

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Pacific Gas and Electric Company

Docket No. ER06-95-001

ORDER ACCEPTING IN PART AND
REJECTING IN PART COMPLIANCE FILING

(Issued December 5, 2007)

1. On August 9, 2006, the Pacific Gas and Electric Company (PG&E) filed a refund report purportedly complying with the directions in the Commission's June 9 Order.¹ This order: (a) accepts the refund report for one of the of the revised facilities agreements that PG&E filed with its refund report; (b) rejects the refund report for one of the revised facilities agreements that PG&E filed with its refund report; (c) rejects three revised facilities agreements that PG&E filed with its refund report; and (d) directs PG&E to comply with the Commission's order directing refunds.

I. Background

2. On October 31, 2005, PG&E filed its eleventh quarterly report of facilities agreements between PG&E and the city and county of San Francisco (San Francisco).² The report covers the period from July 1, 2005 through September 30, 2005. 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's making a filing with the Commission.

¹ *Pacific Gas and Electric Company*, 115 FERC ¶ 61,308 (2006) (June 9 Order).

² PG&E submitted the agreements under a 1987 Interconnection Agreement (1987 Agreement) between PG&E and San Francisco and an Offer of Settlement and Clarifying Supplement that amended the 1987 Agreement to allow PG&E to make quarterly filings of facilities agreements. On November 26, 2004, the Commission approved the settlement. See *Pacific Gas and Electric Co.*, 109 FERC ¶ 61,230 (2004).

3. On June 9, 2006, the Commission issued an order denying PG&E's request for waiver of the Commission's 60-day prior notice requirement for four of the facilities agreements,³ which PG&E executed with San Francisco before the quarter ending on September 30, 2005, and directed PG&E to refund the time value of revenues actually collected from the time that PG&E first charged the rates without Commission authorization until the date PG&E makes the refunds to San Francisco.⁴

II. PG&E's Compliance Filing

4. As noted above, on August 9, 2006, PG&E filed a refund report purporting to comply with the Commission's order. Also, with its refund report, PG&E re-filed three facilities agreements that it had originally filed as unsigned and with different effective dates. These facilities 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; and (3) Two Street Light Services – Fitch Street and Donner Street – Disconnect/Reconnect, dated June 24, 2005. PG&E states that after reviewing these agreements, it determined that the two agreements for the Concourse Parking Garage were actually effective July 8, 2005, and the agreement for Street Light Services for Fitch Street and Donner Street was effective July 5, 2006. In submitting these amended facilities agreements, PG&E did not calculate refunds for all of the facilities agreements, as the Commission directed; instead, it calculated refunds for only two of the facilities agreements.⁵

³ 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.

⁴ June 9 Order, 115 FERC ¶ 61,308 at P 10-14. In the June 9 Order the Commission also accepted ten uncontested facilities agreements, and conditionally accepted and suspended for a nominal period five contested facilities agreements and made them effective, subject to refund. The June 9 Order further set the five contested facilities agreements for hearing, but held the hearing in abeyance so that the parties might engage in settlement discussions.

⁵ PG&E calculated refunds for one of the Concourse Parking Garage facilities agreements (Underground Commercial Device), and for the Dianne Feinstein School – 2550 25th Avenue – Relocation of facilities agreement, dated May 31, 2005. Transmittal Letter at 2 and Attachment 1.

III. Commission Determination

5. We will accept the refund report for one of the facilities agreements that PG&E filed with its refund report (the Diane Feinstein School). We will reject the refund report for one of the facilities agreements that PG&E filed with its refund report (the Concourse Parking Garage (Underground Commercial Device)) because PG&E has not explained why it calculated refunds based on the Customer Financed Equivalent One-Time Payment, rather than on the Total Payment Amount.

6. With respect to the four facilities agreements under consideration here, we denied waiver of our prior notice requirements, accepted the agreements effective December 31, 2005 (60 days from the date of their filing), and directed PG&E to return the time value of the revenues that it collected for the period during which PG&E charged the rates without authorization. We further directed PG&E to file a refund report within 30 days of making time value refunds under all four of the facilities agreements.⁶ PG&E's refund report reflects that it has made time value refunds for only two of the four facilities agreements. We will direct PG&E to make refunds for the two other facilities agreements under consideration here within 30 days of the date of this order and to file a revised refund report with us within 30 days thereafter.

7. Also, PG&E has filed with its refund report three revised and signed facilities agreements. We will reject these revised facilities agreements. In the June 9 Order, the Commission set an effective date for these agreements as December 31, 2005, sixty days from the date of their filing. PG&E did not ask for rehearing of the order establishing this effective date. PG&E may not obtain a different effective date for these agreements by re-filing them, with a different effective date, as part of a refund report. Additionally, these different effective dates would mitigate the Commission's previously-ordered refund requirement.

The Commission orders:

(A) PG&E's compliance filing is hereby accepted in part and rejected in part for the reasons discussed in the body of this order.

(B) PG&E is hereby directed to submit additional information explaining why it calculated refunds for the facilities agreement covering the Concourse Parking Garage (Underground Commercial Device) based on the Customer Financed Equivalent One-Time Payment, rather than on the Total Payment Amount.

⁶ June 9 Order, 115 FERC ¶ 61,308 at P 12-14. We also limited the time value refunds so as not to cause PG&E to suffer loss. *Id.* P 14.

(C) PG&E is hereby directed to make refunds, as discussed in the body of this order, and to file, within 30 days of the date of this order, a compliance filing in conformity with the directions in this order.

(D) PG&E's three revised facilities agreements are hereby rejected.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.