

170 FERC ¶ 61,240
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 23, 2020

In Reply Refer To:
San Diego Gas & Electric Company
Docket Nos. EL18-67-000
ER19-221-002
(not consolidated)

San Diego Gas & Electric Company
8330 Century Park Court
CP32D
San Diego, CA 92123

Attention: Christopher M. Lyons

Dear Mr. Lyons:

1. On October 18, 2019, San Diego Gas & Electric Company (SDG&E) filed an Offer of Settlement and Settlement Agreement (Settlement) concerning its TO5 Formula Rate which establishes SDG&E's base transmission revenue requirement. SDG&E states that the Settlement also incorporates the reduced federal corporate income tax rate in its TO5 Formula as directed by the Commission in Docket No. EL18-67-000. The Settlement appears to be fair and reasonable, and in the public interest, and is approved, as discussed below.

2. On March 15, 2018, the Commission issued several orders to address the effects of the Tax Cuts and Jobs Act of 2017 (Tax Cuts and Jobs Act),¹ which, among other things, reduced the federal corporate income tax rate from 35% to 21%.² Of relevance here, pursuant to Section 206 of the Federal Power Act (FPA),³ the Commission issued

¹ Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

² *AEP Appalachian Transmission Company, Inc.*, 162 FERC ¶ 61,225 (2018) (Formula Rate Order to Show Cause).

³ 16 U.S.C. § 824e (2018).

the Formula Rate Order to Show Cause to public utilities that use transmission formula rates with a fixed line item of 35% for the federal corporate income tax under an open access transmission tariff or transmission owner tariff.

3. The Commission stated that the reduced tax rate results in lower income tax expenses for public utilities going forward. The Commission explained that public utilities recover federal corporate income tax expenses in their transmission rates, and that when tax expenses decrease, so does the cost of service. The Commission continued that it has allowed transmission rates to be established through, among other things, formulas, which may include a fixed line item of 35% for the federal corporate income tax rate, which was the effective tax rate at the time the formula rates were accepted by the Commission.⁴

4. The Commission identified SDG&E as having such arrangements in effect, and that absent a change to SDG&E's transmission formula rates, those formula rates may not accurately reflect SDG&E's cost of service. Accordingly, the Commission found that SDG&E's transmission formula rates appeared to be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. As such, the Commission directed SDG&E to either (1) propose revisions to its transmission formula rates under its tariff on file with the Commission to reflect the reduced tax rate and describe the methodology used for making those revisions, or (2) show cause why it should not be required to do so.⁵ The Commission also noted that, under the show cause option, SDG&E may explain how the reduced tax rate is being addressed in another proceeding pending before the Commission.⁶

5. On May 14, 2018, SDG&E filed its response to the Formula Rate Order to Show Cause. SDG&E stated that it would revise its transmission owner formula rate mechanism to reflect the federal corporate income tax rate reduction in its new transmission owner formula rate (i.e., the TO5 Formula) filing to either a fixed 21% or to the "statutory federal income tax rate."⁷ SDG&E explained that it would calculate the revenue requirement reduction resulting from the reduced federal corporate income tax

⁴ Formula Rate Order to Show Cause, 162 FERC ¶ 61,225 at PP 2-4.

⁵ *Id.* P 5.

⁶ *Id.* P 5 n.11.

⁷ SDG&E, Show Cause Response, Docket No. EL18-67-000 at 4 (filed May 14, 2018).

rate from March 15, 2018 through December 31, 2018 in TO4 Cycle 5⁸ and implement the revenue requirement reduction in TO5 Cycle 1.⁹ On November 15, 2018, the Commission issued an order acknowledging SDG&E's response and held the FPA section 206 proceeding in abeyance pending the final outcome of the TO5 Formula proceeding.¹⁰

6. On October 30, 2018, in Docket No. ER19-221-000, SDG&E submitted the TO5 Formula that SDG&E will use to calculate its wholesale and retail base transmission revenue requirements.¹¹ On December 31, 2018, the Commission accepted SDG&E's proposed TO5 Formula and related 2019 base transmission revenue requirement and suspended them for five months, to become effective June 1, 2019, subject to refund, and established hearing and settlement judge procedures.¹²

7. On October 18, 2019, SDG&E filed the Settlement in its TO5 Formula proceeding.¹³ On November 7, 2019, Commission Trial Staff filed comments in support of the Settlement. No other comments were filed. On January 24, 2020, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.¹⁴

⁸ SDG&E submits annual informational filings under its TO Formula, referred to as Cycles.

⁹ SDG&E Show Cause Response at 4. SDG&E explained that TO5 Formula Cycle 1 would be in effect from January 1, 2019 through December 31, 2019. *See* SDG&E Show Cause Response at 2 n.5.

¹⁰ *San Diego Gas & Elec. Co.*, 165 FERC ¶ 61,095, at P 10 (2018).

¹¹ SDG&E, TO5 Formula Filing, Docket No. ER19-221-000 (filed Oct. 30, 2018).

¹² *San Diego Gas & Elec. Co.*, 165 FERC ¶ 61,276 (2018).

¹³ SDG&E states that the Settlement reflects incorporation of the revised federal corporate income tax rate in its TO5 Formula and states its belief that the Commission may close the FPA section 206 proceeding in Docket No. EL18-67-000. SDG&E, Explanatory Statement, Docket No. ER19-221-002, at 9 (filed Oct. 18, 2019).

¹⁴ *San Diego Gas & Elec. Co.*, 170 FERC ¶ 63,010, at PP 3, 37, 40 (2020). This certification was later amended by an errata issued February 3, 2020. *San Diego Gas & Elec. Co.*, Docket Nos. ER19-221-001 and ER19-221-002, Errata Notice (Feb. 3, 2020).

8. Article 4.8 of the Settlement states:

[T]he standard of review for changes unilaterally proposed by SDG&E or a Party to this proceeding shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Fed. Power Comm’n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527 (2008); and *NRG Power Mktg., LLC v. Maine Pub. Utilities Comm’n*, 558 U.S. 165 (2010). The standard of review for any changes proposed by entities that were not parties to this Settlement or by the Commission acting *sua sponte* shall be the just and reasonable standard.

9. The Settlement resolves all issues set for hearing and settlement judge procedures in Docket No. ER19-221.¹⁵ The Settlement appears to be fair and reasonable, and in the public interest, and is hereby approved. The Commission’s approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

10. SDG&E is directed to make a compliance filing with revised tariff records in eTariff format,¹⁶ on or before May 1, 2020, to reflect the Commission’s action in this order.¹⁷

¹⁵ *San Diego Gas & Elec. Co.*, 165 FERC ¶ 61,276 (accepting and suspending proposed TO5 formula and related base transmission revenue requirement and establishing hearing and settlement judge procedures).

¹⁶ *See Elec. Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).

¹⁷ We note that Attachment 2 to Appendix VIII (Formula Rate Spreadsheet) is missing from SDG&E’s TO Tariff in the eTariff database. SDG&E should include an eTariff record of the settlement version of the Formula Rate Spreadsheet as part of this compliance filing.

11. Finally, in light of the TO5 Formula Settlement we approve herein, we terminate the FPA section 206 proceeding initiated in Docket No. EL18-67-000.

By direction of the Commission.

Kimberly D. Bose,
Secretary.