

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas & Electric Company	Docket No.	ER07-114-000
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

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

(Issued December 26, 2006)

1. On October 31, 2006, in Docket No. ER07-114-000, Pacific Gas & Electric Company (PG&E) filed its fifteenth quarterly filing of 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, and conditionally accepts and suspends for a nominal period the contested New De Young Museum agreement and makes it effective, subject to refund, as discussed below. This order also sets the New De Young agreement 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, and fourteenth 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, respectively. The Commission has issued orders accepting and suspending the agreements at issue in these filings, establishing hearings and settlement judge procedures for each, and consolidating the filings into one proceeding. *See Pacific Gas & Electric*

(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 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 fifteenth quarterly filing, which covers the period from July 1, 2006, through September 30, 2006, contains two large facilities agreements and seven small facilities agreements between itself and San Francisco.³ PG&E states that, between February 4, 2004 and September 20, 2006, San Francisco paid a total of \$300,491 to PG&E for installation of all of the facilities. PG&E requests effective dates from February 11, 2004 to September 20, 2006 and requests waivers of any Commission rules and regulations that may be necessary.

4. PG&E requests a waiver of the requirement that it make time value refunds on the amounts it collected from San Francisco under the New De Young Museum agreement

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). 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).

³ The large facilities agreements are for the California Academy of Sciences, Golden Gate Park and the New De Young Museum, Golden Gate Park. The small facilities agreements are for the Lincoln Park Pump Station, Marina Library, SFR Noise Monitor Station, Silver Terrace Playground, SOMA Park, Summit Pump Station, and Washington High School.

prior to July 1, 2006.⁴ PG&E argues that these amounts were used only to cover the costs of the facilities constructed, that there was no return of capital to PG&E, and that the facilities were not placed in PG&E's rate base. PG&E states that requiring it to refund the time value of these amounts would cause PG&E to have constructed the facilities at a loss.⁵ Thus, PG&E requests that the Commission waive the time value penalty in accordance with Commission decisions in *Carolina Power & Light Company*⁶ and *Southern California Edison Company*.⁷

Notice of Filing and Protest

5. Notice of PG&E's fifteenth quarterly filing was published in the *Federal Register*, 71 Fed. Reg. 65,487 (2006), with interventions and protests due on or before November 21, 2006. San Francisco filed a timely motion to intervene and protest.

6. San Francisco contests only one of the facilities agreements included in PG&E's fifteenth quarterly filing – the New De Young Museum agreement.⁸ San Francisco states that some of the work at the New De Young Museum should have been undertaken at PG&E's cost pursuant to section 11.32 of the San Francisco Administrative Code (Code) and section 7(d) of the 1939 Franchise Agreement between San Francisco and PG&E. Section 11.32 of the Code 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

⁴ PG&E states that it collected \$89,233 from San Francisco for the now-complete installation of facilities for a new museum under the New DeYoung Museum agreement.

⁵ PG&E includes as Attachment 7 to the filing, calculations that show time value refunds would result in a loss of more than \$19,000.

⁶ *Carolina Power & Light Co.*, 84 FERC ¶ 61,103 (1998), *order on reh'g*, 87 FERC ¶ 61,083 (1999).

⁷ *Southern California Edison Co.*, 98 FERC ¶ 61,304 (2002).

⁸ In its original November 21, 2006, protest, San Francisco objected to three of the agreements in PG&E's fifteenth quarterly filing, specifically the: (1) New De Young Museum agreement; (2) California Academy of Sciences agreement; and (3) Washington High School agreement. The protests to the California Academy of Sciences and Washington High School agreements were provisional pending further research and discussions with PG&E. On December 1, 2006, San Francisco filed an amended protest withdrawing its objections to the California Academy of Sciences and Washington High School agreements, leaving only its protest to the New De Young Museum Agreement.

contends that, because it required PG&E to undertake actions to accommodate work performed under the governmental authority of San Francisco, PG&E should have paid for the cost of the work at issue and 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.

