

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

ORDER ACCEPTING AND SUSPENDING AGREEMENTS AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 30, 2005)

1. In this order, we accept for filing two executed Large Facilities Agreements and nine executed Small Facilities Agreements between Pacific Gas and Electric Company (PG&E) and the City and County of San Francisco (San Francisco), and suspend them for a nominal period, to become effective as requested, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. On January 31, 2004, as amended on February 9, 2005, PG&E filed two executed Large Facilities Agreements¹ and nine executed Small Facilities Agreements.² PG&E

¹ The Large Facilities Agreements are (1) Muni 3rd Street, Segment B, Mission Rock, South Street, Mariposa Street, and 20th Street - Distribution Service and Extension Agreement, December 27, 2004; and (2) the Muni 3rd Street Lightrail, 3400 Keith Street – Distribution Service and Extension Agreement, December 27, 2004.

² The Small Facilities Agreements are (1) Eureka Valley Recreation Center and Playground, 100 Collingwood Street – Distribution Service and Extension Agreement, October 27, 2004; (2) Muni Metro East, 601 25th Street – Rule 13 Temporary Service Agreement, December 27, 2004; (3) Muni 3rd Street, Segment B, 4th Street/Berry Street – Distribution Service and Extension Agreement, December 27, 2004; (4) Muni 3rd Street, Segment D #1, Jerrold Avenue to Donner Avenue – Agreement to Perform Tariff Schedule Related Work, December 27, 2004; (5) Muni 3rd Street, Segment D #2, Jerrold Avenue to Donner Avenue – Distribution Service and Extension Agreement,

(continued...)

filed these agreements pursuant to procedures contained in a 1987 Interconnection Agreement between PG&E and San Francisco and “Procedures for Implementation of Section 3.3 of the 1987 Agreement (Procedures).”³ According to PG&E, the Procedures permit it to make quarterly filings of the agreements and to collect installed costs for such facilities prior to filing with the Commission subject to quarterly filing and subject to refund. PG&E states that this is its eighth quarterly filing.

3. PG&E explains that, under the Procedures, it makes quarterly filings of executed Large Facilities Agreements and Small Facilities Agreements for the individual facilities in lieu of filing executed Facilities Authorization Letters. The executed Large Facilities Agreements and Small Facilities Agreements represent the amounts agreed upon for purposes of the Procedure and for work requested by the City.

Description of the Filing

4. The Large Facilities Agreements⁴ provide the terms and conditions for ownership, operation and maintenance for two large projects. PG&E states that it and San Francisco have agreed to install the facilities for a total cost of \$168,629.70, including applicable allowances, and a gross-up for Federal and State taxes. PG&E states that the cost will be true-up to actual cost as provided in the Procedures and the 1987 Interconnection Agreement.

December 27, 2004; (6) Muni 3rd Street, Segment E, Platforms – Distribution Service and Extension Agreement, December 27, 2004; (7) Muni 3rd Street, Segment F, Blanken Street to Sunnydale Street – Agreement to Perform Tariff Schedule Related Work, December 27, 2004; (8) Muni 3rd Street, Segment F, Platforms – Distribution Service and Extension Agreement, December 27, 2004; and (9) Muni 3rd Street Lightrail, 3400 Keith Street – Distribution Service and Extension Agreement, December 27, 2004.

³ The Procedures were approved by the Commission by delegated letter order in Docket No. ER99-2532-000, dated May 27, 1999, and recently updated in a negotiated Clarifying Supplement. PG&E and San Francisco produced the Procedures in order to streamline the filing process and to prevent delays or impedances in the construction of facilities requested by San Francisco.

⁴ *Supra* note 1.

5. The Small Facilities Agreements⁵ provide the terms and conditions for ownership operation and maintenance for nine small projects between October 25, 2004 and December 15, 2004 at a total cost of \$147,722.35, including applicable allowances and a gross-up for Federal and State taxes.

6. PG&E states that the large and small facilities, located on San Francisco property, are owned by it and will remain the property of PG&E to the extent consistent with the California Public Utilities Commission Code Rules 15 and 16, unless otherwise agreed to by San Francisco and PG&E. PG&E states, further, that the facilities were designed at San Francisco's request, for service to San Francisco's load. According to PG&E, San Francisco receives a 100 percent benefit from these facilities.

7. PG&E points out that, with regard to certain of the projects, PG&E will collect a customer-financed equivalent one-time payment instead of a monthly cost of ownership charge for operation and maintenance of the facilities.⁶ PG&E notes that the indirect and overhead costs are based on percentages of various direct costs and that these percentages change from month to month depending on the total actual costs accumulated in a clearing account and the jobs available to which to charge these costs for a given month.

8. PG&E requests the Commission to accept the two Large Facilities Agreements and the nine Small Facilities Agreements to be effective as of the agreement dates provided in a Facilities List included in the eighth quarterly report.⁷ PG&E requests the Commission to grant whatever waivers of the Commission's rules and regulations are necessary for acceptance of the filing.

Notice of Filing and Responsive Pleadings

9. Notice of PG&E's January 31, 2005 and February 9, 2005 filings was published in the *Federal Register*, 70 Fed. Reg. 7098 (2005) and 70 Fed. Reg. 9638 (2005), respectively, with interventions and protests due on or before February 22, 2005 and March 2, 2005, respectively. San Francisco filed a timely motion to intervene and protest.

⁵ *Supra* note 2.

⁶ PG&E states that in future filings with the Commission, the parties may agree to use monthly charges instead of the equivalent one-time payment.

⁷ See PG&E Transmittal Letter, Attachment 1.

