

185 FERC ¶ 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
Allison Clements, and Mark C. Christie.

Pacific Gas and Electric Company

Docket No. ER24-96-000

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

(Issued December 29, 2023)

1. On October 13, 2023, Pacific Gas and Electric Company (PG&E) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ revisions to its Transmission Owner Tariff (TO Tariff) to revise its formula rate (Formula Rate) for the costs associated with its transmission facilities. PG&E also filed a proposed 2024 base Transmission Revenue Requirement (TRR) and associated retail and wholesale transmission rates based on the Formula Rate, which PG&E states result in a decrease in its 2023 TRR. In this order, the Commission accepts in part PG&E's proposed revised Formula Rate and related 2024 TRR, suspends them for a nominal period, to become effective January 1, 2024, and establishes hearing and settlement judge procedures. In addition, the Commission rejects PG&E's request for an adder to its proposed return on equity for its continued participation in California Independent System Operator Corporation (CAISO) (RTO Adder).

I. Background and the Instant Filing

2. PG&E's current Formula Rate was filed on October 1, 2018, in Docket No. ER19-13-000 (TO20 Formula Rate). In an order issued on November 30, 2018, the Commission accepted PG&E's proposed TO20 Formula Rate and related 2019 TRR, suspended it for five months, to become effective May 1, 2019, subject to refund, and established hearing and settlement judge procedures.² On March 31, 2020, PG&E filed an Offer of Partial Settlement resolving certain issues, which the Commission approved on August 17, 2020.³ On October 15, 2020, PG&E filed an Offer of Settlement (TO20

¹ 16 U.S.C. § 824d.

² *Pac. Gas & Elec. Co.*, 165 FERC ¶ 61,194 (2018).

³ *Pac. Gas & Elec. Co.*, 172 FERC ¶ 61,142 (2020).

Settlement) resolving all remaining issues, which the Commission approved on December 30, 2020.⁴ PG&E states that the TO20 Settlement provides that the TO20 Formula Rate terminates on December 31, 2023, and requires PG&E to file a new Formula Rate by October 18, 2023.⁵

3. PG&E's Formula Rate consists of two components: (1) the Model; and (2) the Protocols. The Model is a spreadsheet containing individual schedules that calculate the TRR and transmission rates. The Protocols set forth the terms and operation of the formula rate, including annual update and informational filing timelines, as well as review and challenge procedures. PG&E states that the proposed TO21 Formula Rate uses the same structure as the TO20 Formula Rate, with modifications discussed further below to reflect events that have occurred since the TO20 Formula Rate Model went into effect.⁶ PG&E states that its proposed TO21 Formula Rate operates using three calendar periods: (1) the prior year, which is the most recent calendar year prior to the filing year (for this filing, the prior year is 2022); (2) the filing year, which is the year when PG&E files its annual update (for this filing, the filing year is 2023); and (3) the rate year, which is the year in which the rates will be effective and is the year immediately following the filing year (for this filing, the Rate Year is 2024).⁷

4. PG&E explains that the proposed TO21 Formula Rate calculates a Base TRR, which consists of a wholesale base TRR, plus retail tax adjustment, plus retail uncollectible expense. PG&E states that the wholesale base TRR is calculated by taking the prior year TRR (representing actual costs from PG&E's FERC Form No. 1 supplemented by PG&E company records as needed), plus an incremental TRR (representing the additional costs that PG&E forecasts to incur during the period of time the Base TRR will be in effect), plus an annual true-up adjustment (which is the difference between PG&E's actual transmission costs and revenues received, plus interest).⁸

⁴ *Pac. Gas & Elec. Co.*, 173 FERC ¶ 61,281 (2020).

⁵ PG&E Transmittal Letter at 2 & nn.2-3 (citing Settlement at §1.3).

⁶ PG&E states that it held pre-filing discussions with a number of interested parties in advance of filing the TO21 Formula Rate. *Id.* at 5-6.

⁷ *Id.* at 6.

⁸ *Id.* at 6-7.

5. PG&E states that it has made changes to its Protocols to reflect recent guidance by the Commission⁹ and pre-filing discussions with interested parties. Specifically, PG&E explains that the Protocols provide for PG&E to post a draft annual update by June 15 of each year followed by an extensive review and information exchange process that goes to December 1.¹⁰ PG&E states that the Protocols provide for PG&E to file the annual update with the Commission on or about December 1 for rates and charges to become effective January 1 of the following year. PG&E states that parties have until January 30 to challenge or protest the annual update and PG&E has until March 15 to file a response.¹¹

6. PG&E states that its proposed TO21 Formula Rate results in a wholesale base TRR for Rate Year 2024 of approximately \$2.812 billion, which PG&E states is a decrease of approximately \$352 million or 11% from the base TRR under its TO20 Formula Rate for rate year 2023.¹² PG&E states that the main drivers of the decrease are: (1) a reduction in recorded costs in the prior year TRR; (2) a reduction in the annual true-up adjustment; (3) cost savings resulting from PG&E's proposed wildfire self-insurance program; and (4) the removal of certain forecasted capital costs associated with an anticipated agreement with Citizens Energy Corporation (Citizens).¹³ PG&E provides an overview of some of the significant modifications discussed below.

