106 FERC ¶ 61,144
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. ER99-2326-005
EL99-68-005

OPINION NO. 466-A

ORDER GRANTING REHEARING, REVERSING THE INITIAL DECISION IN PART, AND AFFIRMING THE INITIAL DECISION IN PART

(Issued February 17, 2004)

1. In Opinion No. 466,[1] the Commission reversed, in relevant part, the Initial Decision in this proceeding,[2] and held that the determination of which facilities were properly included in the Transmission Revenue Requirement in Pacific Gas and Electric's (PG&E)'s 1999 rate filing should be based solely on whether control of the facilities had been turned over to the California Independent System Operator Corporation (ISO). The Public Utilities Commission of the State of California (California Commission) and the California Department of Water Resources (DWR) filed requests for rehearing.[3] In this order, the Commission grants the requests for rehearing. Having reconsidered this issue, we review the Initial Decision anew to determine the appropriate allocation of transmission costs, reversing in part and affirming in part the presiding judge's assessment of which costs should be included in PG&E's transmission rates. This order will benefit customers by assuring that the Commission's transmission pricing policies are consistently applied.

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[1] Pacific Gas and Electric Co., Opinion No. 466, 104 FERC ¶ 61,226 (2003).

[2] Pacific Gas and Electric Co., 97 FERC ¶ 63,014 (2001).

[3] Additionally, the Transmission Agency of Northern California, the Modesto Irrigation District, the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency (collectively, TANC) filed a request for rehearing, incorporating by reference the arguments made by DWR.

Background

2. This case arose from PG&E's March 31, 1999, filing to recover the costs of transmission facilities which it owns but which are operated by the ISO. The filing, PG&E's transmission owner (TO) rate, was designated TO-3. The sole remaining issue involves PG&E's proposal to reclassify approximately $132 million worth of gross plant previously designated as "generation ties" or "generation step-up transformers" as "network transmission facilities." The lion's share of this plant was represented by its Diablo Loop, Morrow Bay Loop and Moss Landing Loop facilities, adding $ 89 million to PG&E's Transmission Revenue Requirement, with the remaining $ 43 million spread among 41 separate transmission lines or transformers.

3. In the Initial Decision in this proceeding, the presiding administrative law judge concluded that while all of the facilities at issue "perform[] at least some network transmission function[,]" it would be improper to roll the entire costs of the facilities into the Transmission Revenue Requirement on this basis.[4] Relying on the Commission's decisions in Kentucky Utilities Company[5] and Northern States Power Company,[6] the judge found that the rate treatment of such facilities should reflect their role in supporting generation and ancillary services.

4. Applying this standard, the judge held that the generation-tie function of the Diablo, Morrow Bay and Moss Landing Loops, "far outweighs [their] network contingency function," so that these facilities should be excluded from PG&E's Transmission Revenue Requirement except to the extent that the "proportional use of these facilities may be allocated to network transmission."[7] Because the record did not reveal this level of detail, the judge believed he had "no option but to exclude" these facilities from PG&E's TO-3 tariff "in their entirety – at least until PG&E quantifies [their] network transmission components in a compliance filing."[8] The judge identified another $17 million worth of the facilities in question as dual-function (performing both generation and transmission functions). Employing the same reasoning, he excluded them from PG&E's Transmission Revenue Requirement. However, he concluded that

[4] 97 FERC at 65,061.

[5] 85 FERC ¶ 61,274 at 62,111 (1998) (Kentucky Utilities)

[6] 64 FERC ¶ 61,324 (1993) (Northern States), reh'g denied, 74 FERC ¶ 61,106 (1996).

[7] 97 FERC at 65,061-62.

