

165 FERC ¶ 61,276
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company

Docket No. ER19-221-000

ORDER ACCEPTING AND SUSPENDING PROPOSED FORMULA RATE FILING,
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 31, 2018)

1. On October 30, 2018, San Diego Gas & Electric Company (SDG&E) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ revisions to its Transmission Owner Tariff (TO Tariff) to implement a new formula rate (the TO5 Formula) for the costs associated with its transmission facilities. The TO5 Formula is the successor to SDG&E's currently effective TO4 Formula,² which is due to expire by its terms on December 31, 2018. SDG&E is also including a proposed base transmission revenue requirement (BTRR) and associated retail and wholesale rates based on the TO5 Formula. In this order, the Commission accepts SDG&E's proposed TO5 Formula and related 2019 BTRR, suspends it for five months, to become effective June 1, 2019, subject to refund, and establishes hearing and settlement judge procedures.

I. Instant Filing

2. In the instant filing, SDG&E (1) proposes a new TO5 Formula and Appendix VIII³ to SDG&E's TO Tariff to succeed the TO4 Formula, which will expire on December 31, 2018; and (2) revises its BTRR and transmission rates for retail End Use customers and California Independent System Operator Corporation (CAISO) Wholesale

¹ 16 U.S.C. § 824d (2012).

² The TO4 Formula was embodied in an Offer of Settlement and Settlement Agreement (TO4 Settlement) submitted on February 4, 2014, which the Commission approved on May 27, 2014. *San Diego Gas & Elec. Co.*, 147 FERC ¶ 61,150 (2014).

³ Appendix VIII to SDG&E's TO Tariff, which includes the Formula Rate Protocols as Attachment 1 and the Formula Rate Spreadsheet as Attachment 2, constitutes the TO5 Formula.

customers for the Rate Effective Period under the terms of the proposed TO5 Formula.⁴ SDG&E states that the TO5 Formula continues most, but not all, aspects of the TO4 Formula, including its structure and organization. SDG&E explains that it is proposing changes to the definitions and terms in Appendix VIII, as well as to the TO5 Formula Rate Protocols (Protocols) in Attachment 1 to Appendix VIII and the TO5 Formula Rate Spreadsheet in Attachment 2 to Appendix VIII.⁵ SDG&E requests an effective date of January 1, 2019 for its filing.

3. SDG&E proposes several changes to the definitions and terms in Appendix VIII, which it states are generally clerical in nature. It also proposes to update the definitions involving Accumulated Deferred Income Taxes (ADIT) to include ADIT associated with non-plant related items such as labor and ad valorem taxes.⁶

4. In addition, SDG&E proposes revisions to the Protocols in Attachment 1 to Appendix VIII. Among these is a revision to the Protocols to modify the term of the TO5 Formula. SDG&E explains that the TO4 Formula was in effect through December 31, 2018, subject to a one-time termination right to be noticed by June 30, 2016. In contrast, SDG&E proposes that the TO5 Formula become effective January 1, 2019 and remain in effect without termination, except that SDG&E and interested parties shall each have a right to terminate the TO5 Formula, to be exercised on an annual basis beginning with the 2022 annual cycle, by providing SDG&E and each interested party notice no later than June 30 of any year. Following such notice, SDG&E states that it shall file a successor rate pursuant to FPA section 205, which shall include a request for an effective date that is January 1 of the upcoming year. SDG&E explains that the TO5 Formula shall remain in effect until the Commission accepts a successor rate mechanism.⁷

5. SDG&E identifies a number of key differences between the TO5 Formula and the TO4 Formula. First, SDG&E proposes revisions to be reflected in its TO5 Formula to address the recent change in the federal corporate income tax from 35 percent to 21 percent, for rates to take effect January 1, 2019. SDG&E states that this is consistent with the answer it filed in Docket No. EL18-67-000 in response to the Commission's show cause order regarding the impact of the Tax Cut and Jobs Act on its rates.⁸ SDG&E

⁴ SDG&E Filing at 1-2.

