

171 FERC ¶ 61,048
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick, Bernard L. McNamee,
and James P. Danly.

Pacific Gas and Electric Company

Docket No. ER20-1038-000

ORDER ACCEPTING AND SUSPENDING FILING, AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued April 17, 2020)

1. On February 19, 2020, pursuant to Federal Power Act (FPA) section 205¹ and Part 35 of the Commission's regulations,² Pacific Gas and Electric Company (PG&E) filed proposed revisions to Service Agreement No. 275 with the City and County of San Francisco (San Francisco) under PG&E's Wholesale Distribution Tariff (WDT). PG&E proposes to revise the WDT Service Agreement to add an unexecuted Specifications for Distribution Service (Specifications) for a new delivery point. In this order, we accept PG&E's proposed revisions, suspend them for a nominal period, to become effective on April 20, 2020, as requested, subject to refund, and establish hearing and settlement judge procedures.

I. Background and Filing

2. PG&E provides wholesale distribution and transmission service to San Francisco under Service Agreement No. 275, which includes a WDT Interconnection Agreement and a WDT Service Agreement (collectively, Agreements).³ The Agreements provide for a quarterly filing process of new or revised Specifications for Distribution Service and Work Performance Agreements and is intended to streamline the numerous filings PG&E

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ The Agreements became effective on July 1, 2015. *See City and County of San Francisco v. Pac. Gas and Elec. Co.*, 150 FERC ¶ 61,255, *reh'g denied*, 151 FERC ¶ 61,274 (2015).

makes with the Commission to reflect agreed-upon changes to delivery points and work performed.⁴ PG&E explains that the quarterly filing process is intended to reflect all fully executed additions, deletions, and modifications to San Francisco's points of delivery (i.e., the modifications to the specifications for distribution service)⁵ made during the prior quarter.

3. PG&E states that on October 7, 2019, San Francisco requested that a Specifications for Distribution Service for a new delivery point project (Project) be filed unexecuted due to a dispute over the costs of the Project. Specifically, PG&E states that San Francisco does not agree that the costs should be fully paid for by San Francisco.⁶

4. PG&E states that Section 13.3 of the WDT requires PG&E to file unexecuted Specifications within 30 days after the date of the customer's written notification to file.⁷ PG&E states that in this case, it failed to meet that 30-day requirement because of an administrative oversight. Specifically, PG&E explains that it mistakenly included the Project on the list of projects to be filed fully executed in its quarterly filing for the fourth quarter of 2019.⁸ PG&E states that it did not realize its mistake until San Francisco pointed it out after reviewing the list of projects PG&E proposed to include in the quarterly filing for the fourth quarter of 2019. PG&E states that after being reminded of San Francisco's request to file the Specifications unexecuted, PG&E reviewed all sections to ensure that the costs and listed information were correct, and sent San Francisco a courtesy copy on February 14, 2020.⁹

⁴ PG&E Transmittal Letter at 1; *see* WDT Interconnection Agreement § 8.2.4 (Quarterly Filing of WPAs) and WDT Service Agreement §14.0 (Quarterly FERC Filing of Additions, Deletions and Modifications to the Points of Delivery Under this Service Agreement).

⁵ The specifications for distribution service set forth the rates, terms, and conditions for each new San Francisco metered delivery point.

⁶ PG&E Transmittal Letter at 2.

⁷ *Id.* and n.1.

⁸ *Id.* at 2. PG&E made its quarterly filing for the fourth quarter of 2019 on January 16, 2020. *See Pac. Gas & Elec Co.*, Docket No. ER20-818-000 (March 5, 2020) (delegated order).

⁹ PG&E Transmittal Letter at 2. PG&E did not include the Project in its quarterly filing for the fourth quarter of 2019.

5. In the filing of the unexecuted Specifications, PG&E proposes to revise Appendix B.1 of the WDT Service Agreement (WDT-Qualified Points of Delivery) to add the new delivery point, and revise Appendix C of the WDT (WDT-Qualified Points of Delivery) to reflect the specifications for providing distribution service to the new delivery point.¹⁰ PG&E states that upon receiving San Francisco's request for service, PG&E performed an assessment and determined that both direct assignment facilities and distribution system upgrades are necessary to provide service for the Project, and that description of this work is provided in sections 9.1 and 9.2 of the Specifications.¹¹ PG&E states that it understands that San Francisco disputes the allocation of the costs of the Project between San Francisco and PG&E's other distribution customers, and that San Francisco's dispute appears to be similar to the disputed issues that were recently presented at hearing in Docket Nos. ER17-910-002, ER17-1509-002, ER17-2181-002, and ER18-1102-001.¹²

6. PG&E asserts that both the WDT and the Agreements expressly require San Francisco to compensate PG&E for facilities installed to serve San Francisco.¹³ Specifically, PG&E contends that it may charge for Direct Assignment Facilities, which are defined in Section 2.11 of the WDT as "Facilities or portions of facilities

¹⁰ *Id.*

¹¹ *Id.* at 4 and n.4. PG&E notes that this Project did not require a System Impact Study pursuant to section 9.3 of a Partial Settlement approved by the Commission. *See Pac. Gas & Elec. Co.*, 167 FERC ¶ 61,236 (2019) (approving partial settlement). PG&E explains that the Partial Settlement provides that PG&E does not require a System Impact Study for a new service request in which the load would be less than 500 kW. PG&E states that this Project met the criteria in section 9.3 of the Partial Settlement; therefore, no System Impact Study was performed.

