

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. ER05-911-000
Pacific Gas and Electric Company	Docket No. ER05-1264-000
Pacific Gas and Electric Company	Docket No. ER06-948-000
Pacific Gas and Electric Company	Docket Nos. ER05-516-000 ER05-516-001 ER06-95-000

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

(Issued June 27, 2006)

1. On April 29, 2005, in Docket No. ER05-911-000, Pacific Gas and Electric Company (PG&E) filed its ninth quarterly filing of facilities agreements between PG&E and the City and County of San Francisco (San Francisco). On July 29, 2005, in Docket No. ER05-1264-000, PG&E filed its tenth quarterly filing. On May 1, 2006, in Docket No. ER06-948-000, PG&E filed its thirteenth quarterly filing (collectively, PG&E quarterly filings).¹ This order accepts the uncontested facilities agreements contained in

¹ PG&E requested that the Commission defer action in Docket Nos. ER05-911-000 and ER05-1264-000 to allow for settlement negotiations between itself and San Francisco. PG&E and San Francisco subsequently filed a joint motion for a six-month stay of proceedings involving facilities agreements. The Commission granted the joint motion on October 12, 2005. *Pacific Gas and Electric Co.*, 113 FERC ¶ 61,028 (2005). On April 18, 2006, the Commission granted PG&E and San Francisco's joint motion for a further sixty-day extension of the stay in the proceedings, and noted that the statutory period would begin on June 13, 2006 (*i.e.*, as if the filings had been made on June 13, 2006). *Id.*, 115 FERC ¶ 61,062 (2006).

(continued...)

the PG&E quarterly filings, and conditionally accepts and suspends for a nominal period the contested facilities agreements and makes them effective, subject to refund, as discussed below. This order also sets the contested facilities agreements for hearing, but holds the hearing in abeyance so that the parties may engage in settlement discussions. Further, this order consolidates these proceedings 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 60-day prior notice requirement for seven facilities agreements contained in PG&E's ninth quarterly filing which were executed before the quarter ending on March 31, 2005.

Background

2. The facilities agreements were submitted under a 1987 Interconnection 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 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. 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.

Descriptions of Filings

A. Docket No. ER05-911-000

3. PG&E's ninth quarterly filing, which covers the period from January 1 through March 31, 2005, contains five large facilities agreements and 15 small facilities

On June 13, 2006, PG&E filed a joint motion with San Francisco to request an extension of the stay of proceedings in Docket Nos. ER05-1190-000, ER05-516-000, ER05-516-001, ER05-911-000, ER05-1264-000, and ER06-95-000. The parties requested an extension of the stay until September 15, 2006 to permit them to continue settlement negotiations.

² See *Pacific Gas and Electric Co.*, 112 FERC ¶ 61,354 (2005); *Pacific Gas and Electric Co.*, 115 FERC ¶ 61,308 (2006).

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

agreements between itself and San Francisco. PG&E states that, between February 23, 2004 and March 28, 2005, San Francisco paid a total of \$437,927 to PG&E for installation of all of the facilities. PG&E requests effective dates from March 2, 2004 to March 28, 2005.

4. PG&E requests a waiver of the requirement to make time value refunds on the amounts it collected from San Francisco prior to January 1, 2005, which according to PG&E, totals \$335,850.⁴ PG&E argues that these amounts were collected for pre-interconnection activities, including procurement, engineering and limited construction, which PG&E states are necessary steps in connecting the new facilities to PG&E's system. PG&E requests that, if the Commission does not grant this waiver, it limit the refunds so as not to cause PG&E to have constructed the facilities at a loss, in accordance with Commission decisions in *Carolina Power & Light Company*⁵ and *Southern California Edison Company*.⁶ According to PG&E's calculations, the time value refunds would be \$247, in addition to the \$373 it has agreed to pay as a time value refund for the one-time payment, for a total of \$620.⁷

B. Docket No. ER05-1264-000

5. PG&E's tenth quarterly filing, which covers the period from April 1 through June 30, 2005, contains 16 small facilities agreements between itself and San Francisco. PG&E states that San Francisco paid a total of \$168,545 to PG&E for installation of all of the facilities. PG&E requests effective dates from April 5 to July 8, 2005.

C. Docket No. ER06-948-000

6. PG&E's thirteenth quarterly filing, which covers the period from January 1 through March 31, 2006, contains one large facilities agreement and 14 small facilities

⁴ PG&E states that it also collected a one-time payment of \$10,483 from San Francisco on July 9, 2004, and will refund to San Francisco the time value for this amount. PG&E includes calculations of the refund it will pay San Francisco for this amount in Attachment 4 of its filing, which PG&E calculates as \$373.

