

128 FERC ¶ 61,234  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Suedeem G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Pacific Gas and Electric Company

Docket Nos. ER05-516-000  
ER05-516-001  
ER05-911-000  
ER05-1264-000  
ER06-95-000  
ER06-948-000  
ER06-1306-000  
ER07-114-000  
ER07-812-000

ORDER CONDITIONALLY APPROVING UNCONTESTED SETTLEMENT

(Issued September 10, 2009)

1. On April 13, 2009, Pacific Gas and Electric Company (PG&E) filed an Explanatory Statement, Offer of Settlement (Settlement) and Revised Procedures for the Implementation of Section 3.3 of the 2007 Amended Interconnection Agreement (Revised Procedures), on behalf of PG&E and the City and County of San Francisco, California (CCSF) (jointly, Settling Parties). This Settlement resolves all issues that were set for hearing in the above-captioned dockets concerning protests to agreements in PG&E's quarterly filings as well as certain other disputes. No comments were filed concerning the Settlement. On May 22, 2009, the settlement judge certified the Settlement to the Commission as uncontested.<sup>1</sup>

**Background**

2. The Amended Interconnection Agreement governs PG&E's transmission, distribution and other services to CCSF.<sup>2</sup> The Settling Parties first filed

---

<sup>1</sup> *Pac. Gas & Elec. Co.*, 127 FERC ¶ 63,017 (2009).

<sup>2</sup> Settlement at 2 (stating the Interconnection Agreement was originally executed in 1987 and amended effective September 1, 2007).

procedures in 1999 as an amendment to their interconnection agreement.<sup>3</sup> The procedures provide for PG&E and CCSF to execute agreements that describe the facilities to be constructed and the estimated costs for CCSF projects.<sup>4</sup> Pursuant to the procedures, PG&E collects the installed costs for the facilities prior to filing numerous CCSF-executed agreements on a quarterly basis with the Commission.<sup>5</sup> In 2004, the Settling Parties amended their procedures with Clarified Procedures that were intended to streamline PG&E's quarterly filing process with the Commission and prevent delays in the construction of facilities requested by CCSF.<sup>6</sup>

3. Following approval of the Clarified Procedures, however, disputes arose over certain individual projects. Consequently, CCSF protested the agreements in PG&E's eighth, ninth, tenth, eleventh, thirteenth, fourteenth, fifteenth and seventeenth quarterly filings.<sup>7</sup> The Commission accepted and suspended these agreements, established hearing and settlement judge procedures, and consolidated the filings into one proceeding.<sup>8</sup> The Commission also agreed to stay the quarterly filing proceedings so that the Settling Parties could engage in negotiations to resolve outstanding issues between them.<sup>9</sup>

---

<sup>3</sup> Pac. Gas & Elec. Co., Filing of Procedures for Implementation of Section 3.3 of the 1987 Agreement, Docket No. ER99-2532-000, at Transmittal Letter 1-2 (filed April 20, 1999).

<sup>4</sup> *Id.*

<sup>5</sup> Pac. Gas & Elec. Co., Filing of the Small Facilities Authorization Letter 6, pursuant to the Procedures for Implementation of Section 3.3 of the 1987 Agreement, Docket No. ER04-215-000, at Transmittal Letter 1 (filed November 24, 2003).

<sup>6</sup> Settlement at 2.

<sup>7</sup> *Id.*, citing *Pac. Gas & Elec. Co.*, Docket Nos. ER05-516-000, ER05-516-001, ER05-911-000, ER05-1264-000, ER06-95-000, ER06-948-000, ER06-1306-000, ER07-114-000 and ER07-812-000, respectively.

<sup>8</sup> *Id.* at 3, citing *Pac. Gas & Elec. Co.*, 112 FERC ¶ 61,354 (2005); *Pac. Gas & Elec. Co.*, 115 FERC ¶ 61,308 (2006); *Pac. Gas & Elec. Co.*, 115 FERC ¶ 61,373 (2006); *Pac. Gas & Elec. Co.*, 116 FERC ¶ 61,303 (2006); *Pac. Gas & Elec. Co.*, 117 FERC ¶ 61,336 (2006).

<sup>9</sup> *Id.*; see *Pac. Gas & Elec. Co.*, 113 FERC ¶ 61,028 (2005).

4. The Settling Parties agree to amend the Clarified Procedures and have attached the Revised Procedures to the Settlement to resolve all of the issues in these proceedings.<sup>10</sup> In addition, as a term of the Settlement, PG&E paid \$513,177.67 to CCSF on March 1, 2008 to resolve outstanding financial claims.<sup>11</sup>

### **Revised Procedures and Settlement**

5. The Revised Procedures will supersede the Clarified Procedures with the following major agreed-upon modifications. The Revised Procedures will: (1) update the interconnection procedures; (2) clarify the process by which PG&E will undertake a true-up of project costs; (3) clarify how traffic signals are treated in calculating allowances and determining payment options; (4) resolve certain disputes related to work undertaken pursuant to a 1939 franchise agreement between the Settling Parties; and (5) clarify certain general contract provisions.<sup>12</sup>

6. The Revised Procedures also contain a Commission protective order. Pursuant to the Revised Procedures, the Settling Parties will provide each other information in order to evaluate the potential impacts of proposed projects and proposed construction documents. The Revised Procedures state that some of this information is confidential, sensitive, or proprietary, including detailed job estimates, trench route construction drawings and circuit maps showing the point of interconnection.<sup>13</sup> Thus, the Settling Parties agree to procedures to safeguard such material, including a protective order that provides that each representative of a Settling Party who has access to information designated as confidential or protected material shall sign a non-disclosure certificate.<sup>14</sup>

7. With regard to approval of the Settlement, the Settlement states that if the Commission issues an order modifying the Settlement or approving it only subject to modifications or conditions, then the Settlement will not become effective unless each of the Settling Parties expressly accepts the modifications or conditions within thirty (30) days of the date of the Commission's order requiring

---

<sup>10</sup> *Id.* at 4.

