

106 FERC ¶ 61,240
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher;
and Suede G. Kelly.

Pacific Gas and Electric Company

Docket No. ER04-377-000

ORDER ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 8, 2004)

1. In this order, we accept for filing, suspend for a nominal period, and make effective March 8, 2004, subject to refund, revised Generator Special Facilities Agreements (GSFAs) and Generator Interconnection Agreements (GIAs) (collectively, Agreements) between PG&E and five generators: GWF Energy, LLC – Hanford (GWF), Sunrise Cogeneration and Power Company (Sunrise), La Paloma Generating Company, Ltd (La Paloma), Neo Corporation – Chowchilla (NEO), and Fresno Cogeneration Partners, LP (Fresno) (collectively, Generators). We also establish hearing and settlement procedures. In addition, we deny waiver of the Commission’s 60-day prior notice requirement and make the Agreements effective March 8, 2004.
2. This order benefits customers because it provides a forum to assure that the rates, terms and conditions for interconnection service are just and reasonable, and to encourage increased power supply and competitive markets.

I. Background

3. On January 7, 2004, PG&E filed revised Agreements for the GWF, Sunrise, La Paloma, NEO, and Fresno generating facilities. The original Agreements were accepted

under delegated authority.¹ PG&E states that the Commission's October 25, 2002 Order² required it to make the following changes to these Agreements: (1) a determination as to which facilities are network upgrade facilities subject to the crediting requirement and which are interconnection facilities subject to direct assignment; (2) clarification that PG&E will recover "Cost-of-Ownership" charges³ on the direct assignment facilities, and not on network upgrade facilities; and (3) revisions to reflect the Crediting Mechanism.⁴

¹ GWF Hanford's GSFA and GIA were accepted by the Commission on February 14, 2002 in Docket No. ER02-561-000; Sunrise's GSFA and GIA were accepted by the Commission on June 22, 2001 in Docket No. ER01-1912-000; La Paloma's GSFA and GIA were accepted by the Commission on December 6, 2001 in Docket No. ER02-60-000; NEO and Fresno's GSFA's and GIAs were accepted by the Commission on April 25, 2002 in Docket No. ER02-1332-000.

² See Pacific Gas and Electric Company, 101 FERC ¶ 61,079 (2002), reh'g granted in part, 102 FERC ¶ 61,070 (October 25 Order) (accepting executed GSFA and GIA between PG&E and Los Medanos after requiring PG&E to include a crediting mechanism to fully refund generators for network upgrades). PG&E states that the crediting mechanism filed here is the same as the one approved by the October 25 Order; however, the October 25 Order required the credits to be fully paid, while in this filing, PG&E is proposing to only partially refund the credits.

³ The Cost-of-Ownership charges allow PG&E to recover its costs associated with owning, operating, and maintaining the interconnection facilities that are directly assignable to the generator.

⁴ The Crediting Mechanism is designed to provide transmission credits to generators that fund network upgrades on an amortization schedule with interest at the rate specified in § 35.19(a)(2) of the Commission's regulations. The October 25, 2002 Order provided that Crediting Mechanism in that case would be effective until the Commission adopts Order No. 2003, which has since occurred. See Standardization of Generator Interconnection Agreements and Procedures Final Rule, Docket No. RM02-1-000, 68 Fed. Reg. 49,845 (Aug. 19, 2003), III FERC Stats. & Regs. ¶ 31,146 (July 24, 2003), order on reh'g 106 FERC 61,220.

4. PG&E requests waiver of the Commission's 60-day prior notice requirement to permit the Agreements to become effective on various dates in 2001 and 2002.⁵

II. Notices and Pleadings

5. Notice of PG&E's filing was published in the Federal Register, 69 Fed. Reg. 3130 (2004), with interventions or comments due on or before January 28, 2004. GWF and La Paloma filed timely motions to intervene and protests. PG&E filed an answer to La Paloma and GWF's protests. On February 18, NRG Power Marketing and NEO California Power (NRG/NEO) filed a joint out-of-time motion to intervene. On February 20, 2004, La Paloma filed a reply to PG&E's answer.

III. Discussion

6. Pursuant to Rule 214 of the Commission's Rule of Practice and Procedure, 19 C.F.R. § 385.214 (2003), the timely motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to 214(d) of the Commission's Rules of Practice and Procedure,⁶ given its interest, the early stage of the proceeding, and the absence of any undue prejudice or delay, we find good cause to grant NRG/NEO's untimely, unopposed motion to intervene.

