

115 FERC ¶ 61,308
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER06-95-000

Pacific Gas and Electric Company

Docket Nos. ER05-516-000
ER05-516-001

ORDER ACCEPTING AND SUSPENDING FACILITIES AGREEMENTS, DENYING
WAIVER OF PRIOR NOTICE REQUIREMENT, ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES, AND
CONSOLIDATING PROCEEDINGS

(Issued June 9, 2006)

1. On October 31, 2005, Pacific Gas and Electric (PG&E) filed its eleventh quarterly report, which covers the period from July 1, 2005 through September 30, 2005, of facilities agreements between PG&E and the City and County of San Francisco (San Francisco).¹ This order accepts ten uncontested facilities agreements, and conditionally accepts and suspends for a nominal period five contested facilities agreements and makes them effective, subject to refund, as discussed below. This order also sets the five contested facilities agreements for hearing, but holds the hearing in abeyance so that the parties may engage in settlement discussions. Further, this order consolidates this proceeding with the ongoing proceeding in Docket Nos. ER05-516-000 and ER05-516-001.² In addition, this order denies PG&E's request for waiver of the Commission's prior notice requirement for agreements executed before the quarter ending on September 30, 2005.

Background

2. PG&E's eleventh quarterly report contains 15 facilities agreements between itself and San Francisco. The agreements were submitted under a 1987 Interconnection

¹ PG&E requested that the Commission defer action on the filing until April 12, 2006, to allow for settlement negotiations between itself and San Francisco. PG&E subsequently asked for an additional deferral of action until June 12, 2006.

² See *Pacific Gas and Electric Company*, 112 FERC ¶ 61,354 (2005).

Agreement (1987 Agreement) between PG&E and San Francisco and an Offer of Settlement and Clarifying Supplement which amended the 1987 Agreement to allow PG&E to make quarterly filings of facilities agreements.³

3. The facilities agreements set forth the terms and conditions necessary for the construction, operation, and maintenance of facilities related to the 1987 Agreement, as amended, and allows PG&E to receive payments for facilities constructed prior to PG&E making a filing with the Commission.

Description of Filing

4. PG&E and San Francisco have agreed to have PG&E install facilities for San Francisco. PG&E states that San Francisco has paid a total of \$102,258.15 to PG&E for installation of the facilities at issue. PG&E states that the facilities are owned by PG&E but are on San Francisco's property, and were designed for service to San Francisco for San Francisco's load.

Notice of Filing and Protest

5. Notice of PG&E's filing was published in the *Federal Register*, 70 Fed. Reg. 68,436 (2005), with interventions and protests due on or before November 21, 2005. San Francisco filed a timely motion to intervene and protest.

6. San Francisco states that it objects to the cost estimates provided by PG&E for two of the agreements⁴ because they fail to include a "distribution line extension allowance" in accordance with Rules 15 and 16, on file with the California Public Utilities Commission (California Commission) and incorporated into the 1987 Agreement. San Francisco states that section 3.3.3 of the 1987 Agreement requires PG&E and San Francisco to "pay the additional cost of such extensions or reinforcements as set forth in PG&E's then current Electric Rule Nos. 15, 15.2 and 16 or successor(s) on file with the [California Commission]" San Francisco states that under Rule 16, section E.2 or Rule 15, section C, it is entitled to a distribution line extension allowance based on a

³ On November 26, 2004, the Commission approved the settlement. *See Pacific Gas and Electric Co.*, 109 FERC ¶ 61,230 (2004).

⁴ San Francisco identifies the two agreements as: (1) TS#0777J Potrero Street Upgrade Project – Potrero Street and Alameda to 25th Street, dated August 8, 2005 (Potrero Project); and (2) TS#0435J Upgrade Project – Fulton Street at 8th Avenue, dated September 20, 2005 (Fulton Project).

methodology that considers the expected revenue to PG&E and PG&E's investment in the new facility.⁵ San Francisco states that the Commission should not accept these two agreements unless PG&E agrees to include the required allowances.

