing rates are the subject of an ongoing proceeding in Docket No. ER03-409-000, and are being collected subject to refund and is not final, it is not possible at this time to determine whether the proposed rates will, in fact, be a rate decrease or will be a rate increase. We will therefore suspend the proposed rates and attach a refund obligation.⁵ In order to give customers the immediate benefit of the proposed lower rates

⁵ See Southwestern Electric Power Co., 37 FERC ¶ 61,325 at 61,946 (1986).

and based on our preliminary analysis of the proposed revenue requirement, however, we will impose a nominal suspension in this proceeding, and make the rates effective subject to refund in the event the final rates approved in this proceeding reflect an increase to the rates ultimately approved as just and reasonable in the pending Docket ER03-409-000. Accordingly, we will accept the proposed rates for filing, suspend them for a nominal period, to become effective on January 1, 2004, subject to refund, and set them for hearing.

15. Furthermore, because a further rate decrease may be appropriate, we will institute a Section 206 investigation in Docket No. EL04-37-000 with respect to the justness and reasonableness of PG&E's proposed rate decrease. In cases where the Commission institutes a Section 206 investigation on its own motion, Section 206(b) requires the Commission to establish a refund effective date that is no earlier than 60 days after publication of the notice of initiation of the investigation, but no later than five months subsequent to the expiration of the 60-day period. Consistent with Canal Electric Company,⁶ we will establish the refund effective date at the earliest date possible in order to provide maximum protection to customers, *i.e.*, 60 days from the date notice of the initiation of the investigation in Docket No. EL04-37-000 is published in the Federal Register.

16. Section 206(b) also requires that if the Commission has not rendered a final decision by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to Section 206 of the FPA, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall make its best estimate as to when it reasonably expects to make such a decision. To implement this requirement, we will direct the presiding judge to provide a report to the Commission 15 days before the refund effective date in the event the presiding judge has not by that date: (1) certified to the Commission a settlement which, if approved, would dispose of the proceeding; or (2) issued an Initial Decision. The presiding judge's report, if required, shall advise the Commission as to the status of the investigation and provide a best estimate of the expected date of certification of a settlement or issuance of an Initial Decision.

17. Finally, because there are common issues of law and fact, we shall consolidate Docket Nos. ER04-109-000 and ER04-37-000 for purposes of hearing and decision.

⁶ 46 FERC ¶ 61,153, reh'g denied, 47 FERC ¶ 61,275 (1989).

The Commission orders:

(A) PG&E's proposed rates are hereby accepted for filing and suspended for a nominal period, to become effective on January 1, 2004, subject to refund.

(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 in Docket No. ER04-109-000 concerning the justness and reasonableness of PG&E's proposed rates.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402 of the Department of Energy Organization Act and by the Federal Power Act, particularly Section 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 in Docket No. EL04-37-000 concerning the justness and reasonableness of PG&E's proposed rates.

(D) The Commission Trial Staff is hereby directed to file top sheets within fifteen (15) days of the date of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within approximately 15 days of the date of issuance of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street NE, Washington D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding administrative law 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.

(F) The Secretary shall promptly publish a notice of the Commission's initiation of the investigation under Section 206 of the Federal Power Act in Docket No. EL04-37-000 in the Federal Register.

(G) The refund effective date in Docket No. EL04-37-000, established pursuant to Section 206(b) of the Federal Power Act, will be 60 days following publication in the Federal Register of the notice discussed in Ordering Paragraph (F) above.

(H) The presiding administrative law judge shall advise the Commission, no later than 15 days prior to the refund effective date in the event the presiding judge has not by that date certified to the Commission: (1) a settlement which, if accepted, would dispose of the proceeding; or (2) an Initial Decision, as to the status of the proceeding in these dockets and a best estimate of when the proceeding will be disposed of by the presiding judge.

(I) Docket Nos. ER04-109-000 and EL04-37-000 are hereby consolidated for purposes of hearing and decision.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.