UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

100 FERC ¶ 61,156

Pacific Gas and Electric Company	Docket Nos.	ER97-2358-002 ER98-2351-001
Southern California Edison Company	Docket Nos.	ER97-2355-002 ER98-2322-000
San Diego Gas & Electric Company	Docket Nos.	ER97-2364-002 ER97-4235-002 ER98-497-002 ER98-2371-000

OPINION NO. 458

OPINION AND ORDER AFFIRMING INITIAL DECISION

Issued: August 5, 2002

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Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

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1. These cases arise from the restructuring of California's electric industry, and primarily involve the non-rate terms and conditions of the Transmission Owner (TO) Tariffs and Wholesale Distribution Tariffs (WDTs) filed by the Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E) (referred to collectively as the Companies), as a result of that restructuring. They are before the Commission on exceptions to an Initial Decision.[1] For the most part, we summarily affirm the Initial Decision. However, two issues we affirm with discussion, both of which arise from the fact that certain costs are treated differently under the California Independent System Operator Corporation (California ISO) Tariff than they were under the Companies' existing transmission contracts. This order benefits the public interest by ensuring, generally, that the TO Tariff non-rate terms and conditions are just and reasonable, and specifically that the TO Tariff customers are not subject to unwarranted costs.

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[1] Pacific Gas and Electric Co., et al., 88 FERC ¶ 63,007 (1999).

Background

2. In the latter part of 1996, the Commission conditionally approved the Companies' restructuring proposals and provided guidance for the Companies' subsequent Phase II filing.[2] As relevant here, the Companies' Phase II filing included individual proposed TO Tariffs for each of them, and proposed WDTs for PG&E and SCE. In 1998, the Commission ordered that the non-rate terms and conditions of these filings be consolidated into the present proceedings.[3]

3. A hearing was held before the Administrative Law Judge (judge) in these proceedings in late January 1999. Participating were the Companies, the California Department of Water Resources (DWR), the California ISO, the Cities of Anaheim, Azusa, Banning, Colton and Riverside, California (collectively, the Southern Cities), the City of Vernon, California (Vernon), Enron Power Marketing, Inc. (Enron), New Energy Ventures, Inc. and Commission staff (Staff). The Initial Decision was issued on September 1, 1999.

4. Briefs on exceptions on various issues resolved by the Initial Decision were filed by Enron, SCE and SDG&E (jointly),[4] PG&E (separately), the Sacramento Municipal Utility District (SMUD) and Commission Staff. Briefs opposing exceptions were filed by Enron, the Companies, the Southern Cities, the California Independent System Operator (California ISO), DWR, Vernon and Staff.

5. Of the issues resolved by the Initial Decision and raised on exceptions, we address only those concerning the treatment of two categories of costs imposed on the Companies by the California ISO and which the Companies now wish to recover from TO Tariff customers: (1) certain transmission loss and ancillary service costs; and (2) certain Neutrality and Unaccounted for Energy (UFE) charges.

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[2]Pacific Gas and Electric Company, et al., 77 FERC ¶ 61,077 (1996); Pacific Gas and Electric Company, et al., 77 FERC ¶ 61,204 (1996); Pacific Gas and Electric Company, et al., 77 FERC ¶ 61,265 (1996).

[3]See Southern California Edison Company, et al., 83 FERC ¶ 61,167 (1998); Pacific Gas and Electric Company, et al., 83 FERC ¶ 61,212 (1998).

[4]For convenience, we refer to this brief on exceptions as SCE's.

6. As to the remaining issues, the Commission finds, having reviewed the Initial Decision, the record, and the parties' briefs, that they were properly resolved by the Initial Decision. We therefore deny the exceptions and summarily affirm and adopt the Initial Decision as our own decision on the following issues: (1) whether there should be a pro forma TO tariff; (2) alleged undue discrimination against customers not directly connected to the ISO-operated grid; (3) whether there should be a pro forma WDT; (4) the posting of WDT requests and dispositions; (5) sale or assignment by WDT customers of their WDT capacity; (6) alleged undue discrimination due to WDT restrictions on marketers and generators; (7) eligibility of WDT customers to receive unbundled metering and billing services; (8) sale of interconnection facilities to WDT customers; (9) application of SCE's WDT to Vernon; (10) wholesale-only service on the Companies' distribution systems; (11) whether WDT requests must follow the terms of the pro forma Open Access Transmission Tariff; (12) the reasonableness of SCE's load shedding provisions; and (13) provisions of SCE's WDT.

