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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**Agenda ID 13141
RESOLUTION E-4674
August 14, 2014**

R E S O L U T I O N

Resolution E-4674. Pacific Gas and Electric Company (PG&E) requests approval of proposed revisions to its Electric Schedule S, Standby Service, Special Condition 15 (Schedule S) in light of FERC's August 30, 2010 and February 28, 2011 orders which now allow states to use their own station power load-netting methodologies for assessing certain retail charges under the applicable retail tariffs.

PROPOSED OUTCOME:

- This resolution approves PG&E's proposed revisions to the Electric Schedule S, Standby Service, Special Condition 15 (Schedule S) to assess certain retail charges on station power load of generators that participate in the California Independent System Operator's Station Power Protocol. PG&E proposed to make the revised Schedule S effective on December 18, 2012. This resolution adopts an effective date of August 30, 2010.

SAFETY CONSIDERATIONS:

- This resolution authorizes tariff changes related to the use of station power by non-utility-owned generating units. These generating units remain subject to all of the applicable federal, state and local safety regulations. No incremental safety impacts will result from this resolution.

ESTIMATED COST:

- To the extent that generators on Schedule S were paying less than the Otherwise Applicable Tariff rates, requiring them to pay the Otherwise Applicable Tariff in accordance with this resolution will lower the total amounts that PG&E needs to collect from other ratepayers. The generators will make back-payments to PG&E starting from August 30, 2010 (for the period they were on Schedule S from August 30, 2010), which would lower the total cost that PG&E needs to collect from other ratepayers.

By PG&E Advice Letter 3951-E-B, filed on October 25, 2013.

SUMMARY

This resolution approves with modifications PG&E's proposed revisions to the Electric Schedule S, Standby Service, Special Condition 15 (Schedule S). With the approval of this resolution, generators that participate in the California Independent System Operator's Station Power Protocol will pay certain retail charges under the otherwise applicable tariff that had been eliminated earlier because of the Station Power Protocol (SPP) tariff that the California Independent System Operator had implemented pursuant to an order of the Federal Energy Regulatory Commission (FERC). PG&E proposed to make the revised Schedule S effective on December 18, 2012. This resolution adopts an effective date of August 30, 2010.

Prior to 2006, Pacific Gas and Electric Company (PG&E) charged customers for station power under PG&E's Otherwise Applicable Tariff (OAT).¹ On April 1, 2006, pursuant to a Federal Energy Regulatory Commission (FERC) order, the CAISO implemented the Station Power Protocol (SPP) tariff. The FERC-ordered SPP tariff specified the circumstances under which a generator's station power load could be netted against generation output. In the course of its rulemaking, FERC issued a finding that CAISO's SPP preempted the state's authority to determine if a retail sale of electricity had occurred and thus a generator could avoid paying retail charges previously paid under the OAT for their station power load.

Southern California Edison Company (SCE) challenged the preemptive effect of CAISO's SPP tariff in the United States Court of Appeals for the District of Columbia Circuit. While waiting for the D.C. Circuit Court decision, PG&E, as required by the FERC, filed a modification to Schedule S through AL 2856-E-A to accommodate the CAISO SPP tariff, but reserved its rights to retroactively impose the CPUC jurisdictional retail charges it was being compelled by FERC to eliminate, if SCE prevailed in court. The CPUC approved AL 2856-E-A on

¹ This resolution will use the term Otherwise Applicable Tariff, or "OAT," to refer to station power customers' retail tariff both before CAISO's SPP and also to the tariff structure that will be in effect going forward. Prior to CAISO's SPP, generators would take station power under Electric Schedule S - Standby Service. Since the CPUC is returning SPP participants to the same basic tariff structure that was in effect prior to CAISO's SPP, it is easier to use "OAT" to describe the station power tariff that was in effect prior to SPP, and also to the tariff structure that will be in effect going forward.

December 2, 2009. SCE prevailed in the Court proceedings and FERC issued an Order on Remand on August 30, 2010, that acknowledged the D.C. Circuit Court of Appeals' decision and concluded that states may approve their own station power load-netting methodologies for assessing state jurisdictional retail sales charges. Calpine and others requested FERC to reconsider its Order on Remand, but FERC denied this request. Calpine appealed FERC's Order Denying Rehearing to the D.C. Circuit Court of Appeals, but on December 18, 2012, the court upheld the FERC order.

In light of FERC's August 30, 2010 order, PG&E filed Advice Letter 3951-E to revise its Schedule S tariff on November 18, 2011. A number of parties protested that advice letter. On December 20, 2011 PG&E filed AL 3951-E-A to supersede AL 3951-E. On October 25, 2013, PG&E filed Advice Letter 3951-E-B to supersede AL 3951-E-A which is supported by some parties that had previously protested PG&E's earlier advice letter. With all challenges to FERC's Order on Remand being resolved and final, we now issue this resolution approving PG&E's Advice Letter 3951-E-B effective August 30, 2010.

Generator customers electing the CAISO SPP tariff have been benefitting from modified Schedule S rate reductions, which are not final Commission-approved rates, since June 1, 2006 and have been on notice that PG&E's Schedule S's allowable charges may retroactively include retail charges due under the OAT if SCE prevailed on judicial review. As such, this resolution weighs the circumstances that generators operated under and finds that FERC's August 30, 2010 Order on Remand gave actors sufficient notice that the FERC-ordered SPP tariff was no longer valid according to FERC and the D.C. Circuit Court of Appeals, and as such, it is reasonable to require the generators on the CAISO's SPP tariff to pay the otherwise applicable retail charges beginning from August 30, 2010, for all times such generators were on CAISO's SPP tariff.

