UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company	Docket Nos. ER97-2358-006 ER98-2351-005
Southern California Edison Company	Docket Nos. ER97-2355-012 ER98-2322-006
San Diego Gas & Electric Company	Docket Nos. ER97-2364-007 ER97-4235-006 ER98-497-006 ER98-2371-004

ORDER ON REMAND

(Issued May 6, 2004)

1. On February 12, 2004, the United States Court of Appeals for the District of Columbia Circuit issued an order[1] granting the Commission's motion for a voluntary remand of petitions for review challenging our decisions in Opinion Nos. 458 and 458-A.[2] Upon further review, the Commission affirms these decisions, with some additional explanation and clarification. Our order today benefits customers by assuring that the principles of cost causation are appropriately applied.

Background

2. While the relevant facts are reviewed in the Initial Decision and our prior orders in this proceeding, we believe it would be helpful to provide some context. As a result of the restructuring of California's electric industry, Pacific Gas and Electric Company,

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[1] Southern California Edison Co., et al., v. Federal Energy Regulatory Commission, No. 02-1374 (D.C. Cir.).

[2] Pacific Gas and Electric Co., et al., Opinion No. 458, 100 FERC & 61,156, reh'g denied, Opinion No. 458-A, 101 FERC ¶ 61,151 (2002). Opinion No. 458 affirmed the Initial Decision in this proceeding. Pacific Gas and Electric Co., et al., 88 FERC & 63,007 (1999).

Southern California Edison Company and San Diego Gas and Electric Company (collectively, the Companies), turned over the operation of their transmission systems to the California Independent System Operator Corporation (ISO). The ISO operates the facilities and provides transmission service pursuant to the ISO Tariff, which is on file with the Commission.

3. Under the terms of the ISO Tariff, the Companies must file individual Transmission Owner (TO) Tariffs to determine the specific rates they will charge to recover their costs from their customers, for services provided under the auspices of the ISO. At the same time, during a transitional period, the Companies continue to provide service under existing (pre-restructuring) transmission contracts (Existing Contracts) with certain wholesale customers, who pay transmission rates set by those contracts.

4. This case arose from the Companies' 1998 filing with the Commission of the non-rate terms and conditions of their TO Tariffs. The specific matter at issue here involves the undisputed fact that transmission losses and ancillary services are often treated differently by the ISO Tariff than they are by the Existing Contracts. The Companies' position has been that cost shortfalls (or surpluses) resulting from the difference between Existing Contracts and billing through the ISO Tariff should be recovered or credited through the ISO Tariff's Transmission Revenue Balancing Account Adjustment (TRBAA) and billed to the TO Tariff customers. The TO Tariff customers, naturally enough, have taken the position that these costs, arising as they do from the Existing Contracts, should be billed to the Existing Contract customers.

5. The Initial Decision rejected the Companies' position. The judge found that "[c]ost causation principles dictate that the Existing Contract customers, and not the 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."[3] In his view, to assign the disputed costs to the TO Tariff customers would result in impermissible "cross-subsidization."[4] He was also concerned that including "Existing Contracts' transmission revenues and ancillary service requirements in the Transmission Revenue Credit would result in the double-charging of any TO Tariff customer" performing its own scheduling coordination services.[5]

6. In Opinion No. 458, the Commission affirmed the judge's decision on this issue, with a different emphasis necessitated by the shifting arguments made by the parties on exceptions. First, we rejected the Companies' argument "that the plain meaning of the California ISO Tariff provisions compels the recovery of the costs at issue" through the

[3] 88 FERC at 65,052.

[4] Id. at 65,051.

[5] Id. at 65,052.

TRBAA.[6] Rather, we interpreted the terms of the ISO Tariff as providing "no basis . . . to shift the costs in question" from the Existing Contract customers to the TO Tariff customers, i.e., as essentially irrelevant to the issue of who is responsible for the disputed costs.[7] Second, Opinion No. 458 agreed with the judge that cost causation principles required that the Companies should bear responsibility for the disputed costs unless or until they could modify the existing contracts to take into account the cost differential. "The fact is," the Commission explained, "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."[8]

7. Several parties sought rehearing of Opinion No. 458, primarily on the ground that the ISO Tariff required any difference between losses calculated under an Existing Contract and losses calculated under the ISO Tariff to be reflected as a Transmission Revenue Credit and, through the individual TO Tariffs, operate as an adjustment to each Transmission Owner's Transmission Revenue Requirement. The parties also took issue with our conclusion that assessing the costs at issue to the TO Tariff customers would result in unwarranted cost-shifting.

8. In Opinion No. 458-A, the Commission denied rehearing. Our interpretation of the relevant provisions of the ISO Tariff revealed no such mandate for the treatment of the disputed costs. As we explained, section 2.4.4.4.4.5 of the ISO Tariff

> contemplates that the Companies may seek to recover the contested costs through the Existing Contracts, by filing to reform the contracts, either under section 205 or section 206 [of the Federal Power Act], as appropriate. Second, this approach is consistent with section 2.4.3.1, which provides only that exercise of Existing Contract rights under the ISO regime will impose no additional financial burden on the Participating TO or contract rights holder "to the extent possible."[[9]]

9. Opinion No. 458-A went on to dispose of the parties' contention that charging the TO Tariff customers did not result in unfair cross-subsidization. Applying established cost causation principles, the Commission concluded that the Existing Contract customers had indeed benefited from restructuring, while it could not be

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[6]Opinion No. 458,100 FERC ¶ 61,156 at P 28.

[7] Id.

[8] Id. at P 30.

