

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company

Docket No. ER05-853-000

ORDER ON PROPOSED TARIFF REVISIONS AND ACCEPTING AND
SUSPENDING CERTAIN PROPOSED TARIFF REVISIONS AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued June 20, 2005)

1. In this order, we accept a proposed tariff revision to San Diego Gas & Electric Company's (SDG&E) Transmission Owner Tariff (TO Tariff),¹ to become effective June 21, 2005, and reject proposed tariff language. We accept other proposed revisions to the TO Tariff, suspend them for a nominal period, make them effective June 21, 2005, subject to refund, and set them for hearing and settlement judge procedures. This order benefits customers by providing the parties with a forum in which to resolve their concerns.

Background

2. On July 8, 2004, the California Public Utilities Commission (CPUC) issued Decision 04-07-028, which required CPUC-jurisdictional facilities to follow certain principles when making resource scheduling and procurement decisions, including scheduling and procuring sufficient and appropriate resources (both system-wide and locally within their service area) to permit the California Independent System Operator Corporation (CAISO or ISO) to maintain reliable grid operations.

¹ FERC Electric Tariff, Second Revised Volume No. 11.

3. On April 21, 2005, SDG&E filed proposed revisions to its TO Tariff to reflect the incremental costs incurred by SDG&E, since July 16, 2004, to meet the requirements specified by the CPUC.² SDG&E has identified these costs as a new category of reliability costs under its TO Tariff. It seeks to recover these costs through a balancing account mechanism. Unrelated to the recovery of these costs, SDG&E also proposes to include a new charge, "ISO Charge Type 575," in the definition of Transmission Revenue Credit. SDG&E requests an effective date of June 20, 2005 for the proposed revisions.

Notice of Filing and Responsive Pleadings

4. Notice of SDG&E's filing was published in the *Federal Register*, 70 Fed. Reg. 22,860 (2005), with protests and interventions due on or before May 12, 2005. The CPUC filed a notice of intervention. The California Department of Water Resources State Water Project, the California Electricity Oversight Board, the Modesto Irrigation District (Modesto), the Northern California Power Agency (NCPA), the Sacramento Municipal Utility District, and Southern California Edison Company filed timely motions to intervene. The California Municipal Utilities Association (CMUA); the Cities of Anaheim, Azusa, Banning, Colton and Riverside, California (Southern Cities), jointly; the Cities of Santa Clara and Redding, California and the M-S-R Public Power Agency (Cities/M-S-R), jointly; the Metropolitan Water District of Southern California (Metropolitan); and the Transmission Agency of Northern California (TANC) filed timely motions to intervene and protests.³ TANC requests that the Commission suspend SDG&E's filing and establish an evidentiary hearing.

5. Protestors argue that the costs that SDG&E seeks to recover, other than costs related to ISO Charge Type 575, cannot be classified as reliability costs because they relate to SDG&E's procurement and scheduling of energy to serve native load. Protestors also claim that these costs are not reliability costs because they result from actions taken by SDG&E, a TO, rather than by the CAISO, which is the entity responsible for ensuring reliability of the CAISO-controlled grid. Protestors contend that allowing only Participating Transmission Owners (PTOs) to recover costs for responsible procurement decisions through reliability services rates would force load serving entities that are not PTOs to unjustly bear both their own energy procurement costs and those of

² See SDG&E Transmittal Letter at 3; Exh. 3, Appendix VI (2) (Description).

³ Cities/M-S-R and Modesto incorporate in their pleadings TANC's arguments and positions. NCPA supports TANC's and CMUA's comments.

the surrounding PTO. Southern Cities argue that native load customers for whom resources are procured should pay the costs, not transmission customers that are incurring procurement costs of their own. Metropolitan contends that, if the Commission accepts SDG&E's proposed revisions, it would need to permit all other load serving entities within the CAISO control area to recover the cost of serving load in a reliable manner in order to avoid discriminatory treatment. Protestors further assert that, since SDG&E's costs are incurred to fulfill obligations to serve its retail load, the recovery of those costs is subject to state, not federal, jurisdiction. TANC adds that the Commission's expansion of the definition of reliability services costs, as proposed by SDG&E, will require the Commission to review and make difficult determinations regarding SDG&E's retail energy procurement and scheduling practices.

6. CMUA argues that SDG&E's proposal is largely in response to the inability to accommodate output from the so-called "Border Generators." CMUA asserts that this narrow concern should be dealt with by the parties to the contracts for the Border Generators' output, rather than through SDG&E's proposed revisions, which have broad policy implications.

7. Metropolitan claims that the Commission's acceptance of SDG&E's proposal will render SDG&E financially indifferent to the location from which it procures generation to serve its load, thus moving the CAISO further from the locational marginal pricing paradigm and its economic advantages.

