

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

San Diego Gas & Electric Company) Docket Nos. ER19-221-000,
ER19-221-001

OFFER OF SETTLEMENT AND SETTLEMENT AGREEMENT

San Diego Gas & Electric Company (“SDG&E”) hereby offers to each of the intervenors in the above-captioned proceedings,¹ the following terms and conditions of a Settlement thereof (“Settlement”). This Settlement is being offered pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure.² If approved by the Commission, this Settlement will resolve all issues set for hearing and settlement judge procedures in the *Order Accepting and Suspending Proposed Formula Rate Filing and Establishing Hearing and Settlement Judge Procedures* (“Hearing Order”).³ SDG&E expects that this Settlement will be uncontested. If approved by the Commission, this Settlement will reduce the Base Transmission Revenue Requirement (“BTRR”) that SDG&E proposed in its Fifth Transmission Owner formula rate (“TO5 Formula”), effective June 1, 2019.

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

² 18 C.F.R. § 385.602 (2018).

³ *San Diego Gas & Electric Co.*, 165 FERC ¶ 61,276 (2018).

I. BACKGROUND

On October 30, 2018, pursuant to Section 205 of the Federal Power Act (“FPA”),⁴ SDG&E filed revisions to its Transmission Owner (“TO”) Tariff.⁵ The primary revision was to adopt a new formula rate tariff, the TO5 Formula (“TO5” or “TO5 Formula”), as the successor to its then currently effective TO4 Formula,⁶ to become effective on January 1, 2019. As with the TO4 Formula, the TO5 Formula proposed to include annual informational filings made under the formula (referred to as “Cycles”), with the first such filing consisting of TO5 Cycle 1.

As SDG&E explained, the TO5 Cycle 1 Filing, among other things, (1) proposed a new TO5 Formula and Appendix VIII⁷ to SDG&E’s TO Tariff to succeed the TO4 Formula; and (2) revised SDG&E’s Base Transmission Revenue Requirements⁸ (“BTRR”) and transmission rates for retail End Use customers and California Independent System Operator (“CAISO”) Wholesale customers for the Rate Effective Period (“REP”) under the terms of the proposed TO5 Formula.

Several of the Parties protested various aspects of SDG&E’s October 30, 2018 filing, as noted in the Hearing Order. The Hearing Order accepted SDG&E’s proposed TO5 Formula and related 2019 BTRR, suspended it for five months, to become effective June 1, 2019, subject to refund, and established hearing and settlement judge procedures.⁹ On January 7, 2019, the Chief

⁴ 16 U.S.C. § 824d.

⁵ See “San Diego Gas & Electric Company, Transmission Owner Tariff, Volume 11.”

⁶ The TO4 Formula was embodied in an Offer of Settlement and Settlement Agreement (“TO4 Settlement”) submitted on February 4, 2014, which the Commission approved on May 27, 2014. *San Diego Gas & Electric Company*, 147 FERC ¶ 61,150 (2014). The TO4 Formula was due to expire on its own terms on December 31, 2018.

⁷ Appendix VIII to SDG&E’s TO Tariff – which includes the Formula Rate Protocols as Attachment 1 and the Formula Rate Spreadsheet as Attachment 2 – constitutes the TO5 Formula.

⁸ Unless otherwise defined in this letter and accompanying volumes referenced herein, capitalized terms are intended to have the meanings ascribed to them in SDG&E’s TO Tariff.

⁹ 165 FERC ¶ 61,276 at P 1.

Judge issued an order appointing Judge Steven L. Sterner as settlement judge. On July 10, 2019, after the Parties reached an impasse in their settlement negotiations, the Chief Judge issued an order appointing Judge Andrea McBarnette as the hearing judge. On July 22, 2019, Judge McBarnette designated Joshua Hurwitz as dispute resolution facilitator to assist the Parties, as needed.

The Parties and Trial Staff (collectively, “Participants”) have engaged in numerous settlement conferences and exchanged settlement materials in the course of both the formal settlement procedures and subsequent to their termination. The Participants have been able to reach a negotiated resolution of disputed issues, culminating in this Settlement.¹⁰ The TO5 Formula, consisting of Appendix VIII, the Formula Rate Protocols (“Protocols”) (Attachment 1 to Appendix VIII) and a Formula Rate Spreadsheet (Attachment 2 to Appendix VIII), has been developed in accordance with this Settlement.