7. PG&E proposes a base return on equity (ROE) of 12.37%, which it states reflects PG&E's current financial situation and the significant uncertainties and risks currently faced by PG&E as a result of wildfires and California's existing inverse condemnation policy.¹⁴ PG&E states that its testimony produces a composite zone of reasonableness ranging from 8.02% to 13.24%, and recommends the base ROE at the top of the

⁹ *Id.* at n.15 (citing *Ala. Power Co.*, 178 FERC ¶ 61,207 (2022); *Idaho Power Co.*, 179 FERC ¶ 61,054 (2022)).

¹⁰ *Id.* at 7-8; Protocols § 4.5.

¹¹ PG&E Transmittal Letter at 8; Protocols § 4.1.

¹² PG&E Transmittal Letter at 1; PG&E Filing, Ex. PGE-0004 at 25. PG&E filed its annual update under the TO20 Formula Rate on December 1, 2022, in Docket No. ER19-13-000 revising its base TRR and associated rates to be effective on January 1, 2023. The filing is currently pending.

¹³ PG&E Transmittal Letter at 1-2.

¹⁴ *Id.* at 8-9.

composite zone, or 13.24%, to account for PG&E's above-average risk.¹⁵ PG&E asserts that, after taking into consideration the potential effect of the continuous improvements in its electric transmission system as a result of implementing wildfire mitigation measures, a slightly lower base ROE of 12.37% is just and reasonable.¹⁶ In addition, PG&E requests the RTO Adder of 50 basis points for a total proposed ROE of 12.87%. PG&E contends that it is entitled to the RTO Adder consistent with a decision issued by the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) in June 2022.¹⁷ PG&E notes that the California General Assembly passed a bill in 2022 to state that PG&E shall participate in CAISO¹⁸ but argues that the legal validity of this law has not been tested and, more importantly, its effect may be obviated based on the outcome of a case currently pending in the United States Court of Appeals for the Sixth Circuit.¹⁹

8. Next, PG&E proposes a capital structure that uses adjusted, recorded inputs from FERC Form No. 1 rather than a fixed capital structure.²⁰ PG&E explains that its emergence from bankruptcy and resolution of wildfire liabilities included financing transactions that did not result in the acquisition of rate base utility assets but affected the company's book equity, including shareholder-funded contributions to the California Wildfire Fund and securitization of certain wildfire liabilities.²¹ Specifically, PG&E proposes adjustments to remove long-term debt and securitization from the capital structure calculations, which are not used to finance rate base. According to PG&E, these adjustments result in capital structure ratios of equity to debt that are more reflective of rate base financing.²² PG&E states that its proposed capital structure is similar to the adjustments it proposed in Docket No. ER19-1816-000, which were

¹⁵ *Id.* at 9; Ex. PGE-0019 at 20-22.

¹⁶ PG&E Transmittal Letter at 9; Ex. PGE-0001 at 13:20-14:17; Ex. PGE-0019.

¹⁷ PG&E Transmittal Letter at 9-10 & n.28 (citing *Cal. Pub. Util. Comm'n v. FERC*, 29 F.4th 454 (9th Cir. 2022) (*CPUC*)).

¹⁸ *Id.* at 10 (citing Cal. Pub. Util. Code § 362(c) and (d)).

¹⁹ *Id.* (citing *Am. Elec. Power Serv. Corp. v. FERC*, Case Nos. 23-3196 and 23-3366 (6th Cir. Court of Appeals)).

²⁰ PG&E states that the TO20 Settlement resulted in a fixed capital structure of 49.75% common equity; 49.75% debt; and 0.5% preferred stock. *Id.*

²¹ *Id.*

²² *Id.* at 10-11.

consolidated with the TO20 Formula Rate proceeding,²³ and is consistent with California Public Utilities Commission (CPUC) decisions that authorize PG&E to exclude certain debt costs and make other adjustments when calculating its capital structure.²⁴

9. PG&E also proposes to include in the TO21 Formula Rate costs associated with its wildfire liability self-insurance program. PG&E states that it has targeted, in recent years, the purchase of \$1 billion in general liability insurance to cover potential wildfire claim costs. PG&E explains that it primarily purchased combined general liability policies covering both wildfire and non-wildfire claim costs in a single policy, but that beginning in 2020, carriers began bifurcating policies into two distinct product offerings, one for wildfire claim costs and a second and separate product for non-wildfire claim costs.²⁵ PG&E states that the cost of wildfire-only insurance has gotten so high that in 2022, the average cost of wildfire liability insurance coverage in the commercial markets was greater than 80 cents for each dollar of coverage procured.²⁶ PG&E explains that its wildfire liability self-insurance program will provide significant potential customer savings in the years in which there are smaller losses or no losses because unused funds will be rolled over to the next year, and as the self-insurance balance grows, PG&E can reduce the amount of potential cost recovery in future years to cover its wildfire liability insurance costs.²⁷

10. PG&E explains that it has established a \$1 billion target as a result of California Assembly Bill 1054, which created the California wildfire fund and requires participating California utilities to be responsible for the first \$1 billion in claim costs before the wildfire fund may be called upon.²⁸ PG&E states that under the currently effective TO20 Formula Rate, TO customers are allocated a portion of PG&E's insurance premiums, including wildfire insurance premiums, using a blended allocation factor that is 60% labor, 40% plant allocator. In the TO21 Formula Rate, PG&E proposes to first allocate to customers a portion of the initial contribution to establish a \$1 billion wildfire self-

²³ See *Pac. Gas & Elec. Co.*, 168 FERC ¶ 61,007 (2019) (accepting and suspending proposed revisions to the capital structure calculation in PG&E's Formula Rate and consolidating proceedings).

