

143 FERC ¶ 61,190
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.	ER13-1188-000
		ER13-1188-001
		ER13-1188-002
		ER13-1188-003
		ER13-1188-004
		ER13-1188-005
		ER13-1188-006
		ER13-1188-007
		ER13-1188-008
		ER13-1188-009

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

(Issued May 31, 2013)

1. On March 29, 2013, Pacific Gas and Electric Company (PG&E) filed with the Commission proposed rate changes and revisions to certain non-rate terms and conditions of PG&E's Wholesale Distribution Tariff (WDT), FERC Electric Tariff Volume No. 4.¹ PG&E also filed proposed rate changes to the existing Service Agreements for Wholesale Distribution Service (WDT Service Agreements) of eight customers: the City and County of San Francisco (San Francisco), the Hercules Municipal Utility (Hercules), Lathrop Irrigation District (Lathrop), McAllister Ranch Irrigation District (McAllister), the Power and Water Resources Pooling Authority (PWRPA), the Shelter Cove Resort Improvement District No. 1 (Shelter Cove), the Western Area Power Administration

¹ PG&E March 29, 2013 Wholesale Distribution Tariff Filings (PG&E WDT2 Filings). Pinpoint citations refer to the transmittal letter and exhibits in Docket No. ER13-1188-000.

(Western), and the Westside Power Authority (Westside). In this order, pursuant to the Commission's authority under section 205 of the Federal Power Act (FPA),² we will accept the filings, suspend the proposed rate changes for a five-month period, to be effective November 1, 2013, subject to refund, and set all issues raised by the filings for hearing and settlement judge procedures, as discussed below. 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. PG&E's WDT originally became effective on April 1, 1998, when the California Independent System Operator Corporation (CAISO) assumed operational control of PG&E's transmission facilities. The WDT sets forth the rates, terms, and conditions for wholesale transmission services over PG&E's distribution facilities (WDT Service).

II. PG&E's Filings

A. Cost of Service

3. In the instant WDT filings, PG&E requests an increase in the initial rates for WDT Service (Initial Rate) provided in the WDT in order to reflect PG&E's current cost-of-service. PG&E explains that it needs to update the rates because PG&E has not filed to change the cost-of-service underlying the current rates since the WDT was first filed. The proposed rates are designed to recover \$5.7 million in additional annual revenues, which represents an 87 percent increase over revenues at the currently effective rates.³ PG&E also requests an increase in the WDT Service rates in the WDT Service Agreements of eight WDT customers.⁴

4. The Commission's rate filing regulations require a public utility making a rate filing to submit certain statements providing supporting cost-of-service information for a historical reference period and forecasted test year.⁵ Accordingly, PG&E provides Statements AA through BM for the 2011 historical period (Period I) and the forecasted 2013 test year (Period II), together with associated testimony and workpapers.

² 16 U.S.C. § 824d (2006).

³ PG&E WDT2 Filings at 2.

⁴ *Id.* at 6.

⁵ 18 C.F.R. § 35.13(d) and (h) (2012).

5. PG&E requests that the Commission waive its obligation to provide the information required in Statement BC (Reliability Data) because CAISO is responsible for setting reliability standards and tracking reliability data.⁶ In addition, PG&E states that it does not propose to change any power, fuel clause or production-related service or rate. Therefore, PG&E requests a waiver of the requirement to provide information needed for Statement AH (Operation and Maintenance Expenses). PG&E also states that it is not proposing or changing a rate schedule which embodies a fuel cost adjustment clause; therefore, Statement BI (Fuel Cost Adjustment Factors) is not required.⁷

B. Return on Equity

6. PG&E requests a base Return on Equity (ROE) of 11.0 percent, plus a 50 basis-point adder in recognition of PG&E's participation in CAISO.⁸ This is the same ROE requested in PG&E's most recent Transmission Owner Tariff rate case (TO14), and represents the midpoint of an adjusted ROE range of 7.1 percent to 13.5 percent calculated by PG&E's witness, Dr. Avera, using the Commission's Discounted Cash Flow (DCF) methodology. While PG&E acknowledges that the Commission's order accepting PG&E's TO14 filing directed PG&E to file revised rates reflecting use of the median to establish the base ROE,⁹ PG&E asserts that it stands by the reasonableness of its 11.0 percent base ROE for the reasons explained in its request for rehearing in Docket Nos. ER12-2701-000 *et al.*¹⁰