San Francisco's Protest

10. As an initial matter, San Francisco disputes PG&E's assertion in its transmittal letter that, by execution of the Large Facilities Agreements and the Small Facilities Agreements, San Francisco has concurred with the terms of those agreements. San Francisco explains that it processes interconnections with PG&E under strict timing requirements and that these interconnections cannot be delayed while PG&E and San Francisco resolve any differences regarding the costs associated with those interconnections. San Francisco explains that, when there are disputes, it executes the agreements and submits the payment, and notifies PG&E that it does so under protest and that it reserves its rights to protest in the appropriate forum.

11. With respect to particular agreements, San Francisco argues that the costs for the Keith Street Agreement appear to be excessive. San Francisco states that it requested information from PG&E to verify these costs but that it has not received that information. San Francisco points out that this project involves activities under two separate agreements. One agreement would require San Francisco to pay the costs of the new facilities while the other would require PG&E to pay the costs. San Francisco explains that it needs information to confirm that the allocation of costs is fair. San Francisco also argues that some of the costs result from PG&E's failure to interconnect at the nearest point of distribution. San Francisco states that, when it executed the Keith Street Agreement, it did so under protest.

12. San Francisco also disagrees with PG&E as to the applicability of California Public Utilities Commission Code Rules 15 and 16 to the Jerrold-Donner Agreement and the Blanken-Sunnydale Agreement.

13. Finally San Francisco states that the eighth quarterly report does not include all the agreements that the parties signed in the last quarter.

PG&E's Response

14. On March 2, 2005, PG&E filed a response to San Francisco's protest. PG&E states that San Francisco executed these project agreements because it wanted PG&E to perform the work requested by San Francisco, and as provided under the Procedures and Clarifying Supplement, this execution constitutes approval of the project costs. PG&E points out that, in cases of dispute, section 9.29 of the 1987 Interconnection Agreement provides a dispute resolution process for project specific matters not involving Commission policy or wholesale transmission service. PG&E points out that San Francisco did not exercise this dispute resolution process.

15. PG&E argues that it has provided San Francisco the appropriate cost information and documentation for that portion of the project in the Keith Street Agreement that was

funded by San Francisco. PG&E states that it did not provide such documentation for that portion of the project that was funded by PG&E. PG&E argues that it should not be required to provide information on work for which the customer was not charged. PG&E again points out that, in cases of dispute, the dispute resolution process in section 9.29 of the 1987 Interconnection Agreement should be used. PG&E also notes that there was time to address this issue, had San Francisco pursued it in a timely manner which it did not.

16. PG&E argues that the dispute resolution process in the 1987 Interconnection Agreement should also be used to resolve San Francisco's dispute regarding the interconnection for the Keith Street Agreement project. PG&E states that the applicability of the California Public Utilities Commission Code Rules 15 and 16 to the traffic signal portion of the projects in the Jerrold-Donner Agreement and the Blanken-Sunnydale Agreement is an issue of interpretation that also should be resolved through discussions between the parties or through the dispute resolution process under the 1987 Interconnection Agreement.

17. Finally, PG&E explains that it prepares groups of projects for the quarterly filing as quickly as information is received. PG&E concedes that it did not include all projects up to the date of this eighth quarterly report because of lack of data and proposes to submit the identified projects in the next quarterly filing.

18. PG&E, therefore, requests the Commission to deny San Francisco's request for documentation for PG&E-funded work performed under the agreement that does not fall under the provisions of the 1987 Interconnection Agreement or the Procedures and Clarifying Supplement and to accept PG&E's filing without setting settlement procedures while the parties continue to resolve their differences.

Motions to Defer Action

19. PG&E and San Francisco filed joint motions to defer action on March 16, 2005, on May 5, 2005, and again on June 13, 2005. The parties explained that they were engaged in informal discussions to resolve the issues raised in San Francisco's protest and that deferral of Commission action would permit these discussions to continue.

20. On August 16, 2005, PG&E filed a motion to defer action to October 1, 2005. San Francisco filed an answer to PG&E's August 16 motion on August 18, 2005 stating that, while it was not adverse to another deferral, it believed that some issues cannot be resolved through further discussions and will require Commission action. San Francisco, therefore, recommended that following this deferral, the Commission allow the parties to

brief the outstanding legal issues,⁸ and if necessary, appoint a settlement judge to adjudicate outstanding factual issues.

Discussion

Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F. R. § 385.214 (2005), San Francisco's unopposed motion to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PG&E's and San Francisco's answers because they have provided information that assisted us in our decision-making process.

22. The Commission has granted the parties' numerous requests for an additional deferral in order to work out their differences. However, PG&E's latest request for deferral is set to expire on October 1, 2005, and without Commission action the agreements would go into effect by operation of law.⁹

Hearing and Settlement Judge Procedures

23. PG&E's two Large Facilities Agreements and nine Small Facilities Agreements raise issues 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.

24. Our preliminary analysis indicates that PG&E's 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 the agreements, suspend them for a nominal period, make them effective on the dates requested,¹⁰ subject to refund, and set them for hearing and settlement judge procedures.

⁸ San Francisco proposes October 14, 2005 as the date to file opening briefs and October 28, 2005 as the date to file reply briefs.

⁹ 16 U.S.C. § 824d (2000).

¹⁰ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*) (Commission will generally grant waiver of notice when rate change and effective date are already prescribed).

25. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹¹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹² The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) PG&E's agreements are hereby accepted for filing and suspended for a nominal period, to become effective on the dates requested, subject to refund, as discussed in the body of this order.

(B) 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 by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning PG&E's agreements with San Francisco. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge

¹¹ 18 C.F.R. § 385.603 (2005).

¹² If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.