8. Metropolitan protests SDG&E's request to recover procurement costs incurred since July 2004. Metropolitan argues that, since SDG&E has failed to request a waiver of the 60-day notice requirement, the earliest date SDG&E could recover these costs is 60 days from the date of SDG&E's April 21, 2005 filing. Metropolitan argues that the prohibition on retroactive ratemaking precludes SDG&E's recovery of these costs from July 2004 forward.

Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. ISO Charge Type 575

10. SDG&E proposes to include a new charge, “ISO Charge Type 575,” in the definition of Transmission Revenue Credit.⁴ SDG&E states that ISO Charge Type 575 is an expense charged by the CAISO to SDG&E, as a PTO, to enable the ISO to recover certain grid management charges and metering and client relation costs defined in the CAISO’s Open Access Transmission Tariff.⁵ Upon Commission approval, SDG&E proposes to recover ISO Charge Type 575 by booking it into SDG&E’s Transmission Revenue Balancing Account (TRBA) beginning in 2005.⁶ Once the charge is included in the TRBA, SDG&E states that it will propose to modify its Transmission Revenue Balancing Account Adjustment (TRBAA) rates to reflect these costs in its annual TRBAA rate update filing in December 2005 that will apply to transmission service commencing on January 1, 2006.⁷ No protests were filed concerning SDG&E’s ISO Charge Type 575 proposal.

11. We accept SDG&E’s inclusion of ISO Charge Type 575,⁸ as proposed, to become effective on June 21, 2005.⁹

⁴ TO Tariff section 3.103 (Definition of Transmission Revenue Credit).

⁵ SDG&E’s Exhibit 5 at 5:24-26. SDG&E further states that ISO Charge Type 575 is equal to \$500 per month and recovers a portion of the CAISO’s costs related to maintaining customer account information, providing customer account information, calculating market charges, processing settlement statements, resolving customer disputes, responding to customer inquiries and providing customer training. *Id.* at 5:26-30.

⁶ *Id.* at 6:20-22.

⁷ *Id.* at 6:22-25.

⁸ We note that the Commission has previously accepted such a charge. *See Pacific Gas and Elec. Co.*, 109 FERC ¶ 61,266 (2004).

⁹ We note that SDG&E’s proposed effective date for its TO Tariff revisions falls one day short of the required 60-day notice period. The 60-day notice period required by our regulations starts to run on the first day after the date of filing. Thus, the earliest date that a filing may become effective, absent waiver of the notice requirements, is the day

(continued)

C. Proposal for Retroactive Recovery of Incremental Procurement Costs

12. While SDG&E requests a June 2005 effective date, it indicates in its filing and proposed TO Tariff revisions that it will flow through incremental procurement costs incurred as of July 16, 2004. SDG&E has provided no justification for recovering these costs retroactively to July 16, 2004, and we find none. Accordingly, we reject SDG&E's proposal and find that SDG&E may only recover costs incurred prospectively from June 21, 2005. Moreover, we direct SDG&E to submit a compliance filing, within 30 days of the date of this order, reflecting the removal from its TO Tariff of all language permitting this retroactive recovery of costs.

D. Hearing Procedures

13. Notwithstanding our determination on ISO Charge Type 575 and the retroactive rate issue, SDG&E's proposed TO tariff revisions otherwise raises 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. Our preliminary analysis indicates that SDG&E's proposed TO tariff revisions (with the exception of ISO Charge Type 575) have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept SDG&E's proposed TO tariff revisions, suspend them for a nominal period, make them effective on June 21, 2005, subject to refund, and set them for hearing and settlement judge procedures. (We note that ISO Charge Type 575 and the retroactive rate issue are not to be addressed in the hearing procedures ordered below.)

15. 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 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.¹⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

after the 60-day notice period has expired or, as in this case, June 21, 2005. *See California Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,329 at n.5 (2004).

¹⁰ 18 C.F.R. § 385.603 (2004).

otherwise, the Chief Judge will select a judge for this purpose.¹¹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order 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.

The Commission orders:

(A) SDG&E's proposed ISO Charge Type 575 is hereby accepted for filing, to become effective on June 21, 2005, as discussed in the body of this order.

(B) SDG&E's proposal to recover costs for the period from July 16, 2004 to June 21, 2005 is hereby rejected, and SDG&E is hereby directed to submit a compliance filing, within 30 days of the date of this order, reflecting the removal from its TO Tariff of all language permitting this retroactive recovery of costs, as discussed in the body of this order.

(C) SDG&E's other proposed TO Tariff revisions are hereby accepted for filing and suspended for a nominal period, to become effective on June 21, 2005, subject to refund, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by 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 concerning the justness and reasonableness of SDG&E's proposed TO Tariff revisions (with the exception of the issues discussed in paragraphs (A) and (B)). However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in paragraphs (E) and (F) below.

¹¹ 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 (www.ferc.gov – click on Office of Administrative Law Judges).

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), 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 by telephone within five (5) days of the date of this order.

(F) Within sixty (60) days of the date of this order, 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 conference in these proceedings, in a hearing room of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Such 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)

Linda Mitry,
Deputy Secretary.