²⁴ PG&E Transmittal Letter at 11 & n.33 (citing CPUC Decision (D.) 20-12-025 at 41-43; D.21-04-030, Ordering Paragraphs 18-19).

²⁵ *Id.* at 11-12.

²⁶ *Id.* at 12.

²⁷ *Id.*

²⁸ Ex. PGE-0003 at 4.

insurance fund, then allocate to customers a portion of the amounts necessary to replenish the fund as needed due to claims.²⁹ PG&E proposes to use a plant allocation factor for both the initial contribution and the replenishment amount because any wildfire is likely to be caused by PG&E's facilities (i.e., plant) rather than PG&E employees (i.e., labor).

11. PG&E proposes a single-issue filing provision³⁰ in section 10.7 of its Protocols to allow for an FPA section 205 filing to revise the Formula Rate as needed to reflect any changes to the implementation of PG&E's wildfire self-insurance program approved by CPUC.³¹ PG&E states that the new Schedule 30-WFSelfInsurance of the Model addresses the allocation of wildfire self-insurance costs to customers, and explains that PG&E will also be providing workpapers to interested parties with further detail regarding wildfire self-insurance costs.³²

12. PG&E proposes a composite depreciation rate of 3.29% based on its depreciation study of the average service lives, net salvage, and cost of removal of PG&E's assets. PG&E states that its depreciation study takes into consideration the remaining life technique to reflect the increased estimated average service lives of assets affected by its tower coating program as directed by the Commission.³³

13. PG&E explains that it proposed to transfer substantially all of its non-nuclear generation assets to a new wholly owned subsidiary, Pacific Generation, LLC (Pacific Generation) and as part of its proposal indicated that it would hold transmission

²⁹ PG&E Transmittal Letter at 12-13.

³⁰ Section 10 (Revisions to Formula Rate Provisions) of PG&E's existing Protocols provides that PG&E may make a single-issue FPA section 205 filing to revise the Formula Rate under a limited number of circumstances including: (1) changes to FERC Form No. 1 or Uniform System of Accounts; (2) changes in retail transmission rates that are required as a result of a CPUC order; (3) changes to the depreciation rates; and (4) changes to reflect any future non-ROE transmission incentives granted by the Commission. Section 10 of the Protocols allows other parties to make single-issue FPA section 206 filings and provides that the Commission is not bound by any single-issue filings from reviewing any or all components of the Formula Rate and may at its discretion broaden the scope of a filing.

³¹ Ex. PGE-0003 at 13-14.

³² PG&E Transmittal Letter at 14.

³³ *Id.* at 13-14 & n.36 (citing *Pac. Gas & Elec. Co.*, 178 FERC ¶ 61,123, at P 21 (2022)).

customers harmless from transaction-related costs.³⁴ PG&E states that its testimony explains how Pacific Generation transaction costs were removed from the Formula Rate to hold transmission customers harmless.³⁵ PG&E states that because the CPUC is still considering the Pacific Generation transaction, PG&E and interested parties agreed to add a single-issue filing provision in section 10.6 of the Protocols that directs PG&E to “make a [f]iling to revise the Formula Rate as needed to reflect any changes required by decisions issued by the CPUC and/or FERC after July 1, 2023 to allow the Formula Rate to fully reflect the specific accounting (e.g., operating expenses, rate base, and allocation factor) impacts regarding PG&E’s proposed Pacific Generation transaction.”³⁶

14. PG&E states that it is currently negotiating a Development, Coordination, and Option Agreement with Citizens to provide an annual option for Citizens to enter separate 30-year leases with PG&E for up to \$200 million annually. PG&E explains that under each lease, Citizens will prepay the lease amount to PG&E and in turn, Citizens would receive a leasehold interest in the usage rights for transmission assets that are not yet included in PG&E’s rate base, and that Citizens will also pay a share of the operation and maintenance costs for these projects based on the percentage of its leasehold interest.³⁷ PG&E states that this agreement will help enable necessary transmission investments on PG&E’s system while investing in the communities served by PG&E, and that Citizens has entered into similar transactions with San Diego Gas & Electric Company (SDG&E).³⁸

15. PG&E explains that in order to avoid double recovery of these leased assets, PG&E has removed the expected prepaid lease payment from forecasted capital costs associated with a group of projects forecasted to go into PG&E rates in 2024 and that PG&E anticipates will be part of the 2024 lease with Citizens.³⁹ PG&E also states that it has also included in section 10.8 of its Protocols a single-issue filing provision that

³⁴ *Id.* at 14 & n.37 (citing *Pac. Gas & Elec. Co.*, 183 FERC ¶ 61,159 (2023)).

³⁵ Ex. PGE-0001 at 10.

³⁶ PG&E Transmittal Letter at 14.

³⁷ *Id.*

³⁸ *Id.* at 14-15 & n.40 (citing e.g., *San Diego Gas & Elec. Co.*, 129 FERC ¶ 61,233 (2009) (describing Citizens’ transaction for Sunrise Project transaction and approving petition for declaratory order); *San Diego Gas & Elec. Co.*, 151 FERC ¶ 61,011 (2015) (approving petition for declaratory order regarding Sycamore- Peñasquitos Project transaction)).

