

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**San Diego Gas & Electric Company) Docket Nos. ER13-941-000,
ER13-941-001 and ER13-941-002**

OFFER OF SETTLEMENT AND SETTLEMENT AGREEMENT

San Diego Gas & Electric Company (“SDG&E”) hereby offers to each of the intervenors in the above-captioned proceeding,¹ the following terms and conditions of a Settlement thereof (“Settlement”). This Settlement is being offered pursuant to Rule 602 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure.² If approved by the Commission, this Settlement will resolve all issues set for hearing and settlement judge procedures in the *Order Conditionally Accepting and Suspending Rates and Establishing Settlement Judge and Hearing Procedures* (“Order”), as subsequently amended by the *Order on Request for Rehearing and Motion for Clarification* (“Clarification Order”).³ SDG&E expects that this Settlement will be uncontested.

¹ The intervenors in this proceeding are: the California Public Utilities Commission (“CPUC”); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; the M-S-R Public Power Agency; the City of Santa Clara, California and the City of Redding, California; the Modesto Irrigation District; the Transmission Agency of Northern California; the Northern California Power Agency; and the California Department of Water Resources State Water Project, Pacific Gas and Electric Company, Southern California Edison Company, Trans Bay Cable LLC, State Water Contractors and Sacramento Municipal Utility District (these intervenors are referred to collectively as “Parties” and singularly as “Party”).

² 18 C.F.R. §385.602 (2013).

³ See *San Diego Gas & Electric Company*, 143 FERC ¶61,246 (2013) and *Order on Request for Rehearing and Motion for Clarification*, 144 FERC ¶61,078 (2013). The *Clarification Order* established September 1, 2013 as the Effective Date of the TO4 Formula.

I. BACKGROUND

On February 15, 2013, SDG&E filed tariff revisions under Section 205 of the Federal Power Act (“FPA”)⁴ to implement its Fourth Transmission Owner (“TO”) Formula rate mechanism (“TO4 Formula” or “Filing”) to replace its then-effective Third TO Formula rate mechanism (“TO3 Formula”), which was due to terminate on August 31, 2013. The proposed effective date for the TO4 Formula was September 1, 2013.

As SDG&E explained, the TO4 Cycle 1 Filing did three things: (1) it proposed a new TO4 Formula and Appendix VIII to SDG&E’s TO Tariff to supersede the TO3 Formula; (2) it revised SDG&E’s Base Transmission Revenue Requirements⁵ (“BTRR”) and increased transmission rates for retail End Use and California Independent System Operator Corporation (“CAISO”) wholesale customers under the terms of the proposed TO4 Formula; and (3) it revised Appendix IX of SDG&E’s TO Tariff to reconcile it with CAISO terminology/protocols.

According to the TO4 Filing, SDG&E maintained most of the TO3 Formula in the proposed TO4 Formula except in four principal areas: (1) the TO4 Formula shifted the rate-effective period for each cycle to a calendar year basis following an initial Cycle 1⁶ transition period; (2) the TO4 Formula incorporated placeholders for certain ratemaking incentives for transmission projects in the event SDG&E is authorized, pursuant to Order No. 679,⁷ to recover incentives in the future; (3) the TO4 Formula permitted SDG&E to allocate and/or directly assign costs for certain categories of administrative and general and intangible plant costs to the

⁴ 16 U.S.C. § 824d (2006).

⁵ Capitalized terms have the meanings ascribed to them herein or in SDG&E’s TO4 Tariff.

⁶ SDG&E uses the term “Cycle” to identify the specific informational filing being made under the applicable formula. TO4 Cycle 1 is SDG&E’s first Informational Filing under the TO4 Formula.

⁷ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

transmission function (as opposed to allocating such costs solely on the basis of labor ratios); and (4) the TO4 Formula had no sunset date.⁸

Additionally, SDG&E proposed a projected retail BTRR of \$659,126,000, which amounted to an increase of 5.86 percent over SDG&E's then-effective retail rates and a wholesale BTRR of \$655,851,000, which amounted to an increase of 6.4 percent over its currently-effective wholesale rates.⁹

Further, SDG&E requested a return on equity ("ROE") of 11.3 percent, consisting of a base return of 10.3 percent plus a 50 basis-point incentive adder for its continued participation in CAISO and a 50 basis-point adder for its increased investment risk.¹⁰ This proposed ROE was less than the then-current TO3 Formula ROE of 11.35 percent. SDG&E also proposed new transmission depreciation rates to go into effect September 1, 2013.