¹² PG&E Transmittal Letter at 4. The proceedings in Docket Nos. ER17-910, ER17-1509, and ER17-2181 pertain to PG&E's quarterly filings for the fourth quarter of 2016, the first quarter of 2017, and the second quarter of 2017, respectively. Each of these filings was protested by San Francisco. The Commission set all of these filings for hearing and settlement judge procedures. *See Pac. Gas and Elec. Co.*, 158 FERC ¶ 62,238 (2017); *Pac. Gas and Elec. Co.*, 159 FERC ¶ 62,326 (2017); *Pac. Gas and Elec. Co.*, 160 FERC ¶ 61,135 (2017). The Commission consolidated Docket Nos. ER17-1509 and ER17-2181. In Docket No. ER18-1102-000, PG&E filed unexecuted Specifications for two new delivery points. San Francisco protested the filing objecting to, among other things, the direct assignment of certain costs. The Commission set the filing for hearing and settlement judge procedures. *Pac. Gas and Elec. Co.*, 163 FERC ¶ 61,106 (2018). That filing was not consolidated with the others, but did proceed with them in hearing.

¹³ PG&E Transmittal Letter at 4.

that are constructed by the Distribution Provider for the sole use/benefit of a particular Distribution Customer requesting service under this Tariff.” PG&E also states that Section 11.1 of the WDT Service Agreement requires the Distribution Customer to “pay a one-time payment to the Distribution Provider...equal to the total amount shown in Exhibit A (Cost Summary) of the Specifications....” PG&E states that it has included the amount of the Direct Assignment Facilities in Exhibit A to the Specifications.

7. PG&E also contends that it is authorized to charge for Upgrades, which Section 4.37 of the WDT Interconnection Agreement defines as:

All facilities or portions of facilities not included in Direct Assignment Facilities, as that term is defined in the WDT, for which CCSF must compensate PG&E. This includes any facility upgrade, addition, expansion, or modification referred to in Sections 12.6, 13.4, 16.3, 16.4, 21, 23 of the WDT, plus facility upgrades, additions, expansions, or modifications referenced in the [San Francisco] WDT Service Agreement.¹⁴

8. PG&E concludes that Direct Assignment Facilities and Upgrades are expressly provided for in the WDT and the WDT Interconnection Agreement, respectively, and those provisions are clear that Direct Assignment Facilities and Upgrades may be separately charged to the customer. PG&E states that these costs are detailed in Exhibits A through D of the Specifications.¹⁵

9. The Specifications for the Project include a direct assignment facilities charge of \$371,467.¹⁶ The Specifications also reflects cost-of-ownership charges of \$1,783 per month, which reflect PG&E’s ongoing cost liabilities associated with owning and operating the direct assignment facilities.¹⁷ Exhibit B – Installation Charge includes Distribution System Upgrades of \$170,224, described as reconductoring, equipment replacement, and rearrangements to accommodate San Francisco’s initial load, resulting in a total installation charge to San Francisco (before taxes) of \$541,691.

¹⁴ *Id.* at 5.

¹⁵ *Id.*

¹⁶ PG&E February 19, 2020 Filing, Specifications for Distribution Service for Customer 35059666, section 6.3, 9.2 and Exhibit B – Installation Charge.

¹⁷ PG&E February 19, 2020 Filing, Specifications for Distribution Service for Customer 35059666, § 6.4 and Ex. D – Cost of Ownership. The cost of ownership charge is calculated by multiplying the direct assignment facilities cost of \$371,467 by the monthly cost of ownership of 0.48% set forth in Schedule WD-1 of the WDT.

10. PG&E requests that the unexecuted Specifications become effective on April 20, 2020. PG&E also notes that Commission action is currently pending on three earlier versions of one of the tariff records being revised in the instant docket (Appendix B.1 of the WDT Service Agreement), and proposes to submit a version of that record in this filing with revisions that assume that the Commission will act on the pending dockets and make them effective prior to the requested effective date of April 20, 2020. In the alternative, PG&E requests that the Commission issue an order in this proceeding that requires PG&E to make a compliance filing to submit revised tariff records, if necessary, as a result of the Commission's actions in those three other dockets.¹⁸

II. Notice and Responsive Pleadings

11. Notice of PG&E's filing was published in the *Federal Register*, 85 Fed. Reg. 10,669 (February 25, 2020), with interventions and protests due on or before March 11, 2020. San Francisco filed a timely motion to intervene, protest, and request to hold the proceeding in abeyance.

