

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company	104 FERC ¶ 63,029 Docket No. ER01-2998-002 ER01-2998-003
Pacific Gas and Electric Company	ER02-358-002 ER02-358-003
Northern California Power Agency v. Pacific Gas and Electric Company and the California Independent System Operator Corporation	EL02-64-002 EL02-64-003 (Not Consolidated)

INITIAL DECISION

(Issued August 5, 2003)

APPEARANCES

Mark D. Patrizio, Esq., Kermit R. Kubitz, Esq., Stuart K. Gardner, Esq., and John S. Moot, Esq. on behalf of Pacific Gas & Electric Company.

Robert C. McDiarmid, Esq., Lisa G. Dowden, Esq., Meg Meiser, Esq., and Stephen C. Pearson, Esq. on behalf of Northern California Power Agency.

C. Anthony Braun, Esq. on behalf of City of Roseville.

Wallace L. Duncan, Esq., Lisa S. Gast, Esq., and James D. Pembroke, Esq. on behalf of Silicon Valley Power.

Sean M. Neal, Esq., Wallace L. Duncan, Esq., Derek A. Dyson, Esq., and Peter J. Scanlon, Esq. on behalf of Modesto Irrigation District.

Koji Kawamura, Esq. on behalf of Western Area Power Administration.

David B. Rubin, Esq. and Bradley R. Miliauskas, Esq. on behalf of California Independent System Operator.

Laurence G. Chaset, Esq. on behalf of California Public Utilities Commission.

Jo Ann Scott, Esq. and Carmen Gastilo Machuga, Esq. on behalf of the Federal Energy Regulatory Commission.

David I. Harfeld, Presiding Administrative Law Judge

INTRODUCTION

1. The Federal Energy Regulatory Commission (“Commission”), in its Hearing Order of August 30, 2002¹, set the above-captioned proceeding for hearing of certain issues. The Commission’s Order, in part, approved a partial settlement agreement entered into by Pacific Gas & Electric Company (“PG&E”), the Northern California Power Agency (“NCPA”), the City of Roseville, California (“Roseville”), the City of Santa Clara, California, as Silicon Valley Power (“SVP”), and the California Independent System Operator (“CAISO”). The partial settlement, however, did not resolve two remaining issues: (1) transmission service rights and the right to be exempted from congestion charges under the Stanislaus Commitments, and (2) the rate pancaking issue raised by Roseville, and the Commission set these issues for hearing.

2. On September 13, 2002, the Chief Administrative Law Judge designated the undersigned to preside over the proceeding in this case. On December 20, 2002, Roseville filed a Notice of Intent Not to Submit Testimony in this case. According to its Motion, for the sake of administrative economy, Roseville would pursue its pancaking issue in Docket No. ER00-2019, *et al.*² Therefore, the exclusive issue remaining for hearing had to do with the Stanislaus Commitments.

BACKGROUND³

3. In 1976, PG&E, as part of its efforts to secure licensing for two nuclear power projects (the Stanislaus Nuclear Power Project and the Diablo Canyon Nuclear Project), agreed, in the so-called “Stanislaus Commitments,” to certain licensing conditions to resolve an ongoing dispute with the U.S. Department of Justice, SVP, NCPA, and others, over providing transmission services, power sales, interconnection arrangements and

¹ Order Accepting Settlement Agreement and Interconnection Agreements, 100 FERC ¶ 61,233 (2002).

² See Notice of Intent Not to Submit Testimony of the City of Roseville, filed December 20, 2002.

³ This background is based, in large part, on the Statement of the Case offered by Silicon Valley Power in its Initial Brief. SVP IB at 1.

other services to Santa Clara and others as a “Neighboring Entity” and/or a “Neighboring Distribution System.”⁴

4. Initially, the Stanislaus Commitments were set forth in an April 30, 1976 letter and related attachments from John F. Bonner (then President of PG&E) to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice.⁵ PG&E’s letter to the Department of Justice made clear PG&E’s obligation to provide transmission service to Santa Clara, NCPA, and other Neighboring Entities and Neighboring Distribution Systems. While the Stanislaus Project was never constructed, the Stanislaus

⁴ Neighboring Entity and Neighboring Distribution System are defined in the Stanislaus Commitments as follows:

- C. “Neighboring entity means a financially responsible private or public entity or lawful association thereof owning, contractually controlling or operating, in good faith proposing to own, contractually control or operate facilities for the generation, or transmission at 60 kilovolts or above, of electric power which meets each of the following criteria: (1) its existing or proposed facilities are or will be technically feasible of direct interconnection with those of Applicant; (2) all or part of its existing or proposed facilities are or will be located within the Service Area; (3) its primary purpose for owning, contractually controlling, or operating generation facilities is to sell in the Service Area the power generated; and (4) it is, or upon commencement or operations will be, a public utility regulated under applicable state law or the Federal Power Act, or exempted from regulation by virtue of the fact that it is a federal, state, municipal, or other public entity.
- D. “Neighboring Distribution System” means a financially responsible private or public entity which engages, or in good faith proposes to engage, in the distribution of electric power at retail and which meets each of the criteria numbered (1), (2), and (4) in subparagraph C above.