C. Revisions to PG&E's WDT

(1) Revisions to Schedule WD-1 of the WDT

7. PG&E's distribution system consists of primary distribution lines, which emanate from step down substations on the transmission system, and lower voltage secondary distribution lines emanating from primary line step down transformers. Depending on the location of their load, some customers receive service at the primary distribution level while others may receive service at the lower voltage secondary distribution level. PG&E proposes to change the Initial Rate for WDT Service from \$3.69 per kW-month to

⁶ PG&E WDT2 Filings at 3.

⁷ *Id.*

⁸ PG&E WDT2 Filings, Ex. PGE-14, 80:3-11 and 83:21-24.

⁹ *Pacific Gas and Electric Co.*, 141 FERC ¶ 61,168 (2012) (TO14 Order).

¹⁰ PG&E WDT2 Filings at 4.

\$7.017 per kW-month for primary WDT Service and from \$7.00 per kW-month to \$12.135 per kW-month for secondary WDT Service.¹¹

8. PG&E also proposes an administrative update to set forth in the WDT the rates for its Customer Service Charge, which reflects the cost of PG&E's labor and supervision for billing services for the specified points of delivery under each WDT Service Agreement,¹² and Cost of Ownership Charge, which reflects PG&E's ongoing costs of owning and operating distribution facilities constructed for the sole use of the customer being charged.¹³ PG&E explains that these rates have been filed with and accepted by the Commission in multiple proceedings, but have not previously been included in Schedule WD-1.¹⁴

(2) WDT Non-rate Terms and Conditions

9. PG&E also proposes changes to the non-rate terms and conditions of its WDT applicable to load-serving WDT customers, including a modified definition of "Eligible Customer" that requires demonstration of bona fide ownership or control of intervening distribution facilities, and related revisions describing how, and for what facilities, this demonstration should be made.¹⁵ PG&E also proposes changes to the timing and process for notifying a customer that its application for WDT Service is complete and tendering a draft WDT Service Agreement, and proposes to replace the previously-required customer deposit of one month's WDT Service charge with a "service initiation fee" equal to three months of the customer's expected billing.¹⁶ PG&E states that these changes are intended to clarify the requirements for, and the process of, interconnecting to PG&E's distribution system.

D. Rate Changes to Individual WDT Service Agreements

10. According to PG&E, under each of the individual WDT Service Agreements, PG&E reserves the right to file unilateral rate changes pursuant to section 205 of the

¹¹ *Id.* at 4-5.

¹² *Id.*, Ex. PGE-2, 9:14-19.

¹³ *Id.*, Ex. PGE-2, 10:6-13.

¹⁴ *Id.*, Ex. PGE-2, 10:22-11:10.

¹⁵ PG&E WDT2 Filings at 5.

¹⁶ *Id.* at 5-6.

FPA.¹⁷ For customers with insufficient available historical data to calculate a customer-specific rate, the Initial Rate will be the established rate.¹⁸ PG&E proposes the following rate changes under the individual WDT Service Agreements described below.

(1) **The City and County of San Francisco**

11. San Francisco has two WDT Service Agreements. Both San Francisco WDT Service Agreements use the current Initial Rate for primary service of \$3.69 per kW-month, which PG&E proposes to adjust to reflect the updated primary service rate of \$7.017 per kW-month.¹⁹ PG&E asserts that, in an effort to streamline future maintenance of the agreements, it proposes to unify San Francisco's two WDT Service Agreements and their related interconnection agreements under a single designation under the WDT.

