

137 FERC ¶ 61,045
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

City of Pasadena, California

Docket No. ER11-4375-000

ORDER CONDITIONALLY ACCEPTING PROPOSED TRANSMISSION
REVENUE REQUIREMENT AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued October 20, 2011)

1. On August 25, 2011, the City of Pasadena, California (Pasadena) submitted revisions to its Transmission Owner Tariff (TO Tariff). Pasadena requests that the Commission approve its (1) revised base Transmission Revenue Requirement (TRR), (2) revised High Voltage Transmission Revenue Requirement (High Voltage TRR), and (3) ministerial changes to reflect the implementation of the California Independent System Operator Corporation's (CAISO) Market Redesign and Technology Update (MRTU) initiative.
2. Pasadena requests an effective date of September 1, 2011, and consents to return any payments it receives from the CAISO for Pasadena's revised rates in excess of those ultimately approved by the Commission.¹ As discussed below, we conditionally accept Pasadena's revised TO Tariff rates for filing, effective September 1, 2011, and set the matter for hearing and settlement judge procedures.

I. Background

3. Pasadena is not a public utility, but it is a Participating Transmission Owner (Participating TO) in the CAISO. Pasadena is reimbursed for its TRR by the CAISO through CAISO's collection of a Transmission Access Charge (TAC) from all users of the CAISO grid. The TAC rate is a formula rate based on the TRRs of all Participating TOs. Rate changes that impact the CAISO TAC require a section 205 filing under the

¹ Pasadena Petition at 20 and note 10.

Federal Power Act (FPA)² and full review by this Commission to ensure that the inclusion of these rate revisions will result in a just and reasonable TAC rate charge by the CAISO.³

4. Section 26.1.1 of the CAISO tariff requires non-jurisdictional Participating TOs to file with the Commission their proposed High Voltage TRR. In 2005, Pasadena filed, and the Commission subsequently accepted, Pasadena's initial TO Tariff.⁴ This tariff included Pasadena's base TRR, Transmission Revenue Balancing Account Adjustment (TRBAA), and the High Voltage TRR to be used to calculate the TAC paid by CAISO transmission customers for service over Pasadena's facilities and Entitlements (as defined in the CAISO tariff). Since joining the CAISO in 2005, Pasadena has filed with the Commission an annual update to its TRBAA which results in a revised TRR, effective January 1st of each year. The current base TRR of \$12,433,792 was accepted by the Commission to be effective as of October 1, 2009.⁵

5. In this docket, Pasadena proposes a revised base TRR of \$14,987,968, or an increase of \$2,544,176 (20.5 percent) on an annual basis. Pasadena states that its TRBAA, which serves as a revenue credit or negative adjustment to the TRR, will not change as a result of this filing and will remain a credit of \$735,183.10. Accordingly, the revised High Voltage TRR (i.e., Pasadena's base TRR with the TRBAA adjustment) would become \$15,723,151. The Gross Load associated with Pasadena's proposed TRR is 1,231,980 MWh. According to Pasadena, its Gross Load is determined through an econometric forecasting process that uses past observations of weather, national and local economic performance, and seasonal patterns to predict future energy consumption.⁶

6. Pasadena explains that its revised base TRR is based upon projected annualized costs of the Pasadena transmission entitlements for fiscal year 2012 (July 1, 2011 through June 30, 2012). The base TRR reflects Pasadena's projected Administrative and General

² 16 U.S.C. § 824d (2006).

³ *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, at P 42-44, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

⁴ *City of Pasadena, Cal.*, 109 FERC ¶ 61,386 (2004).

⁵ *City of Pasadena, Cal.*, 130 FERC ¶ 61,129 (2010).

⁶ Pasadena states that its proposed Gross Load is consistent with the forecast Pasadena provided to the California Energy Commission and is used in Pasadena's internal resource planning and procurement decisions.

(A&G) costs, regulatory expenses, and a return on Pasadena's investments in the Pacific DC Intertie and the McCullough-Victorville transmission line.