³⁹ *Id.* at 15.

allows PG&E to make a section 205 filing to modify the TO21 Formula Rate, if needed, after the Citizens transaction is approved by the Commission and/or CPUC.⁴⁰ PG&E states that if the transaction with Citizens does not close or there are changes to the group of projects actually included in the 2024 lease, PG&E will revise the capital costs in its annual update for Rate Year 2025 and any difference between PG&E's actual capital costs and forecast will be trued-up in the annual true-up adjustment of the Formula Rate.⁴¹

16. PG&E proposes to add to the Formula Rate Model a new Schedule 31-COO (cost of ownership) to reflect the cost of ownership rates based on up-to-date cost of service for customer-financed and PG&E-financed facilities.⁴² Finally, PG&E has also included a new schedule for the construction work in progress (CWIP) Incentive – Schedule 32-CWIP Incentive – to provide a mechanism for any network transmission projects for which PG&E has received authorization from the Commission for CWIP incentive treatment to include in rate base.⁴³

17. PG&E requests an effective date of December 13, 2023; however, PG&E requests that the Commission suspend the TO21 Formula Rate until January 1, 2024. PG&E states that the currently effective base TRR and transmission rates from the TO20 Formula Rate would continue until December 31, 2023 when the TO20 Formula Rate terminates, and on January 1, 2024, the TO21 Formula Rate would become effective.⁴⁴

18. Finally, PG&E requests waiver of the Commission's cost support regulations under 18 C.F.R. § 35.13 (2022), including waiver of the full Period I and Period II data requirements. PG&E asserts that good cause exists for such waiver because the statements, testimony, and exhibits accompanying the filing, together with PG&E's publicly available FERC Form No. 1 information, provide ample support for the reasonableness of the proposed Formula Rate.⁴⁵

⁴⁰ *Id.*

⁴¹ *Id.* at 15-16.

⁴² *Id.* at 16.

⁴³ *Id.* PG&E notes that there are no projects or costs currently in Schedule 32-CWIP Incentive because no projects have yet been approved by the Commission for a CWIP incentive.

⁴⁴ *Id.* at 17.

⁴⁵ *Id.* at 17-18.

II. Notice of Filing and Responsive Pleadings

19. Notice of PG&E's filing was published in the *Federal Register*, 88 Fed. Reg. 72,059 (October 19, 2023), with interventions and protests due on or before November 3, 2023. Timely motions to intervene were filed by Public Citizen, Inc.; Peninsula Corridor Joint Powers Board; SDG&E; the City and County of San Francisco, California; Marathon Petroleum Company LP; Modesto Irrigation District; the California Municipal Utilities Association; and Southern California Edison Company. Timely motions to intervene and protests were filed by the Transmission Agency of Northern California (TANC); Northern California Power Agency (NCPA); the City of Santa Clara, California, doing business as Silicon Valley Power (SVP);⁴⁶ State Water Contractors (SWC); California Department of Water Resources State Water Project (SWP); and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities). CPUC filed a notice of intervention and protest. On November 20, 2023, PG&E filed an answer. On December 4, 2023, SWP and CPUC filed answers to PG&E's answer.

A. Protests and Motions for Summary Disposition

20. Protesters generally argue that PG&E's proposed Formula Rate is incomplete, lacks transparency, is one-sided, or unjust, unreasonable, and substantially excessive, contrary to Commission policies and precedent, and presents numerous issues that require formal discovery.⁴⁷ Accordingly, Protesters request that the Commission nominally suspend PG&E's proposed Formula Rate, subject to refund, and establish hearing and settlement judge procedures.⁴⁸

21. As a preliminary matter, Protesters oppose PG&E's eligibility for the RTO Adder, which CPUC estimates to be worth \$41.38 million annually, and they move for summary disposition of this issue.⁴⁹ According to CPUC, a utility must voluntarily join and participate in a regional transmission organization (RTO) or independent system operator (ISO) to qualify for this adder. CPUC explains that, after the Ninth Circuit Court of

⁴⁶ SVP adopts and incorporates the arguments raised in TANC's and NCPA's protests and requests that the Commission grant the relief requested therein. SVP Protest at 3-4.

⁴⁷ CPUC Protest at 3-6, 9-14; Six Cities Protest at 11-30, 33-46; SWC Protest at 5-7; NCPA Protest at 4-10; TANC Protest at 8-17, 19-28; SWP Protest at 1.

⁴⁸ CPUC Protest at 17-19; Six Cities Protest at 2; SWC Protest at 8-9; NCPA Protest at 11-12; TANC Protest at 29-30; SWP Protest at 2; SVP Protest at 2-3.

⁴⁹ CPUC Protest at 6-9; NCPA Protest at 4-5; TANC Protest at 9, 11; SWC Protest at 4; SWP Protest at 3-4.

Appeals upheld the Commission's granting of the RTO Adder in prior transmission owner rate cases,⁵⁰ California enacted a law that mandates that PG&E join and remain a member of CAISO.⁵¹ CPUC contends that the law was intended to reaffirm that PG&E is not a voluntary participant in CAISO.⁵² CPUC asserts that the California statute now explicitly states that PG&E "shall participate in the Independent System Operator."⁵³

22. Protesters contend that the Commission has previously determined that the RTO Adder is not available when RTO/ISO participation is required under state law.⁵⁴ CPUC contends that, because it is the State of California, and not PG&E, who determines whether PG&E will remain a member of CAISO, inclusion of this adder is not justified.⁵⁵ SWP contends that PG&E's assertion that the legal validity of the California Public Utilities Code has not been tested does not rise to the level of material factual dispute, making this issue ripe for summary disposition.⁵⁶ Accordingly, Protesters request that the Commission grant summary disposition and reject PG&E's request for the RTO

⁵⁰ *CPUC*, 29 F.4th 454.