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.*

⁸ On November 15, 2018, the Commission issued an order acknowledging that SDG&E had submitted a response to the Commission's order that directed SDG&E and

proposes to reduce the BTRR in the first annual cycle of the TO5 Formula to reflect the benefits to ratepayers from the federal corporate income tax reduction for the period March 15, 2018 through December 31, 2018.⁹

6. In addition, SDG&E proposes an increase to its return on equity (ROE), which it contends reflects current market conditions and risks. Specifically, SDG&E proposes a base ROE of 10.7 percent, plus a 50-basis point adder for continuing participation in CAISO, for a total proposed ROE of 11.2 percent.¹⁰ SDG&E contends that its testimony included in Exhibit Nos. SD-0001, SD-0019, and SD-0028 demonstrates that the ROE requested in this proceeding is just and reasonable. In testimony, SDG&E employs three methodologies to derive its proposed ROE: (1) the Commission's discounted cash flow (DCF) methodologies using both Value Line growth forecasts and analysts' growth forecasts; (2) the capital asset pricing model; and (3) risk premium analyses. SDG&E states that these analyses result in an ROE range from 9.1 percent to 10.7 percent, with a midpoint of 9.9 percent.¹¹ SDG&E contends that it faces much higher than average risk compared to other regulated utilities, particularly related to catastrophic wildfires in California and changes in the California energy industry.¹² According to SDG&E, as a result of this risk, it proposes a base ROE at the upper end of this range of 10.7 percent, exclusive of the 50-basis point adder for CAISO participation.¹³

7. SDG&E also requests approval of new transmission depreciation rates to go into effect January 1, 2019,¹⁴ which result in an annual depreciation expense accrual of \$165.4 million. This represents an increase in the annual depreciation expense for SDG&E's electric utility assets of approximately \$19.6 million per year. In support of this request,

other public utilities to show cause why their formula transmission rates should not be revised to reflect the effect of the Tax Cut and Jobs Act. The November 15 order notes that SDG&E's response stated that it would reflect the revised federal corporate income tax in its TO5 Formula filing. *San Diego Gas & Elec. Co.*, 165 FERC ¶ 61,095, at P 10 (2018).

⁹ SDG&E Filing, Attachment 1 at 1.

¹⁰ *Id.*, Attachment 1 at 3.

¹¹ *Id.*, Ex. SD-0019 at 15-61.

¹² *Id.*, Ex. SD-0001 at 4-5; Ex. SD-0019 at 61-68; Ex. SD-0028 at 2-22.

¹³ *Id.*, Ex. SD-0019 at 61.

¹⁴ *Id.*, Attachment 1 at 3.

SDG&E includes testimony and a depreciation study that provide a calculated overall composite rate of 3.12 percent.¹⁵

8. SDG&E explains that the TO4 Formula contained separate true-up adjustments for retail and wholesale customers. SDG&E proposes revisions in the TO5 Formula to derive a single true-up adjustment that will apply in the derivation of the BTRRs for retail and wholesale customers. SDG&E contends that the proposed methodology will now conform more closely to the definition of the “True-Up Adjustment,” which is the difference between actual costs and recorded revenues for the “True-Up Period.” In addition, SDG&E asserts that a single true-up adjustment streamlines the annual informational filing and makes it more transparent by eliminating many levels of details that are calculated under the current process.¹⁶

9. SDG&E proposes other revisions to the TO5 Formula Rate Spreadsheet, such as: (1) modifications to the way ADIT is presented in Statement AF; (2) addition of a separate column for all FERC Form No. 1 references; (3) changes to the methodology for calculating the Annual Fixed Charge Rate, and application of the Annual Fixed Charge Rate to the Net Weighted Forecast Plant Additions to derive the Forecast Period Capital Addition Revenue Requirements to reduce future true-up adjustments;¹⁷ (4) addition of a line to capture Other BTRR Adjustments, such as prior year omissions, FERC Audit adjustments, and refunds related to the Tax Cuts and Jobs Act; (5) addition of a new line on Statement AQ to capture Federal Income Tax Deductions Other than Interest to accommodate potential future tax deductions; and (6) revisions to Statement AR to show the Amortization of Excess Deferred Taxes by specific FERC accounts and to add a new line to capture Other Federal Tax Adjustments.¹⁸

10. In addition to the changes to the TO4 Formula, SDG&E proposes to reflect in the TO5 Formula an Adjustment to Reflect Correction of Errors, in accordance with section C.5 of the Protocols. SDG&E explains that the error pertains to ADIT-related figures reported in the footnotes to Schedule Page 274 of its FERC Form No. 1 for the years 2012-2016. According to SDG&E, the error relates to its computation of deferred tax assets related to Net Operating Losses. SDG&E asserts that it erroneously computed deferred tax asset balances on a company-wide basis by including both transmission- and non-transmission-related (California Public Utilities Commission (CPUC) jurisdictional)

¹⁵ *Id.*, Ex. SD-0014 at 4, 6; Ex. SD-0016.