7. Pasadena states that it participates in and has entitlements to three transmission projects through the Southern California Public Power Authority (SCPPA). These three SCPPA projects are the Mead-Adelanto Project, the Mead-Phoenix Project, and the Southern Transmission System, whose total annualized cost for Pasadena's Entitlements are projected to be \$10,320,213 during fiscal year 2012. Pasadena also states that it has an entitlement to transmission capacity pursuant to agreements with the Los Angeles Department of Water and Power (LADWP). These agreements provide transmission rights over the Adelanto-Sylmar line, the Victorville-Sylmar line, the McCullough-Victorville line, the Northern transmission system, and transmission between the Hoover Switchyard and the Sylmar substation. The cost of this entitlement, which is based upon a rate established by LADWP, is projected to be \$2,784,846 during fiscal year 2012. Pasadena states that it has a 2.3077 percent share of the southern portion of the Pacific DC Intertie and the cost of this facility was \$327,447 in 2010.⁷ Finally, Pasadena states it has entered into an Interconnection Agreement with Southern California Edison (SoCal Edison) governing the terms of Pasadena's interconnection to the SoCal Edison transmission system located at Pasadena's T.M. Goodrich Receiving Station (Goodrich). Pasadena states that Pasadena's fiscal year 2012 costs for operation and maintenance activities at Goodrich under the Interconnection Agreement will be \$15,081.

8. Pasadena estimates that its A&G expenses related to personnel costs for individuals involved in transmission matters will total \$193,933 and regulatory expenses will total \$247,180 during fiscal year 2012. Additionally, Pasadena states that it has included an 8.17 percent return on its investments in the Pacific DC Intertie and the McCullough-Victorville transmission line. For the Pacific DC Intertie, Pasadena estimates the return on its share of the net plant to be \$734,891 and its annual depreciation expenses to be \$300,796. Pasadena estimates the return on the McCollough-Victorville line to be \$42,184 and its annual depreciation expense to be \$21,398.

9. Additionally, Pasadena proposes several revisions to its TO Tariff that it states are largely ministerial in nature and are required to conform Pasadena's TO Tariff to the new market structures contained in the CAISO Tariff due to the implementation of MRTU. Pasadena proposes to (1) delete the definition of Net FTR Revenue, (2) modify the definition of Transmission Revenue Credit to delete references to Net FTR Revenues and

⁷ Pasadena states that it does not anticipate that the cost will change in fiscal year 2012.

Usage Charge Revenues, (3) delete the reference to Transition Period, and (4) delete references to Usage Charge Revenues and FTR auction proceeds.⁸

10. As a municipality organized under the laws of California, Pasadena argues that it is exempt from the fees otherwise imposed under Part 381 of the Commission's regulations.⁹ Accordingly, Pasadena requests that the Commission waive any fee associated with this filing.

11. Pasadena requests an effective date of September 1, 2011, to allow the revised base TRR and TO Tariff revisions to be placed into service as soon as possible.

II. Notice of Filing and Responsive Pleadings

12. Notice of Pasadena's filing was published in the *Federal Register*, 76 Fed. Reg. 55,372 (2011), with interventions, comments, and protests due on or before September 15, 2011. Pacific Gas and Electric Company (PG&E), Trans Bay Cable LLC, M-S-R Public Power Agency, the City of Santa Clara, California and the Modesto Irrigation District filed motions to intervene. The California Department of Water Resources State Water Project (SWP), and Southern California Edison Company (SoCal Edison) filed motions to intervene with comments or protests. Atlantic Path 15 filed a motion to intervene out-of-time.

A. Protests

13. SWP and SoCal Edison comment that Pasadena's proposed TRR includes a return on rate base (ROR) of 8.17 percent for its partial ownership in the Pacific DC Intertie and the McCullough-Victorville line, which amounts to approximately \$776,000 combined for the two projects. SWP and SoCal Edison object to Pasadena selecting SoCal Edison's Return on Equity (ROE) as a proxy for its own. SoCal Edison and SWP assert that Pasadena does not have investors, is not an IOU, and has access to tax-exempt financing. For these reasons, SoCal Edison and SWP argue that Pasadena's cost of debt is likely to be less than SoCal Edison's cost of debt. Moreover, SWP and SoCal Edison believe that additional information and discussion are necessary to understand the justifications for a municipal transmission owner like Pasadena earning a return on investment.¹⁰

⁸ Pasadena Petition at 18.

⁹ *Id.*, citing 18 C.F.R. § 381.108 (2011).

¹⁰ SWP Comment at 6-7; SoCal Edison Protest at 2-3.

