

112 FERC ¶ 61,208
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

City of Anaheim, California

Docket No. EL05-131-000

ORDER ON PETITION FOR DECLARATORY ORDER AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued August 23, 2005)

1. In this order, the Commission accepts the revised High Voltage Base Transmission Revenue Requirement (base Transmission Revenue Requirement or Transmission Revenue Requirement) for the City of Anaheim, California (Anaheim), effective July 1, 2005, as requested, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. On June 24, 2005, Anaheim filed a petition for a declaratory order asking the Commission to: (1) approve Anaheim's proposed Transmission Revenue Requirement, as revised; (2) waive the 60-day notice requirement to allow for an effective date of July 1, 2005; (3) waive the filing fee associated with this petition; and (4) grant any other relief or waivers necessary of appropriate for approval and implementation of Anaheim's revised Transmission Revenue Requirement.

3. Anaheim is a Participating Transmission Owner in the California Independent System Operator Corporation (CAISO). Anaheim is reimbursed for its Transmission Revenue Requirement by the CAISO through the 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 Transmission Revenue Requirements of all Participating Transmission Owners.¹

¹ See *California Independent System Operator Corp.*, Opinion No. 478, 109 FERC ¶ 61,301 (2004).

4. Anaheim proposes a revised base Transmission Revenue Requirement of \$25,969,779 on an annual basis.² Anaheim states that its Transmission Revenue Balancing Account Adjustment (TRBAA), which serves as a revenue credit or negative adjustment to the Transmission Revenue Requirement, will not change as a result of this filing and will remain \$952,829. Anaheim's revised High Voltage Transmission Revenue Requirement (*i.e.* Anaheim's base Transmission Revenue Requirement with the inclusion of the TRBAA adjustment) would become \$25,016,950, if accepted.

5. Anaheim states that the increase in its proposed Transmission Revenue Requirement results from adjustments to its costs from its Entitlements in the Southern Transmission System, the Mead-Adelanto Transmission Project, the Mead-Phoenix Transmission Project, contracts for various Entitlements with the Los Angeles Department of Water and Power, contracts for transmission capacity on Pacific Northwest DC Intertie, administrative and general expenses, regulatory expenses, and payments to the City of Anaheim by the Anaheim Public Utilities.

6. Anaheim requests waiver of the 60-day prior notice requirement and requests an effective date of July 1, 2005. Anaheim explains that its Entitlements in the STS, the Mead-Adelanto Project, and the Mead-Phoenix Project are all financed by the Southern California Public Power Authority (SCPPA) and are the most significant revisions to the proposed Transmission Revenue Requirement. The SCPPA budget, Anaheim's monthly costs for these projects, will change beginning July 1, 2005.

Notice of Filing and Responsive Pleadings

7. Notice of Anaheim's filing was published in the *Federal Register*, 70 Fed. Reg. 41,000 (2005), with comments, interventions, and protests due on or before July 15, 2005. Northern California Power Agency, Modesto Irrigation District, and the cities of Santa Clara and Redding, California, together with M-S-R Public Power Agency, filed motions to intervene. The California Independent System Operator Corporation (CAISO) filed a motion to intervene out of time. Pacific Gas & Electric Company (PG&E) and Southern California Edison Company (So Cal Edison) filed motions to intervene and protested Anaheim's filing.

² Anaheim's current Transmission Revenue Requirement is \$22,900,000. Anaheim's proposed Transmission Revenue Requirement reflects a \$ 3,069,779 increase.

8. PG&E states that the Commission should not adopt the comparability standard of review (similar to the standard applied in Order No. 888³ for non-public utilities) in its review of Anaheim's proposed Transmission Revenue Requirement and should instead apply the standard of review under section 205 of the Federal Power Act.⁴

9. PG&E argues that parts of Anaheim's proposed Transmission Revenue Requirement are unclear or unjust and unreasonable and that this filing should be set for hearing. PG&E states that Anaheim's proposed Transmission Revenue Requirement should not include transfers to the Anaheim general fund because these transfers generally support city services that solely benefit Anaheim residents. It argues that CAISO ratepayers, located throughout California and outside California, should not be required to pay TAC rates that includes costs for transfers of funds that solely provide services for Anaheim residents. PG&E contends that general fund transfers are more appropriately recovered through retail electric rates.

10. So Cal Edison argues that the Commission should set the proposed Transmission Revenue Requirement for hearing because Anaheim has not met its burden of establishing that it is just and reasonable. It argues that Anaheim's petition fails to adequately explain most of the proposed increases to its Transmission Revenue Requirement. For example, it asserts that Anaheim explains an increase in costs for its Mead-Adelanto and Mead-Phoenix lines by stating that after July 2005, it must pay principal in addition to interest expenses on the projects. So Cal Edison argues that it is unclear why principal payments would begin after these projects have been in service for many years.

11. Both PG&E and So Cal Edison argue that Anaheim's proposed Transmission Revenue Requirement should not include right-of-way fees, which are imposed by Anaheim for costs associated with facilities located in the public streets, ways, alleys, or places owned by the City of Anaheim. PG&E argues that no transmission facilities at issue in Anaheim's Transmission Revenue Requirement are located within the City of Anaheim. So Cal Edison argues that Anaheim has provided no evidence that the

³ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1996), *aff'd in part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁴ 16 U.S.C. § 824e (2000).

resulting revenue from these fees would yield a just and reasonable return, applying the traditional rate base model used by the Commission.