Finally, SDG&E proposed minor revisions to Appendix IX of the TO Tariff in an effort to reconcile terminology with current CAISO terminology and procedures. SDG&E stated that this aspect of its Filing is separate from the TO4 Formula but still an important part of the TO Tariff.¹¹

No Party opposed the proposed changes to Appendix IX; however, Parties protested numerous aspects of the TO4 Formula and sought summary rulings on some of SDG&E's proposals. The Commission declined to act summarily on all but two issues and set the TO4 Filing for hearing and settlement procedures to resolve all contested issues. With respect to the two issues summarily resolved, the Commission found that SDG&E: (1) is entitled to a 50-basis

⁸ SDG&E Filing at 2-3.

⁹ *Id.* at 4.

¹⁰ *Id.* at 9; Ex. SDG-9 at 6-7.

¹¹ *Id.* at 3.

point ROE adder for being a member of the CAISO and (2) is required to use an average of the 13-monthly balances to develop transmission rate base, consistent with Section 35.13(h)(4)¹² of the Commission's regulations. In that regard, the Commission instructed SDG&E to use the average 13-monthly balances in determining its transmission rates.

SDG&E, the Parties and Commission Trial Staff ("Trial Staff") held formal settlement conferences before Judge Judith A. Dowd; however, on September 25, 2013, Judge Dowd reported that SDG&E and the Parties had reached an impasse in their settlement negotiations and recommended termination of settlement procedures. On September 26, 2013, the Chief Judge issued an order which, among other things, terminated settlement judge procedures and designated Judge H. Peter Young as the Administrative Law Judge to preside over the hearing. Judge Young subsequently appointed dispute resolution specialists from the Office of Administrative Law Judges and Dispute Resolution to facilitate settlement negotiations. With the assistance of Judge Dowd and the dispute resolution specialists, a negotiated resolution of disputed issues was reached culminating in this Settlement.

The TO4 Formula, embodied in Appendix VIII, the Formula Rate Protocols ("Protocols") and the Formula Rate Spreadsheet, has been developed in accordance with the Settlement.

II. ARTICLE I – SETTLEMENT RATES

Effective September 1, 2013, during the term of the TO4 Formula, SDG&E's wholesale and retail BTRR shall be determined by the TO4 Formula, consistent with the terms of this Settlement. The TO4 Appendix VIII, which includes the Protocols as Attachment 1 and the Formula Rate Spreadsheet as Attachment 2, constitutes the "TO4 Formula." The TO4 Formula

¹² 18 C.F.R. § 35.13 (h)(4) (2013).

constitutes the filed-rate. The TO4 Formula Appendix VIII, including Attachments 1 and 2, is being filed with and is an integral part of this Settlement.

When SDG&E makes its annual Informational Filing, if any person protests any cost reflected in charges derived under TO4 Formula, SDG&E shall bear the burden of demonstrating the justness and reasonableness of its implementation of the TO4 Formula, consistent with Commission precedent and Sections C.4.d. and C.4.g. of the Protocols.

1.1. Wholesale BTRR

The TO4, Cycle 1 formulaic BTRR for the transitional Rate Effective Period, beginning September 1, 2013 through December 31, 2014, consists of (1) Base Period revenues and (2) Forecast Period revenues.

Effective September 1, 2013, the TO4, Cycle 1 Wholesale BTRR shall be \$538.410 million, as determined in accordance with the TO4 Formula.

1.2. Retail BTRR

Effective September 1, 2013, the TO4, Cycle 1 Retail BTRR shall be \$541.698 million, as determined in accordance with the TO4 Formula.