II. THE SETTLEMENT

A. Article I – Settlement Rates

Effective June 1, 2019, during the term of the TO5 Formula, SDG&E’s wholesale and retail BTRR shall be determined by the TO5 Formula, consistent with the terms of this Settlement. The TO5 Appendix VIII, which includes the Protocols as Attachment 1 and the Formula Rate Spreadsheet as Attachment 2, constitutes the “TO5 Formula.” The TO5 Formula constitutes the formula rate. The TO5 Formula Appendix VIII, including Attachments 1 and 2, is being filed with and is an integral part of this Settlement.

¹⁰ On September 18, 2019, Chief Judge Cintron issued an order waiving the answer period and suspending the procedural schedule.

When SDG&E makes its annual Informational Filing, if any person protests any cost reflected in charges derived under the TO5 Formula, SDG&E shall bear the burden of demonstrating the justness and reasonableness of its implementation of the TO5 Formula, consistent with Commission precedent and Sections C.4.d and C.4.g. of the Protocols.

1.1 BTRR

The TO5, Cycle 1 formulaic BTRR for the Rate Effective Period, beginning June 1, 2019 through December 31, 2019, consists of the (1) Base Period Revenues and (2) Forecast Period Revenues.

1.1.1 Effective June 1, 2019, the TO5, Cycle 1 Wholesale BTRR shall be \$819.971 million, as determined in accordance with the TO5 Formula.

1.1.2 Effective June 1, 2019, the TO5, Cycle 1 Retail BTRR shall be \$823.744 million, as determined in accordance with the TO5 Formula.

1.2 Term

1.2.1 The TO5 Formula shall be in effect from June 1, 2019 and each year thereafter, unless the Commission modifies or replaces the TO5 Formula, subject to the following. Each party to SDG&E's TO5 Formula rate filing proceeding at FERC, whether the Cycle 1 filing or subsequent annual Informational Filings, and SDG&E, shall each have a right to terminate the TO5 Formula, to be exercised on an annual basis beginning with the 2022 annual cycle (TO5 Cycle 4), by providing notice to SDG&E and to each Party no later than June 30, 2021 or any year thereafter ("Notice of Termination"). Following the Notice of Termination, SDG&E shall file a successor rate pursuant to Section 205, which shall include a request for an effective date that is January 1 of the upcoming year. All Parties retain their right to oppose the filing.

1.2.2 After termination of the TO5 Formula, SDG&E shall calculate a Final True-Up Adjustment. The Final True-Up Adjustment shall cover the period of time ending on the date the TO5 Formula terminated and beginning on the day after the period covered by the most recent Annual True-Up Adjustment that was included in the BTRRs. The Final True-Up Adjustment shall be determined using the same calculation methodology as the Annual True-Up Adjustment and shall be applied to the next successor rate.

1.2.3 Notwithstanding the foregoing, the existing rates in effect at the time the TO5 Formula terminates shall remain in effect until superseded by subsequent Commission-approved rates, consistent with Section 2.4(e) of the Commission's Regulations.¹¹

1.3 Miscellaneous Rate Matters

1.3.1 This Settlement resolves all issues concerning the adjustment to reflect the correction of errors related to SDG&E's calculation of its Accumulated Deferred Income Taxes ("ADIT").¹² SDG&E will correct the ADIT errors as follows. With respect to 2012-16, SDG&E will recover \$25.5 million of the 2012-16 portion of the ADIT error, rather than the \$91 million amount SDG&E proposed to recover in the October 31, 2018 TO5 filing. This amount does not include any recovery of proposed interest on the correction. SDG&E will also make a corresponding refund via CPUC-regulated rates of \$8.5 million. As of December 31, 2017 (and going forward), SDG&E's rate base will reflect the deferred tax asset associated with the ADIT error correction.

1.3.2 SDG&E has reflected a rate base reduction for the following four categories of unfunded reserves: (1) Injuries and Damages Accrual; (2) Accrued Workmen's Compensation;

¹¹ 18 C.F.R. § 2.4(e)(2018).

¹² See SDG&E's October 30, 2018 Transmittal Letter accompanying the TO5 Formula filing at p. 6 and pp. 1-3 of Attachment 1 to that letter.