¹⁶ *Id.*, Attachment 1 at 3.

¹⁷ *Id.*, Attachment 1 at 3-4.

¹⁸ *Id.*, Attachment 1 at 4.

amounts in the computation, rather than only transmission-related amounts. SDG&E claims that the principal effect of this was the inappropriate and premature reduction of the Net Operating Loss carryforward generated by the Sunrise Powerlink transmission facility.¹⁹

11. SDG&E states that the Net Operating Loss carryforward arose from the fact that in 2012, it claimed a 100 percent bonus depreciation deduction on qualified Sunrise Powerlink costs of approximately \$1.44 billion. In addition, SDG&E claimed 50 percent bonus depreciation on other electric transmission projects that went into service in 2013-2017. SDG&E states that if it had correctly computed the deferred tax assets by including only transmission-related amounts, the Net Operating Loss carryforward would continue at least until 2020. However, SDG&E explains that if it continues to maintain the approach to computing deferred tax assets, the benefit from the Sunrise Powerlink and other transmission property in its ADIT would be reduced or offset by the inclusion of non-transmission-related (CPUC jurisdictional) activity and ADIT balances.²⁰ By making this change, SDG&E seeks to ensure that the Net Operating Loss from transmission facilities is assigned to transmission-related ADIT, consistent with the Commission's stand-alone policy.²¹ SDG&E asserts that the cumulative ratemaking impact of the existing approach is approximately \$91 million.²²

12. SDG&E states that the projected TO5 BTRR for End Use customers for 2019 is approximately \$910.9 million, representing a 10.6 percent increase over the current revenue requirement. The TO5 BTRR for CAISO Wholesale customers equals \$907.0 million, representing a 10.9 percent increase over the current revenue requirement. SDG&E states that the increase in transmission rates is primarily attributable to the following factors: (1) the revision to the Annual Fixed Charge Rate calculation; (2) the ADIT error correction; and (3) the revision to SDG&E's ROE.²³

13. Finally, SDG&E requests waiver of the Commission's cost support regulations under 18 C.F.R. § 35.13 (2018), to the extent such waivers are necessary. SDG&E

¹⁹ *Id.*, Attachment 1 at 1-2; Ex. SD-0017 at 3-8.

²⁰ *Id.*, Attachment 1 at 2.

²¹ *Id.* (citing *Kern River Gas Trans. Co.*, Opinion No. 486, 117 FERC ¶ 61,077, at PP 224-240 (2006); *Columbia Gas Transmission Co.*, Opinion No. 173, 23 FERC ¶ 61,396 (1983)).

²² *Id.*, Ex. SD-0001 at 8.

²³ *Id.* at 6.

asserts that good cause exists for such waiver because the statements, testimony and exhibits accompanying this filing, along with SDG&E's FERC Form No. 1, provide sufficient information for the reasonableness of the proposed formula rates.²⁴

II. Notice of Filing and Responsive Pleadings

14. Notice of SDG&E's filing was published in the *Federal Register*, 83 Fed. Reg. 55,526 (2018), with interventions and protests due on or before November 20, 2018. CPUC filed a timely notice of intervention, motion to reject, and protest. Timely motions to intervene were filed by Pacific Gas and Electric Company (PG&E), Southern California Edison Company, GridLiance West LLC, Modesto Irrigation District, State Water Contractors, the City of Santa Clara, California and the M-S-R Public Power Agency, and Northern California Power Agency. Timely motions to intervene and protests were filed by the California Department of Water Resources State Water Project (SWP), the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities), and the Transmission Agency of Northern California (TANC).²⁵ On December 6, 2018, SDG&E filed an answer to the motion to reject. On December 7, 2018, Citizens Energy Corporation (Citizens) filed a motion to intervene out-of-time. On December 18, 2019, SDG&E filed an answer to the protests.

