

Numerous parties submitted protests and comments regarding the unbundled GMC and Pass-Through Tariff. Several parties, including the Northern California Power Agency (NCPA) protested the Pass-Through Tariff on the basis that it should not be applied to service rendered under existing transmission contracts. NCPA and others challenged PG&E's contention that the GMC represented payment for a new service not already required to be provided under the terms of the various parties' existing contracts. Rather, NCPA argued that PG&E, as a Scheduling Coordinator with the ISO, provides the same service to its customers as is required in their transmission service rate schedules. As such, NCPA contended that PG&E's filing constituted a rate increase under existing contracts that did not permit such an increase to go into effect, and that PG&E was not entitled to pass through the GMC to NCPA under the Mobile-Sierra doctrine.³ In addition, NCPA asserted that PG&E's filing violated the filed rate doctrine in that it effectively sought an increase of a fixed rate contract on file with the Commission.

PG&E responded in its answer to the protests that the parties' "new services" argument had been denied by the Commission in previous orders and pointed out that the Commission would determine after a hearing the customers to which GMC costs should be allocated.

In the December 29 Order, the Commission accepted for filing the unbundled GMC and PG&E's Pass-Through Tariff effective January 1, 2001, suspended them for a nominal period, made them subject to refund, and set them for hearing. The Commission determined that parties had raised material issues of fact and established hearing proceedings to examine, among other things, whether existing transmission customers should be subject to GMC charges.

Request for Rehearing

On rehearing, NCPA argues that the Commission erred by failing to reject PG&E's Pass-Through Tariff as to those contracts with Mobile-Sierra protection against unilateral rate changes by the transmission provider. NCPA generally raises the same arguments as

³United Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

in its protest, urging the Commission to reject summarily PG&E's Pass-Through Tariff as to the contract at issue.

Discussion

The Commission rejects NCPA's arguments. The issue of whether PG&E's services as a Scheduling Coordinator constitute a new service under the terms of its existing transmission contracts is best resolved at hearing. Such a forum will permit the detailed legal and factual examination of the various contracts at issue that was not possible based on the record available in this proceeding.

In addition, NCPA cites no cases which prohibit the Commission from allowing new tariffs to go into effect subject to refund pending a determination on any Mobile-Sierra issue, nor why a refund remedy would not be adequate if it were ultimately determined that the Mobile-Sierra doctrine prevented the pass-through of charges sought here.

The Commission orders:

The request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.