(2) **Lathrop Irrigation District and McAllister Ranch Irrigation District**

12. Because it did not have sufficient historical load data to calculate customer-specific rates for Lathrop or McAllister, PG&E states that these customers' WDT Service Agreements have been revised to reflect the proposed Initial Rate for primary service in PG&E's WDT, \$7.017 per kW-month.²⁰

(3) **Hercules Municipal Utility**

13. Based on historical load data for each interconnection point, PG&E proposes changing the customer-specific rate in two of Hercules's three WDT Service Agreements from \$0.00506 per kWh to \$0.01418 per kWh and in the third agreement from \$4.71 per kW-month to \$7.030 per kW-month.²¹

¹⁷ 16 U.S.C. § 824d (2006).

¹⁸ PG&E WDT2 Filings at 6.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 7.

(4) **Power and Water Resources Pooling Authority**

14. PWRPA has a number of WDT Service Agreements grouped under two service agreements designated as Service Agreement Nos. 30 and 56. With respect to the three WDT Service Agreements contained in Service Agreement No. 30, PG&E proposes to (1) increase the customer-specific rate for the Rough and Ready Pumping Plant from \$7.810 per kW-month to \$15.697 per kW-month; (2) update the rate charged to the Poundstone Pumping Plant for primary service from the current Initial Rate of \$3.69 per kW-month to a customer-specific rate of \$10.479 per kW-month; and (3) revise the rate charged to the Wilkins Slough Pumping Plant for secondary service from the current Initial Rate of \$7.00 per kW-month to a customer-specific rate of \$15.697 per kW-month.²² PG&E states that it does not have sufficient data to calculate customer-specific rates for the various points of interconnection in the 11 separate WDT Service Agreements under the designation Service Agreement No. 56, therefore PG&E has revised the currently effective Initial Rate in all of these WDT Service Agreements of \$3.39 per kW-month to reflect the proposed updated Initial Rate for primary service, \$7.017 per kW-month.

(5) **Shelter Cove**

15. Shelter Cove's current rate for primary distribution service will increase from \$4.271 per kW-month to a customer-specific rate of \$7.046 per kW-month based upon the cost-of-service adjustments in PG&E's WDT.²³

(6) **Western Area Power Administration**

16. Western's WDT Service Agreement contains over 1,100 points of interconnection across PG&E's distribution system for service to its customers, including many points of interconnection with the Calaveras Public Power Agency (Calaveras) and the Tuolumne Public Power Agency (Tuolumne). PG&E explains that, although the WDT specifies a demand rate that requires the installation of a revenue-quality demand meter for each interconnection point, PG&E has accommodated Western by developing a customer-specific energy rate for those points without demand meters.

²² *Id.* at 8.

²³ *Id.*

17. PG&E proposes to increase Western's customer-specific rates for primary and secondary service at points with demand meters from \$3.49 and \$7.08 per kW-month to \$6.949 and \$12.480 per kW-month, respectively.²⁴ Under PG&E's rate filing, Western's customer-specific rates for primary and secondary service at points without demand meters would increase from \$0.0037 and \$0.01912 per kWh to \$0.01998 and \$0.03682 per kWh, respectively.

(7) **Westside Power Authority**

18. Westside's current rate for primary distribution service under its WDT Service Agreement will increase from \$0.01996 per kWh to a customer-specific rate of \$0.02383 per kWh based upon the cost-of-service adjustments in PG&E's WDT.²⁵

E. Other Matters

19. PG&E requests an effective date of June 1, 2013, with a nominal one-day suspension should the filings be set for hearing and settlement judge proceedings.²⁶ PG&E also explains that due to its eTariff configuration, only one tariff can be filed in each eTariff submission, even if all tariffs are under the same Tariff ID. To accommodate this configuration, the eTariff data for the WDT was included in the initial filing in Docket No. ER13-1188-000 and the eTariff data for various WDT Service Agreements were filed, immediately following the initial filing, in nine separate amendments in Docket Nos. ER13-1188-001 through ER13-1188 -009.

III. Notice of Filings and Responsive Pleadings

20. Notice of PG&E's filings was published in the *Federal Register*, 78 Fed. Reg. 20,907 (2013) with protests or interventions due on or before April 19, 2013.