[8] Id. at 65,062.

another $26 million worth of facilities were dedicated entirely to network transmission service, so that their costs were recoverable in PG&E's Transmission Revenue Requirement.[9]

5. The Initial Decision further held that "the record indicates that most (if not all)"of the $26 million worth of facilities" which should be included in PG&E's Transmission Revenue Requirement "were at all times properly reflected in the ISO Transmission Register – which serves as the operational indicator of whether facilities are in fact under ISO control."[10] The judge therefore rejected an argument by several parties that the failure of PG&E to make a filing under Section 203 of the Federal Power Act (FPA)[11] should preclude the company from recovering the costs associated with these facilities in its TO-3 tariff.

6. In Opinion No. 466, the Commission reversed the Initial Decision on the contested issue. In the Commission's view, the judge had erred in deciding which facilities were to be included in PG&E's Transmission Revenue Requirement "based on whether these facilities should be classified as transmission or generation under our pre-ISO precedent."[12] Rather, we concluded:

> The relevant question now is simply whether operational control of the facilities was transferred to the ISO. If control was turned over, the facilities should be included in the TO-3 base. If it was not, they must be excluded.[[13]]

7. On rehearing, the California Commission and DWR take issue with our approach in Opinion No. 466 of making ISO operational control the sine qua non of classifying facilities for the purpose of determining those costs to be included in PG&E's Transmission Revenue Requirement. They argue that this position (1) is contrary to Commission precedent concerning the creation of the ISO, where the Commission

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[9] Id. (citation omitted).

[10] Id.

[11] 16 U.S.C. § 824b (2000).

[12] Opinion No. 466 at P 13.

[13] Id. (footnote omitted).

stated that it would examine the rate treatment of facilities;[14] (2) is contrary to various policy initiatives the Commission has been and is pursuing, primarily Order No. 2003;[15] (3) conflicts with evidence that ISO control of a facility does not necessarily place the costs of that facility within ISO network transmission rates;[16] and (4) fails to meet the requirements of the FPA in several respects.[17]

Discussion

A. Preliminary Issues

8. On April 6, 2001, PG&E filed for Chapter 11 bankruptcy protection. Although the Bankruptcy Code provides that the filing of a bankruptcy petition automatically stays certain actions against the debtor,[18] the Code also provides an exception from this automatic stay for:

> An action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.[19]

9. The Commission has found in the past that actions taken under the authority granted it by the Federal Power Act and the controlling regulations fit within this

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[14] California Commission Request at 6-8; DWR Request at 13-15.

[15] California Commission Request at 16-22; DWR Request at 20-24, citing Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), reh'g pending.

[16] California Commission Request at 8-10; DWR Request at 15-16

[17] DWR Request at 28-35; California Commission Request at 10-11,15-16.

[18] 11 U.S.C. § 362(a)(1) (1994 & Supp. 2000).

[19] 11 U.S.C. § 362(b)(4) (1994 & Supp. 2000).

exception, and, therefore, are exempt from the automatic stay provision.[20] Here, we are exercising our regulatory power under Section 205 of the FPA.

B. The Requests for Rehearing

10. The Commission finds that the parties on rehearing have raised a legitimate concern that Opinion No. 466's approach -- determining the rate treatment of facilities based solely on whether control has been transferred to the ISO -- is inconsistent with our precedent. In the October 1996 order that granted in part the proposed designation by PG&E and the other utility companies of their facilities as "local distribution" (subject to state jurisdiction) or "transmission" (subject to Commission jurisdiction), we specifically noted that

> [T]he jurisdictional split between transmission and local distribution will not predetermine transmission pricing, cost allocation, or rate design determinations at either the state commission or at this Commission.[[21]]

Similarly, in the November 1996 order which, inter alia, conditionally authorized the transfer to the ISO of the facilities of PG&E and the other utilities, the Commission plainly stated that "we are not now prepared to rule on cost responsibility issues."[22] Rather, the Commission contemplated that issues relating to the utilities' Transmission Revenue Requirements would be resolved in their individual tariff filings, such as this