Ex. No. NCP-2 at 6-7.

⁵ See Ex. No. NCP-2 at 4-5.

Commitments were included as part of the Nuclear Regulatory Commission's ("NRC") license for PG&E's Diablo Canyon Nuclear Project.⁶

5. On September 30, 1983, PG&E and SVP entered into an Interconnection Agreement ("PG&E/SVP IA") as the mechanism by which the parties would implement the rights and obligations of the Stanislaus Commitments. A similar agreement was reached between PG&E and NCPA ("PG&E/NCPA IA") on July 29, 1983. The IAs provided, among other things, for transmission service, ancillary services, and some power sales. MID negotiated its own IA with PG&E ("PG&E/MID IA") in 1988, which extends until April 1, 2008. MID I.B. at 2

6. PG&E's obligations under the Stanislaus Commitments have been the subject of litigation among the United States, PG&E, Santa Clara, NCPA, and other customers of PG&E. On June 8, 1989, the Federal District Court for the Northern District of California granted summary judgment in favor of Santa Clara, among others, in a proceeding wherein PG&E had refused to give Santa Clara credit for power purchased by Santa Clara and others from the Western Area Power Administration ("Western") and, instead, billed the entities as if the energy had been delivered from PG&E's own resources, in clear violation of PG&E's obligations under the Stanislaus Commitments. The entities in question refused to pay PG&E and deposited the disputed amounts in escrow.

7. Appeals followed, together with the issuance of a Notice of Violation against PG&E by the NRC citing PG&E for violations of the Stanislaus Commitments. On April 25, 1991, the Federal District Court entered a Final Amended Judgment in the action brought by the United States against PG&E. SVP, NCPA, and other cities and PG&E again appealed.

8. In November 1991, NCPA and PG&E entered into a comprehensive Settlement Agreement that included further commitments by PG&E to provide services to NCPA and to SVP as a Neighboring Entity and Neighboring Distribution System. Based upon the settlement reached, PG&E withdrew a series of suits against its customers, based upon the understanding that the Settlement Agreement would bind PG&E to implement and honor the Stanislaus Agreements through January 1, 2050.

9. On May 6, 1998, PG&E gave notice to SVP and NCPA that it intended to terminate the PG&E/SVP IA and the PG&E/NCPA IA. After months of negotiation among SVP, NCPA, and PG&E, the parties were unable to agree upon the terms of replacement IAs. As a result of the impasse, PG&E filed requests with the Commission for authority to terminate the existing PG&E/NCPA and PG&E/SVP IAs. PG&E also filed unexecuted replacement IAs and requested that the Commission approve an

⁶ *Id.* at 4.

effective date of April 1, 2002, for both the Notices of Termination and the Replacement IAs (FERC Docket Nos. ER01-2998-000 for NCPA, filed August 31, 2001, and ER02-358-000 for SVP, filed November 16, 2001). After protests were filed by both NCPA and SVP, on March 14, 2002 (“March 14 Order”), the Commission conditionally accepted PG&E’s replacement IAs but suspended their operation for the full five months permitted under law, until September 1, 2002, subject to refund and subject to further FERC order. 98 FERC ¶ 61,281. In the March 14 Order, the Commission noted that it had jurisdiction of the issues raised by PG&E, NCPA, and SVP, pursuant to Section 205 of the Federal Power Act. The Commission directed its Trial Staff (“Staff”) to convene a Technical Conference to give the parties an opportunity to resolve the issues through negotiations.

10. The negotiations were fruitful. Final agreement on a Replacement Interconnection Agreement (“RIA”) with PG&E, a Metered Subsystem Agreement (“MSS”) with the CAISO, and a Settlement Agreement among PG&E, NCPA, Roseville, SVP, and the CASIO (“2002 Settlement Agreement”) was reached on or about July 12, 2002, and the Agreements were subsequently filed with the Commission for approval on July 15, 2002. On August 30, 2002, the FERC approved the RIA, MSS and 2002 Settlement Agreement with effective date for each of September 1, 2002. 100 FERC ¶ 61,233.

11. The 2002 Settlement Agreement, however, did not resolve whether SVP, NCPA, or MID are entitled under the Stanislaus Commitments to receive “firm” transmission service, and if so, whether those entities have the right under that arrangement to be exempted from congestion costs associated with such service. The matter was set for hearing.⁷

12. On April 17, 2003, the parties to this proceeding filed a Joint Stipulation of Issues and identified the following three issues⁸ as those to be addressed in this proceeding:

⁷ *Id.*. The PG&E/MID IA is effective until 2008, prompting MID to make the following statement:

Although MID’s IA with PG&E does not expire until 2008, and MID intends to continue to honor its IA with PG&E through its expiration in 2008, and MID does not request in this proceeding any alteration of its IA with PG&E, MID submits that the Stanislaus Commitments and the 1991 Settlement Agreement apply with equal force to MID as it does to NCPA and SVP, and requests the Presiding Judge to