Discussion

7. The two issues we discuss involve the relationship between the Companies' existing contracts and the California ISO tariff, and specifically whether certain losses caused by the lack of harmony between the contracts and the tariff should be recovered in the Transmission Revenue Balancing Account Adjustment (TRBAA) of the Companies' TO Tariffs.

Initial Decision

8. The first issue arises from the difference between the California ISO Tariff's ancillary services and transmission loss protocols and those contained in the Companies' existing transmission contracts. Because customers under the existing contracts continue to pay those contract rates but are nevertheless served by the California ISO in the same manner as the TO Tariff customers, mismatches occur between the ISO's cost to serve and what it collects under the existing contracts. The Initial Decision rejected the Companies' view that the costs stemming from these differences should be collected (or credited) by means of the TRBAA in the TO Tariffs. As the judge described it, the Companies were essentially attempting to collect these costs by charging them to the TO

Tariff customers, who then "would be responsible for costs incurred on their own behalf as well as those incurred on behalf of the Existing Contract customers."[5]

9. The Initial Decision agreed with the Companies' premise that the Commission had established a policy of honoring existing contracts during the course of industry restructuring. However, the judge determined, protecting the integrity of the contracts did not warrant the cross-subsidization sought by the Companies. As he explained:

> Cost-causation principles dictate that the Existing Contract customers, and not all TO Tariff customers, should pay for the charges incurred as a result of the ISO's billing requirements which affect service provided under those Existing Contracts.[[6]]

10. In support of this conclusion, the judge relied on record evidence that inclusion of existing contracts' transmission revenues and ancillary service requirements in the Transmission Revenue Credit would result in the double-charging of any TO Tariff customer who performs its own scheduling coordination services.[7] As he went on to explain, such customers (DWR, for example), should not be required to "subsidize ISO charges incurred by third parties obtaining service under Existing Contracts, while also paying their entire Scheduling Coordinator share of Transmission Losses and Ancillary Service requirements directly to the ISO."[8]

11. The judge further determined that the Commission's policy of not abrogating existing contracts did not mean that contracts were not subject to modification. Indeed, he observed, the ISO Tariff "explicitly provides" that parties with existing rights or non-converted rights "shall continue to pay for Transmission Losses or Ancillary Services requirement[s]" in accordance with the Existing Contracts as they may be modified or

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[5] 88 FERC at 65,051.

[6] Id. at 65,052.

[7] Id.

[8] Id.

changed" by their own terms.[9] Thus, the judge declared, the Companies could seek modification by means of filing pursuant to section 205 or 206 of the Federal Power Act (FPA), if the contracts so permitted. Otherwise, he concluded, "the Companies themselves must shoulder this cost burden, as they accepted the risk of potential cost increases at the time they negotiated the Existing Contracts."[10] To endorse the Companies' view, the judge reasoned, would mean that Customers who were not parties to those prior negotiations would have that burden imposed on them, resulting in the impermissible cross-subsidization referred to above.

12. The Initial Decision also found fault with the Companies' proposal in that the mechanism involved (the TRBAA) was an automatic adjustment clause, and as such, subject to certain Commission policy strictures. Employing such a clause, the judge explained, requires the utility to "demonstrate that the applicable costs or revenues included within the clause's scope are volatile and make a significant difference."[11] Because the Companies' proffered evidence on this issue failed to make this showing, the judge concluded that an automatic adjustment clause was not an appropriate vehicle to reflect "shortfalls and surpluses related to transmission losses and ancillary services."[12]

13. The Initial Decision went on to discuss the second issue, PG&E's claim that the UFE charges should be collected under its TO Tariff. In the judge's view, PG&E's proposal had the same flaws as those discussed in the first issue. Specifically, the judge found that the proposal:

> would compel those entities serving as their own Scheduling Coordinators on their own behalf to pay their own ISO-imposed Neutrality Adjustment Charges and, in addition,

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[9] Id., quoting ISO Tariff, Item G, § 2.4.4.4.4.5 (emphasis the judge's).

[10] Id., citing Exh. EPM-2 at 12-13.

[11] Id., citing IES Utilities, Inc., 81 FERC ¶ 61,187, at p. 61,831 (1997); Florida Power Corporation, 70 FERC ¶ 61,321, at p. 61,979 (1995).

[12] Id., citing Pennsylvania-New Jersey-Maryland Interconnection, et al., 81 FERC ¶ 61,257, at pp. 62,252-53 (1997); Exh. S-1 at 10.

> bear some of the cost responsibilities of customers served under Existing Contracts.[[13]]

Indeed, he observed that PG&E had conceded potential double charging arising from the inclusion of UFE charges in its TO Tariff.[14]

14. The Initial Decision further determined that PG&E had failed to demonstrate that the use of an automatic adjustment clause was appropriate, as it had not conducted any studies or presented any evidence or testimony analyzing the potential magnitude or volatility of the Neutrality Charges or their potential magnitude or volatility.