⁵¹ CPUC Protest at 7 & n.19 (citing Cal. Pub. Util. Code § 362 (effective Sept. 6, 2022)).

⁵² *Id.* at 7-8 & n.22 (citing Cal. Assembly Bill 209, Chapter 251 of the Statutes of 2022 (effective Sept. 6, 2022) (Assembly Bill 209). *See* § 1(a)(2)(b)(1) of the Bill Text stating that "It is the intent of the Legislature to... reaffirm that an electrical corporation currently participating in the Independent System Operator is not a voluntary participant.").

⁵³ *Id.* at 8 & n.23 (citing Cal. Pub. Util. Code § 362 (c); Cal. Pub. Util. Code §362(d) (prohibiting PG&E from withdrawing from CAISO)).

⁵⁴ *See e.g.*, CPUC Protest at 8-9 & n.24 (citing *Dayton Power & Light Co.*, 176 FERC ¶ 61,025, at PP 14, 27-28, 54-56 (2019); *order on reh'g*, 178 FERC ¶ 61,102 (2022) (*Dayton*)).

⁵⁵ *Id.* at 6-9.

⁵⁶ SWP Protest at 4 & n.14 (citing *Consolidated Oil & Gas, Inc. v. FERC*, 806 F.2d 275, 280 (D.C. Cir. 1986) ("Since no material factual dispute exists, the FERC was not required to hold a hearing.")).

Adder.⁵⁷ NCPA contends that, if the Commission does not reject the RTO Adder, it should be included in the hearing and settlement judge procedures.⁵⁸

23. Protesters object to PG&E's proposed base ROE as unjust and unreasonable. Protesters generally contend that PG&E's proposed return on equity is inflated by: (1) using an inappropriately selected proxy group; (2) including an Expected Earnings analysis, which is not part of the Commission's current methodology; and (3) erroneous conclusions regarding PG&E's relative risk position.⁵⁹ Six Cities and SWP also assert that PG&E relies on a flawed Capital Asset Pricing Model that is inconsistent with Commission precedent.⁶⁰ CPUC argues that if PG&E corrected the above-mentioned issues and followed Commission-approved methodologies, it would significantly reduce the composite range of its ROE from 8.02%-13.24% to 8.45%-11.70%.⁶¹

24. In addition, Protesters assert that PG&E's proposed 3.29% depreciation rate is excessive and represents an unjustified increase from its currently authorized depreciation rate of 2.86%. Protesters contend that PG&E's depreciation study contains several errors, including a reliance on altered historical data and overstating the expected cost of removal and understating the reasonably expected service lives of certain asset categories.⁶² TANC objects that PG&E appears to have repeated the same service life analysis, without explanation or justification, that the Commission has previously rejected based on a finding that PG&E had underestimated the longevity of PG&E transmission assets.⁶³

25. Protesters also identify other issues that they argue require suspension of the proposed Formula Rate and formal hearing procedures. For example, several Protesters

⁵⁷ CPUC Protest at 15-17; TANC Protest at 28-29. SWC adopts and incorporates by reference SWP's and CPUC's requests. SWC Protest at 4; SWP Protest at 3-4.

⁵⁸ NCPA Protest at 4.

⁵⁹ CPUC Protest at 3-6; Six Cities Protest at 11-25, 27-30; SWC Protest at 5; NCPA Protest at 5-7; TANC Protest at 9-11; SWP Protest at 5-11.

⁶⁰ Six Cities Protest at 26-27; SWP Protest at 9-11.

⁶¹ CPUC Protest at 6.

⁶² *Id.* at 10-13; SWC Protest at 6; NCPA Protest at 7; TANC Protest at 11-17; SWP Protest at 19.

⁶³ TANC Protest at 11-15 (citing Opinion No. 572 at P 93).

challenge PG&E's proposed adjustments to its capital structure.⁶⁴ Six Cities similarly oppose PG&E's proposed cost of debt as contrary to Commission precedent.⁶⁵ NCPA and TANC question PG&E's accounting for wildfire costs, and argue that PG&E has not demonstrated that the proposed wildfire self-insurance program is just and reasonable.⁶⁶ In addition, NCPA and SWP contend that PG&E has failed to demonstrate that its proposed cost of ownership charge, and particularly the change in finance charges, is just and reasonable.⁶⁷ SWP contends that PG&E is inappropriately capitalizing costs that should be expensed.⁶⁸ TANC argues that PG&E failed to support its methodology for calculating the gross load forecast and has also failed to provide an explanation or any supporting documentation for its proposed change to its annual fixed charge rate calculation.⁶⁹ TANC notes that PG&E is making its TO20 Rate Year 2024 Annual Update in December 2023 and incorporates by reference its protests on PG&E's TO20 Formula Rate Annual Updates for Rate Years 2022 and 2023. TANC asserts that, to the extent the Commission determines that PG&E's proposed treatment of certain costs under TO20 are unjust and unreasonable, such costs should not be used as a basis for PG&E's transmission revenue requirement under the TO21 Formula Rate.⁷⁰

26. Although some Protesters support the proposed revisions to section 4 of the Protocols (Updating the Base TRR),⁷¹ Protesters request that the revised Protocols be included in the hearing and settlement judge procedures.⁷² CPUC also objects to the indefinite term of PG&E's proposed Formula Rate set forth in the Protocols with no sunset date.⁷³

⁶⁴ Six Cities Protest at 5-8, 10-11; SWC Protest at 6; SWP Protest at 11-13.

