

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER04-1192-000

ORDER ACCEPTING AND SUSPENDING, SUBJECT TO REFUND,
SPECIAL FACILITIES AGREEMENT

(Issued November 2, 2004)

1. Pacific Gas and Electric Company (PG&E) has filed an unexecuted Special Facilities Agreement (Facilities Agreement) for the Fresno Co-Generation Expansion Project with Fresno Cogeneration Partners, LP (Fresno Partners). We accept and suspend the Facilities Agreement, to become effective September 8, 2004, subject to refund and further Commission order. In addition, we grant waiver of the Commission's 60-day prior notice requirement. This order benefits customers because it ensures facilities will be in place when needed for the new Fresno Co-Generation Expansion Project.

I. PG&E's Filing

2. PG&E submitted its filing on September 3, 2004. PG&E states that the Facilities Agreement provides for PG&E to furnish, engineer, and install certain special facilities on PG&E's Kerman and Helms Substations necessary for the operation of generation from the new Fresno Co-Generation Expansion Project.

3. PG&E states that the Facilities Agreement provides for the Fresno Partners to compensate PG&E for the design, construction and ongoing operation and maintenance costs associated with PG&E's ownership of these facilities. PG&E has calculated the monthly costs of ownership based on its currently effective rate of 0.31 percent and the estimated cost of installation. PG&E states that this monthly charge is the product of the estimated installed costs of the facilities and PG&E's current cost of ownership rate for transmission-level, customer-financed special facilities, as approved by the California Public Utilities Commission.

4. PG&E notes that the Facilities Agreement includes (as Attachment 1) a Generator

Interconnection Agreement (Interconnection Agreement) that was previously accepted by the Commission.¹ PG&E states that it is currently negotiating with the Fresno Partners for a single Facilities and Interconnection Agreement for all of the Fresno Partners' generating facilities. In addition, they are also negotiating the apportionment of the facilities' operations and maintenance costs.

5. PG&E requests waiver of the Commission's 60-day prior notice requirement² and asks that the Facilities Agreement be allowed to become effective September 8, 2004. PG&E states this waiver is necessary in order for PG&E to collect funds from the Fresno Partners and, thus, begin the design work and purchase materials necessary to enable the Fresno Partners to commence operation of the Co-Generation Expansion Project by mid-November 2004.

6. PG&E also requests waiver of the Commission's refund and interest requirements³ in order to permit collection of funds from Fresno on or about September 8, 2004. PG&E states that the Fresno Partners support this waiver request.⁴ PG&E states that it is not asking that this waiver apply to interest on the cost of ownership charges, as PG&E has not collected cost of ownership charges on the project.

7. Last, PG&E requests that the Commission accept this filing, and suspend it for a nominal period, but delay setting further procedures for 90 days to allow the parties an opportunity to continue negotiating the terms of the Facilities Agreement. PG&E states that the parties will provide an update to the Commission within 45 days to keep the Commission apprised of the status of the negotiations.

II. Notice and Intervention

8. Notice of PG&E's filing was published in the *Federal Register*, (69 Fed. Reg. 56,210 (2004)), with interventions, comments, or protests due on or before September 24, 2004. No interventions, comments, or protests were filed.

¹ See Second Revised Service Agreement No. 11, FERC Electric Tariff Sixth Revised Volume No. 5.

² 18 C.F.R. § 35.3 (2004).

³ 18 C.F.R. § 35.19a (2004).

⁴ See Attachment 2 of the Facilities Agreement.

III. Discussion

9. The filing indicates that the parties are currently negotiating the terms of the Facilities Agreement and that both parties are requesting that the Commission allow them to continue their negotiations for another 90 days. We will accept the Facilities Agreement for filing and suspend it for a nominal period, to become effective subject to refund and further Commission order. This will permit PG&E to collect the funds necessary to furnish and install the new facilities necessary for the commencement of operations at the new Fresno Co-Generation Expansion Project in a timely manner.

10. If the parties successfully conclude negotiations, we direct PG&E to timely file as a compliance filing in this proceeding an amended Facilities Agreement for Commission review. However, if the parties are unable to reach agreement and file within 90 days, we direct PG&E to notify the Commission within 90 days of the status of the negotiations, and any outstanding issues. Also, consistent with PG&E's application, we will require PG&E to file an initial status report within 45 days. Additionally, we will grant waiver of the prior notice requirement.⁵

11. We note that PG&E submitted its filing prior to the effective date and prior to the collection of funds. Accordingly, we find that the Commission's policy on interest and refunds for late filings does not apply.

12. Lastly, while Order Nos. 2003 and 2003-A⁶ established compliance obligations and effective dates for transmission providers' *pro forma* Large Generator Interconnection Procedures and Large Generator Interconnection Agreements, the Commission has granted PG&E, along with other California entities, an extension of time, until January 5, 2005, in which to file its interconnection compliance.⁷ Until the Commission acts on this compliance filing, PG&E's existing interconnection procedures and agreement will continue to apply.

⁵ See *Central Hudson Gas and Electric Company, et al.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

⁶ Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *reh'g pending*; see also Standardization of Generator Interconnection Agreements and Procedures, 106 FERC ¶ 61,009 (2004).

⁷ See *California Independent System Operator Corp., et al.*, 108 FERC ¶ 61,315 (2004).

The Commission orders:

(A) The Facilities Agreement is hereby accepted for filing and suspended, to become effective September 8, 2004, subject to refund and further Commission order, as discussed in the body of this order.

(B) Waiver of the Commission's 60-day prior notice requirement is hereby granted.

(C) Within 90 days, PG&E is hereby directed to file either an amended Facilities Agreement upon the successful conclusion of negotiations, or a report concerning the status of negotiations, as discussed in the body of this order. In addition, PG&E is directed to file an initial status report within 45 days of the issuance of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.