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest and a reply to an answer unless otherwise ordered by the decisional authority. We will accept PG&E's answer, and La Paloma's reply to PG&E's answer because, they have provided information that assisted us in our decision-making process.

A. Revisions to Crediting Mechanism

1. PG&E's Filing

8. PG&E proposes to make the transmission credit payments on a quarterly rather than monthly basis. It also proposes to proportionally reduce the transmission credits

⁵ PG&E requests that the Agreements be made effective on the date of execution as follows: GWF Hanford GSFA – August, 17, 2001; GWF Hanford GIA August 27, 2001; Sunrise GSFA – April 19, 2001; Sunrise GIA – June 27, 2001; La Paloma GSFA – January 28, 2000; La Paloma GIA – April 26, 2002; NEO Chowchilla GSFA – May 17, 2002; NEO Chowchilla GIA – May 17, 2002; Fresno GSFA – May 17, 2002; Fresno GIA – May 17, 2002.

⁶ 18 C.F.R. § 385.214(d) (2003).

owed to generators that began commercial operation prior to January 28, 2003, the date of the Duke Hinds II order.⁷ In other words, the five year term over which credits would be paid would begin with the date of commercial operation of the generator's project, unless the date is before January 28, 2003, the date of the Commission's order in the Duke Hinds II case. If a generator's project began commercial operation before January 28, 2003, PG&E proposes to reduce the total network upgrade repayment amount proportionally by the period of time between commercial operation of the facility and January 28, 2003.

9. Thus, PG&E's crediting mechanism would amortize the credits by calculating payments over five years from the date the facility began operations and then deducting the payments from the date of operations until January, 28, 2003. PG&E states that the crediting mechanism can only be implemented on a prospective basis from the date of Duke Hinds II because of the ban on retroactive ratemaking.⁸ PG&E claims that Duke Hinds II implemented a new Commission policy requiring credits. Furthermore, PG&E conditions its obligation to pay credits upon the final resolution of the issues pending in Duke Hinds II.

2. Interveners' Objections

10. La Paloma and GWF (collectively, Interveners) state they are entitled to full refunds through credits of the funds they advanced to build network upgrades. They object to PG&E's proposal to only pay credits beginning as of the date of Duke Hinds II. The Interveners state that the Commission approved an interim crediting mechanism that requires full refunds over a five year-period even though PG&E requested a ten-year payback period.⁹ If the Commission had approved the 10-year period, PG&E's partial refund amortized over 10 years would have been greater than PG&E's current proposal, which would amortize over 5 years. La Paloma states this would be contrary to the Commission's intentions.

⁷ Duke Energy Hinds, LLC et. al., 102 FERC ¶ 61,068 (2003) (Duke Hinds II), reh'g pending (Commission revised agreement under FPA Section 206 to comport with pre-existing Commission policy requiring credits for network upgrades paid for by generators).

⁸ PG&E cites Duke Hinds II at P 29 and n.28, where the Commission noted that since it was granting only prospective relief, neither the filed rate doctrine nor the rule against retroactive ratemaking would be violated. Supra note 7.

⁹ Pacific Gas & Electric Company, 101 FERC ¶ 61,079 (2002) reh'g pending (PG&E had requested a 100 percent payback over a 10 year period).

11. GWF states that PG&E has not demonstrated how Duke Hinds II applies to the facts at issue here and notes several differences. GWF states that, in the original Agreements, GWF agreed to fund the network upgrade costs in compliance with Commission policy and PG&E's Crediting Mechanism to fully credit generators for network upgrade costs.¹⁰ In Duke Hinds II, GWF states, the agreement did not reserve the right to credits; the agreement was changed by the Commission under FPA Section 206, so the relief ordered for that generator could be prospective only. However, in this instance, the original Agreement between PG&E and GWF contains "reservation of rights" language that provides for the Agreement to be modified based on the outcome of the "Removing Obstacles"¹¹ Orders regarding the roll-in of interconnection and system upgrade costs.¹² GWF states that this reservation of rights language requires PG&E to make full refunds through credits going back to the date the generating facility began commercial operation. GWF states that the reservation of rights language was included because PG&E had not developed a specific crediting mechanism yet, but the Commission required credits.¹³

12. Based on PG&E's proposed amortization schedule, La Paloma's refund would be reduced by that time between April 26, 2002, the date operation began, and January 28, 2003, or by 15.18 percent. Therefore, La Paloma would only receive 84.82 percent of the network upgrade costs. La Paloma claims that allowing PG&E to unilaterally withhold 15.18 percent of the refunds would result in La Paloma paying twice for transmission service; through rolled-in rates and again through incremental rates in violation of Commission policy, which allows only one charge for transmission service.