15. The judge concluded that the same cost-shifting/cross-subsidization concerns underlying his resolution of the treatment of transmission losses and ancillary service costs "precludes PG&E from including the ISO-imposed Neutrality/Unaccounted for Energy Charges in PG&E's TO Tariff TRBAA."[15]

The Parties' Positions

16. SCE PG&E and SMUD except to the Initial Decision's resolution of the transmission loss/ancillary service issue. SCE makes a general policy argument that the judge's interpretation of the existing contracts had the effect of abrogating them. This position, SCE alleges, directly contradicts the Commission's policy of honoring existing contracts, and provides a "clear and compelling disincentive to similarly situated public utilities . . . to join RTOs or ISOs."[16]

17. SCE alleges that the judge essentially abrogated the existing contracts by ignoring the California ISO Tariff's express provisions ensuring that such contracts would be honored. According to SCE, the tariff

> expressly provides that in honoring Existing Contracts, "each Participating TO and holder of transmission rights under an Existing Contract will work with the ISO to develop

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[13] 88 FERC at 65,053-54, citing Exh. DWR-6 at 7; Exh. S-1 at 22.

[14] 88 FERC at 65,054, citing Tr. 69-70; Exh. DWR-9, No. 78a; Exh. PTO-3 at 10.

[15] Id.

[16] SCE Brief on Exceptions at 6.

> operational protocols . . . which allow existing contractual rights to be exercised . . . in a way that: . . . (iii) to the extent possible, imposes no additional financial burden on either the Participating TO or the contract rights holder (beyond that in the Existing Contract).[[17]]

18. SCE asserts that this provision must be read in conjunction with the Master Definitions Supplement of the California ISO Tariff, which defines a "Transmission Revenue Credit" in these terms:

> The Proceeds received by the Participating TO from the ISO Wheeling Service and Usage Charges, plus the shortfall or surplus resulting from any cost differences between Transmission Losses and Ancillary Service requirements associated with Existing Rights or Non-Converted Rights and the ISO's rules and protocols.[[18]]

19. Taken together, SCE argues, the California ISO Tariff "plainly contemplate[s]" that the disparate treatment of transmission losses and ancillary services in the existing contracts and the new ISO structure "was intended to be handled through a transmission revenue crediting mechanism."[19] In this instance, SCE concludes, the TRBAA included in the TO Tariffs "is the mechanism through which those revenues were to be credited (or any associated costs debited)."[20]

20. SCE goes on to attack the Initial Decision's reliance on cost causation principles. While SCE agrees with the judge that the ISO incurs the costs at issue to affect service provided under the existing contracts, it nevertheless contends that "there has been no

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[17] Id. at 5, quoting ISO Tariff Item G § 2.4.3.1 (emphasis SCE's).

[18] Id. at 6, quoting ISO Tariff Item G, Master Definitions Supplement (emphasis SCE's).

[19] Id. at 6.

[20] Id. at 7 (footnote omitted).

showing in this docket that the Existing Contracts or their customers caused the costs."[21] Rather, according to SCE, it is the Commission-approved policy of honoring the existing contracts which causes the cost differentials to exist. SCE also takes issue with the judge's proposal that sections 205 and 206 provide an adequate remedy in these circumstances.

21. Finally, SCE disputes the Initial Decision's conclusion that the Companies failed to demonstrate that an automatic adjustment clause such as the TRBAA would be appropriate to recover the costs at issue.

22. While generally making the same arguments as SCE, PG&E and SMUD advance several additional points. Concerning the cost causation issue, SMUD observes that because it self-supplies ancillary services, its existing contracts with PG&E for transmission service do not contain ancillary service provisions. SMUD therefore asserts that there is no reason to modify existing contracts to charge for services that are not rendered under them.

23. PG&E argues that the Initial Decision incorrectly determined that customers acting as their own Scheduling Coordinators (SCs) would be double-charged by recovering ISO-related charges through the TRBAA. According to PG&E, an entity such as DWR which is acting as its own SC pays SC charges for its Existing Contract schedules, but "only gets a portion of the TRBAA debit (or credit) if it also chooses to take TO Tariff Service in addition to its Existing Contract service."[22]

24. PG&E further asserts that at the time of the hearing, it did not have sufficient information to demonstrate that the magnitude and volatility of the charges were sufficient to permit automatic adjustment clause treatment. PG&E thus requests the Commission to accept an affidavit containing such information that became available only after the close of the record.[23]

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[21] Id. at 9 (emphasis in original; footnote omitted).