A. Protests

15. As part of its pleading, CPUC moves to reject SDG&E's filing.²⁶ CPUC asserts that SDG&E's filing fails to conform to Commission regulations regarding the requisite information that must accompany any proposed rate increase, and that SDG&E does not meet the standards for waiver of these regulations. CPUC alleges that SDG&E's filing does not comply with FPA section 205 or part 35 of the Commission's regulations in that it lacks critical cost components. CPUC also alleges that SDG&E's filing does not comply with the Commission's formula rate policies in that the TO5 Formula relies on data found in company records and lacks transparency.²⁷ CPUC also opposes SDG&E's request for waivers, arguing that, while the Commission has granted waivers of the cost support required by 18 C.F.R. § 35.13 in formula rate cases involving FERC Form No. 1 data, the Commission has rejected such requests where there are questions regarding the

²⁴ *Id.* at 7 (citing *S. Cal. Edison Co.*, 136 FERC ¶ 61,074, at P 29 (2011)).

²⁵ TANC adopts the arguments of the CPUC, SWP, and Six Cities and requests that the Commission grant the relief requested by those entities. TANC Protest at 6.

²⁶ CPUC Protest at 3-17.

²⁷ *Id.* at 6-7, 11-13.

inputs to the formula.²⁸ Here, CPUC contends, SDG&E proposes to use unverifiable company books and records rather than relying on FERC Form No. 1 data.²⁹

16. Protesters generally argue that SDG&E's proposed rate increase is unjust, unreasonable, and substantially excessive, and presents numerous issues that require formal discovery. Accordingly, protestors assert that the Commission should suspend SDG&E's proposed rates for the maximum five-month period, subject to refund, and establish hearing and settlement judge procedures.³⁰

17. CPUC, SWP, and Six Cities argue that SDG&E's proposed ROE of 11.2 percent should be rejected for a number of reasons. Protesters state that the proposed ROE is 115 basis points greater than the present ROE, making it significantly greater than what is needed to attract capital.³¹ Protesters also assert that SDG&E's ROE analysis has several problems that warrant rejection: (1) the analysis fails to properly screen the proxy group according to Commission precedent;³² (2) the analysis fails to properly perform the Commission's DCF analysis;³³ (3) the analysis uses non-sanctioned growth estimates and dividend calculations;³⁴ (4) the capital asset pricing model and risk premium analyses are flawed and inflate SDG&E's cost of equity;³⁵ (5) SDG&E's unjustified ROE results in

²⁸ *Id.* at 7-11 (citing *Tampa Elec. Co.*, 133 FERC ¶ 61,023, at P 53 (2010) (*Tampa Electric*); *Duke Energy Carolinas, LLC*, 152 FERC ¶ 61,028, at P 16 (2015) (*Duke Energy*); *N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004, at PP 192-193 (2015) (*NYISO*)).

²⁹ *Id.* at 11.

³⁰ *Id.* at 18-19; Six Cities Protest at 37-39; SWP Protest at 14-15; TANC Protest at 6-7.

³¹ CPUC Protest at 20-22.

³² *Id.* at 22-25; Six Cities Protest at 11-14; SWP Protest at 5-6.

³³ CPUC Protest at 25-27; Six Cities Protest at 9-14; SWP Protest at 4-8.

³⁴ CPUC Protest at 25-27; Six Cities Protest at 10-11; SWP Protest at 6-7.

³⁵ CPUC Protest at 27-28; Six Cities Protest at 14-17; SWP Protest at 8-9.

rates that are excessive by at least \$60 million;³⁶ and (6) the recommended ROE is outside the zone of reasonableness.³⁷ CPUC also argues that SDG&E overstates its risks and fails to take into account the opportunities for investors in California utilities.³⁸

18. CPUC also takes issue with SDG&E's proposal for a 50 basis point adder for CAISO participation. CPUC asserts that SDG&E's eligibility for this adder should be determined in the pending litigation regarding PG&E's equivalent 50 basis point adder for CAISO participation, which is on remand from the Ninth Circuit.³⁹ CPUC suggests that the Commission use that proceeding to determine the outcome of this issue. CPUC further contends that, even if the Commission determines that SDG&E is eligible for the 50 basis point adder, the authorized ROE cannot exceed the top of the zone of reasonableness. According to CPUC, SDG&E's proposed 11.2 percent ROE, which includes the 50 basis point adder, is outside the top of the zone of reasonableness.⁴⁰