13. GWF states that under PG&E's proposed crediting mechanism, GWF would receive 71.56 percent of network credits, the amortized payments from January 28, 2003 until August 2006, and would not receive credits for the 17 months from August 2001. GWF argues that this penalizes it for having promptly brought needed generation on line

¹⁰ GWF cites Pacific Gas and Electric Company's Response to Deficiency Letter, Pacific Gas and Electric Co., Docket No. ER02-1330-001, at Attachment 1, Sections B and E (filed August 26, 2002).

¹¹ Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States, 94 FERC ¶ 61,272 (2001) reh'g dismissed; 95 FERC ¶ 61,225 (2001) order on reh'g; 96 FERC ¶ 61,155 (2001) order on reh'g; 97 FERC ¶ 61,024 (2001) (orders gave special roll-in treatment to generators meeting certain criteria).

¹² PG&E Filing, Attachment 1 Hanford GSFA at P18 and PG&E filing, Attachment 1 Hanford GIA Section 15.26.

¹³ GWF is the only generator in this filing that has this additional reservation language in its original IA.

in California. GWF requests that the Commission reject PG&E's credit mechanism proposal and require PG&E to refund 100 percent of the transmission credits within five years from the date the GWF became operational. GWF states that to allow PG&E to make payments for five years from the date of this filing would reward PG&E for its delay in filing these agreements.

3. PG&E's Answer

14. PG&E states that the Interveners seek retroactive credits for the period prior to January 28, 2003, despite the fact that they operated under Commission-approved agreements that required them to pay for such upgrades themselves. PG&E asserts that this claim is contrary to the filed rate doctrine, the ban on retroactive ratemaking, and the Commission's ruling in paragraph 29 of Duke Hinds II (which explains that the relief ordered in that case would be prospective only). PG&E argues that nothing in the Interveners' contracts, or any arguments based on public policy, can entitle them to a refund that is prohibited by the filed rate doctrine and the ban on retroactive ratemaking.

4. La Paloma's Answer

15. La Paloma disagrees with PG&E's answer and states that allowing PG&E to only partially refund network upgrades allows PG&E to double recover and impose "and" pricing on La Paloma. Furthermore, La Paloma states the date it began operations was later than the date PG&E stated, thereby increasing the partial refund of network upgrades PG&E proposes to pay.

5. Commission Response

16. When a transmission provider constructs network upgrades to meet a request for transmission service, Commission policy has long been to allow it to charge customers the higher of embedded cost of transmission service (with the cost of the network upgrades rolled in) or the incremental cost of the network upgrades, but not the sum of the two.¹⁴ Thus, contrary to PG&E's claim, Duke Hinds II did not create the Commission's crediting policy. Duke Hinds II allowed a generator to have its agreement reviewed based on the unjust and unreasonable standard under Section 206 because the agreement specifically preserved the rights of both parties to request the Commission to do so. The revised agreements in Duke Hinds II became effective on January 28, 2003. The date in Duke Hinds II is not generally applicable to other parties or agreements; the Commission in that case ordered network credits to be made prospectively only, from the

¹⁴ See American Electric Power Service Corporation, 91 FERC ¶ 61,308 (2000) and Consumers Energy Company, 95 FERC ¶ 61,233 (2001) (applying traditional transmission pricing policy in interconnection context by requiring credits).

date of the Duke Hinds II order, because under Section 206 we have authority to make only prospective changes to a contract.

17. Here, PG&E has proposed to revise the agreement to pay transmission credits for the network upgrades dating back to January 28, 2003. While we do not agree with PG&E's reading of Duke Hinds II or its rationale for the January 28, 2003 cut-off date, we could not require PG&E to provide for additional credits beyond what it has offered to pay. Requiring additional credits would essentially reimburse the generators for amounts allocable to past periods, *i.e.*, rates paid before PG&E's proposed effective dates, contrary to the filed rate doctrine and the rule against retroactive ratemaking.¹⁵

18. Accordingly, we find PG&E's crediting mechanism acceptable. As to Sunrise, NEO, and Fresno, whose commercial operation date is not in dispute, PG&E is directed to apply its crediting mechanism using the undisputed commercial operation dates. However, there is a factual dispute as to the commercial operation date of the La Paloma facilities. That factual dispute is to be included in the hearing and settlement judge proceedings we are ordering below. Once that dispute is resolved, PG&E is directed to apply its crediting mechanism to the La Paloma facilities based on the commercial operation date determined in the hearing and settlement judge proceedings.