BACKGROUND

Generating stations consume some electricity in order to start up the plant to generate electricity. The generating station may have some other auxiliary load as well.

While the main purpose of a generating facility is to produce electricity and to provide power to the transmission grid, some amount of electricity is needed to get the plant started up to operate the generating facility. There is also some auxiliary load at the generating stations related to fuel-processing machines, cooling systems, control devices, and office equipment. Electricity consumed by

the generating facility is called “station power” load. Prior to the CAISO’s implementation of its SPP tariff in 2006, any on-site station power load that exceeded on-site generation – typically measured in 15-minute metering intervals – was considered retail load.

Under the retail tariff prior to CAISO implementation of the Station Power Protocol (SPP), the responsible utility assessed transmission and energy sales and other charges to station power load under the Otherwise Applicable Tariff.

Under the retail tariff prior to the CAISO implementing the SPP on June 1, 2006, any on-site station power load that exceeded on-site generation during the standard and established 15-minute metering interval was considered retail load and was assessed applicable retail energy and transmission charges under the Otherwise Applicable Tariff (OAT).

The CAISO SPP introduced monthly netting and re-characterized station power load.

In response to generators’ complaints and FERC’s instructions,² the CAISO developed the SPP Tariff.³ The SPP Tariff became effective on April 1, 2006. The SPP was an optional program for generators, and some generators voluntarily participated in the CAISO SPP and became the SPP Generators starting from June 1, 2006. Under the CAISO SPP, regardless of the power consumption shown in the established 15-minute interval meter readings, generators were allowed to net their station power load against their on-site and off-site generation on a monthly basis. Consequently, by operation of the CAISO SPP, retail load subject to state jurisdictional retail energy and transmission charges was determined on a monthly netting basis.

² *Duke Energy Moss Landing LLC*, 109 FERC ¶ 61,170 (2004), *reh’g denied*, 111 FERC ¶ 61,451 (2005).

³ On April 18, 2005, CAISO filed Amendment No. 68 to its Tariff proposing to conform its tariff to FERC’s SPP. (*California Independent System Operator Corp.*, FERC Docket No. ER05-849.) On June 22, 2005, FERC conditionally accepted in part and rejected in part CAISO’s proposed Amendment 68. (*California Independent System Operator Corp.*, 111 FERC ¶ 61,452 (2005).

Through the SPP, CAISO re-characterized the station power load of the SPP Generator owner's station power portfolio into the following three categories called "On-Site Self-Supply"; "Remote Self-Supply"; and "Third Party Supply."

"On-Site Self-Supply": Within a SPP Generator owner's portfolio, if any individual generating facility's output is more than its station power load in a given month, the CAISO SPP tariff deems the generating facility's station power load as "On-Site Self-Supply." For the "On-Site Self-Supply" portion of the station power load, the CAISO exempts transmission access charges based on the notion that station power load is "On-Site Self-Supplied" and does not use any transmission facilities if it is net positive in energy on a monthly basis. CAISO also introduced a new concept that this "netted" portion of the station power load would be treated as wholesale load (despite the fact that FERC refused to call this a wholesale energy sales transaction). As a result, CAISO assessed wholesale energy charges directly to the SPP Generator owner.

"Remote Self-Supply": For a SPP Generator owner who has a portfolio of generating facilities at more than one location, if the combined station power load is less than the combined generation in the portfolio in a given month, CAISO deems the station power load as either "On-Site Self-Supply" or "Remote Self-Supply". For transmission access charges, CAISO treats the "Remote Self-Supply" portion of the station power load as retail load and bills the transmission access charges to the responsible utility. However for energy charges, CAISO treats the "Remote Self-Supply" portion as wholesale load and bills the wholesale energy charges directly to the SPP Generator owner.

"Third Party Supply": For a SPP Generator owner's portfolio, if the combined station power load is in excess of combined generation in the portfolio in a given month, the difference is considered to be supplied by a third party and so is called Third Party Supply. CAISO treats this portion as retail load and bills the transmission charges and energy sales charges to the responsible utility. The responsible utility is then allowed to assess incremental retail charges for its incremental retail services.

SCE challenged the CAISO SPP tariffs and FERC’S underlying rationale.

SCE continuously challenged the CAISO’s tariff modification and FERC rulings on station power policy. After FERC denied SCE’s request for rehearing,⁴ SCE on December 12, 2008 appealed the FERC order approving the CAISO SPP tariff at the D.C. Circuit Court. SCE asserted that with the CAISO allowing monthly netting and cross-netting among generation facilities in different locations, SCE would end up under-collecting revenues for the retail services it provided to the SPP Generators. In other words, SCE argued that it was providing certain retail services to SPP generators but that, because of FERC’s SPP framework, SCE was unable to charge and be compensated for providing those retail services. The main issues SCE brought up were: 1) whether FERC can preempt state jurisdiction over retail energy sales; and 2) whether FERC has authority to set the netting methodology for the retail energy sales.

On August 28, 2009, PG&E filed Advice Letter 2856-E-A, while waiting for the D.C. Circuit Court decision.

While waiting for the D.C. Circuit Court decision, PG&E, as required by FERC, filed a modification to Schedule S through Advice Letter (AL) 2856-E-A to accommodate the CAISO implementation of the SPP Tariff (henceforth the Original FERC-Required Tariff). With the implementation of the FERC required SPP tariff, some of the retail charges applicable to station power loads were to be eliminated retroactively from June 1, 2006.