III. San Francisco's Protest

12. San Francisco argues that the facilities PG&E proposes to directly assign to San Francisco include facilities that will be used to serve other PG&E customers and/or that are comparable to facilities used exclusively to serve PG&E retail customers and rolled into the WDT's system-average Distribution Service Charge.¹⁹ San Francisco contends that PG&E has failed to demonstrate that its proposal to directly assign these costs to San Francisco is consistent with its WDT or Commission policy.

13. San Francisco states that, as noted by PG&E, the dispute over the cost-related terms of the unexecuted Specifications at issue in this proceeding raises the same issues recently presented at hearing in Docket Nos. ER17-910-002, ER17-1509-002, ER17-2181-002, and ER18-1102-001.²⁰ Specifically, San Francisco states that Docket No. ER18-1102-001 involved two unexecuted Specifications for new delivery points where San Francisco protested PG&E's proposal to directly assign certain new facility costs to San Francisco, and the Commission set that filing for hearing and settlement judge procedures.²¹ San Francisco states that the Commission should likewise establish

¹⁸ PG&E Transmittal Letter at 5.

¹⁹ San Francisco Protest at 4-5.

²⁰ *Id.* at 5.

²¹ *Id.* at 5-6 and n.11 (citing *Pac. Gas & Elec. Co.*, 163 FERC ¶ 61,106).

hearing and settlement judge procedures for the unexecuted Specifications for Distribution Service PG&E filed in this proceeding. However, San Francisco states that in order to minimize duplicative litigation, the Commission should hold the hearing and settlement judge procedures in the instant proceeding in abeyance pending a decision in Docket No. ER18-1102-001.²² San Francisco states that the Commission has previously held proceedings in abeyance pending the outcome of pending proceedings that have raised similar issues.²³

14. San Francisco also notes that PG&E's arguments that "PG&E may charge for Direct Assignment Facilities, defined in WDT Section 2.11" and "PG&E is authorized to charge for Upgrades," as defined in Section 4.37 of the WDT Interconnection Agreement are the same arguments PG&E makes in the fully developed record in Docket No. ER18-1102-001 and disputed by San Francisco.²⁴ San Francisco states that the litigation of these issues in Docket No. ER18-1102-001 is well underway, and that holding hearing and settlement judge procedures in the instant proceeding in abeyance pending the resolution of Docket No. ER18-1102-001 will make more efficient use of the Commission's resources, as well as those of PG&E and San Francisco.²⁵

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), San Francisco's timely, unopposed motion to intervene serves to make it a party to this proceeding.

²² *Id.* at 7. San Francisco also notes that is authorized to represent that while PG&E does not agree with the merits of San Francisco's protest, should the Commission determine that this proceeding should be set for hearing and settlement judge procedures, PG&E does not oppose San Francisco's motion to hold the hearing and settlement judge procedures in this proceeding in abeyance pending the outcome of Docket No. ER18-1102-001.

²³ *Id.*

²⁴ *Id.* at 7-8.

²⁵ *Id.* at 8. San Francisco notes that an Initial Decision in those dockets is scheduled for July 3, 2020.

B. Substantive Matters

16. Our preliminary analysis indicates that PG&E's proposed revisions to Service Agreement No. 275 have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that PG&E's filing raises issues of material fact that are more appropriately addressed through hearing and settlement judge procedures. Accordingly, we accept PG&E's proposed revisions to Service Agreement No. 275 for filing, suspend them for a nominal period, to become effective April 20, 2020, as requested, subject to refund, and establish hearing and settlement judge procedures.

17. We acknowledge San Francisco's request to hold this proceeding in abeyance pending the outcome of the proceeding in Docket Nos. ER17-910-002, ER17-1509-002, ER17-2181-002, and ER18-1102-001. Because this filing and those ongoing proceedings involve the same parties and closely related issues, we direct the Chief Administrative Law Judge to consider and decide whether to hold this proceeding in abeyance, as well as whether to consolidate it with the other proceedings for purposes of settlement, hearing, and decision.

18. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁶ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.²⁷ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, 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 commencement of a hearing by assigning the case to a presiding judge.

²⁶ 18 C.F.R. § 385.603 (2019).

²⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

The Commission orders:

(A) PG&E's proposed revisions to Service Agreement No. 275 are hereby accepted for filing and suspended for a nominal period, to become effective April 20, 2020, subject to refund, as discussed in the body of this order.

(B) 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 by 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 I), a public hearing shall be held concerning PG&E's proposed revisions to Service Agreement No. 275. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 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 within five days of the date of this order.

(D) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge 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 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a 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.

(F) The Chief Administrative Law Judge is authorized to consider whether to hold this proceeding in abeyance pending the outcome of Docket Nos. ER20-1038-000, ER17-910-002, ER17-1509-002, ER17-2181-002, and ER18-1102-001, as well as whether to consolidate it with those proceedings for purposes of settlement, hearing, and decision.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.