

168 FERC ¶ 61,007  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

Pacific Gas and Electric Company

Docket Nos. ER19-1816-000  
ER19-13-000  
(Consolidated)

ORDER ACCEPTING AND SUSPENDING PROPOSED FORMULA RATE  
REVISIONS, ESTABLISHING HEARING AND SETTLEMENT JUDGE  
PROCEDURES, AND CONSOLIDATING PROCEEDINGS

(Issued July 8, 2019)

1. On May 9, 2019, Pacific Gas and Electric Company (PG&E) filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> revisions to the formula rate in its Transmission Owner Tariff (TO Tariff). Specifically, PG&E proposes to revise the capital structure calculation in its formula rate to remove the effect of certain non-cash charges related to wildfire liabilities. In this order, the Commission accepts PG&E's revisions, suspends them for five months, to become effective December 9, 2019, subject to refund, and establishes hearing and settlement judge procedures. The order also consolidates the proceeding with the ongoing hearing and settlement judge proceedings on PG&E's transmission formula rate in Docket No. ER19-13-000.

**I. Background**

2. On October 1, 2018, in Docket No. ER19-13-000, PG&E filed revisions to its TO Tariff to implement a formula rate for the costs associated with its transmission facilities. PG&E also included a proposed 2019 base transmission revenue requirement (TRR) and associated retail and wholesale transmission rates based on the formula rate. In an order issued on November 30, 2018, the Commission accepted PG&E's proposed formula rate and related 2019 TRR, suspended it for five months, to become effective May 1, 2019, subject to refund, and established hearing and settlement judge procedures,<sup>2</sup> which are ongoing.

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> *Pac. Gas and Elec. Co.*, 165 FERC ¶ 61,194 (2018).

3. PG&E's formula rate consists of two components: (1) the Model; and (2) the Protocols. The Model is a spreadsheet containing individual schedules that calculate the TRR and transmission rates. The Protocols set forth the terms and operation of the formula rate, including annual update and informational filing timelines, review and challenge procedures. PG&E states that section 11 of the Protocols allows PG&E to make a single-issue FPA section 205 filing to revise the formula rate under a limited number of circumstances which include, among other things, revisions to the calculation of the capital structure.<sup>3</sup>

## II. PG&E's Filing

4. PG&E states that on January 29, 2019, it filed for bankruptcy as a result of a number of factors, including significant potential liabilities arising from wildfires in 2017 and 2018.<sup>4</sup> PG&E explains that in evaluating future liabilities for the wildfires, it determined that Generally Accepted Accounting Principles (GAAP) required that PG&E take a non-cash charge equal to the low end of the range of probable liability.<sup>5</sup> PG&E states that as a result, it recorded non-cash charges totaling \$8.483 billion, net of income taxes and insurance recoveries, on its books at the end of 2018.<sup>6</sup>

5. PG&E explains that the recording of the non-cash charges results in a net reduction to PG&E's common equity balance of \$8.483 billion, which reduces to 41 percent, the ratio of common equity to total capital as of December 31, 2018.<sup>7</sup> PG&E states that the 41 percent ratio will continue into 2019 and beyond, until the actual liabilities resulting from the wildfires is determined and paid from the issuance of new equity, new debt, or paid by other means.<sup>8</sup>

6. PG&E states that the ratio of common equity to total capital of 41 percent does not accurately reflect its true cost to finance rate base, which PG&E claims is approximately

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<sup>3</sup> PG&E Transmittal at 2.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> PG&E Filing Ex. PGE-0001, Testimony of Marques A. Cruz at 4.

<sup>6</sup> PG&E Transmittal at 2.

<sup>7</sup> *Id.* at 2; Ex. PGE-0001 at 6.

<sup>8</sup> PG&E Transmittal at 2-3.

52 percent.<sup>9</sup> PG&E asserts that because it has not made any actual cash payments related to the non-cash charges, these charges do not change the relative levels of debt and equity cash that financed rate base, and that all of the cash previously provided by investors remains invested in the assets in rate base.<sup>10</sup> PG&E states that applying a higher debt ratio as a result of the non-cash charge would imply that PG&E has increased the amount of debt financing used for its rate base, which PG&E contends is not the case.<sup>11</sup>

7. As a result, PG&E proposes to revise the capital structure calculation in Schedule 5 – CostofCap-2 of its formula rate Model to remove the effect of the non-cash charges. Specifically, PG&E proposes to add additional rows and notes to Schedule 5 to allow for the non-cash charges to be added back in to the common equity balance.<sup>12</sup> PG&E claims that this modification: (1) increases the ratio of common equity to 52 percent, which meets PG&E’s target equity ratio as required by the California Public Utilities Commission (CPUC), and (2) avoids a substantial shortfall in earnings expected by common equity investors.<sup>13</sup> PG&E claims that failure to remove non-cash charges would reduce the 2019 Rate Year retail base TRR from \$1.96 billion to \$1.81 billion.<sup>14</sup>