On May 4, 2010, the D.C. Circuit Court vacated and remanded FERC’s approval of CAISO’s Station Power Protocol.

In an opinion issued May 4, 2010, the D.C. Circuit Court vacated and remanded FERC's approval of CAISO's SPP tariff. Under its FERC approved SPP tariff, CAISO had determined that station power load was to be treated as a wholesale transaction even though FERC never explicitly characterized it as that. The court discussed that, in order to sustain CAISO’s SPP tariff, FERC needed to explain and justify its authority to determine that a retail transaction had not taken place.⁵ While the D.C. Circuit recognized FERC’s “undeniable right . . . to

⁴ 125 FERC ¶ 61,072 (October 17, 2008).

⁵ *So. Cal. Edison Co. v. Federal Energy Regulatory Com.* (D.C. Cir. 2010) 603 F.3d 996, 999-1001.

determine how much electricity generators deliver to and take from the grid for transmission purposes,”⁶ it found that this authority did not by itself “empower” FERC to “conclude that a retail sale has not taken place.”⁷ The D.C. Circuit concluded that, while FERC had established an otherwise appropriate netting methodology for the purposes of assessing CAISO transmission charges, FERC had exceeded its authority when it used that same netting methodology to determine whether a retail sale had occurred. The D.C. Circuit Court suggested that it could be entirely appropriate for the netting methodology used to assess FERC jurisdictional charges to be different from the netting methodology used to assess state jurisdictional retail charges, but the D.C. Circuit Court did not further discuss the issue of different netting methodologies.⁸

On December 2, 2009, the CPUC approved Advice Letter 2856-E-A, including the attached tariff sheets for Schedule S subject to the outcome of the D.C. Circuit Court’s review of FERC’s approval of CAISO’s SPP tariff. Since the appeal to the D.C. Circuit Court was still pending, PG&E, in the AL 2856-E-A filing, reserved its rights to retroactively recover the CPUC jurisdictional retail charges (due under the OAT).

On December 2, 2009, the CPUC approved the Original FERC-Required Tariff as filed in PG&E’s Advice Letter 2856-E-A, including the attached tariff sheets for Schedule S, and made it effective retroactive to June 1, 2006. In Advice Letter 2856-E-A, PG&E (pursuant to FERC’s order upholding CAISO’s SPP tariff⁹) exempted SPP customers who are “neither purchasing at retail nor using local distribution facilities”¹⁰ from paying certain transmission, distribution, and non-bypassable charges included in previously-filed tariffs. However, since the appeal to the D.C. Circuit Court was still pending, PG&E, in the AL 2856-E-A filing, reserved its rights to retroactively recover the CPUC jurisdictional retail charges (due under the OAT) it was being compelled by

⁶ *Id.* at 997-998.

⁷ *Id.* at 1000.

⁸ *Id.* at 1002.

⁹ 125 FERC ¶ 61,072 (2008) at P 72.

¹⁰ Advice Letter 2856-E-A, Appendix A.

FERC to eliminate, if SCE prevailed in court.¹¹ The Commission approved AL 2856-E-A (Schedule S) subject to the outcome of the D.C. Circuit Court's review of FERC's approval of CAISO's SPP tariff.

Under the Original FERC-Required Tariff, station power load is netted monthly against energy that is from "On-Site Self-Supply" or "Remote Self Supply". The netted On-Site Self Supply portion of the station power load is exempted from transmission charges and retail energy sales charges. The netted "Remote Self-Supply" portion of the station power load is only exempted from retail energy sales charges. CAISO assesses a share of the transmission access charge to "Remote Self-Supply."

On August 30, 2010, FERC issued an Order on Remand that allowed states to use their own netting methodologies for assessing retail non-transmission charges. Calpine and other SPP participants requested a rehearing, but on February 28, 2011, FERC issued an Order Denying Rehearing.

In accordance with the D.C. Circuit Court of Appeals' remand, FERC on August 30, 2010, issued an order on remand¹² stating that, while FERC determines the amount of station power load that is transmitted on the FERC-jurisdictional transmission grid, the states determine the amount of station power load that is sold in state-jurisdictional retail sales. FERC further stated that states, in determining the amount of station power that is sold at retail, need not use the same netting methodology that FERC uses to determine the amount of station power load that is transmitted in interstate commerce. Calpine

¹¹ In Advice Letter 2856-E-A, PG&E stated, "...this filing would allow PG&E only to charge SPP Customers for standby service consistent with the FERC directive on station power, but would also explicitly provide for recovery of energy and other charges should the D.C. Circuit reverse FERC's directive on station power." (PG&E Advice Letter 2856-E-A (August 28, 2009) at 2.) The proposed tariff stated, "A Customer eligible for SPP and taking service under this Special Condition 15, must acknowledge its obligation to and agreement to pay charges consistent with the resolution of the D.C. Circuit appeal, including subsequent decisions on appeal or remand, if any, for any time after the later of April 1, 2006 or when the Customer received CAISO certification to operate under SPP." (*Id.* at PG&E Proposed Tariff Schedule S, Sheet 17, Special Conditions, section 15, j).)

¹² 132 FERC ¶ 61,183 (2010) (FERC Order on Remand).