19. GWF's Agreements have additional "reservation of rights" language¹⁶ that it argues requires PG&E to pay full refunds through credits, that is, to pay credits as though the original Agreements had so required. Based on the record before us, it is unclear what that provision is intended to do. Specifically, we cannot tell from the pleadings: (1) whether the "reservation of rights" clause gives GWF a right to demand full credits (dating back to its date of commercial operations) under the Commission's generally applicable crediting policy; and/or (2) whether the clause gives GWF a right to such full credits under the Removing Obstacle Orders.¹⁷ PG&E argues that GWF's generating facility was not "proposed" after March 14, 2001 or accelerated to achieve an earlier than planned commercial operation date, as the Removing Obstacle Orders require. These issues must be decided in the hearing and settlement judge proceedings we have ordered below. If PG&E demonstrates that GWF is not entitled to full credits based on these

¹⁵ Supra note 7 at P 29 and n.8.

¹⁶ PG&E Filing, Attachment 1 GWF GSFA at P 18 and GWF GIA at § 15.26.

¹⁷ Supra note 11.

arguments, GWF is still entitled to partial credits from January 28, 2003,¹⁸ as PG&E has offered.

B. Cost-of-Ownership Charges – Two 230 kV Circuit Breakers within Midway Substation

1. PG&E's Filing

20. In revising La Paloma's GSFA to reflect which facilities are network upgrade facilities and which are interconnection facilities, PG&E classifies two 230 kV circuit breakers as interconnection facilities subject to direct assignment. PG&E adds that, in accordance with Commission policy, the revised GSFA provides for PG&E to collect Cost-of-Ownership Charges on direct assignment facilities only.

2. La Paloma's Objection

21. La Paloma argues that the two 230kV circuit breakers are network upgrade facilities. Therefore, there should not be a Cost-of-Ownership Charge for them, and La Paloma should receive credits for them. La Paloma relies on Elk Hills,¹⁹ where the Commission found that two 230kV circuit breakers PG&E installed in the same Midway Station for another generator, Elk Hills Power, LLC (Elk Hills), were network upgrade facilities. Additionally, La Paloma notes that PG&E similarly defines the point of interconnection in La Paloma's and Elk Hill's GIAs as the point where electrical conductors contact the PG&E electric system. La Paloma states that PG&E's proposal goes further by identifying the point of interconnection as the line-side disconnect switches within the Midway Station. Since the line-side disconnect switches are on the La Paloma side of the circuit breakers, La Paloma states that the 230kV circuit breakers are at or beyond the point of interconnection.

22. La Paloma also notes that PG&E receives power from both La Paloma and Sunrise through these 230kV circuit breakers and that PG&E has not directly assigned to Sunrise the costs associated with these breakers. Even if the Commission determines that these two breakers are correctly classified as direct assignment costs, La Paloma contends that it should not be responsible for 100 percent of the costs, since Sunrise also uses these breakers.

¹⁸ Not because the January 28, 2003 date in Duke Hinds II is generally applicable, but because this is the date as of which PG&E offered to pay credits.

¹⁹ Pacific Gas and Electric Company, 105 FERC ¶ 61,289 (2003) (Elk Hills), reh'g pending.

3. PG&E's Answer

23. PG&E states that two more recent Commission decisions support its classification of the two 230 kV breakers as interconnection facilities.²⁰ PG&E also argues that La Paloma has no contractual right to expect the Cost-of-Ownership Charges to be apportioned between La Paloma and Sunrise. The two 230 kV circuit breakers were installed at Midway Substation in order to interconnect the La Paloma generating facility. PG&E contends that section 3 of the La Paloma GSFA (which has been approved by the Commission)²¹ requires La Paloma to pay Cost-of-Ownership Charges on direct assignment facilities. PG&E further states that the Sunrise generation facility was interconnected later than La Paloma's Commission-approved GSFA and that La Paloma alone is responsible for the cost of the two 230 kV circuit breakers at Midway Substation, along with any applicable Cost-of-Ownership Charges. However, PG&E agrees to participate in settlement proceedings with La Paloma and Sunrise.