1.3. Miscellaneous Rate Matters

1.3.1. This Settlement resolves issues concerning generation interconnection facilities costs for SDG&E-owned generators installed after March 2000, unfunded or partially funded reserves and the income tax calculation formula for the equity component of Allowance for Funds Used During Construction, each of which shall be recovered by SDG&E in accordance with the TO4 Formula. Further, SDG&E will include Accumulated Deferred Income Taxes (“ADIT”) in rate base. SDG&E will treat plant-related ADIT in the True-Up in the same

manner that it treats plant-related ADIT in the Base Period. Only plant-related ADIT will be included in the True-Up.

1.3.2. SDG&E will allocate all Administrative and General (“A&G”) costs recorded in Accounts 920-923 and 925-935, and all intangible plant costs recorded in Account 303 on the basis of labor ratios. All costs recorded in Account 924 shall be allocated on the basis of plant ratios.

1.3.3. SDG&E will include 50% of Operations and Maintenance expenses and 50% of A&G expenses in the Annual Fixed Charge Rate for projected capital additions.

1.4. Incentives

During the term of the TO4 Formula, and subject to the conditions set forth in the Protocols,¹³ SDG&E shall have the right to file a petition for declaratory order for authorization to recover transmission project-specific incentives. All persons retain their full rights to oppose the requested incentives.

1.5. Term

1.5.1 The term of the TO4 Formula shall be 5 1/3 years, beginning on September 1, 2013, and ending on December 31, 2018, subject to the following paragraph.

1.5.2. SDG&E and each Party (noted in footnote 1 herein), shall each have a one-time right to terminate the TO4 Formula by providing notice to SDG&E and each Party no later than June 30, 2016 (“Notice of Termination”). Following the Notice of Termination, SDG&E shall file a successor rate pursuant to Section

¹³ See Protocols, Section D.2.

205, which shall include a request for an effective date that is January 1, 2017.

All Parties retain their full rights to oppose the filing.

1.5.3. Notwithstanding the foregoing, the rates in effect at the time SDG&E makes a successor rate filing shall remain in effect until superseded by subsequent FERC-approved rates, consistent with Section 2.4(e) of the Commission's regulations.¹⁴

1.6. Depreciation Rates

The TO4 Formula will include stated transmission depreciation rates for each account upon which the annual depreciation expense shall be calculated. These rates are shown in Attachment A to this Settlement and Statement AJ work papers. The composite depreciation rate will be 2.52%, based on plant balances as of May 31, 2012, except for the Sunrise Powerlink project, which reflects plant balances as of July 31, 2012. The transmission depreciation rates cannot be changed during the term of the TO4 Formula.

The TO4 Formula also provides for stated depreciation rates and/or amortization periods for General Plant, Common Plant and Intangible Plant, as applicable. These rates and/or amortization periods, which also are shown in Attachment A to this Settlement and Statement AJ workpapers, cannot be changed absent a FPA Section 205 or 206 filing. SDG&E may make a single-issue Section 205 filing to change the depreciation rates and/or amortization periods for General Plant, Common Plant and Intangible Plant upon approval by the CPUC of revised depreciation rates and/or amortization periods for these plant categories. All persons retain their full rights to oppose the filing.

¹⁴ 18 C.F.R. § 2.4(e).

1.7. Cash Working Capital

SDG&E's cash working capital will be established by multiplying the total amount of SDG&E's O&M and A&G expenses allocated to transmission by 1/8th.

1.8. Post-Employment Benefits Other than Pensions ("PBOP")

1.8.1. SDG&E will continue to make annual single-issue Section 205 filings to update its PBOPs in accordance with Section D.1. of the Protocols.

1.8.2. SDG&E's right to file an annual single-issue PBOP filing will be included in Section D.1. of the Protocols.

1.8.3. PBOPs shall be stated separately in Statement AH.

1.9. Post-Construction Environmental Costs

SDG&E will expense, rather than capitalize, costs due to environmental requirements implemented after the affected facilities have been placed into service.

1.10. ROE

1.10.1. SDG&E's ROE will be 10.05%, including the 50 basis point adder for CAISO participation.

1.10.2. For each cycle under the TO4 Formula, SDG&E will use its actual equity, debt and preferred ratios as of December 31 of the Base Period to derive the capital structure for the Rate Effective Period applicable to that cycle.