[22] PG&E Brief on Exceptions at 14 (emphasis in original).

[23] Id. at 16 n.12 (citations omitted).

25. Finally, in support of its position that it should be permitted to recover the UFE charges through the TRBAA, PG&E reiterates the arguments made by the Companies concerning transmission losses and ancillary services.[24]

26. Staff, Enron, the Southern Cities and DWR oppose exceptions on these issues. All three argue that the Initial Decision properly interpreted the California ISO Tariff as not requiring unrecovered transmission losses and ancillary services to be shifted to third parties. They further maintain that the judge did not in any sense "abrogate" the existing contracts, but rather applied them in accordance with their terms. Finally, they support the judge's decision as consistent with both cost causation principles and the Commission's policy with respect to automatic adjustment clauses.

[24] Id. at 18-21.

Commission Decision

27. While the Commission is affirming the Initial Decision on these issues, we do so with a somewhat different emphasis than that of the presiding judge. The fundamental question in this proceeding is whether the Companies' proposed TO and WDT tariffs are just and reasonable. As the parties opposing exceptions correctly observe, the contentions of the Companies and SMUD that the California ISO Tariff definition controls the resolution of this issue is something of a red herring. Indeed, in approving the California ISO Tariff, we made clear that the Companies' transmission revenue requirements were to be evaluated in their individual TO Tariff proceedings.[25]

28. The Commission rejects the Companies' argument that the plain meaning of the California ISO Tariff provisions compels the recovery of the costs at issue through the TO Tariffs' TRBAA. Rather, we find that the tariff provisions on which the Companies rely provide no basis for them to shift the costs in question from the existing contract customers to the TO Tariff customers. First, Section 2.4.3.1 is essentially precatory. It provides only that the parties to the existing contracts will work with the California ISO to develop protocols allowing the existing contracts to be exercised in a manner that, inter alia,"to the extent possible, imposes no additional financial burden on either the Participating TO or the contract rights holder (beyond that in the Existing Contract)." The qualifying phrase "to the extent possible" indicates that there may indeed be situations where an additional financial burden may fall on the Participating TO or the contract rights holder. Second, we find that the California ISO Tariff's definition of Transmission Revenue Credit essentially begs the question, because there is no dispute that the ISO will assess these costs to the Companies. The issue is what can the Companies do to recover these costs. The costs arise because the Companies have failed to revise the rates contained in the existing contracts to reflect the Companies' new cost of service, which includes California ISO charges.

29. Furthermore, the Companies' position does not take into account Section 2.4.4.4.4.5 of the California ISO Tariff, on which the Initial Decision relied. The Commission believes that the judge reasonably read that provision as recognizing that if the California ISO rules and protocols governing transmission losses or ancillary service requirements are not the same as those in the existing contracts, the California ISO will provide the information so that the parties to those contracts may resolve the matter, by contract modification or otherwise.

[25] See Pacific Gas & Electric Company, et al., 81 FERC ¶ 61,122 at 61,455 n.113.

30. Applying cost causation principles, the Initial Decision held that equities favored the Companies' shouldering this burden unless and until they could modify their contracts accordingly. The Commission agrees. We reject the Companies' and SMUD's argument that they should be absolved of this responsibility because they and their customers did not "cause" the cost mismatch. The fact is that the costs are associated with service provided under the existing contracts, not the TO Tariffs, and should not be shifted to the TO Tariff customers. The remedy, as the judge observed, is for the Companies to reform their existing contracts by means of FPA sections 205 and 206. The Companies' contention that these remedies are inadequate is devoid of merit; these are the remedies the statute provides.

31. The Commission also rejects the specific arguments raised by PG&E and SMUD. First, our discussion above of the cost causation issues disposes of PG&E's argument concerning the UFE charges. Furthermore, we do not see DWR's status as an SC as relevant to its status as a party to the existing contracts. SMUD's argument concerning customers who self-provide ancillary services is likewise irrelevant. It appears self-evident that for any party in this circumstance, the Companies will incur no related costs that need to be recovered .

32. In view of our conclusion that the Companies cannot recover the costs at issue through the TO Tariffs, we need not reach the question of whether the TRBAA would have been an appropriate mechanism. PG&E's request for the Commission to receive its affidavit into the record is therefore moot.

The Commission orders:

(A) The Initial Decision in these proceedings is hereby affirmed, as discussed in the body of this order.

(B) Within 60 days of the date of this Opinion, the Companies shall submit a refund report to the Commission. However, if a request for rehearing is filed, the Companies shall file their refund report within 30 days of the date the Commission disposes of the request for rehearing.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.