4. La Paloma's Answer

24. La Paloma identifies with Elk Hills and differentiates both itself and Elk Hill from Progress Energy since the facilities at issue in that case lay along a radial transmission line before the line connected to the network line, whereas La Paloma claims that in its and Elk Hills case, the facilities are located [within] a major existing PG&E substation. La Paloma argues that the breaker facilities are certainly "at," if not "beyond" the point of interconnection.

5. Commission Response

25. We are not persuaded by La Paloma's argument. As we noted in Progress Energy Carolinas, Inc. (Progress Energy) the "point of interconnection" as we use the term is where the interconnection facilities interconnect to the existing transmission system. The breaker and associated relay equipment in that case thus were directly assignable to the generator.²² We find that the two 230 kV circuit breakers at the La Paloma facility are located the same way. The one-line diagram for the La Paloma facility (Attachment 6 - section 35.13(c)(3) at P 4) reveals that the facilities in question are not at or beyond the point of interconnection – they are on the Generator's side of that point and thus are directly assignable to La Paloma. La Paloma is not entitled to transmission credits.

²⁰ PG&E cites Progress Energy Carolinas, Inc., 105 FERC ¶ 61,231 (2003) and Pacific Gas and Electric Co., 105 FERC ¶ 61,267 (2003).

²¹ Pacific Gas & Electric, Commission Letter Order dated December 6, 2001, Docket No. ER02-60-000.

²² 105 FERC ¶ 61,231 at P 6 (2003).

Therefore, we conclude that La Paloma should be assessed Cost-of-Ownership charges for the two 230kV circuit breakers. In the future, IA filings should include one-line diagrams: (1) showing the physical point of interconnection, i.e. the point where the interconnection facilities connect to the existing system; and (2) differentiating between existing and new facilities.

26. Since Sunrise also uses these breakers, assigning all the Cost-of-Ownership charges to La Paloma may be unjust and unreasonable. Therefore, we will include this matter in the hearing and settlement judge procedures ordered below.

C. Other Issues

27. PG&E states that the GSFAs still reflect the estimated costs and that the actual costs will be addressed later in a project true-up process.

28. PG&E has included costs for testing (SCADA/EMS and pre-parallel inspection) as an ongoing direct assignment cost and proposes to bill generators for cost-of-ownership charges. Interveners state that there are no ongoing costs to PG&E for this testing.

29. In revising La Paloma's GSFA to reflect which facilities are network upgrade facilities and which are interconnection facilities, PG&E classifies a 13.6 double circuit tower generation tie line as an interconnection facility, thus directly assigning to La Paloma the cost of the facility. La Paloma states that PG&E neither owns, neither maintains nor operates this line; therefore, PG&E has no basis to directly assign the cost of it to La Paloma.

30. PG&E states that the generators have paid their respective Income Tax Contribution on Components (ITCC) taxes on their total estimated cost in addition to ITCC tax due on the Network Upgrade Charges. La Paloma disputes whether or not PG&E is entitled to collect and hold ITCC and if so, the correct amount of charges PG&E can hold.

31. These issues are best addressed in the hearing and settlement judge procedures we are ordering below. While Sunrise, NEO, and Fresno have not challenged these issues, they are to be included in the hearing and settlement judge proceedings we are ordering below.

D. Waiver of Commission's Prior Notice Requirements

1. PG&E's Filing

32. PG&E requests waiver of the prior notice requirement in Section 35.3 of the Commission's regulations²³ to allow the Agreements to be effective upon the date of execution.²⁴ PG&E acknowledges that it made these filings well after the requested effective dates. It argues that this is a re-filing of GSFAs and GIAs that have already been accepted by the Commission and that we should waive prior notice so that PG&E can start making credit payments to the generators, which is a benefit to the generators. Furthermore, it says that no other customer will be affected by these waivers. PG&E clarifies that it is not asking for a waiver with respect to interest calculated retroactively (which relates to refunding the difference between the Cost-of-Ownership charges previously charged and the lower proposed Cost-of-Ownership charges), as PG&E has not collected any Cost-of-Ownership charges from these generators. PG&E contends that it will bill each generator retroactively for Cost-of-Ownership charges associated with the direct assignment facilities. Finally, PG&E states that this would decrease revenues to PG&E.