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[20] See Virginia Electric and Power Co., 84 FERC ¶ 61,254 (1998); Century Power Corp., 56 FERC ¶ 61,087 (1991). The Commission's conclusion on this matter is consistent with judicial precedent regarding the scope of the exemption to the automatic stay. E.g., Board of Governors of the Fed. Reserve Sys. v. MCorp Fin., Inc., 502 U.S. 32 (1991); SEC v. Brennan, 250 F.3d 65 (2d Cir. 2000); NLRB v. Continental Hagen Corp., 932 F.2d 828 (9th Cir. 1991); United States v. Commonwealth Cos. Inc., 913 F.2d 518 (8th Cir. 1990); NLRB v. Edward Cooper Painting, Inc., 804 F.2d 934 (6th Cir. 1986); Penn Terra Ltd. v. Dept. of Environmental Resources, 733 F.2d 267 (3rd Cir. 1984); see generally 3 Collier on Bankruptcy § 362.05 (15th ed. rev. 2000).

[21] Pacific Gas and Electric Co., et al., 77 FERC ¶ 61,077 at 61,326 n.36 (1996).

[22] Pacific Gas and Electric Co., et al., 77 FERC ¶ 61,204 at 61,822 (1996).

one.[23] Therefore, the Commission grants the requests for rehearing of the California Commission and DWR.[24]

C. The Proper Rate Treatment for the Facilities

11. Having granted the requests for rehearing, the Commission must now address exceptions taken by the parties to the Initial Decision with respect to the rate treatment of the facilities. PG&E filed a brief on exceptions, challenging the judge's exclusion of the costs associated with the three 500Kv and 230Kv transmission lines that are configured as loop facilities, as well as the costs of the so-called dual function facilities, from its rates. The Cities of Anaheim, Banning, Colton, and Riverside, California (collectively, the Cities) filed a joint brief raising the same issue. Briefs opposing these exceptions were filed by the California Commission, DWR and Commission trial staff (Staff). Additionally, DWR filed a brief on exceptions challenging the judge's inclusion of the cost of the portion of the facilities that he found no longer performed generation functions, to which PG&E filed an opposing brief.

12. We begin with the proposition that "historically, the rolled-in method of transmission cost allocation has been favored" by the Commission, "given a finding that the system operates as an integrated whole . . . [and] . . . absent a finding of special circumstances."[25] We have recognized such special circumstances where an integrated

[23] Similarly, in dealing with the reclassification of facilities by MidAmerican Energy Company and other utilities as part of implementation of retail access in Illinois, the Commission noted that whether facilities were under the operational control of a Regional Transmission Organization would "not predetermine transmission pricing, cost allocation or rate design determinations . . . at this Commission." MidAmerican Energy Co., et al., 90 FERC ¶ 61,105 at 61,337 n.9 (2000).

[24] In view of our resolution of this issue, the Commission does not address the merits of the remaining arguments raised on rehearing.

[25] American Electric Power Service Corp., 101 FERC ¶ 61,211 at P 11 (2002) (footnote and internal quotation marks omitted), quoting Otter Tail Power Company, 12 FERC ¶ 61,169 at 61,420 (1980) (Otter Tail). This consistent policy has been repeatedly affirmed by the courts. E.g., Western Massachusetts Electric Co. v. FERC, 165 F.3d 922, 927 (D.C. Cir. 1999).

transmission system is lacking,[26] and in the case of generation step-up (GSU) transformers providing support for specific generation facilities.[27]

13. As described above, the Initial Decision held that the high voltage transmission lines configured as loop facilities and certain dual function facilities should not be subject to rolled-in cost allocation, but authorized rolled-in cost allocation for the remaining facilities, which are dedicated exclusively to network transmission. We deal with these three groups of facilities separately.

14. As the Initial Decision specifically concluded, "[t]he record establishes that . . . the Diablo, Morro Bay and Moss Landing Loops each indisputably performs a critical network transmission function[.]"[28] Indeed, the Commission takes notice of the fact that these 500kV and 230kv transmission lines form a parallel path on a separate corridor to the major north/south path (Path 15), which separates the northern and southern zones of California.