Corporation (Calpine) petitioned for FERC's reconsideration of its Order on Remand, and on February 28, 2011, FERC denied Calpine's rehearing request.¹³

Calpine and other SPP participants appealed the FERC order to the D.C. Circuit Court of Appeals. On December 18, 2012, the D.C. Circuit Court of Appeals upheld the FERC order.

Calpine and other SPP participants appealed to the D.C. Circuit Court of Appeals for review of the FERC order denying Calpine's rehearing request of the FERC Order on Remand. SPP participants argued that the court's ruling in *Southern California Edison Co. v. FERC* (D.C. Cir. 2010) 603 F.3d 996, only rejected FERC's jurisdiction to determine whether a retail sale of energy had occurred when that determination was based on FERC's jurisdiction over transmission. However, SPP participants argued that *Southern California Edison* did not preclude FERC from considering alternative theories for claiming jurisdiction (such as FERC's jurisdiction over wholesale energy sales), and FERC's failure to consider alternative bases for upholding the netting policies established for other states is an arbitrary and capricious departure from those policies.¹⁴ On December 18, 2012, the D.C. Circuit Court affirmed the FERC Order on Remand.¹⁵ The court responded to the SPP participants' argument by noting that none of the alternative theories for jurisdiction put forth by the petitioners was viable because none of those theories was actually relied upon by FERC.¹⁶

PG&E Proposal as Filed in Advice Letter 3951-E-B

On November 18, 2011, in responding to the FERC orders, PG&E filed Advice Letter (AL) 3951-E. SPP Generators protested the filing. In response to protests of AL 3951-E, PG&E submitted a superseding Advice Letter (AL 3951-E-A) which added a provision to afford notice to SPP participants that charges might change once appeals to the relevant FERC orders were finalized. On October 25, 2013, PG&E filed AL 3951-E-B, which superseded AL 3951-E-A, and is before us now.

¹³ 134 FERC ¶ 61,151 (2011).

¹⁴ *Calpine Corp. v. FERC* (D.C. Cir. 2012) 702 F.3d 41, 45.

¹⁵ *Id.* at 50.

¹⁶ *Id.* at 46.

In AL 3951-E-B, PG&E proposed, among other things, the following modifications to its Schedule S:

1. Effective December 18, 2012, return of SPP Generators to the CPUC jurisdictional Otherwise Applicable Tariff that was in effect before PG&E implemented the Original FERC-Required Tariff. The CPUC jurisdictional tariffs determine applicable retail charges based on 15-minute interval metering.
2. Exemption of the "On-Site Self-Supply" portion of the station power load from FERC jurisdictional transmission access charges, similar to the CAISO SPP tariff that exempts this portion of the station power load from these transmission charges.
3. Make PG&E-proposed Schedule S effective from December 18, 2012, and provide a credit to SPP Generator owners for the payments they made directly to the CAISO during the period from December 18, 2012, to the Commission approval date of the filed Schedule S.

NOTICE

Notice of AL 3951-E-B was made by publication in the Commission's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with General Rule 7.1 of General Order 96-B.

PROTESTS

PG&E filed Advice Letters AL 3951-E, AL 3951-E-A, and AL 3951-E-B to implement station power tariff changes. AL 3951-E was protested by many parties. Advice Letter 3951-E-B is supported by some parties who protested the earlier AL 3951-E. It is important to note that in AL 3951-E, PG&E was proposing to collect certain retail charges from station power customers due under the OAT from June 2006, whereas in AL 3951-E-B, PG&E requests collection of back charges from only December 18, 2012. This change has had a significant impact on the nature of the protests from affected parties.

PG&E's Advice Letter 3951-E was timely protested by Calpine Corporation (Calpine), La Paloma Generating Company, LLC, Independent Energy Producers Association (IEP), Western Power Trading Forum (WPTF), Dynegy, and jointly by the Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC), collectively referred to here as Protestants. This Advice Letter 3951-E-B, which supersedes AL 3951-E and AL 3951-E-A, was

timely protested by Calpine Corporation, Western Power Trading Forum, and the Independent Energy Producers Association.

The following is a summary of the major issues parties raised in December 2011 in their protests for AL 3951-E:

1. The AL process should not be used for dealing with the issues related to station power load. Instead, the CPUC should decide on a universal charging methodology for station power load through a rulemaking.
2. The CPUC has not yet established its policy on the netting methodology or the rate components for state-jurisdictional station power loads.
3. PG&E neither purchased, sold, nor provided any services associated with the original or any revised version of Schedule S; in particular, PG&E has not provided services that warrant imposing retail charges on load served by "Remote Self Supply."
4. Where a generator obtains energy for its station power load from another generator under common ownership, there is no retail sale and the various charges applicable to retail sale should not be imposed on such self-supply.
5. The retroactive application of the revised tariff would lead to double payment. PG&E should be required to refund the charges already collected from SPP generators if such charges are determined by a reviewing court to be improper. The retroactive application of a revised Schedule S is also unjust, unreasonable, and discriminatory because any retroactive changes to an approved tariff rate are illegal and contrary to established CPUC policy.

In their protest to AL 3951-E-B (which supersedes AL 3951-E), some parties again argue that the CPUC has not yet established its policy on the netting methodology or the rate components for state-jurisdictional station power load. It is worth noting that several of the protestants of the original AL 3951-E (Calpine Corporation and Western Power Trading Forum (WPTF)) are now supporting PG&E's position of the Advice Letter effective date of December 18, 2012, as described in PG&E Advice Letter 3951-E-B.