⁶⁵ Six Cities Protest at 9-10.

⁶⁶ NCPA Protest at 7-8; TANC Protest at 22-27; SWP Protest at 13-14.

⁶⁷ NCPA Protest at 9-10; SWP Protest at 18-19.

⁶⁸ SWP Protest at 14-18.

⁶⁹ TANC Protest at 19-22.

⁷⁰ *Id.* at 17-19.

⁷¹ Six Cities Protest at 46-47; SWP Protest at 20.

⁷² CPUC Protest at 1; Six Cities Protest at 2.

⁷³ CPUC Protest at 14-15; Protocols § 3 (Term of the Formula Rate).

B. Answers

27. PG&E objects to Protesters' request that the Commission reject its proposed RTO Adder, contending that both the Commission and the Ninth Circuit Court of Appeals have determined that PG&E is eligible for the RTO Adder because of its ongoing participation in CAISO.⁷⁴ PG&E argues that, although section 362 of the California Public Utilities Code, as amended by Assembly Bill 209, directs PG&E and the other California utilities to participate in CAISO, subsection (d) expressly allows PG&E to seek to voluntarily withdraw from CAISO, subject to CPUC approval.⁷⁵

28. PG&E contends that, although the Commission has indicated that a utility's ongoing participation in an RTO or ISO must be "generally voluntary" to be eligible for the RTO Adder, the Commission has not defined "voluntary," instead indicating that it will review a utility's request for an RTO Adder on a "case-by-case" basis.⁷⁶ PG&E argues that here, even with the enactment of Assembly Bill 209, there is a disputed factual issue about whether PG&E's ongoing participation in CAISO is voluntary, repeating that section 362(d) provides that a utility can withdraw its facilities from CAISO with CPUC approval. Thus, PG&E contends that as a factual matter its participation in CAISO continues to be voluntary in that California law expressly provides PG&E an opportunity to withdraw, subject to CPUC approval.⁷⁷

29. PG&E argues that *Dayton* is distinguishable as in that case the Ohio statute at issue, unlike the California statute here, does not include language that allows Ohio utilities to withdraw from the RTO/ISO. Moreover, PG&E notes that, in *Dayton*, the Commission ordered a paper hearing to explore whether Dayton has shown that its participation in an RTO is voluntary, and the parties here have not had an opportunity to fully brief factual and legal issues related to section 362 and the voluntariness of PG&E's participation in CAISO. PG&E asserts that, at a minimum, summary disposition should be denied and the parties given an opportunity through hearing and settlement judge

⁷⁴ PG&E Answer at 3-4 & n.9 (citing *Pac. Gas & Elec. Co.*, 168 FERC ¶ 61,038 (2019), *order denying reh'g*, 170 FERC ¶ 61,194 (2020); *CPUC*, 29 F.4th 454).

⁷⁵ *Id.* at 4 (explaining that section 362 (d) states in relevant part: "An electrical corporation shall not withdraw a facility from the operational control of the Independent System Operator without commission approval pursuant to Section 851.").

⁷⁶ *Id.* at 5 & nn.14-15 (citing *Promoting Transmission Investment*, Order No. 679, 116 FERC ¶ 61,057, at PP 326, 331 (2006)).

⁷⁷ *Id.* at 5-6.

procedures to fully address this issue.⁷⁸ In addition, PG&E states that the Commission's decisions in *Dayton* are currently on appeal in the Sixth Circuit Court of Appeals and contends that the Commission should not grant summary disposition on an issue that is still being actively considered in the Courts of Appeal.⁷⁹

30. PG&E agrees with Protesters that there are a number of disputed issues of material fact that are best resolved in hearing and settlement judge procedures.⁸⁰ Nevertheless, PG&E defends each disputed aspect of the TO21 Formula Rate and asserts that it has demonstrated that its proposal is just and reasonable and consistent with Commission precedent. For example, PG&E contends that its proposed base ROE is justified by its speculative credit rating and corresponding risk to PG&E from wildfires.⁸¹ PG&E also asserts that, consistent with Commission precedent, its proposed capital structure uses actual company data and appropriately excludes certain unique financings that are unrelated to rate base investment.⁸² PG&E also argues that Protesters mischaracterize or misunderstand other aspects of the proposed Formula Rate, including the depreciation study, the transparency regarding the wildfire self-insurance program, the definition of unfunded reserves, and costs that should be treated as expenses rather than capital.⁸³ PG&E disputes CPUC's claim that the proposed TO21 Formula Rate is unjust and unreasonable because it does not have a specifically defined term. PG&E contends that the point of a formula rate is that the Commission finds that the mechanism by which PG&E recovers its costs is fair, and then the actual costs are reviewed through the annual update process, rendering an expiration date for the formula rate unnecessary.⁸⁴

31. CPUC and SWP argue that the summary disposition on the issue of the RTO Adder is appropriate because there is no question of fact or law as to whether PG&E's participation in CAISO is voluntary. SWP asserts that PG&E has had ample opportunity to provide factual and legal support for its position and has failed to do so.⁸⁵ CPUC and

⁷⁸ *Id.* at 6-7.

⁷⁹ *Id.* at 7.

⁸⁰ *Id.* at 2-3.

⁸¹ *Id.* at 10-17.