⁵ *Carolina Power & Light Co.*, 84 FERC ¶ 61,103 (1998), *order on reh'g*, 87 FERC ¶ 61,083 (1999).

⁶ *Southern California Edison Co.*, 98 FERC ¶ 61,304 (2002).

⁷ PG&E includes calculations of the time value refunds that it estimates would be due under this approach in Attachment 5 of its filing.

agreements between itself and San Francisco. PG&E states that San Francisco paid a total of \$191,301 to PG&E for installation of all of the facilities. PG&E requests effective dates from January 19 to March 14, 2006.

Notice of Filings and Protests

7. Notice of PG&E's ninth quarterly filing was published in the *Federal Register*, 70 Fed. Reg. 25,040 (2005), with interventions and protests due on or before May 20, 2005. Notice of PG&E's tenth quarterly filing was published in the *Federal Register*, 70 Fed. Reg. 47,191 (2005), with interventions and protests due on or before August 19, 2005. Notice of PG&E's thirteenth quarterly filing was published in the *Federal Register*, 71 Fed. Reg. 29,327 (2006), with interventions and protests due on or before May 22, 2006. San Francisco filed timely motions to intervene and protests. PG&E submitted answers in the filings for the tenth and thirteenth quarterly filings.

8. San Francisco states that it objects to PG&E's request for a waiver of time value refunds for the seven agreements in PG&E's ninth quarterly filing that were entered into before January 1, 2005. San Francisco contends that the Commission should not grant PG&E's request for the waiver of time value refunds because it is against Commission policy.⁸ Moreover, San Francisco objects to the waiver because PG&E has not demonstrated that refunds will result in the construction of the special facilities at a loss. Accordingly, San Francisco asks the Commission to deny the request for waiver, or at a minimum require PG&E to provide proper documentation for its waiver request.

9. San Francisco also argues that it objects to the cost estimates provided by PG&E for a number of the agreements.⁹ 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

⁸ *Citing Southern California Edison Co.*, 98 FERC ¶ 61,304 (2002), and *Carolina Power & Light Co.*, 84 FERC ¶ 61,103 (1998), *order on reh'g*, 87 FERC ¶ 61,083 (1999).

⁹ A list of all the contested agreements by issue and docket number is shown on Appendix A to this order.

based on a methodology that considers the expected revenue to PG&E and PG&E's investment in the new facility.¹⁰ San Francisco states that the Commission should not accept these agreements unless PG&E agrees to include the required allowances.

10. San Francisco further states that it protests the costs for one agreement in PG&E's tenth quarterly filing which requires San Francisco to pay for the work of moving a wire as a result of San Francisco relocating a building by barge from one part of the city to another. San Francisco argues that 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" San Francisco contends that since relocation of the building was work performed under the governmental authority of San Francisco, and since it was necessary for PG&E to move the wire in order for the relocation to be undertaken safely, PG&E should have paid for the cost of moving the wire. 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.

11. Finally, San Francisco states that the Commission must address its concerns that the contested agreements are unjust and unreasonable, rather than deferring the disputes to arbitration under the 1987 Agreement.¹¹

12. In its answers, PG&E argues that, when San Francisco executed the facilities agreements, San Francisco concurred with the amounts; therefore, the agreements became binding contracts for PG&E performing the work requested by San Francisco. In addition, PG&E argues that San Francisco should utilize the dispute resolution procedures identified in the 1987 Agreement to address such contractual disputes. PG&E states that the distribution line extension allowance issue is one of interpretation of the

¹⁰ San Francisco notes that it has raised an identical issue with agreements filed by PG&E in its eighth quarterly filing in Docket Nos. ER05-516-000 and ER05-516-001.

¹¹ 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.

California Commission tariffs incorporated by reference into the 1987 Agreement, and thus does not involve Commission policy and should be resolved through discussion or the dispute resolution process under the 1987 Agreement.

Discussion

A. Procedural Matters

13. 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 motions to intervene serves to make it a party to these proceedings. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 384.213 (a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to allow PG&E's answers, and accordingly we will reject them.

B. Request for Waiver

14. 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.¹² 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.¹³ However, PG&E is obligated to make quarterly filings with the Commission of the agreements entered into in the prior quarterly period.

15. PG&E's ninth quarterly filing in Docket No. ER05-911-000 reflects activity in the first quarter of calendar year 2005. Therefore, the Commission will grant waiver of the Commission's 60-day prior notice requirement with respect to the 13 agreements dated within that quarter (from January 1 through March 31, 2005).

16. However, with respect to the seven agreements with requested effective dates before January 1, 2005,¹⁴ waiver of notice is granted for this type of filing only upon

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

¹³ See *Pacific Gas and Electric Co.*, Docket No. ER88-217-000 (March 31, 1989) (unpublished delegated letter order); *Pacific Gas and Electric Co.*, Docket No. ER99-2532-000 (May 27, 1999) (unpublished delegated letter order).