21. Timely motions to intervene were filed by the California Department of Water Resources State Project, the Turlock Irrigation District, Southern California Edison Company (SoCal Edison), and the City of Santa Clara, California. On May 6, 2013, PWRPA and Calaveras and Tuolumne filed an answer opposing SoCal Edison's doc-less motion to intervene on the grounds that PG&E's proposed WDT revisions will not affect the rates paid by SoCal Edison customers.

²⁴ *Id.* at 9.

²⁵ *Id.* at 10.

²⁶ *Id.*

22. Timely motions to intervene and protests were filed by Western and San Francisco. In addition, PWRPA and Calaveras and Tuolumne submitted timely motions to intervene, motions for partial summary disposition and protests. On May 2, 2013, PG&E submitted an answer to the protests and motions for summary disposition.

A. Protests

(1) Requests for Hearing and Settlement Procedures and Suspension

23. Western, San Francisco, PWRPA, and Calaveras and Tuolumne (collectively, Protestors) request that the Commission set the proposal for hearing, suspend the hearing, and set the matter for settlement judge proceedings.²⁷

24. Protestors ask the Commission to reject PG&E's request for a nominal one-day suspension and instead suspend the proposed rates for the maximum five-month period permitted by section 205 of the FPA.²⁸ Protestors explain that suspension for the full five-month period is appropriate under *West Texas Utilities Company* when "more than ten percent of the proposed increase is found to be excessive."²⁹ Protestors generally assert that PG&E's proposed rate increase is excessive by more than 10 percent and therefore warrants the full five-month suspension.³⁰

(2) Return On Equity

25. Protestors request that the Commission summarily reject PG&E's proposed ROE.³¹ They state that the Commission already rejected PG&E's use of the midpoint

²⁷ Western Protest at 7-8, Calaveras and Tuolumne Protest at 19, San Francisco Protest at 28, PWRPA Protest at 34.

²⁸ 16 U.S.C. § 82 4d(e) (2006).

²⁹ 18 FERC ¶ 61,189, at 61,375 (1982) (*West Texas*).

³⁰ PWRPA Protest at 7-8 (arguing that PG&E's proposed rate is at least 35 percent excessive), San Francisco Protest at 26-27 (asserting that at least \$343 million of the \$1.65 billion increase is excessive), Calaveras and Tuolumne Protest at 19 (agreeing with PWRPA that the rate is at least 35 percent excessive), Western Protest at 8-9 (the potential increase of more than 87 percent over revenues at the currently effective rate includes an improperly calculated ROE).

³¹ PWRPA Protest at 9-17, San Francisco Protest at 22, Calaveras and Tuolumne Protest at 5, Western Protest at 4. PWRPA and Calaveras and Tuolumne include motions

(continued...)

value to derive the 11.0 percent ROE in the TO14 Order, “reemphasiz[ing] its policy regarding the use of the median versus the midpoint to calculate an ROE.”³² PWRPA and San Francisco each raise further concerns with the methodology used to calculate PG&E’s ROE, including: (1) the use of alternative ROE benchmarks, without disclosure of the weight given to each benchmark and in contravention of Commission precedent rejecting reliance on alternative ROE methods, and (2) composition of the proxy group.³³

26. PWRPA and Calaveras and Tuolumne also move for summary disposition of PG&E’s inclusion of a 0.5 percent (50 basis-points) adder to its requested base ROE.³⁴ According to these Protestors, the summary approval of the 50 basis-point adder for *transmission* customers in the TO14 Order has no bearing on the appropriateness of applying this adder to *distribution* customers in the WDT filings, because applying the adder to rates covering distribution facilities, which are not under CAISO’s operational control, will not serve the incentive’s stated purpose of keeping transmission facilities within the operational control of CAISO.

(3) Administrative and General Expenses

27. San Francisco and PWRPA object to PG&E’s proposed allocation of 52.35 percent of forecasted Administrative and General (A&G) expenses for 2013 to electric distribution based, they assert, on stale 2008 adjusted data instead of 2013 forecasted labor ratios.³⁵ In addition, PWRPA argues that certain components of PG&E’s calculation of its A&G expenses are unsupported and raise concerns requiring additional review, while other components—such as the allocation of 30.2 percent of franchise payments to distribution customers when such payments are usually associated with transmission line siting—are patently unjust and unreasonable.³⁶

for summary disposition in their pleadings; Western and San Francisco request summary disposition in their protests.