19. Protesters also express concerns regarding SDG&E's proposed Capital Additions Forecast and Annual Fixed Charge Rate. According to CPUC, SDG&E's self-approval practices for asset management capital additions are not just and reasonable, and a formula rate will exacerbate the situation. CPUC states that, while the Commission has encouraged utilities in California to voluntarily increase transparency over their transmission planning for projects that do not go through the CAISO Transmission Planning process, SDG&E's current proposal does not increase transparency in transmission revenue requirement forecasting or involve stakeholders in transmission planning processes.⁴¹ In addition, CPUC, Six Cities, and SWP take issue with the way SDG&E derives its revenue requirement associated with forecasted capital additions. According to protesters, SDG&E proposes to change the computation of the Annual Fixed Charge Rate by using Net Plant (Gross Plant less Accumulated Depreciation)

³⁶ SWP argues that SDG&E's ROE should be no higher than 8.93 percent. SWP Protest at 10-11. Six Cities argues that SDG&E's ROE should be no higher than 8.84 percent. Six Cities Protest at 18-23.

³⁷ CPUC Protest at 28-29.

³⁸ *Id.* at 30.

³⁹ *Id.* at 33 (citing *Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,121 (2018) (setting the issue of PG&E's eligibility for a 50 basis point adder for further briefing)).

⁴⁰ *Id.* at 33-34.

⁴¹ *Id.* at 34-35 (citing *Cal. Pub. Utils. Comm'n v. Pac. Gas & Elec. Co.*, 164 FERC ¶ 61,161, at P 74 (2018)).

instead of Gross Plant in the denominator of the Annual Fixed Charge Rate calculation. Protesters argue that SDG&E's proposal to change the Annual Fixed Charge Rate calculation overstates the Forecasted Period Capital Addition Revenue Requirements, thereby inflating SDG&E's proposed BTRR and increasing its cash flow.⁴²

20. CPUC, Six Cities, and SWP argue that SDG&E has not adequately demonstrated that an error in its ADIT calculation has occurred.⁴³ CPUC states that for an error to have occurred, SDG&E must show that the TO4 rates inadvertently did not reflect the agreed-upon ADIT methodology that was used to develop the TO4 rates agreed to in accordance with a multi-party Settlement Agreement. Otherwise, states CPUC, SDG&E is simply presenting an ADIT methodology change and applying it retroactively, which should not fall under the TO4 Protocol Provision for error corrections.⁴⁴ CPUC states that if SDG&E fails to adequately show its current proposal is indeed an error, an additional \$91 million dollars over TO4 rates could violate the "public interest" standard of review established in section 4.8 of the Settlement Agreement.⁴⁵ CPUC also asserts that the proposal may constitute a violation of the prohibition against retroactive ratemaking.⁴⁶

21. CPUC and Six Cities also contend that SDG&E failed to provide adequate evidence from CPUC data to substantiate its claim that the Net Operating Loss or deferred tax asset was improperly calculated previously, or that its revised calculation is correct.⁴⁷ Six Cities argues that it is unclear whether SDG&E has taken into account the Tax Cuts and Jobs Act of 2017 and its limits on the amount of Net Operating Loss that can be used to offset prior years' net operating income.⁴⁸ SWP argues that SDG&E proposes to collect not only its corrected True-Up TRR and interest rate, but also transmission-related municipal franchise fees and transmission-related uncollectibles, which are not explicitly provided for in the TO4 error correction protocol. Therefore,

⁴² *Id.* at 39-40, Six Cities Protest at 33-34, SWP Protest at 14.

⁴³ CPUC Protest at 40-44; Six Cities Protest at 24-26; SWP Protest at 11-13.

⁴⁴ CPUC Protest at 41.

⁴⁵ *Id.* at 43.

⁴⁶ *Id.* 43-44.

⁴⁷ *Id.* at 42, Six Cities Protest at 24.