¹⁴ The seven agreements are listed in Appendix A to this order.

showing of extraordinary circumstances.¹⁵ PG&E has not made such a showing. Therefore, waiver of notice for these agreements is denied, and these agreements are accepted, effective June 29, 2005, sixty days after the date of filing.¹⁶

17. Accordingly, if PG&E collected revenues under those agreements 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.¹⁷ 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.¹⁸

18. 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

19. Our preliminary analysis of the 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 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 some of the agreements in its ninth quarterly filing that do not qualify for waiver of notice. Therefore, these agreements are accepted to become effective on the dates discussed above.

¹⁵ See *Central Hudson Gas and Electric Co.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹⁶ Two of the late filed agreements are contested, are accepted and suspended and made effective subject to refund, and are set for hearing and settlement judge procedures as discussed below.

¹⁷ See *El Paso Electric Co.*, 101 FERC ¶ 61,276, *reh'g denied*, 105 FERC ¶ 61,131 (2003).

¹⁸ See *Southern California Edison Co.*, 98 FERC ¶ 61,304 (2002); see also *Florida Power & Light Co.*, 98 FERC ¶ 61,276, *reh'g denied*, 99 FERC ¶ 61,320 (2002).

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

21. Our preliminary analysis indicates that the 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 facilities agreements, suspend them for a nominal period, make them effective on the dates requested subject to refund, and set them for hearing and settlement judge procedures.¹⁹ Given common issues of law and fact, we will also consolidate these dockets with the ongoing proceedings in Docket Nos. ER05-516-000 and ER05-516-001.²⁰

The Commission orders:

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

(B) PG&E's 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 agreements dated within the quarters covered by the filings, but denied for the agreements contained in the ninth quarterly filing dated prior to January 1, 2005, as discussed in the body of this order.

¹⁹ The two contested facilities agreements in PG&E's ninth quarterly filing that fall outside of the quarter, which are: (1) City College Walkway on Phelan, dated November 18, 2004, and (2) Richardson Avenue and Lyon Street Traffic Signal, dated December 3, 2004, will become effective on June 29, 2005, sixty days after filing. The rest of the contested facilities agreements will become effective on the dates of the agreements.

²⁰ While we note that PG&E has asked for an extension of the stay in certain of these dockets to allow for negotiations with San Francisco, we find that insofar as their negotiations encompass both dockets pending before the judges and dockets pending before us, it would be most efficient to have all of these dockets before the judge. Accordingly, we are consolidating the dockets in this order with the dockets currently before the judge.

(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 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.

(E) These proceedings are 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 filing with the Commission within 30 days thereafter.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A

Agreements Contested on the Line Extension Allowance Issue

Ninth Quarterly Filing – Docket No. ER05-911-000

- 3rd Street Lightrail, Segment B, 4th Street/Berry Street to 22nd Street, dated January 6, 2005
- 3rd Street Lightrail, Segment C, 23rd Street, Marin Street, Evans Avenue and Hudson Avenue, dated March 28, 2005
- City College Walkway on Phelan, dated November 18, 2004
- Richardson Avenue and Lyon Street Traffic Signal, dated December 3, 2004

Tenth Quarterly Filing – Docket No. ER05-1264-000

- 3rd Street Lightrail Segment C – 22nd Street to Jerrold Avenue, dated May 25, 2005
- Clarendon/Laguna Honda, dated April 22, 2005
- Octavia Street Improvements – Octavia Street, dated April 5, 2005

Thirteenth Quarterly Filing – Docket No. ER06-948-000

- Small Facilities Agreement TS#0286J, Bush Street between Scott and Kearney, dated February 24, 2006

Agreement Contested on the City Rights Under Franchise Agreements Issue

Tenth Quarterly Filing – Docket No. ER05-1264-000

- China Basin Road – Support Energized Conductor for Building Move, dated May 6, 2005

Late-Filed Agreements

Ninth Quarterly Filing – Docket No. ER05-911-000

- Central PumpStation, 23rd and Sloat, dated March 2, 2004
- Music Concourse Underground Parking Garage, Golden Gate Park, dated September 3, 2004
- Pier 3, Hornblower Improvements, Embarcadero – Agreement for Installation or Allocation of Special Facilities, dated July 26, 2004
- Pier 3, Hornblower Improvements, Embarcadero – Distribution Service and

- Extension Agreement, dated July 26, 2004
- City College Walkway on Phelan, dated November 18, 2004
- Richardson Avenue and Lyon Street Traffic Signal, dated December 3, 2004
- Octavia Street Improvements, dated December 1, 2004