1.10.3. The line for Account 219 in Statement AV will remain unpopulated for Cycle 1 and a True-Up Adjustment will be made in SDG&E's TO4 Cycle 2 Informational Filing to reflect the actual Account 219 amount shown in SDG&E's FERC Form 1. For each Informational Filing thereafter, the line for Account 219 in Statement AV will be populated in accordance with SDG&E's FERC Form 1.

1.11. Wholesale and Retail True-Up Mechanisms

The TO4 Formula reflects separate true-up mechanisms for its wholesale and retail rates. The details of the True-Up Adjustments are set forth in Section E of the Protocols.

1.12. FERC Account Nos. 182.2 and 407

Appendix VIII, Section I.B.21 provides that abandoned project costs, if any, “shall be recorded in FERC Account No. 182.2 and amortized to FERC Account No. 407.”

1.13. Income Tax Calculation

The federal and state income tax calculation in Appendix VIII, Section II.A.3 (b) and (c) have been revised as appropriate.

III. ARTICLE II – ENGINEERING AUDIT AND QUARTERLY REPORTS

2.1. In previous TO formulas, including the TO3 Formula, SDG&E agreed to jointly select with the CPUC a professionally competent engineering company (“Reviewing Engineer”) to review the need for and costs of (a) transmission facilities (including substations) added to the SDG&E transmission system at voltage levels of at least 69 kV and below 200kV; (b) substations added and/or modified that do not have a Certificate for Public Convenience and Necessity; and (c) projects whose costs are equal to or greater than \$3,000,000.

2.2. For the TO4 Formula, SDG&E will (a) jointly select with the CPUC a Reviewing Engineer to review items (a) through (c) in subsection 2.1. above; (b) support the CPUC and the Reviewing Engineer’s ability to participate in the CAISO’s review of SDG&E’s projects; and (c) make available \$200,000 to be spent on the engineering review in each cycle, subject to an annual inflation adjustment.

2.3. Within 45 days after the end of each calendar quarter, SDG&E shall provide to the CPUC and any other interested party that so requests the following information:

2.3.1. Quarterly reports, tracking the various historical O&M accounts for the most recent calendar quarter that are included in the TO4 Formula, with work papers and supporting documentation as appropriate to allow the CPUC and other parties to monitor the costs throughout the year rather than solely through the Annual Informational Filing; and

2.3.2. Quarterly reports to track when the forecast monthly transmission plant additions actually went into service as compared to when they were forecast to go into service as contemplated by the TO4 Formula.

IV. ARTICLE III – REFUNDS

This Settlement provides for refunds (with interest at Commission prescribed rates) resulting from the Settlement as set forth below.

3.1. Wholesale Refunds

SDG&E shall refund to the CAISO all payments that it has received from the CAISO that exceed the payments that would have been received had the Settlement Wholesale and Retail BTRR been reflected in the CAISO's Access Charge rates as of September 1, 2013.

The effective period for such refunds shall be from September 1, 2013 to the date the Access Charge rates resulting from this Settlement are implemented by the CAISO. Within ten (10) business days of the date on which all necessary approvals of this Settlement are obtained, SDG&E will request that the CAISO calculate and make refunds, with interest, as required under 18 C.F.R. §35.19a, to Utility Distribution Companies, Metered Subsystems, and Scheduling Coordinators for Access Charges and Wheeling Access Charges, as appropriate, under the CAISO Tariff. SDG&E will also request that the CAISO adjust the Wheeling Access Charge

revenues allocable to each Participating Transmission Owner (“PTO”) to reflect the refunds for Wheeling Access Charge service. Further, SDG&E will request that the CAISO, consistent with its Tariff, ensure that such adjustments to Wheeling Access Charge revenues are debited to each PTO’s TRBA in the first restatement of SDG&E’s and other PTOs’ TRBAs following all approvals of this Settlement.

3.2. Retail End Use Refunds

Retail End Use Refunds shall be effectuated in the True-Up Adjustment following the Rate Effective Period to which they apply. All such refunds shall reflect interest calculated pursuant to § 35.19a of the Commission’s regulations, 18 C.F.R. § 35.19a.