⁴⁸ Six Cities Protest at 25.

states SWP, further discovery is necessary to provide the parties a chance to evaluate SDG&E's proposal and whether the resulting rate is just and reasonable.⁴⁹

22. CPUC, Six Cities, and SWP argue that SDG&E claims that it will refund excess deferred income tax balance (Excess ADIT) to ratepayers,⁵⁰ but does not include any return of Excess ADIT to customers when calculating TO5 Cycle 1 rates. Protesters express concern that SDG&E's Average Rate Assumption Method (ARAM)⁵¹ may unnecessarily delay the benefits of the Tax Cut and Jobs Act from flowing back to customers. CPUC states that it appears that the Commission has discretion in this area and could require SDG&E to begin the ARAM return of Excess ADIT to customers beginning in 2019 and remain consistent with normalization requirements. Six Cities argues that SDG&E should be required to (1) include a mechanism in its formula to provide for the flow-back of Excess ADIT to transmission customers, and (2) appropriately classify ADIT for purposes of determining the period of time over which ADIT should be amortized and flowed back.⁵²

23. Protestors argue that SDG&E's requested depreciation rate is too high. CPUC states that SDG&E's proposed composite depreciation rate of 3.12 percent accounts for nearly \$165.4 million of SDG&E's expenses, whereas continued use of the currently authorized 2.75 percent rate would result in a reduction of approximately \$19.6 million from what SDG&E has requested. CPUC argues that SDG&E does not adequately justify the necessity for this increase in its depreciation rate. Further, CPUC asserts that SDG&E may be significantly understating the salvage value of its assets, and states it will be pursuing this issue through discovery. Six Cities states that it will need additional discovery to consider several issues, including: (1) the validity of changes in the survivor

⁴⁹ SWP Protest at 12-13.

⁵⁰ *See* SDG&E Filing, Ex. SD-0017 at 10:1-4.

⁵¹ CPUC states that consistent with Tax Cut and Job Act normalization rules, utilities are required to use the ARAM methodology when calculating the return of excess ADIT. CPUC states that because there was no ARAM return of excess ADIT in 2017, ARAM benefits will then begin flowing back to SDG&E customers in 2020. Six Cities adds that in order to determine the appropriate amortization period for refunding excess ADIT, utilities must classify ADIT amounts as either (a) Protected Plant-Related; (b) Unprotected Plant-Related; or (c) Unprotected Non-Plant-Related.

⁵² CPUC Protest at 45-46; Six Cities Protest at 27-28; SWP Protest at 14.

cures for Accounts 352, 353, 356, and 358; (2) the change in the net salvage rate for Sunrise Powerlink; and (3) the proposed depreciation rate for Battery Storage Systems.⁵³

24. CPUC and SWP also express concern with the fact that the proposed Transmission Related Administrative and General expense is an unexplained 12 percent increase over TO4 Cycle 5. In addition, CPUC states that the increase in SDG&E's Transmission Wage & Salary allocator is only a five percent increase, and the remaining increase in costs has not been explained.⁵⁴ CPUC also states that SDG&E's current and proposed retail transmission rate designs need to be reexamined to assess whether they continue to adequately reflect cost causation. CPUC asserts that as renewable generation has reached greater penetration on SDG&E's system, loads and costs have become increasingly time-dependent, yet SDG&E's retail transmission rate designs have not been updated since 2009. According to CPUC, SDG&E's proposed formula rate results in flat (non-time-dependent) volumetric retail transmission rates that may not fully comport with its coincident-peak-based allocation of the TRR to customer classes.⁵⁵

25. Six Cities asserts that Statement AF includes very limited, generic categories of transmission-related balances of ADIT Accounts 190, 282, and 283, and SDG&E has not shown that it has properly reflected all transmission-related ADIT that should be included as transmission rate base adjustments. Six Cities states that it will require additional review and discovery to determine if Statement AF properly reflects the transmission-related ADIT additions and related adjustments to rate base.⁵⁶ Six Cities next expresses concerns regarding SDG&E's proposal to use a single true-up adjustment for retail and wholesale customers, asserting that the proposed change will negatively impact wholesale customers by including revenues and expenses in the true-up adjustment for wholesale customers that are only related to retail customers.⁵⁷ Six Cities also takes issue with SDG&E's proposal not to include accrued unfunded reserves in rate base, asserting it is contrary to Commission policy. According to Six Cities, inclusion of accrued unfunded reserves in rate base would reduce the wholesale BTRR by approximately \$1.5

⁵³ CPUC Protest at 47-48; Six Cities Protest at 30-31; SWP Protest at 14.

⁵⁴ CPUC Protest at 48; SWP Protest at 14.