15. This is confirmed by PG&E's witness Mr. Jenkins, who described the three high voltage loop facilities in some detail. The Diablo Loop, he explained, consisted of three 500kV transmission lines that loop through and integrate the Diablo Canyon nuclear facility with other 500kV facilities, and which also "allow[] for critically important increased power transfers between Northern and Southern California."[29] According to Mr. Jenkins, without these facilities, north/south "transfers [on Path 15] would need to be reduced by as much as 25 percent (or 500 megawatts)."[30]

16. Mr. Jenkins described the Morro Bay Loop, which consists of six 230kV transmission lines, as integrating the Las Padres area of the PG&E system with the rest of the Northern California grid, and are essential to serve the bulk power needs of the load in the Las Padres area. Furthermore, he explained:

> These lines not only allow for the delivery of excess power into the rest of the system during periods of high local generation, but also for the

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[26] See Niagara Mohawk Power Corp., 42 FERC ¶ 61,143 at 61,531 (2001).

[27] Kentucky Utilities, 85 FERC at 62,111-12.

[28] 97 FERC at 65,061.

[29] Ex. PGE-13 at 4-6.

[30] Id. at 4-5.

> importation of power to serve that significant local load during periods of low (or no) generation.[31]

He stated further that the Morro Bay Loop provided an additional parallel path to the 500kV Diablo Loop, providing support for the latter's increased north/south transfer capability.[32]

17. Mr. Jenkins' testimony about the 500kV Moss Landing Loop was similar, indicating that it "integrates the Central Coast area of the PG&E system with the rest of the Northern California electric system."[33] He went on to explain that the facility serves the bulk power needs of the area load and is one of the two 500kV sources for 2000 megawatts of load served from the Metcalf substation.

18. While these specific facts about the loop facilities adduced by Mr. Jenkins do not appear to be in dispute,[34] the judge did not rely on them. Rather, he emphasized evidence introduced by Staff that "the various generating units connected by these three . . . facilities transmitted power over them to the grid between 81% and 100% of the time throughout 1997."[35] Applying Kentucky Utilities and Northern States to this evidence, the judge concluded that the costs associated with these facilities should not be assigned to the PG&E's transmission rate base.

19. In Kentucky Utilities, we dealt with the proper rate treatment of GSU transformers, which are located at generation stations and used solely to increase the voltage of electric energy produced by generators to the higher voltages necessary for bulk power transmission to load centers. Such GSUs, we explained "serve[] no purpose without the generator."[36] Thus, we concluded, such "GSUs are not part of a utility's integrated transmission grid" so that the costs associated with them should be charged

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[31] Id. at 5.

[32] Id.

[33] Id.

[34] See infra, P 28.

[35] 97 FERC at 65,061 (citations omitted).

[36] 85 FERC at 62,109 n.33.

directly to the relevant generating unit, and not to transmission customers (except for ancillary services).[37]

20. Despite the references in the Initial Decision to GSUs, the bulk transmission lines configured as loop facilities at issue here are not comparable to the GSUs we examined in Kentucky Utilities, which were not part of the utility's integrated grid. Here, as the judge acknowledged, the loop facilities are part of the integrated grid. That they may also be used to transmit power from local area generation stations does not invalidate their status as part of the integrated grid. Therefore, Kentucky Utilities is inapposite here, and the Commission's rolled-in pricing policy should apply.

21. Northern States, which predated Order No. 888, similarly provides no basis for the result reached by the Initial Decision. There, a utility sought to assign certain costs of generation (specific components of generating plants that provided certain reactive power benefits and frequency control benefits) to its transmission rate. Though the Commission did not rule out such "refunctionalization" of generation costs to the transmission function, it found that the utility had not adequately supported its request. In contrast, PG&E's costs here have historically been included in PG&E's Transmission Revenue Requirement and recovered in transmission rates (though they have been "subfunctionalized" in the past, assigning specific costs to specific customers).[38] Furthermore, as the judge acknowledged, the loop facilities do provide network benefits.