(3) Accrued Supplemental Executive Retirement Plan (SERP); and (4) Accrued Vacation Payable.

1.3.3 SDG&E will calculate the Annual Fixed Charge Rate using Net Transmission Plant (Gross Plant Less Accumulated Depreciation) in the denominator, instead of using Gross Transmission Plant.

1.3.4 SDG&E will exclude 40% of Executive Incentive Compensation from the BTRR, using the definition of “executive officer” set forth in Rule 3b-7 under the Securities Exchange Act of 1934. Rule 3b-7 defines an “executive officer” to include a company’s “president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration of finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant.” 17 C.F.R. § 240.3b-7.

1.4 Depreciation Rates

1.4.1 The TO5 Formula will include stated transmission depreciation rates for each account upon which the annual depreciation expense shall be calculated. These rates are shown in Attachment A to this Settlement and in Statement AJ workpapers. The composite transmission depreciation rate will be 2.97%, based on plant balances as of December 31, 2017. The transmission depreciation rates cannot be changed during the term of the TO5 Formula.

1.4.2 The TO5 Formula also provides for stated depreciation rates and/or amortization periods for General Plant, Common Plant and Intangible Plant, as applicable. These rates and/or amortization periods, which also are shown in Attachment A to this Settlement and in Statement AJ workpapers, cannot be changed absent a FPA Section 205 or 206 filing. SDG&E may make a single-issue Section 205 filing to change the depreciation rates and/or amortization periods for

General Plant, Common Plant and Intangible Plant upon approval by the CPUC of revised depreciation rates and/or amortization periods for these plant categories. All persons retain their full rights to oppose the filing. However, the Commission is not bound by this provision and may at its discretion broaden the scope of the filing.

1.5 Return on Equity

1.5.1 SDG&E's Return on Equity ("ROE") will be 10.60%, consisting of a base ROE of 10.10% and a 50 basis point adder for CAISO participation. SDG&E will refund the CAISO 50 basis point adder as of the refund effective date (June 1, 2019) in this proceeding if the Commission issues an order ruling that California investor-owned utilities are no longer eligible for the CAISO adder.

1.5.2 For each cycle under the TO5 Formula, SDG&E will use its actual equity, debt and preferred ratios as of December 31 of the Base Period to derive the capital structure for the Rate Effective Period applicable to that cycle.

1.5.3 There shall be a moratorium on SDG&E and Parties that prohibits Section 205 or Section 206 filings seeking to change the ROE component (both the Return on Common Equity on Statement AV, page 1, line 32, and the Incentive Return on Common Equity, on Statement AV, page 2, line 1), with the exception of the 50-basis point adder for CAISO participation, of the TO5 Formula through June 30, 2021. This moratorium is described in the Term provision in Section B of the Protocols.

1.6 Wholesale and Retail True-Up Mechanisms

The TO5 Formula reflects a single true-up adjustment for retail and wholesale customers. The details of the True-Up Adjustment are set forth in Section E of the Protocols.

1.7 Reservation of Rights

SDG&E has modified the Protocols to include a provision reserving the Parties' rights to unilaterally file a complaint under Section 206 of the Federal Power Act.

B. ARTICLE II – EVALUATION OF SDG&E'S FORECAST PERIOD CAPITAL ADDITIONS

2.1 SDG&E will support interested Parties' review of its Forecast Period Capital Additions – a component of the Base Transmission Revenue Requirements within the TO5 Formula – in the following manner.

2.1.1 At the time of the Draft Informational Filing, SDG&E will provide interested Parties with data on all planned electric transmission capital projects for the next five-year period (e.g., SDG&E's current Five Year Plan for transmission projects only as of the time of the Annual Update filing), as well as transmission capital additions made in the prior five years. The data for each project will include but is not limited to the following:

- (1) Description of the project;
- (2) Purpose of the project;
- (3) Justification for the need of the project including but not limited to the following:
 - a. Standards/requirements/policies encroached upon or expected to be violated;
 - b. Age;
 - c. Fire threat; and
 - d. Alternatives considered.
- (4) For these same projects, SDG&E will provide its budget estimation and methodology for the next three-year period.

2.1.2 SDG&E will provide interested Parties with all strategy documents used to identify electric transmission capital projects that are not reviewed by the CAISO.