2. Interveners' Objections

33. Interveners oppose PG&E's proposal to retroactively bill generators for Cost-of-Ownership Charges, since PG&E has never billed or previously requested payment of these charges. The Interveners argue that this would place an unfair burden on them. Furthermore, PG&E has offered no reason for its failure to bill the generators for these Cost-of-Ownership Charges and should not now be permitted to collect lump sum reimbursement. Interveners request that the Commission reject PG&E's proposal to retroactively collect these Cost-of-Ownership charges and deny PG&E's waiver request.

3. Commission Response

34. PG&E has not shown good cause to justify granting waiver of our prior notice requirement.²⁵ Nor has PG&E shown extraordinary circumstances justifying its failure to timely file.²⁶ Therefore, consistent with Commission precedent, we will deny waiver of

²³ 18 C.F.R. § 35.3 (2003).

²⁴ Supra note 7.

²⁵ 18 C.F.R. § 35.3 (2003).

²⁶ Central Hudson Gas & Electric Company, 60 FERC ¶61,106, reh'g denied, 60 FERC ¶ 61,089 (1992).

notice in this circumstance where the public utility filed an Agreement under an umbrella tariff more than 30 days late.²⁷ We will thus make the Agreements effective March 8, 2004, 60 days from the date PG&E made its filing.

IV. Hearing and Settlement Judge Procedures

35. PG&E's filing presents a number of issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing ordered below. The Commission's preliminary analysis indicates that PG&E's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, the Commission will accept the proposed Agreements for filing, suspend them for a nominal period, to become effective on March 8, 2004, subject to refund, and set them for hearing and settlement judge procedures. Interveners raise a number of issues of material fact that cannot be resolved on the record before us and that are more appropriately addressed in a hearing.

36. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, the hearing will be held in abeyance and a settlement judge will be appointed pursuant to Rule 6034 of the Commission's Rules of Practice and Procedure.²⁸ If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise the Chief Judge will select a judge for this purpose.²⁹ 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 the commencement of a hearing by assigning the case to a presiding judge.

²⁷ Pacific Gas & Electric Company, 105 FERC ¶ 61,267 (2002) reh'g pending; Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139, clarified, 65 FERC ¶ 61,081 (1993).

²⁸ 18 C.F.R. § 385.603 (2003).

²⁹ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

The Commission orders:

(A) The Agreements, as designated in the enclosure, are hereby accepted for filing and suspended for a nominal period, to be effective March 8, 2004, subject to refund, as discussed in the body of this order.

(B) Waiver of the Commission's 60-day prior notice requirement is hereby denied, as explained in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred on 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 the regulations under the Federal Power Act (18 C.F.R. Chapter 1), a public hearing shall be held concerning the justness and reasonableness of rates, terms, and conditions for interconnection service. However, the hearing will be held in abeyance to provide time for settlement judge procedures as discussed in Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in the 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 designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission 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 Chief Judge and the Commission of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Judge, shall convene a conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such 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)

Linda Mitry,
Acting Secretary.

APPENDIX

Pacific Gas and Electric Company
Docket No. ER04-377-000
Rate Schedule Designations
Effective Date: March 5, 2004

<u>Designations</u>	<u>Description</u>
(1) Service Agreement No. 24 under No. 24 under FERC Electric Tariff, Sixth Revised Volume No. 5 (supercedes Original Service Agreement No. 24)	Generator Special Facilities Agreement and Generator Interconnection Agreement with GWF Energy LLC – Hanford
(2) Second Revised Service Agreement No. 2 under FERC Electric Tariff, Sixth Revised Volume No. 5 (supercedes First Revised Service Agreement No. 2)	Generator Special Facilities Agreement and Generator Interconnection Agreement with Sunrise Cogeneration and Power Company
(3) First Revised Service Agreement No. 18 under FERC Electric Tariff, Sixth Revised Volume No. 5 (supercedes Original Service Agreement No. 18)	Generator Special Facilities Agreement and Generator Interconnection Agreement with La Paloma Generating Company
(4) Second Revised Service Agreement No. 13 under FERC Electric Tariff, Sixth Revised Volume No. 5 (supercedes First Revised Service Agreement No. 13)	Generator Special Facilities Agreement and Generator Interconnection Agreement with NEO Corporation – Chowchilla
(5) Second Revised Service Agreement No. 11 under FERC Electric Tariff, Sixth Revised Volume No. 5 (supercedes First Revised Service Agreement No. 11)	Generator Special Facilities Agreement and Generator Interconnection Agreement with Fresno Cogeneration Partners, LP