22. While it is true, as the judge observed, that the advent of unbundling under Order No. 888 has influenced the Commission to allow refunctionalization of costs in some circumstances, we have not modified our policy of requiring rolled-in pricing for high voltage transmission facilities that comprise the integrated transmission grid. The basis of this policy is that the integrated grid is a single interconnected system serving and benefitting all transmission customers; indeed, it is the grid's interconnected nature that makes for a reliable system consistently providing for the delivery of electric energy to all customers even when particular facilities go out of service, either due to scheduled maintenance or unexpected outages.[39] Our rolled-in pricing policy recognizes the

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[37] Id. at 62,113.

[38] That PG&E's rate treatment of these facilities, before they were transferred to the control to the California ISO, was based on the further "subfunctionalization" of transmission facilities does not change our conclusion that these facilities are part of the integrated grid. Thus, our general rolled-in pricing policy is applicable to the facilities.

[39] See Otter Tail, 12 FERC at 61,420.

inherent benefit of the integrated grid to customers, by spreading the costs of the integrated grid among all customers. With the limited exceptions noted above, we have consistently adhered to this policy. The Commission, therefore, grants the exceptions of PG&E and the Cities concerning the reasoning to support the rate treatment of these loop facilities.

23. We next turn to the appropriate rate treatment of the $ 17 million worth of what the judge termed "dual-function" facilities. Though he found the "record . . . conclusive that each of the facilities at issue performs at least some network transmission function," and that "[n]o party disputes this fact," he nevertheless excluded them from PG&E's Transmission Revenue Requirement.[40] The Commission agrees with the judge's factual finding, but not his legal conclusion.

24. The record demonstrates that these transformers, though they also connect generation to the integrated grid, nonetheless serve a critical network function. As Mr. Jenkins explained, these facilities consist of transformer banks, which "allow power to flow between two transmission voltages."[41] The fact that these transformers allow power flows between two transmission voltages in addition to connecting generation to the grid, thus performing dual functions, distinguish these transformers from GSUs.

25. In light of this evidence, we will reverse the presiding judge and grant the exceptions with respect to the treatment of this group of facilities. Because the facilities undeniably serve an important network function, the Commission's policy explained above requires the costs associated with them to be rolled in to PG&E's Transmission Revenue Requirement.

26. The presiding judge held that the third group of facilities (worth approximately $26 million) exclusively served PG&E's transmission system and should thus be rolled into PG&E's transmission rate base.[42] In its brief on exceptions, DWR challenges the judge's conclusion as relying on Mr. Jenkins' rebuttal testimony for this finding. According to DWR, this testimony is unreliable because it contained material not included in PG&E's direct testimony and due to certain alleged discrepancies with PG&E's discovery responses.[43] However, we find that Mr. Jenkins' testimony provided

[40] 97 FERC at 65,061 (emphasis in original; citations omitted).

[41] Ex. PGE-13 at 6.

[42] See supra note 9, and accompanying text.

[43] DWR's Brief Opposing Exceptions at 9-10.

information to counter contrary claims by the opposing parties, which is exactly the function of rebuttal evidence. More significantly, DWR in its brief does not refute the substance of Mr. Jenkins' testimony. Therefore, we deny DWR's exceptions on the third group of facilities and affirm the Initial Decision on this issue.[44]

The Commission orders:

(A) The requests for rehearing of the California Commission, DWR and TANC are hereby granted, as explained in the body of this opinion.

(B) The Initial Decision in this proceeding is hereby reversed in part, and affirmed in part, as explained in the body of this decision.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

[44] In spite of our new resolution of this case, PG&E must still file the compliance filing required by Opinion No. 466. The Commission continues to be concerned about the accurate assessment of which facilities were turned over to the control of the ISO, which remains a qualifying factor for facilities to be included in the Transmission Revenue Requirement.