2.1.3 SDG&E will respond to questions from interested Parties regarding deployment of transmission technologies, and any other questions regarding the data.

2.1.4 SDG&E will respond to interested Parties' questions regarding project-specific information provided as set forth in Sections 2.1.1 through 2.1.3 above.

2.1.5 SDG&E will hold one meeting annually among interested Parties to discuss the information identified in Sections 2.1.1 through 2.1.4 above, at which it will provide demonstration(s) of the modeling/analysis and model validation process that was conducted for select projects in (1) including input data and identification of the data sources.

2.1.6 SDG&E will also make available a total of \$300,000 to be spent annually on CPUC's participation in the CAISO Transmission Planning Process, an engineering review on behalf of the CPUC in each TO5 Formula Cycle, and FERC litigation. This amount will be fully recovered in transmission rates.

C. ARTICLE III – REFUNDS

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

3.1 Wholesale Refunds

SDG&E shall refund to the CAISO all payments that it has received from the CAISO that exceed the payments that would have been received had the Settlement Wholesale and Retail BTRR been reflected in the CAISO's Access Charge rates as of June 1, 2019. The effective period for such refunds shall be from June 1, 2019 to the date the Access Charge rates resulting from this Settlement are implemented by the CAISO.

3.2 Retail End Use Refunds

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

D. ARTICLE IV – GENERAL PROVISIONS

4.1 Resolution of All Issues

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

4.2 Non-Precedential Effect of Settlement of All Issues

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

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

This provision applies to all issues set for hearing. Agreement to or acquiescence in this Settlement shall not be deemed in any respect to constitute an admission by SDG&E or any Party to this proceeding that any allegation or contention made by SDG&E or any other Party in this proceeding is true or valid. The Settlement represents a negotiated offer of settlement for the sole purpose of settling all issues set for hearing and settlement procedures in this proceeding. Neither SDG&E nor any Party to this proceeding or affiliate thereof shall be deemed to have

approved, accepted, agreed to, or consented to any fact, concept, theory, rate methodology, principle, or method relating to jurisdiction, prudence, reasonable cost of service, cost classification, cost allocation, rate design, tariff provisions, or other matters underlying or purported to underlie any of the resolutions of the issues provided herein. The Commission's approval of the Settlement shall not constitute approval of, or precedent regarding, any principle or issue settled by this proceeding. The resolution of any matter in this Settlement shall not be deemed to be a "settled practice" as that term was interpreted and applied in *Public Service Commission of the State of New York v. FERC ("PSCNY")*.¹³

4.4 Approval of Settlement and Privileged Nature of Settlement

This Settlement is submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602, and is offered solely as a compromise in order to resolve the issues set for hearing in this proceeding. The discussions among SDG&E, Trial Staff, and the Parties to this proceeding that have produced this Settlement have been conducted on the explicit understanding that they were undertaken subject to Rule 602(e) of the Commission's Rules of Practice and Procedure,¹⁴ and the rights of such parties with respect thereto shall not be impaired by the Settlement. All documents provided or exchanged among SDG&E, Trial Staff, and the Parties to this proceeding in the course of such discussions are also subject to Rule 602(e).

4.5 Settlement Effectiveness

This Settlement shall become effective upon the issuance of a final Commission order approving this Settlement, including all attachments, without modifications or conditions or, if

¹³ *PSCNY*, 642 F.2d 1335 (D.C. Cir. 1980).

¹⁴ 18 C.F.R. § 385.602(e).

modified or conditioned, upon its acceptance by adversely affected parties as provided in Section 4.6 below.

4.6 Integration

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

4.7 Entirety of Offer of Settlement

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

4.8 Standard of Review

To the maximum extent permitted by law, the provisions of this Settlement shall not be subject to change under Sections 205 and 206 of the FPA absent the written agreement of SDG&E and the Parties to this proceeding, and the standard of review for changes unilaterally proposed by SDG&E or a Party to this proceeding shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Fed. Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527 (2008); and *NRG Power*

Mktg., LLC v. Maine Pub. Utilities Comm'n, 558 U.S. 165 (2010). The standard of review for any changes proposed by entities that were not parties to this Settlement or by the Commission acting *sua sponte* shall be the just and reasonable standard.

Respectfully submitted,

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