⁸² *Id.* at 18-20.

⁸³ *Id.* at 22-27.

⁸⁴ *Id.* at 28.

⁸⁵ SWP Answer at 2-5.

SWP maintain that California law clearly requires PG&E to participate in CAISO because, even though California Public Utilities Code section 362(d) permits PG&E to seek to withdraw its facilities from CAISO control, PG&E may not by its own decision-making withdraw from CAISO.⁸⁶ CPUC and SWP also object to PG&E's attempt to rely on arguments made in the *Dayton* line of cases. SWP contends that this line of argument is procedurally improper because the deadlines for the Commission to reconsider *Dayton* have passed, and because, regardless of the outcome of the *Dayton* appeal, the Commission lacks the authority to invalidate a state statute.⁸⁷ CPUC argues that the Commission should not wait to rule on this issue for an undetermined outcome in a separate, and distinct, legal proceeding because the California statute clearly requires PG&E's participation in CAISO.⁸⁸ Finally, SWP contends that it is irrelevant to this case whether the other California utilities currently recover the RTO Adder because only PG&E has requested the RTO Adder since passage of Assembly Bill 209.⁸⁹

III. Discussion

A. Procedural Matters

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

33. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2022), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers submitted by PG&E, CPUC, and SWP because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

34. As discussed below, with the exception of our summary disposition of PG&E's request for the RTO Adder for its continued participation in CAISO, we are setting all issues raised in PG&E's proposed Formula Rate for hearing and settlement judge procedures.

⁸⁶ *Id.* at 6-8; CPUC Answer at 4-5.

⁸⁷ SWP Answer at 8-11.

⁸⁸ CPUC Answer at 7.

⁸⁹ SWP Answer at 11-12.

1. RTO Adder

35. We reject PG&E's request for the RTO Adder.

36. In the Energy Policy Act of 2005, Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in electric transmission infrastructure.⁹⁰ The Commission subsequently issued Order No. 679,⁹¹ establishing the processes by which a public utility may seek transmission rate incentives pursuant to section 219. In November 2012, the Commission issued a Policy Statement providing guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.⁹²

37. In Order No. 679, the Commission found that “entities that have already joined, and that remain members of, an RTO, ISO, or other Commission-approved Transmission Organization, are eligible to receive” the RTO Adder incentive⁹³ and have a presumption of eligibility.⁹⁴ The Commission explained that “the basis for the incentive is a recognition of the benefits that flow from membership in such organizations and the fact continuing membership is generally voluntary.”⁹⁵

38. Under a prior formulation of the California statute, the Ninth Circuit remanded the question of PG&E's eligibility for the RTO Adder to the Commission and instructed the Commission to inquire “whether [PG&E] could *unilaterally* leave [CAISO] and thus whether an incentive adder could induce it to remain.”⁹⁶ On remand, the Commission

⁹⁰ Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

⁹¹ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁹² *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (Transmission Incentives Policy Statement).

⁹³ Order No. 679, 116 FERC ¶ 61,057 at P 331.

⁹⁴ *Id.* P 327 (“An entity will be presumed to be eligible for the incentive if it can demonstrate that it has joined an RTO, ISO, or other Commission-approved Transmission Organization, and that its membership is on-going.”).

⁹⁵ *Id.* P 331.

⁹⁶ *Cal. Pub. Util. Comm'n v. FERC*, 879 F.3d 966, 979 (9th Cir. 2018) (emphasis

found that California law did not mandate PG&E's participation in CAISO, and that the RTO Adder therefore induced PG&E to continue its membership.⁹⁷ On appeal, in 2022, the Ninth Circuit upheld the Commission's interpretation of California law.⁹⁸

39. However, as noted above, California has since amended its public utilities code and enacted a law, effective September 6, 2022, which requires that electrical corporations⁹⁹ such as PG&E participate in CAISO, and may not withdraw from CAISO without CPUC approval.¹⁰⁰ Section 1(a)(2)(b)(1) of Assembly Bill 209 provides that "It is the intent of the Legislature to . . . reaffirm that an electrical corporation currently participating in [CAISO] is not a voluntary participant."¹⁰¹ Additionally, section 362(c) of California Public Utilities Code provides that "an electrical corporation . . . shall participate in [CAISO]."

40. Although PG&E argues that section 362(d) ("An electrical corporation shall not withdraw a facility from the operational control of [CAISO] without [CPUC] approval") means that there is some dispute about whether PG&E is required to remain in CAISO, we disagree. Section 362(d) explicitly addresses the circumstances under which an electrical corporation can withdraw a particular facility from CAISO's operational control, not whether the electrical corporation itself can withdraw.

41. Pursuant to Rule 217 of the Commission's Rules of Practice and Procedure,¹⁰² the Commission may summarily dispose of a proceeding or part of a proceeding when it determines that there is no genuine issue of material fact. We are not persuaded by

added).

⁹⁷ *Pac. Gas & Elec. Co.*, 168 FERC ¶ 61,038 at PP 2, 43-52.

⁹⁸ *CPUC*, 29 F.4th 454, 468.

⁹⁹ Under California law, an "electrical corporation" is "every corporation or person owning controlling, operating, or managing any electric plant for compensation within the state." Cal. Pub. Util. Code § 218. Therefore, as the owner of the electric facilities at issue in this proceeding, PG&E meets the definition of "electrical corporation" for purposes of the CAISO participation requirement, and PG&E does not dispute the applicability of the statute.