<sup>11</sup> *Id.*

<sup>12</sup> Explanatory Statement at 4-7. *See also* Settlement at Attachment 4 Revised Procedures.

<sup>13</sup> Settlement at Attachment 4 Revised Procedures § 10.

<sup>14</sup> Settlement at Attachment 4 Revised Procedures § 10 – Attachment 1.

the modifications or conditions.<sup>15</sup> The Settlement further states that in the event either of the parties fails to accept a modification or condition required by the Commission, then the Settlement shall be void and of no effect.<sup>16</sup>

### **Determination**

8. With respect to future changes to the Settlement itself, page 7 of the Settlement provides:

It is the Parties' intent that the Commission's right to change any provision of this Settlement Agreement shall be limited to the maximum extent permissible by law and that any such change, if permissible, shall be in accordance with the *Mobile-Sierra* public interest standard applicable to fixed rate agreements. *See United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

9. With respect to the protective order, the Revised Procedures state that the Settling Parties have agreed to the procedures for protecting, using, handling, and safeguarding confidential, sensitive, or proprietary material.<sup>17</sup> The Revised Procedures state that the Settling Parties also agree to automatically exchange such information as is generally available to the public.<sup>18</sup> The Settling Parties further agree to provide to each other such additional confidential, sensitive, or proprietary information as may be requested, provided that such non-public information shall be considered "Protected Materials" as defined in the protective order, clearly marked as protected, and that any representative handling such information will sign a non-disclosure certificate.<sup>19</sup>

10. The Commission recognizes that the Settling Parties may have valid reasons for seeking to protect some information from public disclosure. However, consistent with our prior orders, and given the existing consensus between the Settling Parties as to the materials that should be protected and procedures for protecting them, the Commission believes it is preferable for the parties to

---

<sup>15</sup> Settlement at 8-9.

<sup>16</sup> *Id.* at 9.

<sup>17</sup> Settlement at Attachment 4 Revised Procedures § 10.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

negotiate and enter into a protective agreement among themselves without Commission involvement.<sup>20</sup> While in other cases, the parties have shown a willingness to sign a protective agreement among themselves, we see no reason why PG&E and CCSF are not able to enter into a protective agreement. Further, a protective agreement entered into by the parties would provide as much protection as a Commission-issued protective order.<sup>21</sup> The Settling Parties are directed to make a compliance filing no later than 45 days from the date of this order reflecting the removal of the protective order and updating the references to the protective order in the Revised Procedures. New subdockets will be assigned to the compliance filing.

11. The Settlement appears to be fair and reasonable and in the public interest and is hereby approved, subject to the conditions of this order. The Commission's conditional approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Except for the tariff sheets related to the protective order,<sup>22</sup> the tariff sheets are properly designated, accepted for filing and made effective as set forth in the Settlement.<sup>23</sup>

12. The Settling Parties intend this Settlement to be a full and final settlement of the issues in Docket Nos. ER05-516-000, ER05-516-001, ER05-911-000, ER05-1264-000, ER06-95-000, ER06-948-000, ER06-1306-000, ER07-114-000, and ER07-812-000. CCSF has committed to withdraw its protests in these dockets once the Commission approves the Revised Procedures.<sup>24</sup>

---

<sup>20</sup> *PPL Montana, LLC*, 113 FERC ¶ 61,231, at P 5 (2005); *Bridgeport Energy, LLC*, 111 FERC ¶ 61,381, at P 2 (2005); *Southern Co. Energy Mktg., Inc.*, 111 FERC ¶ 61,011, at P 8 (2005); *Cranberry Pipeline Corp.*, 107 FERC ¶ 61,147, at P 10 (2004); *PG&E Texas Pipeline, L.P.*, 92 FERC ¶ 61,111 (2000); *Trunkline Gas Co.*, 53 FERC ¶ 61,065 (1990).

<sup>21</sup> See *Southern Co. Energy Mktg., Inc.*, 111 FERC ¶ 61,011, at P 8.

<sup>22</sup> Pac. Gas & Elec. Co., Revised Rate Schedule FERC No. 114, Original Sheet Nos. 180u.02, 180u.07-12.

<sup>23</sup> *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

<sup>24</sup> Settlement at 7.

The Commission orders:

(A) The Settlement is hereby conditionally approved, as discussed in the body of this order.

(B) The request for issuance of a protective order is denied for the reasons discussed in the body of this order.

(C) The Settling Parties must submit a compliance filing no later than 45 days from the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.