12. PG&E states that the administrative and general expenses component of Anaheim's proposed Transmission Revenue Requirement (primarily for time spent by Anaheim employees) is based on market salaries and not actual salary information. PG&E states that it is unclear why Anaheim uses market and not actual salary information in determining this cost. Further, So Cal Edison argues that Anaheim has not demonstrated that its administrative and general costs are just and reasonable, given that there is a nearly 17 percent increase from fiscal year 2003-2004. Finally, PG&E questions why the gains associated from refinancing the debt on the Mead-Adelanto and Mead-Phoenix lines were credited to income in 2004 instead of being amortized over the life of the new debt issue.

13. So Cal Edison does not oppose Anaheim's request of waiver of the 60-day prior notice requirement for an effective date of July 1, 2005, as long as the proposed Transmission Revenue Requirement is made subject to refund on that date.

Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant CAISO's untimely motion to intervene, given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

B. Standard of Review

15. We have not established a formal standard of review to be applied to all non-jurisdictional Transmission Revenue Requirement cases but consider the issue on a case-by-case basis. The Commission addressed this issue recently in an opinion reviewing the Transmission Revenue Requirement filed by the City of Vernon, California (Vernon).⁵

⁵ *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). Vernon filed its proposed Transmission Revenue Requirement on August 30, 2000, which was accepted subject to certain modifications by the Commission. PG&E appealed to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). The D.C. Circuit remanded to the Commission the questions of which standard the Commission used in its review of the Vernon filing and whether the review would ensure that the CAISO's rates will be

(continued...)

16. In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was clearly not subject to our section 205 jurisdiction. However, the Commission explained that, in *PG&E*, “the court gave the Commission discretion concerning the review of Vernon’s [Transmission Revenue Requirement], so long as that review ‘ensure[s]. . . that the CAISO’s rates will ultimately be just and reasonable.’”⁶ It further explained that the court did not rule out the possibility of a strict section 205 review but gave the Commission the discretion to conduct a less thorough review if possible. The Commission added that it saw no need to establish a formal standard to be applied to all non-jurisdictional Transmission Revenue Requirement cases, but by making clear the standard it was applying to its review of Vernon’s Transmission Revenue Requirement, it was complying with the court’s mandate, and was providing substantial guidance for further cases involving nonjurisdictional Transmission Revenue Requirements.⁷

17. With respect to Vernon’s Transmission Revenue Requirement in particular, the Commission determined that it could not give deference to the Vernon City Council’s rate determinations, and that Vernon’s Transmission Revenue Requirement was therefore subject to a full and complete section 205 review as part of the Commission’s section 205 review of the CAISO’s jurisdictional rate.

18. Therefore, in establishing hearing procedures to determine the appropriate Transmission Revenue Requirement for Anaheim, which has been approved by the Anaheim City Council, we will leave the manner in which the determination will be made to the discretion of the presiding judge, subject to the guidelines established by Opinion No. 479. Whether this will entail a section 205 proceeding like the one in Vernon in order to establish a sufficient record on the justness and reasonableness of Anaheim’s Transmission Revenue Requirement will be up to the presiding judge in the first instance.

just and reasonable under section 205. *Pacific Gas & Electric Co. v. FERC*, 306 F.3d 1112 (D.C. Cir. 2002) (*PG&E*). The Commission initially began settlement procedures in response to the remand but ultimately set Vernon’s Transmission Revenue Requirement for hearing.

⁶ Opinion No. 479, 111 FERC ¶ 61,092 at P 35 (quoting *PG&E*, 306 F.3d at 1116).

⁷ *Id.* at P 36.

C. Hearing Procedures

19. Anaheim's filing 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.
20. Our preliminary analysis indicates that Anaheim's proposed Transmission Revenue Requirement has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept Anaheim's Transmission Revenue Requirement for filing, make it effective as of July 1, 2005, as requested, subject to refund, and set it for hearing and settlement judge procedures.
21. 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 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.⁸ 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.⁹ 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.

⁸ 18 C.F.R. § 385.603 (2005).

⁹ 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 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).

D. Waiver of Filing Fee

22. We will grant Anaheim'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 in Part 381.¹⁰ Anaheim explains that it is a municipal utility organized under the laws of California. Anaheim is therefore exempt from the filing fee required for a petition for a declaratory order.

The Commission orders:

(A) Anaheim's proposed Transmission Revenue Requirement is hereby accepted for filing, effective July 1, 2005, subject to refund.

(B) Anaheim's petition for waiver of the filing fees 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 Commission by section 402(a) of the Department of Energy Organization Act and 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 Anaheim's proposed Transmission Revenue Requirement. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in 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 (2005), 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 in writing or by telephone within five (5) days of the date of this order.

(E) 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

¹⁰ 18 C.F.R. § 381.108 (2005).

discussions continue, the settlement judge shall file a report at least 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 this proceeding 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.