[9] Opinion No. 458-A, 101 FERC ¶ 61,151 at P 18 (footnote omitted).

demonstrated that the TO Tariff customers had benefited from restructuring "so singularly as to require costs incurred in connection with the Existing Contracts, to which they are not parties, to be passed on to them."[10]

10. Several parties sought judicial review of Opinion Nos. 458 and 458-A. The parties' briefs brought to our attention one statement in Opinion No. 458-A which was factually incorrect, and another which was susceptible of misunderstanding. The Commission, therefore, filed a motion with the court for a limited voluntary remand, in order to address these points.

Discussion

11. There were two basic elements to the Commission's decisions in Opinion Nos. 458 and 458-A. First, we held that the ISO Tariff does not, by its terms, determine which group of the Companies' customers is responsible for the disputed costs. Second, we concluded that requiring the TO Tariff customers to shoulder the burden of costs incurred by the Existing Contract customers would result in unnecessary and inequitable cost-shifting.[11] The Commission continues to subscribe to the reasoning and results of these opinions. In this order, we only clarify our discussion of certain matters pertaining to the first issue, the meaning of the ISO Tariff.

12. To begin, we turn to the factual misstatement in Opinion No. 458-A. In describing the language of the ISO Tariff, we stated that its provisions "determine the manner in which the California ISO will collect the costs from the Companies."[12] This is, of course, erroneous: Section 7.1 of the ISO Tariff establishes the ISO's Transmission Access Charge, which the ISO collects (from the transmission customers) for the Participating Transmission Owners so that they may recover their Transmission Revenue Requirements.[13]

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[10] Id. at P 23.

[11] The Commission also rejected various other arguments by the Companies that this result was inequitable because of the possibility that the Companies would have to absorb these costs, if they were unable to pass them through to the Existing Contract customers. See Opinion No. 458, 100 FERC ¶ 61,156 at P 30; Opinion No. 458-A, 101 FERC ¶ 61,151 at P 23-25.

[12] Opinion No. 458-A, 101 FERC ¶ 61,151 at P 15 (emphasis added).

[13] To the extent that the TOs are "Market Participants [i.e., transmission customers] withdrawing Energy from the ISO Controlled Grid," however, the ISO does collect costs from the Companies. ISO Tariff, section 7.1.

13. The Commission also acknowledges that Opinion No. 458 described the ISO Tariff's Transmission Revenue Credit provision in a shorthand manner that could be confusing. We stated that the 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 the Companies do to recover these costs."[14] The ISO Tariff's Transmission Revenue Credit definition, as relevant here, states that it includes:

> the shortfall or surplus resulting from any cost differences 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.[[15]]

Thus, strictly speaking, the cost differences may flow either way, depending upon whether there is a "shortfall" or a "surplus." However, it is fair to say that, in the time period relevant to this case, the matter has been one of "shortfall," so that Companies have a deficit to make up from their customers.

14. Putting these revisions in context, they have no effect on the basic conclusions the Commission reached in Opinion Nos. 458 and 458-A, which are reaffirmed here. Thus, contrary to the views of the parties on rehearing, the Commission continues to hold that the terms of the ISO Tariff do not clearly answer the question of which customer group would be responsible for shortfalls caused by the mismatch between "Transmission Losses or Ancillary Service requirements associated with Existing Rights or Non-Converted Rights" and "those under the ISO's rules and protocols."[16]

15. Section 2.4.4.4.4.5 of the ISO Tariff states that parties to the Existing Contracts "shall continue to pay for Transmission Losses or Ancillary Service requirements in accordance with such Existing Contracts as they be modified or changed in accordance with the terms of the Existing Contract."[17] In cases where there is a mismatch, the ISO "will provide the parties to the Existing Contracts with details of its Transmission Losses and Ancillary Services calculations . . . to enable the parties to the Existing Contracts to settle the differences bilaterally or through the relevant TO Tariff."[18] A reasonable

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[14] Opinion No. 458, 100 FERC ¶ 61,156 at P 28.

[15] ISO Tariff, Master Definitions Supplement. The Transmission Revenue Credit also includes the proceeds received by the Participating Transmission Owners from the ISO for Wheeling Service and Usage Charges.

[16] ISO Tariff, section 2.4.4.4.4.5.

[17] Id.

[18] Id.

reading of this language indicates that the ISO Tariff is neutral on the subject of whether TO Tariff customers, as opposed to the Existing Contract customers, will be responsible for any such differences.

16. The other sections of the ISO Tariff referenced by the parties do not warrant a different result. As we discussed in some detail in our prior orders, section 2.4.3.1 only advises that the ISO operational protocols "will allow existing contractual rights to be exercised" in a manner that "to the extent possible, imposes no additional financial burdens" on the Participating Transmission Owner "or the contract rights holder (beyond that in the Existing Contract)."[19] Furthermore, it is not clear what the actual financial burdens on the contract rights holders are or have been.[20]

17. Having established that the terms of the ISO Tariff do not dictate which customers are responsible for the shortfalls in question, the Commission, for the reasons discussed here and in Opinion Nos. 458 and 458-A, finds that, in accordance with longstanding principles of ratemaking cost causation, the shortfalls associated with the Existing Contracts should not be the responsibility of the TO Tariff customers.

The Commission orders:

Opinion Nos. 458 and 458-A are hereby affirmed, with the further explanation and clarification provided above.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

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[19] ISO Tariff, section 2.4.3.1.

[20] The Companies never introduced into the record in this case the amount, if any, of the costs they allegedly would not be able to pass through and would thus have to absorb.