³² See Calaveras and Tuolumne Protest at 5 (citing TO14 Order, 141 FERC ¶ 61,168 at P 23); San Francisco Protest, Attachment A at 2-9.

³³ PWRPA Protest at 10-19, San Francisco Protest, Attachment A at 9-24.

³⁴ PWRPA Protest at 5, Calaveras and Tuolumne Protest at 5-6.

³⁵ San Francisco Protest at 24-25, PWRPA Protest at 30.

³⁶ PWRPA Protest at 21-25.

(4) **Other Rate Issues**

28. Western, PWRPA, and San Francisco express concern that PG&E may have overstated its depreciation rates.³⁷ In addition, Western questions whether PG&E may be double-charging its customers taking bundled services for items charged separately under the WDT Service Agreements.³⁸ PWRPA and Calaveras and Tuolumne also raise additional cost calculation and allocation issues which, they believe, support the conclusion that PG&E's proposed rate increase is excessive. These concerns include the absence of source documents to support certain cost allocations and concern regarding the magnitude of the Customer Service Charges related to billing PWRPA, who supplies its own meter and billing information to PG&E.³⁹

29. Calaveras and Tuolumne also protest PG&E's proposal to eliminate the \$40,000 per year rate credits currently provided to the agencies pursuant to Western's 2006 Settlement Agreement in Docket No. ER05-116-000.⁴⁰

30. Western and PWRPA both request that, if accepted, PG&E's proposed rate increase be phased in over a four-year period to avoid rate shock.⁴¹

(5) **Non-Rate Terms and Conditions**

31. Protestors also raise concerns regarding PG&E's proposed changes to certain non-rate terms and conditions in its WDT, particularly as these revisions affect customer eligibility. PWRPA and Calaveras and Tuolumne assert generally that, to the extent that any of PG&E's proposed modifications to non-rate terms and conditions are inconsistent with terms and conditions in the existing unexpired WDT Service Agreements or currently-effective Settlement Agreements, the terms in the existing WDT Service Agreements or settlements should govern.⁴² Western notes that its WDT Service Agreement was negotiated as part of a package of contracts distributing benefits and

³⁷ Western Protest at 6, PWRPA Protest at 25, San Francisco Protest at 25-26.

³⁸ Western Protest at 6.

³⁹ *See* PWRPA Protest at 19-34. Calaveras and Tuolumne adopt PWRPA's arguments with respect to rate issues. Calaveras and Tuolumne Protest at 8.

⁴⁰ Calaveras and Tuolumne Protest at 6-7.

⁴¹ PWRPA Protest at 34, Western Protest at 11-12.

⁴² PWRPA Protest at 35-36, Calaveras and Tuolumne Protest at 9-11.

burdens associated with the integration of Western's and PG&E's transmission systems and the construction of the Pacific AC Intertie, and that adjusting the terms under the Western-PG&E WDT Service Agreement may accordingly impact related agreements.⁴³

32. According to PWRPA, Western, and Calaveras and Tuolumne, PG&E's revised provisions requiring bona fide ownership or control of intervening distribution facilities ignores the "grandfather" provision in section 212(h) of the FPA,⁴⁴ which waives the requirement for intervening facilities if the distribution customer is a federal power marketing administration or other publicly-owned electric utility and was selling electricity to the applicable end-use customer prior to the enactment of the Energy Policy Act of 1992.⁴⁵ Likewise, Western seeks clarification from the Commission that the requirement to demonstrate bona fide ownership and control of intervening facilities therefore does not apply to new points of delivery designated by Western under its existing WDT Service Agreement.⁴⁶

33. PWRPA, San Francisco, and Calaveras and Tuolumne contend that PG&E's request to extend the time within which PG&E is required to tender a draft WDT Service Agreement to an applicant from 30 to 90 days after the application is deemed complete is unjustified and excessive.⁴⁷ Furthermore, San Francisco objects to PG&E's attempt to expand the definition of a "Completed Application" and to give itself broad discretion to deem when an application is complete.⁴⁸

34. Finally, San Francisco protests PG&E's proposal to combine San Francisco's two existing WDT Service Agreements into a single agreement. San Francisco states that no other WDT customer is being subjected to such consolidation and that the service agreements are for separate developments on separate timelines and thus should not be combined.⁴⁹

⁴³ Western Protest at 7.