7. San Francisco also argues that it objects to the costs for three other agreements⁶ because the work should have been undertaken at PG&E's cost pursuant to section 11.32 of the San Francisco Administrative Code and section 7(d) of the 1939 Franchise Agreement between San Francisco and PG&E that requires PG&E to "remove or relocate without expense to the city any facilities installed, used and maintained under the franchise . . . if and when made necessary by any lawful change of grade, alignment or width of any street, or by any work to be performed under the governmental authority of the city . . ." ⁷ San Francisco contends that, in the case of these three agreements, San Francisco required PG&E to undertake actions in order to accommodate work to be performed under the governmental authority of San Francisco. Therefore, San Francisco claims that PG&E's demand for payment for the work is not just and reasonable. Accordingly, San Francisco requests that the Commission require PG&E to return the funds paid by San Francisco, with interest.

8. San Francisco also states that the Commission must address its concerns that the five contested agreements are unjust and unreasonable, rather than deferring the dispute to arbitration under the 1987 Agreement.⁸

⁵ San Francisco notes that it has an identical issue with agreements filed by PG&E in its eighth, ninth, and tenth quarterly filings in Docket Nos. ER05-516-000 and ER05-516-001, ER05-911-000, and ER05-1264-000.

⁶ San Francisco identifies the three agreements as: (1) Octavia Street Improvement #2029N Project- S/W corner of Fell and Laguna Streets, dated August 8, 2005, and Supplemental to Short Term Facilities Agreement – Ref# 100933266, PM#40513249 (Octavia Project); (2) Two Street Light services – Fitch Street and Donner Street, dated June 24, 2005; and Supplemental to Short Term Facilities Agreement – PM#40506498, (Fitch/Donner Project); and (3) Dianne Feinstein School – 2250 25th Avenue, Distribution Service and Extension Agreement – PM#30437371, dated May 31, 2005 (Feinstein Project).

⁷ San Francisco Protest at 6.

⁸ San Francisco raises this concern because, in Docket No. ER05-516-000, PG&E filed an answer to San Francisco's protest alleging that the disagreements between the parties as to the facility agreements should be resolved pursuant to the arbitration provisions of section 9.29 of the 1987 Agreement.

Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), San Francisco's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Request for Waiver

10. The Federal Power Act requires that, absent waiver, a rate must be filed with the Commission at least 60 days before a public utility can charge that rate to a customer.⁹ Here, the Commission has approved a procedure that allows PG&E to begin charging San Francisco for the construction of facilities under separate agreements before the rate is filed and accepted by the Commission.¹⁰ However, PG&E is obligated to make quarterly filings with the Commission of the agreements entered into in the prior quarterly period.

11. The filing at issue is PG&E's quarterly filing reflecting activity in the third quarter of calendar year 2005. Therefore, the Commission will grant waiver of the Commission's 60-day prior notice requirement with respect to the eleven agreements dated within that quarter (from July 1, 2005 through September 30, 2005).

12. However, with respect to the four agreements with requested effective dates before July 1, 2005,¹¹ waiver of notice is granted for this type of filing only upon showing of

⁹ 16 U.S.C. § 824d (2000); 18 C.F.R. § 35.3 (2005).

¹⁰ See *Pacific Gas and Electric Company*, Docket No. ER88-217-000 (March 31, 1989) (unpublished delegated letter order); *Pacific Gas and Electric Company*, Docket No. ER99-2532-000 (May 27, 1999) (unpublished delegated letter order).