⁵⁵ CPUC Protest at 48-49.

⁵⁶ Six Cities Protest at 26-27.

⁵⁷ *Id.* at 28-29.

million. Six Cities states that it will require discovery to identify all potential unfunded reserves that should be included as offsets to rate base as customer-funded capital.⁵⁸

26. Six Cities also expresses concerns regarding proposed revisions to SDG&E's Protocols, asserting that: (1) SDG&E unreasonably shortened the review period for its Draft Informational Filing, which provides insufficient time for interested party review and does not comport with the Commission's requirements;⁵⁹ (2) the Protocols do not assure interested parties that responses to information requests will be timely; (3) the Protocols inappropriately allow SDG&E to modify information in the reference sections and footnotes of the formula rate spreadsheet without a Commission filing;⁶⁰ (4) SDG&E has removed the requirement that it provide workpapers and a working Excel version of its formula as part of its Draft Informational Filing, which hinders review by interested parties; (5) section C.5 of the Protocols does not provide a standard for identifying a qualifying "error" or a process through which qualifying errors are reviewed;⁶¹ and (6) the Protocols should be revised to reserve third parties' rights to file under FPA section 206 to seek to change or cancel the TO5 Formula, which is inconsistent with SDG&E's express reservation of its own section 205 rights to take such actions.⁶²

B. Answer

27. In response to CPUC's motion to reject, SDG&E argues that it has complied with the Commission's filing requirements and has adequately supported its TO5 Formula filing with detailed statements, data, cost support, workpapers, and testimony, and that the CPUC has not specifically identified any missing information, or deficient or non-verifiable data.⁶³ SDG&E states that it sought waiver of section 35.13 of the Commission's regulations merely "to the extent such waivers are necessary" to permit the filing to take effect as requested, and asserts that the Commission routinely grants such

⁵⁸ *Id.* at 32-33.

⁵⁹ *Id.* at 34-35 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014)).

⁶⁰ *Id.* at 35.

⁶¹ *Id.* at 36.

⁶² *Id.* at 37.

⁶³ SDG&E December 6 Answer at 4, 6.

waiver requests.⁶⁴ SDG&E also distinguishes *Tampa Electric*, which CPUC relies on, arguing that it has provided detailed information for all of its inputs and data used in the formula. SDG&E asserts that, unlike in *Tampa Electric*, here there is neither missing cost support information nor known errors to be corrected.⁶⁵

28. SDG&E also states that the Commission recently denied a virtually identical CPUC motion to reject in response to PG&E's TO20 tariff filing in Docket No. ER19-13-000.⁶⁶ SDG&E contends that, like PG&E in its TO20 filing, SDG&E's TO5 Formula contains a fully populated formula rate model, and nearly 900 pages of workpapers, testimony, and other information. Likewise, SDG&E argues, any gaps in the filing are best addressed during hearing and settlement judge procedures.⁶⁷

29. In its December 18 answer, SDG&E asserts that the Commission should reject requests for a five-month suspension, and should instead suspend the TO5 Formula nominally, allowing it to take effect January 1, 2019, subject to refund. In support of this argument, SDG&E states that a nominal suspension would permit a seamless transition between the TO4 Formula and the TO5 Formula.⁶⁸ SDG&E also argues that all other arguments raised by protesters should be resolved through hearing and settlement judge procedures.⁶⁹

III. Discussion

A. Procedural Matters

30. 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.

31. 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

⁶⁴ *Id.* at 4.

⁶⁵ *Id.* at 4-5.

⁶⁶ *Id.* at 7-8 (citing *Pac. Gas & Elec. Co.*, 165 FERC ¶ 61,194, at P 34 (2018)).

⁶⁷ *Id.*

⁶⁸ SDG&E December 18 Answer at 3.

⁶⁹ *Id.* at 4.

decisional authority. We accept SDG&E's answer because it provided information that assisted us in our decision-making process.

32. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2018), the Commission will grant Citizens' 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. Substantive Matters

33. Our preliminary analysis indicates that SDG&E's TO5 Formula and proposed 2019 BTRR have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that SDG&E's filing raises issues of material fact that, to the extent not summarily disposed of here, cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. In *West Texas*, 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).⁷⁰ Based on our preliminary analysis, we find that SDG&E's proposed rates may yield substantially excessive revenues, and thus suspend them for five months. Therefore, we accept SDG&E's proposed TO5 Formula and proposed 2019 BTRR for filing, suspend them for five months to be effective June 1, 2019, subject to refund, and set all issues not summarily disposed of in this order for hearing and settlement judge procedures.