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 New De Young Museum Agreement is unjust and unreasonable.⁹

8. San Francisco also objects to PG&E's request for waiver of time value refunds for the New DeYoung Museum agreement. San Francisco first argues that PG&E's claim is unsupported because PG&E provides no calculations or documentation for its contention that issuing time value refunds would result in PG&E having constructed the facilities at a loss. Second, San Francisco notes that, as discussed above, some of the facilities should have been constructed at PG&E's cost pursuant to the Franchise Agreement. Finally, San Francisco notes that it has been a longstanding disagreement between San Francisco and PG&E whether all of the work for these facilities should be performed under the 1987 Agreement, or if some of the work should be performed under the Franchise Agreement. San Francisco argues that PG&E should have filed the New De Young Museum agreement with the Commission in a timely manner because it was inappropriate for PG&E to both charge San Francisco and then delay the filing of the agreement.

9. Finally, San Francisco states that the issues associated with the New De Young Museum Agreement should be consolidated with the other proceedings which are the subject of settlement discussions between PG&E and San Francisco in connection with Docket Nos. ER05-516-000, *et al.*¹⁰

Discussion

A. Procedural Matters

10. 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.

⁹ San Francisco raises this concern because, in Docket No. ER05-516-000, PG&E filed an answer to San Francisco's protest alleging that disagreements between the parties regarding facilities agreements should be resolved pursuant to the arbitration provisions of the 1987 Agreement.

¹⁰ *See supra* note 1.

B. Request for Waiver

11. 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.¹¹ 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.¹² However, PG&E is obligated to make quarterly filings with the Commission of the agreements entered into in the prior quarterly period.

12. PG&E's fifteenth quarterly filing reflects activity in the third quarter of calendar year 2006. Therefore, the Commission will grant waiver of the Commission's 60-day prior notice requirement for the agreements dated within that quarter (from July 1 through September 30, 2006).

13. PG&E requests an effective date of February 11, 2004, for the New De Young Museum agreement, but waiver of notice is granted for untimely filings only upon showing of extraordinary circumstances.¹³ PG&E has not made such a showing. Therefore, waiver of notice for this agreement is denied, and the agreement is accepted, effective December 31, 2006, sixty days after the date of filing.

14. Accordingly, if PG&E collected revenues under the New DeYoung Museum 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.¹⁴ Here, since 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.

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

¹² 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).

¹³ See *Central Hudson Gas & Electric Co.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹⁴ See *El Paso Electric Co.*, 101 FERC ¶ 61,276, *reh'g denied*, 105 FERC ¶ 61,131 (2003).

15. The Commission also limits time value refunds in cases such as this so as not to cause the utility to suffer a loss.¹⁵ PG&E includes as Attachment 7 to the filing, calculations that show time value refunds would result in a loss of over \$19,000. However, there is a dispute, discussed above, over whether some of the costs included in PG&E's calculations should have been undertaken at PG&E's cost pursuant to the Franchise Agreement, which could affect these calculations.

16. Accordingly, the Commission will require PG&E to make time value refunds within 30 days after the dispute is decided or settled, and to file a refund report with the Commission within 30 days thereafter.

C. City Rights under the Franchise Agreement and Arbitration

17. 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.

18. Consistent with prior orders addressing facility agreements between these two parties,¹⁶ we find that San Francisco's concerns about its rights under the Franchise Agreement and about 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.

19. Our preliminary analysis indicates that the New De Young Museum agreement has 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 New De Young facilities agreement, suspend it for a nominal period, make it effective on December 31, 2006, subject to refund, and set it 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.

¹⁵ 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).

¹⁶ See *supra* note 1.

(B) PG&E's contested facilities agreement is hereby accepted and suspended for a nominal period, and made effective, 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 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 New De Young Museum facilities agreement. 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, *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 and to file a refund filing with the Commission, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.