⁴⁴ 16 U.S.C. § 824k(h) (2006).

⁴⁵ PWRPA Protest at 40, Western Protest at 10-11. *See also* San Francisco Protest at 21.

⁴⁶ Western Protest at 9-11.

⁴⁷ *See* PWRPA Protest at 46.

⁴⁸ San Francisco Protest at 19-20.

⁴⁹ *Id.* at 27.

B. PG&E's Answer

35. On May 2, 2013, PG&E filed an answer (Answer) responding to Protestors' motions for partial summary disposition and seeking leave to respond to the protests.⁵⁰ First, PG&E contends that requiring use of the median of the DCF analysis is overly restrictive and, in any event, unsuitable for summary disposition when issues of material fact exist.⁵¹ Next, PG&E argues the 50 basis-point adder should apply to such facilities when they are part of the larger path necessary to allow customers to take transmission service under CAISO's tariff.⁵² PG&E cautions that granting Protestors' motions would effectively force the utility to adopt an ROE insufficient to attract capital and support electric infrastructure expansion.⁵³ PG&E thus urges the Commission to set these aspects of the ROE for hearing and settlement judge proceedings and reject Protestors' request that it be required to file revised rates using an 8.6 percent ROE.⁵⁴

36. Finally, PG&E states that the labor ratios used to allocate A&G expenses were chosen for consistency with PG&E's state rate case, and requests that the Commission likewise set this issue for hearing and settlement judge proceedings.⁵⁵

IV. Discussion**A. Procedural Matters**

37. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will also grant SoCal Edison's timely, opposed motion to intervene. As a Participating Transmission Owner in CAISO, SoCal Edison has expressed an interest which may be directly affected by the outcome of

⁵⁰ As explained below, the Commission rejects PG&E's Answer to the extent it responds to items other than Protestors' motions for summary disposition. Accordingly, Section II of the Answer is not addressed herein.

⁵¹ PG&E Answer at 4-6.

⁵² *Id.* at 6-7.

⁵³ *Id.* at 8-9.

⁵⁴ *Id.* at 9-12.

⁵⁵ *Id.* at 12-13.

this proceeding. Therefore, we will accept SoCal Edison's motion to intervene pursuant to Rule 214.

38. PG&E's Answer responds to the motions for partial summary disposition filed by PWRPA and Calaveras and Tuolumne, as well as other issues raised in the protests. 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's Answer to the protests and, therefore, will accept only Section I of PG&E's Answer, which responds to Protestors' motions for summary disposition.

B. Commission Determination

39. Based upon a review of the filing, the Commission finds 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. PG&E's proposed revisions to its WDT and the WDT Service Agreements raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in hearing and settlement judge procedures. 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.

40. 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 unduly discriminatory, or that it may be inconsistent with other statutory standards.⁵⁶ 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.⁵⁷ We recognize, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.⁵⁸ Here, our preliminary analysis indicates that PG&E's proposed rates may be substantially excessive. Therefore, we will accept the rates for filing, suspend them for the maximum five-month period, to become effective November 1, 2013, subject to refund, and set them for hearing and settlement judge procedures.

⁵⁶ See, e.g., *Boston Edison Co.*, 12 FERC ¶ 61,211 (1980).

⁵⁷ *West Texas*, 18 FERC ¶ 61,189.

⁵⁸ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980).

41. The Commission will, however, decide the median/midpoint issue here and reemphasize its policy regarding the use of the median versus the midpoint to calculate an ROE. PG&E's requested 11.0 percent base ROE is the same ROE proposed in the TO14 proceeding, derived using the same principles and analyses, including use of the midpoint of the DCF analysis.⁵⁹ In that and other recent proceedings, 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 tendency for a single utility of average risk, such as PG&E.⁶⁰ PG&E has presented no compelling reason why the Commission's holding on this same issue in the TO14 Order should not apply here. 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.

