

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas & Electric Company	Docket No.	ER07-812-000
Pacific Gas & 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

ORDER ACCEPTING IN PART AND SUSPENDING IN PART
FACILITIES AGREEMENTS, ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES, AND CONSOLIDATING PROCEEDINGS

(Issued June 28, 2007)

1. On April 30, 2007, in Docket No. ER07-812-000, Pacific Gas & Electric Company (PG&E) filed its seventeenth quarterly filing of agreements for load interconnection facilities (facilities agreements) between PG&E and the City and County of San Francisco (San Francisco). This order accepts the uncontested facilities agreements contained in the PG&E quarterly filing, making them effective as discussed below, and conditionally accepts and suspends two contested agreements for a nominal period, making them effective as requested, subject to refund. This order also sets the contested 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 No. ER05-516-000, *et al.*¹

¹ PG&E's eighth, ninth, tenth, eleventh, thirteenth, fourteenth and fifteenth quarterly filings are pending before the Commission in Docket Nos. ER05-516-000/ER05-516-001, ER05-911-000, ER05-1264-000, ER06-95-000, ER06-948-000, ER06-1306-000, and ER07-114-000, respectively. The Commission has issued orders accepting and suspending the agreements at issue in these filings, establishing hearings

(continued...)

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 that amended the 1987 Agreement to allow PG&E to make quarterly filings of facilities agreements.² The facilities agreements set forth the terms and conditions for the construction, operation, and maintenance of improvements needed to provide transmission service to serve San Francisco's municipal load under the 1987 Agreement, as amended. The amended 1987 Agreement allows PG&E to receive payments for facilities constructed prior to PG&E making a filing with the Commission, subject to quarterly filing and possible refund. PG&E states that the facilities are owned by PG&E but are on San Francisco's property and were designed to serve San Francisco's load.

Description of Filing

3. PG&E's seventeenth quarterly filing, which covers the period from January 1, 2007, through March 31, 2007, contains one large facilities agreement and 13 small facilities agreements between PG&E and San Francisco. PG&E states that on December 27, 2006, San Francisco paid a total of \$90,432 to PG&E for installation costs under the one large facility agreement for the City College Mission Campus (City College Mission Campus Agreement). PG&E states that between January 11, 2007 and April 2, 2007, San Francisco paid a total of \$89,232 to PG&E for installation costs under the 13 small facilities agreements. PG&E requests an effective date of December 27, 2006 for the City College Mission Campus Agreement and dates ranging from January 16, 2007 to March 28, 2007 for the small facilities agreements (*i.e.* the the date of the agreements listed in Attachment 1), and requests waivers of any Commission regulations that may be necessary.

4. PG&E states that it collected the total cost for the City College Mission Campus Agreement prior to the first quarter of 2007 and collected payments for two of the small facilities (the DPW Electric Shop and the Western Addition Library) in March 2007. PG&E states that it will refund to San Francisco the time value of these revenues

and settlement judge procedures for each, and consolidating the filings into one proceeding. *See Pacific Gas & Electric Co.*, 112 FERC ¶ 61,354 (2005); *Pacific Gas & Electric Co.*, 115 FERC ¶ 61,308 (2006); *Pacific Gas & Electric Co.*, 115 FERC ¶ 61,373 (2006); *Pacific Gas & Electric Co.*, 116 FERC ¶ 61,303 (2006); *Pacific Gas & Electric Co.*, 117 FERC ¶ 61,336 (2006). Over the past several months, PG&E and San Francisco have engaged in settlement discussions regarding the outstanding issues in these filings.

² On November 26, 2004, the Commission approved the settlement. *See Pacific Gas & Electric Co.*, 109 FERC ¶ 61,230 (2004).

pursuant to Commission policy and includes refund calculations in Attachment 4 to its filing.³

Notice of Filing and Protest

5. Notice of PG&E's seventeenth quarterly filing was published in the *Federal Register*, 72 Fed. Reg. 26,623 (2007), with interventions and protests due on or before May 21, 2007. San Francisco filed a timely motion to intervene and protest.

6. San Francisco contests two of the small facilities agreements included in PG&E's seventeenth quarterly filing: (1) the Illinois Bridge North Agreement and (2) the 899 Cargo Way South Agreement. San Francisco states that it objects to the cost estimates provided by PG&E for these two agreements because they fail to include a "distribution line extension allowance" and a "two alternate payment options" 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]"⁴ San Francisco states that, under section E.2 of Rule 16 and section C of Rule 15, it is entitled to a distribution line extension allowance based on a methodology that considers the expected revenue to PG&E and PG&E's investment in the new facility, and to two alternate payment options.⁵

7. San Francisco argues that, rather than deferring the disputes to arbitration under the 1987 Agreement, the Commission must address San Francisco's concerns that the Illinois Bridge North and 899 Cargo Way South agreements are unjust and unreasonable,

³ PG&E states that it will make refunds to San Francisco pursuant, and to be consistent with, a Commission order issued in April 2004, which directed PG&E to refund San Francisco the time value of revenues collected for the entire period that the rates in the filing were collected without Commission authorization. *See Pacific Gas & Electric Co.*, 107 FERC ¶ 61,033 (2004). PG&E explains that the period for which these refunds are calculated runs from the date the facilities agreement should have been filed with the Commission, if PG&E has timely filed it, until the date PG&E intends to refund San Francisco.