PG&E's Reply to Protests of AL 3951-E and AL 3951-E-B

PG&E replied to the protests to AL 3951-E on December 15, 2011 and to AL 3951-E-B on November 21, 2013. The following is a summary of the PG&E Reply:

1. The AL is an appropriate vehicle to modify the Original FERC-Required Tariff. The CPUC previously recognized that there was no need for a rulemaking on station power services.
2. Based on the retail metering, any station power load not supplied from the on-site generator is a retail sale and thus retail charges should be assessed. The CPUC has the authority to assess non-bypassable charges if there is retail distribution service or a retail energy sale to a station power load.
3. In the case of "Remote Self-Supply", there is either (a) a retail sale of energy, or (b) usage of the distribution system, or (c) both. The CPUC previously adopted and implemented netting period rules and policies for station power load.
4. The filed rate doctrine does not prohibit PG&E from changing the station power tariff to reflect the outcome of judicial review of FERC's orders. Tariff modifications based on judicial relief do not violate the rule against retroactive ratemaking. Also, appropriate notice of the potential rate changes was provided.

DISCUSSION

PG&E's AL 3951-E-B supersedes PG&E's earlier filed Advice letters 3951-E and 3951-E-A. Parties have not raised all the issues with AL 3951-E-B that they had raised in response to those earlier advice letters. In fact, Advice Letter 3951-E-B is supported by some parties who had protested the earlier advice letter. However, since the parties had raised those issues earlier, we address the various arguments that were made by the parties in response to PG&E's earlier advice letters.

This draft resolution replaces draft resolution E-4653 that was issued by the Energy Division on April 14, 2014.

Advice Letter filing is an appropriate vehicle for determining the issues presented here.

When PG&E implemented the FERC-required CAISO station power tariff (Schedule S), it did so through the filing of an advice letter (Advice Letter 2856-E-A). PG&E is now proposing to return generators to the otherwise applicable CPUC jurisdictional station power tariff (OAT) through the same advice letter process to address FERC Order on Remand and reinstate Schedule S. The tariff modification is therefore allowed through the advice letter filing.

The proposed Schedule S as filed does not introduce any new netting methodologies. It only proposes to resume applying the CPUC jurisdictional Otherwise Applicable Tariff (OAT) for station power load which uses 15-minute interval metering. The generators who did not opt for the FERC required CAISO station power tariff have been on that tariff all along.

For billing purposes, monthly netting does not accurately reflect the amount of station power load supplied by the utility because it can zero out much of the power that was actually supplied by the responsible utility when the generating facility needed that power. 15-minute interval metering is more appropriate.

The proposed Schedule S as filed does not introduce any new netting methodologies. Rather it proposes to resume applying the CPUC jurisdictional Otherwise Applicable Tariff (OAT) for station power load which use 15-minute interval metering. The generators who did not opt for the FERC required CAISO station power tariff have been on that tariff all along.¹⁷

The SPP tariff that was implemented by the CAISO under a FERC mandate allowed generators to net the station power load over a month. So, even when a generator consumed a large amount of station power load (when it was not

¹⁷ WPTF has protested on the grounds that the CPUC has not considered what should be the appropriate netting period. (Western Power Trading Forum's Protest of PG&E's Advice Letter 3951-E, p.2). The issue of what should be the appropriate netting period appropriately is not before the Commission at this time. The CPUC is simply returning SPP Participants to the CPUC jurisdictional tariff (the OAT) and applying the 15-minute interval metering that has been a well-established practice long before the Original FERC-Required Tariff was submitted or approved.

generating power at all or was not generating enough during the start-up process), due to the netting at the end of the month, it could show that the generator did not consume station power at all from a retail perspective. Thus, billing based on monthly netting hides the fact that this power was consumed and makes it difficult for the responsible utility to bill the retail power it supplied. Because monthly netting can zero out much of the station power load, SPP Generators were able to argue that they did not receive that power and should not be billed. The fact is that, as the responsible Load Serving Entity (LSE), PG&E is responsible for providing retail services for that load and should be allowed under CPUC approved tariffs to bill that load for such retail services.

The CPUC jurisdictional station power tariff in effect before the CAISO's SPP implementation used 15-minute interval metering. A 15-minute metering interval more accurately reflects the electric power situation, as power demand must be constantly balanced against power supply. To maintain a safe and reliable power system and to avoid blackouts, electric load and electric supply must be continuously balanced. It is because of the need to continuously balance load and resources that the CAISO's real time energy dispatch interval is five (5) minutes and its automatic generation control issues ramp up or ramp down instructions every four (4) seconds.

Billing based on monthly netting does not accurately reflect the amount of station power services provided. Monthly netting would often result in underestimating the external power needs of a generating facility. It does not show all the time periods when the power was being brought in from the outside and the responsible utility's transmission/distribution/generation system was used for supplying that power.

Another problem with monthly netting is that there is not a sufficient incentive for a generator to reduce station power consumption at peak time because the power does not get billed at retail peak rates even though the utility has the obligation to deliver the power to the station.

SPP participants have claimed that 15-minute netting puts them at a competitive disadvantage versus utility-owned generators. But this argument misunderstands the cost structure of utility-owned generators vis-à-vis merchant generators.