¹⁰⁰ Cal. Pub. Util. Code §§ 362 (c) and (d).

¹⁰¹ Cal. Assemb. B. 209, Chapter 251 of the Statutes of 2022, § 1(a)(2)(b)(1) (effective Sept. 6, 2022).

¹⁰² 18 C.F.R. § 385.217 (2022).

PG&E's arguments that there is a disputed factual issue about whether PG&E's ongoing participation in CAISO is voluntary and that the Commission should therefore set this matter for hearing and settlement judge procedures. To the contrary, we find that the issue presented is a legal question of statutory interpretation and that it can be resolved on the existing record.¹⁰³

42. Accordingly, we find that, by virtue of the recently enacted California statute, PG&E is required to participate in CAISO and cannot unilaterally withdraw from CAISO. As such, PG&E's participation in CAISO is no longer voluntary. Thus, we find that PG&E is no longer eligible for the RTO Adder.

43. Likewise, we are not persuaded by PG&E's attempt to distinguish this case from *Dayton* on the grounds that "the Ohio statute mandates participation and did not identify any statutory language that allows for withdrawal."¹⁰⁴ To the contrary, as discussed above, we find that the California statute does mandate participation and does not permit PG&E to withdraw from CAISO without CPUC approval. Moreover, we find it inapposite that, in *Dayton*, the Commission established a paper hearing to allow a full opportunity for parties to brief the issue, because the existing record is adequate to make a determination here. Therefore, we find that no further process is necessary.¹⁰⁵ Finally, we find that the fact that *Dayton* is on appeal does not affect a finding here; an appeal does not require the Commission to put similar issues in a holding pattern pending resolution of the appeal.¹⁰⁶

¹⁰³ As a general matter, we note that it is within the Commission's discretion to hold an evidentiary hearing. *See, e.g., Blumenthal v. FERC*, 613 F.3d 1142, 1144 (D.C. Cir. 2010) (explaining that the Commission's "choice whether to hold an evidentiary hearing is generally discretionary.") (internal quotations and citations omitted); *Woolen Mill Assoc. v. FERC*, 917 F.2d 589, 592 (D.C. Cir. 1990) (the decision whether to conduct an evidentiary hearing is in the Commission's discretion).

¹⁰⁴ PG&E Answer at 6-7.

¹⁰⁵ *See, e.g., Tenn. Valley Mun. Gas Ass'n v. FERC*, 140 F.3d 1085, 1088 (D.C. Cir. 1998) (the Commission has "broad discretion to determine when and how to hear and decide the matters that come before it.").

¹⁰⁶ *See Midcontinent Indep. Sys. Operator, Inc.*, 157 FERC ¶ 61,168, at P 8 (2016) (finding that the "filing for judicial review of a Commission order does not stay the effectiveness or enforceability of the order's provisions").

2. Remaining Issues

44. Aside from the RTO Adder issue, our preliminary analysis indicates that PG&E's proposed TO21 Formula Rate and proposed 2024 TRR have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that PG&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.

45. Accordingly, we accept PG&E's proposed Formula Rate and proposed 2024 TRR for filing and suspend them for a nominal period, to become effective January 1, 2024, subject to refund, and set them for hearing and settlement judge procedures. We grant PG&E's requested waiver of section 35.13 of the Commission's regulations, consistent with the Commission's prior acceptance of formula rates.¹⁰⁷ We find that full Period I and Period II data are not needed for an evaluation of the justness and reasonableness of PG&E's filing. However, to the extent that participants at the hearing can show the relevance of additional information needed to evaluate the proposal, the Administrative Law Judge can provide for appropriate discovery of such information.

46. While we are setting these matters for a trial-type evidentiary hearing,¹⁰⁸ we encourage efforts to reach settlement before hearing procedures commence. To aid 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.¹⁰⁹ If 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 requirements which determine judges' availability.¹¹⁰ The settlement judge shall report to the Chief Judge

¹⁰⁷ See, e.g., *Sw. Power Pool*, 185 FERC ¶ 61,110, at P 27 (2023); *S. Cal. Edison Co.*, 136 FERC ¶ 61,074, at P 29 (2011); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 94 (2007); *TransAllegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 57 (2007); *Am. Elec. Power Serv. Corp.*, 120 FERC ¶ 61,205, at P 41 (2007).

¹⁰⁸ Trial Staff is a participant in the hearing and settlement judge procedures. See 18 C.F.R. § 385.102(b), (c) (2022).

¹⁰⁹ 18 C.F.R. § 385.603 (2022).

¹¹⁰ If 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 available for settlement proceedings and a summary of their background and experience

and the Commission within 60 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide additional time to continue settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) PG&E's proposed inclusion of the RTO Adder in its Formula Rate is hereby rejected, as discussed in the body of this order.

(B) The remainder of PG&E's proposed Formula Rate and proposed 2024 TRR are hereby accepted for filing and suspended a nominal period to become effective January 1, 2024, subject to refund, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and 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 PG&E's proposed Formula Rate and 2024 TRR, as discussed in the body of this order. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2022), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within 45 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 parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(E) Within 60 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide participants 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 60 days thereafter, informing the Commission and the Chief Judge of participants' progress toward settlement.

(<https://www.ferc.gov/available-settlement-judges>).

(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 45 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, or remotely (by telephone or electronically), as appropriate. 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 Danly is not participating.

(S E A L)

Debbie-Anne A. Reese,
Deputy Secretary.