⁴ San Francisco May 21, 2007 Protest at 3.

⁵ San Francisco notes that it has raised an identical issue with agreements filed by PG&E in its eighth ninth, tenth, and thirteenth quarterly filings in Docket Nos. ER05-516-000/001, ER05-911-000, ER05-1264-000 and ER06-948-000 respectively.

because San Francisco's concerns relate to two new agreements that were filed for the first time with the Commission.⁶

8. Finally, San Francisco states that the issues associated with the Illinois Bridge North and 899 Cargo Way South Agreements should be consolidated with the other proceedings in Docket Nos. ER05-516-000, *et al.*⁷ because the issues here are also the subject of settlement discussions in that proceeding.

Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), San Francisco's timely, unopposed motion to intervene serves to make it a party to these proceedings.

B. Request for Waiver

10. 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.⁸ 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.⁹ However, PG&E is obligated to make quarterly filings with the Commission of the agreements entered into in the prior quarterly period.

11. PG&E's seventeenth quarterly filing reflects activity in the first quarter of calendar year 2007. Therefore, the Commission will grant waiver of the Commission's 60-day prior notice requirement for the agreements dated within that quarter (from January 1 through March 31, 2007).

⁶ San Francisco raises this concern because, in some previous quarterly filings of facilities agreements, PG&E filed answers to San Francisco's protests alleging that disagreements between the parties regarding facilities agreements should be resolved pursuant to the arbitration provisions of the 1987 Agreement.

⁷ *See supra* note 1.

⁸ 16 U.S.C. § 824d (2000); 18 C.F.R. § 35.3 (2006).

⁹ *See Pacific Gas & Electric Co.*, Docket No. ER88-217-000 (March 31, 1989) (unpublished letter order); *Pacific Gas & Electric Co.*, Docket No. ER99-2532-000 (May 27, 1999) (unpublished letter order).

12. PG&E requests an effective date of December 27, 2006, for the City College Mission Campus Agreement, but waiver of notice is granted for untimely filings only upon showing of extraordinary circumstances.¹⁰ PG&E states only that it requests an effective date for each facilities agreement as of the agreement date of each facilities agreement and does not provide support for its request of waiver of notice for the City College Mission Campus Agreement. PG&E has not made such a showing of extraordinary circumstances. Therefore, waiver of notice for this agreement is denied, and the agreement is accepted, effective June 30, 2007, sixty days after the date of filing.

13. Accordingly, if PG&E collected revenues under the City College Mission Campus Agreement 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.¹¹ Here, because PG&E was authorized to file the agreement on a quarterly basis, the period for which refunds must be paid runs from the date the agreement should have been filed with the Commission if PG&E had timely filed it (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.¹²

14. As noted above, PG&E includes as Attachment 4 to the filing, calculations that show time value refunds that it states it will refund to San Francisco.

15. Accordingly, the Commission will require PG&E 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, Alternate Payment Options, and Arbitration

16. 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 an effective date

¹⁰ See *Central Hudson Gas & Electric Co.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹¹ See *El Paso Electric Co.*, 101 FERC ¶ 61,276 (2002), *reh'g denied*, 105 FERC ¶ 61,131 (2003).

¹² 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).

for the City College Mission Campus Agreement that does not qualify for waiver of notice. Therefore, that agreement is accepted to become effective on June 30, 2007.

17. Consistent with prior orders addressing facility agreements between these two parties,¹³ we find that San Francisco's concerns about the distribution line extension allowance, alternate payment options, and arbitration under the 1987 Agreement 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.

18. Our preliminary analysis indicates that the Illinois Bridge North and 899 Cargo Way South 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 Illinois Bridge North and 899 Cargo Way South 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. Given common issues of law and fact, we will also consolidate this docket with the ongoing proceedings in Docket No. ER05-516-000, *et al.*

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, and made effective, as requested, subject to refund, as discussed in the body of this order.

(C) Waiver of the Commission's 60-day prior notice requirement is hereby granted for the agreements dated within the quarter covered by the filing, as discussed in the body of this order, but denied for the City College Mission Campus Agreement dated prior to the quarter, as discussed in the body of this order.

(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 Illinois Bridge North and 899 Cargo Way South agreements. However, the hearing shall be held in abeyance

¹³ *See supra* note 1.

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, *et al.*

(F) The settlement judge or presiding judge, as appropriate, designated in Docket No. ER05-516-000, *et al.*, 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 of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.