SPP participants argue that a 15-minute netting period would put them at a competitive disadvantage because utility-owned generators are not required to similarly pay retail charges for their station power. But this illustrates a

misconception on several levels. First of all, it is wholly outside the scope of the informal advice letter process and this resolution to address broad policy concerns over the similar treatment of utility-owned and merchant generators. Secondly, there is nothing in the Public Utilities Code, nor in the FERC Orders on Remand, nor in the D.C. Circuit Court rulings that would require the CPUC to subject utility-owned generators to similar rules as merchant generators. Thirdly, the SPP participants' argument fundamentally misunderstands the fact that utility-owned generators operate under a ratemaking structure that is very different from merchant generators. Utilities are subject to the Commission's comprehensive rate regulation. Utilities' profits are limited by the Commission-approved rate of return, and ratepayers pay for all of the utilities' prudently incurred costs including their depreciation and taxes, to name a couple of differences. Merchant Generators, on the other hand, face no such legal and regulatory limitation to their profit-making, but are not made whole when they lose money. In other words, the risk and reward paradigm is entirely different for utility-owned generators and for merchant generators.

Using the competitive disadvantage argument, IEP and several SPP participants request that the CPUC should consider alternative netting regimes. However, considering the optimum netting interval is a substantial policy question for which the informal advice letter process is an inappropriate vehicle. This resolution simply returns SPP participants to a netting regime that was in place for all generators that used station power before the CAISO implemented the FERC mandated station power tariff that is no longer valid. Generators who did not opt to be on the CAISO's FERC mandated tariff have been on this tariff all along. With the approval of this resolution, all generators on the station power tariff will be paying station power charges under the otherwise applicable tariff.

SPP participants claim that they purchased their energy from the CAISO market and that PG&E did not supply them energy, thus they cannot be charged a retail rate by PG&E. However, their claim is based on monthly netting which zeroes out much of the power that was delivered to them by the utility in real time. As the responsible load serving entity, PG&E has the obligation to deliver power for station power load purposes and must recover applicable retail charges for power delivered.

SPP Participants claim that it would be unjust to charge them retail rates when PG&E did not supply the power because it was taken off the CAISO grid. However, PG&E has an obligation to serve load. PG&E must ensure that there is adequate supply on standby at all times, ready to serve the generator in case of an outage. This is a retail service for which PG&E, as the responsible LSE must

recover applicable retail charges for retail services provided to the generating station within any 15-minute metering interval.

When station power load supplied by off-site generation uses the utility's transmission/distribution/generation system, it should pay applicable retail charges.

Before the SPP implementation, station power load was metered on a 15-minute interval basis and treated like any other retail load. The CAISO billed any load-based services procured on behalf of such load to the responsible Scheduling Coordinator (i.e., a responsible utility), and did not bill such charges directly to the SPP Generator owners. The responsible utility's bill to the generator for its station power load, in turn, included all applicable retail charges approved by the CPUC. PG&E's proposed station power tariff is reasonable insofar as it would enable PG&E to bill for net station power that PG&E delivered to the generating station within any 15-minute metering interval.

Protestants' allegation of retroactive ratemaking is without merit because the original FERC-Required Tariff was expressly "subject to change pending judicial review" of the FERC orders, and PG&E is seeking to back bill for Commission approved final rates that would have been in effect but for the Original FERC-Required Tariff.

PG&E proposes to make Advice Letter 3951-E-B effective December 18, 2012 (including the unpaid retail charges). SPP participants argue against back billing on the grounds that it would constitute impermissible retroactive ratemaking. However, as the protestants are well aware, when PG&E filed the Original FERC-Required Tariff to implement FERC's SPP, Schedule S was approved by the CPUC on December 2, 2009, effective back to June 1, 2006. Therefore, SPP participants are arguing both that (1) the Schedule S tariff could be properly applied retroactively because of the FERC's original orders but (2) the previously applied OAT cannot be made effective back to June 1, 2006 even though those FERC orders were overturned.

The protestants contend that the Draft Resolution misapplies the rule against retroactive ratemaking. In support of this position they cite language originally contained in D.92-03-094 (1992) 43 Cal. P.U.C. 2d 596, 600:

It is a well-established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, before the utility incurs those expenses, the

Commission has authorized the utility to book those expenses into a memorandum or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking. (Emphasis in original).

Protestants do not explain why this long-standing practice is relevant here. In certain situations, the Commission does allow recovery of just and reasonable costs incurred in the past if the utility provides a notification establishing a memorandum account before incurring those costs. The utilities routinely seek authorizations to recover amounts booked in memorandum accounts for past periods when they meet certain specified conditions for recovery. In this case, the utilities had provided a notification to the generating customers through their tariffs that rates were subject to change back from June 1, 2006 pending the resolution of judicial review of FERC's SPP. In this case, PG&E is seeking to reinstate previously established Commission-approved rates, now that the FERC order requiring different rates has been overturned. Most importantly, when the Commission approved the Original FERC-Required Tariff, the Commission did not approve final rates, but instead approved rates that were in the tariff made expressly "consistent with the resolution of the D.C. Circuit appeal" of the FERC orders.¹⁸ Just as pre-established memorandum accounts put the Commission and the utility's customers on notice that the utility will later seek to recover those expenditures, PG&E's Schedule S tariff notified the participants that those rates could be modified later on, based on the outcome of the pending court cases.¹⁹ As PG&E explained in Advice Letter 2856-E-A,

¹⁸ PG&E Tariff Electric Schedule S, Standby Service, Special Conditions, Sheet 17, section 15 j) in PG&E AL 2856-E-A.