V. GENERAL PROVISIONS

4.1. Resolution of All Issues

This Settlement resolves all issues set for hearing and settlement judge procedures in this proceeding.

4.2. Non-Precedential Effect of Settlement for All Issues

This Settlement is non-precedential with respect to any proceeding, and its terms may not be referred to in any proceeding before the Commission or any court or other forum for the purpose of supporting or opposing any specific approach to any issue.¹⁵ Notwithstanding the foregoing, SDG&E and any Party to this proceeding may enforce its rights and obligations under this Settlement in any rate case or other proceeding, and this Settlement may be referred to and introduced for that sole purpose and no other. This Settlement is submitted on the condition that, in the event it does not become effective in accordance with its terms, it shall not constitute any part of the record in this proceeding or be used for any other purposes.

¹⁵ Specifically, this Settlement is entered into without prejudice to any position any party might take in any proceeding relating to the excess wildfire expense issue, *i.e.*, the excess wildfire costs arising from the 2007 Witch, Rice, and/or Guejito fires.

4.3. No Admission or Settled Practice for All Issues Set for Hearing

This provision applies to all issues set for hearing. Agreement to or acquiescence in this Settlement shall not be deemed in any respect to constitute an admission by SDG&E or any Party to this proceeding that any allegation or contention made by SDG&E or any other Party in this proceeding is true or valid. The Settlement represents a negotiated offer of settlement for the sole purpose of settling all issues set for hearing and settlement procedures in this proceeding. Neither SDG&E nor any Party to this proceeding or affiliate thereof shall be deemed to have approved, accepted, agreed to, or consented to any fact, concept, theory, rate methodology, principle, or method relating to jurisdiction, prudence, reasonable cost of service, cost classification, cost allocation, rate design, tariff provisions, or other matters underlying or purported to underlie any of the resolutions of the issues provided herein. The Commission's approval of the Settlement shall not constitute approval of, or precedent regarding, any principle or issue settled by this proceeding. The resolution of any matter in this Settlement shall not be deemed to be a "settled practice" as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC* ("PSCNY").¹⁶

4.4. Approval of Settlement and Privileged Nature of Settlement

This Settlement is submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602, and is offered solely as a compromise in order to resolve the issues set for hearing in this proceeding. The discussions among SDG&E, Trial Staff, and the Parties to this proceeding that have produced this Settlement have been conducted on the explicit understanding that they were undertaken subject to Rule 602(e) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(e), and the rights of such parties with

¹⁶ *PSCNY*, 642 F.2d 1335 (D.C. Cir. 1980).

respect thereto shall not be impaired by the Settlement. All documents provided or exchanged among SDG&E, Trial Staff, and the Parties to this proceeding in the course of such discussions are also subject to Rule 602(e).

4.5. Settlement Effectiveness

This Settlement shall become effective upon the issuance of a final Commission order approving this Settlement, including all attachments, without modifications or conditions or, if modified or conditioned, upon its acceptance by adversely affected parties as provided in Section 4.6 below.

4.6. Integration

This Settlement constitutes an integrated package of compromises that are non-severable. Notwithstanding the foregoing, if the Commission's approval of this Settlement is conditioned on the modification of this Settlement or on any other condition, such modification or condition shall be considered to be accepted unless SDG&E, Trial Staff, or any Party objecting to such condition or modification files written notice of objection to the Settlement, as modified or conditioned, with the Commission and serves such notice on SDG&E, Trial Staff, and the other Parties to this proceeding within a period of fifteen (15) days from the date of such final Commission order.

4.7. Entirety of Offer of Settlement

This Settlement supersedes all previous representations, understandings, negotiations, and agreements, whether written or oral, between the participants in this proceeding or their representatives, and constitutes the entire offer of settlement with respect to the matters set for hearing and settlement judge procedures in this proceeding.

4.8. Standard of Review

To the maximum extent permitted by law, the provisions of this Settlement shall not be subject to change under Sections 205 and 206 of the FPA absent the written agreement of SDG&E and the Parties to this proceeding, and the 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 “public interest” standard of review shall not apply to future changes to the Settlement adopted by the Commission acting *sua sponte* or at the request of an entity that was not a party to this proceeding.