42. In addition, the Commission will reject PG&E's proposal to add 50 basis-points of incentive ROE in recognition of PG&E's participation in CAISO. This incentive applies to "jurisdictional transmission facilities that have been turned over to the operational control of the Transmission Organization."⁶¹ PG&E admits that the facilities whose costs are recovered in its WDT Service rates "are not under the CAISO's operational

⁵⁹ PG&E WDT2 Filings, Ex. PGE-14, 1:28-32 ("While my testimony in this case is patterned directly on my testimony on behalf of PG&E in its latest transmission rate filing, Docket No. ER12-2701-000, these principles and analyses used to determine a fair ROE apply equally to distribution service provided to wholesale transmission customers.").

⁶⁰ See TO14 Order, 141 FERC ¶ 61,168 at P 23; *Southern California Edison Co. v. FERC*, No. 11-1471, 2013 WL 1920937, at *3-9 (D.C. Cir. May 10, 2013); *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)).

⁶¹ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062, at P 21 (2007) ("a public utility member of an [regional transmission organization (RTO)] is eligible for the Transmission Organization incentive rate treatment as to all of its jurisdictional transmission facilities that have been turned over to the operational control of the Transmission Organization").

control.”⁶² In fact, the Commission has previously found that the 50 basis-point adder incentive does not apply to rates for distribution facilities, over which the applicable RTO generally has less, or no, control.⁶³ Thus, while this incentive was summarily accepted in the TO14 Order with respect to PG&E’s transmission rates,⁶⁴ we find that PG&E’s request to include a 50 basis-point adder is not appropriate for its ROE for WDT Service. Accordingly, we direct PG&E to make a compliance filing within thirty (30) days of the date of this order removing the 50 basis-points from the ROE.

43. 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 filings do not include such proposals and, therefore, Statement AH is not required.

C. Hearing and Settlement Judge Procedures

44. Other than those issues resolved above, PG&E’s proposed 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.

⁶² PG&E Answer at 7.

⁶³ *ISO New England, Inc.*, 106 FERC ¶ 61,280, at PP 247-248 (2004), *affirmed sub nom. Maine Public Utilities Comm’n v. FERC*, 454 F.3d 278, 290 (D.C. Cir. 2006) (rejecting a proposed 50 basis-point adder as applied to lower voltage and radial lines, finding that “[w]hile the rationale for this incentive applies for the facilities that are part of the Regional Network Service, it does not apply for the facilities that are subject to the Local Service Schedule”); *PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,112, at P 38 (2008) (finding that the 50 basis-point adder did not apply in a case where “the wholesale distribution service at issue involves low voltages over which [applicant], not [the RTO], has operational control”); *Niagara Mohawk Power Corp.*, 124 FERC ¶ 61,106, at P 36 (2008) (permitting application of the 50 basis-point adder incentive with respect to “properly classified transmission facilities,” but setting for hearing the issue of “whether [the applicant] has improperly included local distribution facilities in its wholesale transmission rate base, as protesters have asserted”), *reh’g* 126 FERC ¶ 61,173, at PP 24-27 (2009) (limiting application of the 50 basis-point adder to facilities under the RTO’s operational control).

⁶⁴ TO14 Order, 141 FERC ¶ 61,168 at P 25.

45. 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.⁶⁵ 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.⁶⁶ 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 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 revisions to its WDT and WDT Service Agreements are hereby conditionally accepted for filing and suspended for the maximum five-month period, to become effective November 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 and excluding the 50 basis-point adder, within thirty (30) days of the date of this order, as discussed in the body of this order.

(C) PG&E's requests for waiver of the obligation to provide the reliability information in Statement BC and for waiver of the Statement AH monthly fuel, water for power and purchased power information by FERC accounts filing requirement are hereby granted, as discussed in the body of this order.

⁶⁵ 18 C.F.R. § 385.603 (2012).

⁶⁶ 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>).

(D) 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 WDT 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 (E), (F), and (G) below.

(E) 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.

(F) 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.

(G) 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)

Kimberly D. Bose,
Secretary.