¹⁹ Indeed, protestants were fully aware this could happen. In their briefs to the D.C. Circuit Court they argued that allowing the state to define the retail rates would be unfair because it would subject them to retroactive retail charges provided for in the utilities' tariffs:

Calpine's brief stated, "after the [FERC] accepted the Station Power Protocol, each of the local utilities had inserted 'Special Conditions' into their retail tariffs permitting utilities to impose retroactive retail charges on generators for station power service in past periods depending on the outcome of Southern California Edison." (Calpine's Initial Brief to the D.C. Circuit in Case 11-1122 at page 32.)

Dynegy also stated, "The SPSS tariffs can be read as having imposed on generators a liability for retail charges 'consistent with the DC Circuit appeal,' for the period between the effective date of a generator's Station Power Portfolio, which could go back as far as April 1, 2006, and the

Footnote continued on next page

“this filing would allow PG&E only to charge SPP Customers for standby service consistent with the FERC directive on station power, but would also explicitly provide for recovery of energy and other charges should the D.C. Circuit reverse FERC’s directive on station power.” As such, the Original FERC-Required Tariff was never the final Commission approved rates but was always subject to adjustment depending on the outcome of the federal court of appeals challenges. Therefore, by this advice letter, PG&E is requesting only that it be allowed to implement those rates and back bill for past underpayments of those rates previously authorized by the Commission to be charged in the absence of the now-overturned Original FERC-Required Tariff.

The Commission rejects PG&E’s proposal to make Schedule S filed in this advice letter effective December 18, 2012. The revised Schedule S should be effective from August 30, 2010, because that is the date on which FERC issued an Order on Remand that allowed states to use their own netting methodologies for assessing retail non-transmission charges.

PG&E proposes to make Advice Letter 3951-E-B effective from December 18, 2012. PG&E argues that FERC overstepped its jurisdiction and, but for those actions PG&E would have been charging SPP participants their Otherwise Applicable Tariff (OAT) since June 1, 2006. PG&E further argues, as explained above, that it had provided notice to CAISO SPP-Participants that depending on the outcome of FERC and court actions, generators could owe back charges.

We reject PG&E’s proposed date of December 18, 2012. The SPP participants sold power into competitive markets. In order to competitively price their energy, SPP participants had to determine what their costs were. It is reasonable to assume that when FERC issued an Order on Remand on August 30, 2010 acknowledging the D.C. Circuit Court of Appeals’ decision and concluded that states may approve their own station power load-netting methodologies for

date that new CPUC ‘clarifying tariffs’ go into effect.” (Dynergy, Calpine Rehearing Request, Dkt. ER05-849 at 23-25.)

NRG similarly admitted, “The retail station power tariffs approved by the California Public Utilities Commission (‘CPUC’) specify that entities taking station power service remain liable – back to the date generators first availed themselves of the CAISO’s Station Power Program – for retail station power charges if the utilities were successful in their challenge to the Station Power Program.” (NRG Rehearing Request, Dkt ER05-849 at 22.)

assessing state jurisdictional retail sales charges, it was no longer reasonable for SPP participants to continue to rely on the Original FERC-Required Tariff and the CAISO's SPP Tariff, in pricing their power. Therefore, it is fair and reasonable to make PG&E's Revised Schedule S effective beginning on August 30, 2010.

To the extent that generators on the CAISO's SPP tariff paid wholesale energy charges to the CAISO in the past, we authorize PG&E to provide SPP generators a credit for those charges starting on August 30, 2010.

In AL 3951-E-B, PG&E proposes to make the implementation of Otherwise Applicable Tariff (OAT) effective from December 18, 2012. Acknowledging that the generators on the CAISO's SPP tariff had paid wholesale energy charges to the CAISO after December 18, 2012, PG&E proposes to give them a credit for those payments so the generators are not double charged for any power.

We authorize PG&E to provide a credit for those charges starting on August 30, 2010, which is the date they will be paying charges under the PG&E's tariff approved in this resolution. To be eligible for this credit, the generators must present proof of the wholesale energy charges paid to the CAISO within 90 days of the effective date of this resolution.

In re-billing SPP customers, PG&E should provide the detail of the calculation necessary to determine how the back charges are determined.

SPP Participants should be able to see how PG&E calculated the back billed charges to see if there are any billing discrepancies. SPP Participants have requested workshops on this issue in AL 3951-E-B, but workshops could take a significant amount of time and would result in unnecessary delay. This is essentially a billing issue between PG&E and generators and can be handled through PG&E's existing tariffs.

COMMENTS

P.U. Code section 311(g)(1) provides resolutions generally must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this resolution was mailed to parties for comments on July 15, 2014. This resolution will be placed on the Commission's agenda no earlier than 30 days from today. For the full service list, see Attachment A.