8. PG&E requests that its proposed tariff revisions become effective on July 8, 2019. PG&E contends that the proposed revisions would have a *de minimis* rate impact of no greater than approximately 0.5 percent on its TRR beginning on January 1, 2020, because only one month (December 2018) reflects the non-cash charges in the 13-month average. PG&E states that the more significant impact on rates will occur beginning January 1, 2021 when the formula rate will reflect a full 13-month period with the non-cash charges. PG&E contends that because the impact is *de minimis* and because the more significant rate impact will not occur in the first five months following PG&E’s requested effective date, the maximum five-month suspension contemplated in *West Texas* should not apply.<sup>15</sup>

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<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*

<sup>11</sup> Ex. PGE-0001, Testimony of Marques A. Cruz at 7.

<sup>12</sup> PG&E Transmittal at 3-4.

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.* PG&E does not propose any other changes to its formula rate.

<sup>15</sup> *Id.* at 5 (citing *W. Tex. Utils. Co.*, 18 FERC ¶ 61,189, at 61,374-75 (1982)).

### **III. Notice of Filing and Responsive Pleadings**

9. Notice of PG&E's filing was published in the *Federal Register*, 84 Fed. Reg. 21,769 (2019), with interventions and protests due on or before May 30, 2019. CPUC filed a timely notice of intervention. Timely motions to intervene were filed by Southern California Edison Company (SoCal Edison), Modesto Irrigation District, and the Northern California Power Agency. Timely motions to intervene and protests were filed by the Transmission Agency of Northern California (TANC), the California Department of Water Resources State Water Project (SWP), the State Water Contractors, the City of Santa Clara, California and the M-S-R Public Power Agency (SVP/M-S-R), and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities). CPUC filed a protest, and motion to file a protest one day out-of-time. On June 14, 2019, PG&E filed an answer to the protests.

#### **A. Protests**

10. Protesters generally argue that PG&E's proposed changes to its capital structure calculation are unjust, unreasonable, contrary to Commission policy, and result in an unsupported increase in rates. Accordingly, protesters contend that the Commission should either reject PG&E's filing,<sup>16</sup> or suspend PG&E's filing for the maximum five-month period, subject to refund, and establish hearing and settlement judge procedures.<sup>17</sup> In support of the five-month suspension period, protesters argue that PG&E failed to provide support for what would amount to an approximate \$150 million rate increase for transmission customers.<sup>18</sup> Protesters also request that the Commission consolidate this proceeding with the ongoing proceeding in Docket No. ER19-13-000.<sup>19</sup>

11. Protesters argue that section 11 of the Protocols, which allows PG&E to make single-issue section 205 filings, is unjust and unreasonable, and contrary to Commission

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<sup>16</sup> CPUC Protest at 6-11; State Water Contractors Protest at 6-9; SWP Protest at 1-2.

<sup>17</sup> TANC Protest at 19-21; CPUC Protest at 11-12; Six Cities Protest at 7; SWP Protest at 9; State Water Contractors Protest at 10.

<sup>18</sup> TANC Protest at 19; SWP Protest at 9; State Water Contractors Protest at 10.

<sup>19</sup> TANC Protest at 19-21; State Water Contractors Protest at 10; CPUC Protest at 11; Six Cities Protest at 7-8; SWP Protest at 9.

policy.<sup>20</sup> Protesters note that the provision that PG&E relies on was contested and set for hearing in Docket No. ER19-13-000, but not specifically approved.<sup>21</sup>

12. Protesters also argue that PG&E's filing is inconsistent with ratemaking principles, GAAP, and the Uniform System of Accounts.<sup>22</sup> Protesters assert that PG&E is effectively proposing a hypothetical capital structure that deviates from its actual capital structure, i.e., 52 percent, which Commission policy does not allow.<sup>23</sup>

13. Protesters argue that PG&E does not adequately explain the accounting of the potential wildfire liabilities or sufficiently address the continuing impacts on its formula rate from adding back the amount associated with potential wildfire liabilities after such liabilities are paid.<sup>24</sup>

### **B. PG&E's Answer**

14. PG&E contends that the single-issue filing Protocol provisions are consistent with Commission policy, contrary to protesters' arguments. According to PG&E, the parties raised the same concerns in Docket No. ER19-13-000, but the Commission nonetheless accepted PG&E's formula rate, including the Protocols, subject to suspension and settlement and hearing procedures. Thus, PG&E states that the Protocols are effective and permit single-issue filings.<sup>25</sup>

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<sup>20</sup> TANC Protest at 8-10; State Water Contractors Protest at 7-8; CPUC Protest at 10-11; SWP Protest at 7-8.

<sup>21</sup> CPUC Protest at 10-11; SWP Protest at 8.

<sup>22</sup> TANC Protest at 11-14; Six Cities Protest at 5-7; SWP Protest at 5; State Water Contractors Protest at 8-9.