14. SoCal Edison protests that it is unclear whether Pasadena's proposed increase in A&G expenses is based on the expenses that Pasadena can reasonably be expected to incur. Also, SoCal Edison asserts that the basis of the forecast expense appears to be "Market Salary" and may not represent the expense actually expected to be incurred. SoCal Edison asserts that Pasadena provides little support for the sizable increase in A&G expenses and, thus, this proposed expense warrants further review. Further, SoCal Edison asserts that it is not clear that Pasadena developed its forecast for regulatory expenses, which includes legal and consulting fees, using methodology that is consistent with Commission policy. SoCal Edison argues that, given the factual issues raised, the Commission should accept Pasadena's TRR, subject to refund, and set these issues for hearing.¹¹

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2011), the Commission will grant Atlantic Path 15's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Standard of Review

17. The Commission has addressed the standard of review to be applied to petitions involving non-jurisdictional TRRs in an opinion reviewing the TRR filed by the City of Vernon, California (Vernon).¹² In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to its Federal Power Act (FPA) section 205 jurisdiction. However, the Commission noted that because Vernon voluntarily submitted its TRR as a component of CAISO's jurisdictional rate, Vernon's TRR is "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."¹³ The Commission explained that in *Pacific Gas &*

¹¹ SoCal Edison Protest at 4.

¹² See Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207, *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297.

¹³ Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

Elec. Co. v. FERC, the U.S. Court of Appeals for the District of Columbia Circuit held that the Commission has statutory authority to review Vernon's TRR "to the extent necessary to ensure that the CAISO rates are just and reasonable."¹⁴ Subsequently, the court upheld the Commission's decision that subjecting the TRRs of non-jurisdictional utilities (such as Vernon) to a full section 205 review is "the only way to ensure that CAISO's rate is just and reasonable."¹⁵

18. However, in *TANC* the court rejected the Commission's authority to order Vernon to pay refunds under FPA section 205. The court held that the structure of the FPA clearly reflects Congress's intent to exempt governmental entities and non-public utilities from the Commission's refund authority over wholesale electric energy sales.¹⁶ The court reasoned that FPA section 201(f) exempts from Part II of the FPA "any political subdivision of a state."¹⁷

19. Therefore, while Pasadena is not within the Commission's jurisdiction under FPA section 205, we find that, based on the court's rulings, it is appropriate to apply the just and reasonable standard of FPA section 205 to Pasadena's TO Tariff rates. To determine the justness and reasonableness of Pasadena's TO Tariff rates, we find that, as discussed below, hearing and settlement judge procedures are appropriate.

20. Furthermore, although Pasadena is not subject to Commission-imposed rate suspension and refund obligations, Pasadena has agreed to refund any payment it receives from the CAISO for Pasadena's revised rates in excess of those ultimately approved by the Commission.¹⁸

C. Hearing and Settlement Judge Procedures

21. Pasadena's proposed TO Tariff rate revisions raise issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

¹⁴ *Id.* at 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

¹⁵ *Transmission Agency of N. Cal. v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007) (*TANC*).

¹⁶ *Id.* at 673-74.

¹⁷ *Id.* at 674.

¹⁸ Pasadena Petition at 20 and note 10.

22. Our preliminary analysis indicates that Pasadena's TRR has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will conditionally accept Pasadena's TO Tariff revisions for filing, make them effective as of September 1, 2011, and set all issues, except those decided below, for hearing and settlement judge procedures.

23. While we are setting these matters 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.¹⁹ 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.²⁰ The settlement judge shall report to the Chief Judge and the Commission within 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.

D. Other Issues

24. We will accept Pasadena's revisions to its TO Tariff to conform Pasadena's TO Tariff to the new market structures contained in the CAISO Tariff due to the implementation of MRTU, effective September 1, 2011, as requested.

25. Also, we will grant Pasadena's petition for waiver of the filing fee. Section 381.108 of the Commission's regulations provides that municipalities are exempt from the filing fees required by Part 381.²¹ Pasadena explains that it is a municipal utility organized under the laws of California. Therefore, Pasadena is exempt from the filing fee required for a rate filing.

¹⁹ 18 C.F.R. § 385.603 (2011).

²⁰ 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 days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

²¹ 18 C.F.R. § 381.108 (2011).

The Commission orders:

(A) Pasadena's proposed TO Tariff rates, as incorporated in revised tariff provisions, are hereby conditionally accepted for filing, effective September 1, 2011, as discussed in the body of this order.

(B) Pasadena's request for waiver of the filing fee is hereby granted, as discussed in the body of this order.

(C) 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 concerning Pasadena's TO Tariff 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 (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), 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.

(E) 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.

(F) 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. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.