¹¹ The four agreements are: (1) Concourse Parking Garage – Golden Gate Park – Underground Commercial Device, dated June 24, 2005; (2) Concourse Parking Garage – Golden Gate Park – Installation of Electric Service, dated June 24, 2005; (3) Two Street Light Services – Fitch Street and Donner Street – Disconnect/Reconnect, dated June 24, 2005; and (4) Dianne Feinstein School – 2550 25th Avenue – Relocation of Facilities, dated May 31, 2005.

extraordinary circumstances.¹² PG&E has not made such a showing. Therefore, waiver of notice for these four agreements is denied, and these agreements are accepted, effective December 31, 2005, following sixty days from the date of filing.

13. Accordingly, if PG&E collected revenues before that effective date, PG&E must refund the time value of the revenues actually collected for the time period during which the rates were charged without Commission authorization.¹³ Here, since PG&E was authorized to file the agreements on a quarterly basis, the period for which refunds must be paid runs from the date each agreement should have been filed with the Commission if PG&E had timely filed them (here, the date the rates were first charged without Commission authorization) until the date refunds are paid to San Francisco. The Commission also limits time value refunds in cases such as this so as not to cause the utility to suffer a loss.¹⁴

14. PG&E is directed to make time value refunds within 30 days of the date of this order and to file a refund report with the Commission within 30 days thereafter.

C. Line Extension Allowance, City Rights under Franchise Agreements, and Arbitration

15. Our preliminary analysis of the ten uncontested facilities agreements indicates that these agreements appear to be just and reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept eight of these agreements for filing, to become effective on the dates requested, without suspension or hearing. However, we note that PG&E requested effective dates for two of these agreements that do not qualify for waiver of notice. Therefore, these two agreements are accepted to become effective on the dates discussed above.

16. San Francisco's concerns about the distribution line extension allowance, city rights under franchise agreements, and arbitration under the 1987 Agreement in the five

¹² See *Central Hudson Gas and Electric Company*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹³ See *El Paso Electric Company*, 101 FERC ¶ 61,276, *reh'g denied*, 105 FERC ¶ 61,131 (2003).

¹⁴ See *Southern California Edison Company*, 98 FERC ¶ 61,304 (2002); see also *Florida Power & Light Company*, 98 FERC ¶ 61,276, *reh'g denied*, 99 FERC ¶ 61,320 (2002).

contested agreements raise questions of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

17. Our preliminary analysis indicates that the five contested agreements have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, we will accept these five facilities agreements, suspend them for a nominal period, make them effective subject to refund, and set them for hearing and settlement judge procedures. Given common issues of law and fact, we will also consolidate this docket with the ongoing proceedings in Docket Nos. ER05-516-000 and ER05-516-001.¹⁵

The Commission orders:

(A) PG&E's ten uncontested facilities agreements are hereby accepted and made effective, as discussed in the body of this order.

(B) PG&E's five contested facilities agreements are hereby accepted and suspended for a nominal period, to become effective upon the dates identified in the body of this order, subject to refund, as discussed in the body of this order.

(C) PG&E's request for waiver of the Commission's 60-day prior notice requirement is hereby granted for the 11 agreements dated within the third quarter of 2005, but denied for the four agreements dated prior to July 1, 2005, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the five contested facilities agreements. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as provided in Ordering Paragraphs (E) and (F) below.

¹⁵ The two contested facilities agreements that fall outside of the quarter, which are the Fitch/Donner Project and the Feinstein Project will become effective on December 31, 2005, sixty days after filing. The remaining three contested facilities agreements, including the Potrero Project, the Octavia Project, and the Fulton Project, will become effective on the dates of the agreements, which are August 8, 2005, August 8, 2005, and September 20, 2005, respectively.

(E) This proceeding is hereby consolidated for purposes of settlement, hearing, and decision with the ongoing proceeding in Docket Nos. ER05-516-000 and ER05-516-001.

(F) The settlement judge or presiding judge, as appropriate, designated in Docket Nos. ER05-516-000 and ER05-516-001, shall determine the procedures best suited to accommodate consolidation.

(G) PG&E is hereby directed to make time value refunds, within 30 days of the date of this order and to file a refund report with the Commission within 30 days thereafter.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.