<sup>23</sup> TANC Protest at 15-17 and n.42 (citing *Transcontinental Gas Pipe Line Corp.*, Opinion No. 414, 80 FERC ¶ 61,157, at 61,667 (1997), *order on reh'g*, Opinion No. 414-A, 84 FERC ¶ 61,084, at 61,415 (1998); *see also Constellation Mystic Power, LLC*, 165 FERC ¶ 61,267, at P 48 (2018); *Enbridge Pipelines (Southern Lights) LLC*, 139 FERC ¶ 63,015 (2012); *ITC Holdings, Corp.*, 121 FERC ¶ 61,229, at P 49 (2007); SWP Protest at 6-7; *see also* State Water Contractors Protest at 8-9 (noting that consistent with generally accepted accounting rules, non-cash charges must be included in capital structure).

<sup>24</sup> TANC Protest at 17-18; CPUC Protest at 7.

<sup>25</sup> PG&E Answer at 3-4.

15. PG&E argues that its proposal to remove the non-cash charges is not inconsistent with precedent, pointing to a recent order in a formula rate proceeding where the Commission accepted SoCal Edison's filing, subject to refund and settlement and hearing procedures, that proposed to exclude wildfire related non-cash charges from its capital structure.<sup>26</sup> PG&E states that the Commission should act similarly here. PG&E further explains that its proposal is consistent with Commission policy that has traditionally excluded equity that was not used to finance rate base from a utility's capital structure.<sup>27</sup>

16. PG&E argues that the filing should only be suspended one day because there is no impact on consumers until 2021, at which time the five-month suspension period would have long since expired. PG&E requests that the motions to reject its filing be denied and that its filing be accepted, effective July 8, 2019, subject to refund, and set for hearing and settlement procedures.<sup>28</sup> PG&E does not oppose consolidation of this proceeding with that in Docket No. ER19-13-000 and agrees with Protesters that consolidation would promote administrative efficiency and reduce redundancy.<sup>29</sup>

#### **IV. Discussion**

##### **A. Procedural Matters**

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), CPUC's notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PG&E's answer because it has provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

19. Our preliminary analysis indicates that PG&E's proposed revisions to its capital structure calculation in Schedule 5 – CostofCap-2 of its formula rate Model have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. PG&E's filing raises issues of material fact that cannot be resolved based on the record before us and that are more

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<sup>26</sup> *Id.* at 7 (citing *Southern Cal. Edison Co.*, 167 FERC ¶ 61,214 (2019)).

<sup>27</sup> *Id.* at 7-8.

<sup>28</sup> *Id.* at 13.

<sup>29</sup> *Id.* at 3-4.

appropriately addressed in the hearing and settlement judge procedures ordered below. While we are setting this matter for hearing and settlement judge procedures, we do not find that PG&E's filing is patently deficient, and we therefore deny some protesters' requests to reject the filing.

20. In *West Texas Utilities Co.*, the Commission explained that, when its preliminary analysis indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, the Commission will generally impose a maximum suspension (i.e., five months).<sup>30</sup> Based on our preliminary analysis, we find that PG&E's proposed rates may yield substantially excessive revenues. Therefore, we accept PG&E's proposed revisions to its formula rate for filing, suspend them for five months to become effective December 9, 2019,<sup>31</sup> subject to refund, and set all issues for hearing and settlement judge procedures.

21. Protesters support the consolidation of this proceeding with the ongoing proceeding on PG&E's formula rate in Docket No. ER19-13-000, which is currently the subject of hearing and settlement judge procedures. PG&E states that it does not oppose consolidation. Because of the existence of common issues of law and fact in these two proceedings, we grant the motions to consolidate this proceeding with the ongoing proceeding in Docket No. ER19-13-000 for purposes of settlement, hearing, and decision. We believe that consolidating these proceedings will promote administrative efficiency.

The Commission orders:

(A) PG&E's proposed revisions to its capital structure calculation in Schedule 5 – CostofCap-2 of its formula rate Model are hereby accepted for filing and suspended for five months to become effective December 9, 2019, 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 the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held in Docket

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<sup>30</sup> *W. Tex. Utils. Co.*, 18 FERC at 61,374-75.

<sup>31</sup> PG&E requests an effective date of July 8, 2019. Absent waiver of notice, the earliest date that proposed rates, terms, or conditions may become effective is the 61<sup>st</sup> day after filing, i.e., the day *after* the 60-day prior notice period has expired. See *Utah Power & Light Co.*, 30 FERC ¶ 61,015, at 61,024 n.9 (1985). Thus, the earliest permissible effective date is July 9, 2019. The five-month suspension from that date results in an effective date of December 9, 2019.

No. ER19-1816-000 concerning the justness and reasonableness of PG&E's proposed revisions to the calculation of capital structure in its formula rate, as discussed in the body of this order.

(C) Docket Nos. ER19-1816-000 and ER19-13-000 are hereby consolidated for purposes of settlement, hearing, and decision.

(D) The settlement judge or presiding judge, as appropriate, designated in Docket No. ER19-13-000 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.