FINDINGS

1. Station power load is the amount of electricity consumed by a generating facility.
2. Prior to the California Independent System Operator's (CAISO's) Station Power Protocol (SPP) tariff, customers who were on Pacific Gas and Electric Company's (PG&E's) Electric Schedule S, Standby Service, Special Condition 15 (Schedule S) were provided service under the Otherwise Applicable Tariff (OAT). The OAT was a tariff previously approved by the Commission as final rates. Station power load subject to the OAT was measured and determined by a well-established practice of 15-minute metering intervals.
3. Through the implementation of the CAISO SPP, CAISO introduced the monthly netting methodology and re-characterized the station power load as "On-Site Self-Supply", "Remote Self-Supply" and "Third Party Supply." CAISO exempted the "On-Site Self-Supply" portion from transmission access charges. CAISO, using wholesale prices, settled energy charges for the "On-Site Self-Supply" and the "Remote Self-Supply" portions of the station power load with the SPP Generators directly.
4. Pursuant to orders of the Federal Energy Regulatory Commission (FERC), PG&E filed Advice Letter 2856-E-A on August 28, 2009, in which it sought approval of a revised Schedule S (Original FERC-Required Tariff) with an effective date of June 1, 2006 and with rates subject to change pending the resolution of judicial review of FERC's SPP. Under the Original FERC-Required Tariff, some of the retail charges applicable to station power load of the SPP Generators were eliminated due to the monthly netting approach of the SPP.
5. On December 2, 2009, the Commission approved Advice Letter 2856-E-A with an effective date of June 1, 2006, with rates subject to change pending judicial review of FERC orders on SPP.
6. On May 4, 2010, the Court of Appeals for the District of Columbia Circuit vacated FERC's ruling, finding that FERC's approval of CAISO's SPP tariff had a preemptive effect on the grounds that FERC was acting in excess of its jurisdiction by determining when a retail sale occurred; and the D.C. Circuit Court remanded proceedings consistent with its opinion.

7. On August 30, 2010, FERC issued an Order on Remand and let the states determine their netting methodology for assessing state-jurisdictional retail charges.
8. PG&E filed Advice Letter 3951-E on November 18, 2011 to resume billing using 15-minute interval metering and charging rates in accordance with its final rates contained in the Otherwise Applicable Tariff. Specifically, PG&E requested approval to: (a) assess retail charges to station power load of the SPP Generators based on the well-established 15-minute metering interval; (b) pass through the exemption of the transmission charges for the "On-Site Self-Supply" portion of the station power load; (c) make the rate effective from June 1, 2006. PG&E notified customers through its tariff that the rate, if approved, is subject to change if judicial review of the related FERC orders is granted.
9. Calpine Corporation (Calpine), Dynegy, Western Powers Trading Forum (WPTF), La Paloma Generating Company LLC, Cogeneration Association of America jointly with the Energy Producers and Users Coalition (CAC/EPUC), and the Independent Energy Producers Association (IEP) all submitted timely protests, and PG&E replied to the protests.
10. Since the submission of Advice Letter 3951-E, PG&E has submitted two supplemental advice letters, each of which supersedes AL 3951-E in its entirety. The most recent Advice Letter, AL 3951-E-B, was submitted on October 25, 2013, and is the subject of this resolution.
11. The Advice Letter is an appropriate vehicle for determining the issues presented here because PG&E's Original FERC-Required Tariff (former Schedule S) was submitted for Commission approval through an Advice Letter filing.
12. Monthly netting does not result in a true measure of station power load supplied by the utility. It can zero out much of the power that was actually supplied by the responsible utility to meet the load of the generating facility.
13. The well-established regime of metering in accordance with the meter's 15-minute reporting interval - which pre-dated CAISO's SPP - is more appropriate than the monthly netting methodology in determining the retail service provided by the responsible utility to serve station power needs.

14. The Commission rejects the argument from SPP Generators that 15-minute interval metering puts them at a competitive disadvantage vis-à-vis utility-owned generators because utility-owned generators operate under a ratemaking structure that is very different from merchant generators.
15. PG&E must ensure that there is adequate supply on standby at all times, ready to serve the generator in case of an outage. As the responsible LSE, PG&E must recover applicable retail charges for power supplied to the generating station.
16. The argument about retroactive ratemaking raised by some protestors lacks merit because the Commission's approval of the Original FERC-Required Tariff (former Schedule S) did not set final rates but instead approved a tariff in an Advice Letter filing that was "subject to change pending judicial review" of the FERC orders requiring the Original FERC-Required Tariff. Approval of PG&E's Advice Letter 3951-E-B would only allow PG&E to bill SPP Participants to reflect the FERC Order on Remand (August 30, 2010).
17. Revised Schedule S should be made effective on August 30, 2010, instead of PG&E's requested effective date of December 18, 2012, because FERC issued its Order on Remand acknowledging the D.C. Circuit Court of Appeals' decision on August 30, 2010. It is reasonable to assume that at that point, generators on the CAISO's SPP tariff had sufficient notice that they have to pay retail charges under PG&E's otherwise applicable tariff and should price their power accordingly.
18. In the advice letter, PG&E proposes to give a credit to SPP Generators for the wholesale energy charges they have already paid to the CAISO to resolve the double payment issue. To the extent that generators on the CAISO's SPP tariff paid wholesale energy charges to the CAISO, we authorize PG&E to provide SPP generators a credit for those charges starting on August 30, 2010.
19. In re-billing SPP customers, PG&E should provide the detail of the calculation necessary to determine how the back charges are determined.

THEREFORE, IT IS ORDERED THAT:

1. This Resolution approves PG&E's proposed Schedule S to authorize Pacific Gas and Electric Company to assess retail charges to SPP Generators' station power in accordance with the Otherwise Applicable Tariff with the following modifications:
 - a. Schedule S shall be effective from August 30, 2010.
 - b. PG&E is authorized to provide SPP generators a credit for wholesale energy charges they paid to the CAISO from August 30, 2010 to the date of issuance of this resolution. SPP participants receiving a back bill have 90 days to show proof of the amount of wholesale energy charges they already paid to the CAISO to get the credit.
 - c. Within 30 days of the issuance of this resolution, PG&E shall file a Tier 1 advice letter specifying which account would be used to flow the revenues received by PG&E from SPP generators from August 30, 2010.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 14, 2014; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director