34. We grant SDG&E's request for waiver of the requirements under section 35.13 of the Commission's regulations. We find that granting waiver in this case is consistent with the Commission's precedent granting similar waiver requests by other public utilities in formula rate filings. Contrary to CPUC's contentions, the Commission has granted such requests for waiver where, as here, the applicant used both FERC Form No. 1 data and data included in company records.⁷¹ While CPUC relies on *Tampa Electric*, we note that the Commission in that case identified specific gaps in the data that

⁷⁰ *W. Tex. Utils. Co.*, 18 FERC ¶ 61,189, at 61,374-75 (1982).

⁷¹ See, e.g., *Pub. Serv. Co. of New Mex.*, 142 FERC ¶ 61,168, at P 29 (2013); *Empire Dist. Elec. Co.*, 140 FERC ¶ 61,087, at P 49 (2012); *S. Cal. Edison Co.*, 136 FERC ¶ 61,074, at P 29; *Xcel Energy Servs., Inc.*, 122 FERC ¶ 61,098, at P 75 (2008); *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205, at PP 40-41 (2007); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 57 (2007); *Allegheny Power Sys. Operating Cos.*, 111 FERC ¶ 61,308, at PP 55-56 (2005), *order on reh'g*, 115 FERC ¶ 61,156 (2006); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at PP 93-94 (2007).

were not supported by publicly available documents.⁷² Conversely, SDG&E seeks to revise a formula rate using a combination of FERC Form No. 1 data and SDG&E company records supported by detailed descriptions of the formula rate inputs, and, under these circumstances, we find that additional data are not needed for an evaluation of the justness and reasonableness of SDG&E's proposed Formula Rate. However, this finding does not preclude parties at hearing from demonstrating the need for additional specific information to allow for a full evaluation of SDG&E's proposal.

35. We further deny CPUC's motion to reject SDG&E's filing. SDG&E's filing contains a fully populated TO5 model, work papers, and testimony in support of its costs. In total, SDG&E's filing consists of approximately 900 pages of such testimony, work papers, and other information, and we believe that any gaps in the filing are best addressed during the hearing and settlement judge procedures ordered below. Having evaluated SDG&E's filing, we find that it satisfies the Commission's threshold filing requirements and is not patently deficient. We therefore deny CPUC's motion to reject SDG&E's filing.

36. 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.⁷³ If the parties desire, they may, by mutual agreement, request a specific judge as the Settlement Judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirement which determine judges' availability.⁷⁴ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of

⁷² *Tampa Electric*, 133 FERC ¶ 61,023 at PP 53-54 (stating that Tampa Electric acknowledges flaws in its formula rate and that a substantial amount of the costs are not based on publicly available documents); *see also Duke Energy*, 152 FERC ¶ 61,028 at P 16, n.32 (denying a waiver request where Duke Energy failed to support its actual costs and noting that it was unclear whether certain actuarial studies would be publicly available). We note that CPUC also cites *NYISO*, 151 FERC ¶ 61,004, but in *NYISO*, much of the applicant's costs in that case would be based on services provided by affiliated transmission owners, which is not the case here.

⁷³ 18 C.F.R. § 385.603 (2018).

⁷⁴ 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 (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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 assignment of the case to a presiding judge.

The Commission orders:

(A) SDG&E's proposed TO5 Formula and proposed 2019 BTRR are hereby accepted for filing and suspended for five months to become effective as of June 1, 2019, subject to refund, as discussed in the body of this order.

(B) SDG&E's requests for waivers are hereby granted, as discussed in the body of this order.

(C) The motion to reject SDG&E's proposed TO5 Formula and 2019 BTRR filed by CPUC is hereby denied, as discussed in the body of this order.

(D) 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 section 205 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 in Docket No. ER19-221-000 concerning the justness and reasonableness of SDG&E's proposed TO5 Formula and 2019 BTRR, 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 (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2018), 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 a 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.

(F) 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 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 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 McIntyre is not voting on this order.
Commissioner McNamee is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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