

106 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket No. ER00-565-008

ORDER ON UNCONTESTED PARTIAL SETTLEMENT

(Issued January 28, 2004)

1. On September 22, 2003, Pacific Gas and Electric Company (“PG&E”) filed an Offer of Partial Settlement (the “Partial Settlement”) in the above referenced docket. On October 7, 2003, the Northern California Power Agency (“NCPA”) filed comments on the Partial Settlement. On October 14, 2003, Commission Trial Staff filed comments on the Partial Settlement. On October 24, 2003, PG&E and the San Francisco Bay Area Rapid Transit District (“BART”) filed supplemental comments in support of the Partial Settlement in response to the presiding judge’s Order Requiring Supplemental Comments issued on October 17, 2003.

2. The Partial Settlement resolves all issues between PG&E and BART pending in these proceedings, which concerns PG&E’s proposed Scheduling Coordinator Services Tariff (“SCS Tariff”). On November 20, 2003, the Presiding Administrative Law Judge certified the uncontested Partial Settlement to the Commission. In her certification, the judge stated “it is appropriate to certify the Partial Settlement as an uncontested Partial Settlement, subject to the addition of the express condition that PG&E may not spread costs that would be properly allocable to BART to other wholesale customers.” We note that in its supplemental comments, PG&E stated that it “agrees with these requests as they are consistent with its intent as stated in the Explanatory Statement. Because PG&E has agreed not to allocate the BART [scheduling coordinator (SC)] costs to any other SC Customer, this Settlement will not affect the remaining parties in this proceeding.”

3. The subject Partial Settlement is in the public interest and is hereby accepted. The rates submitted with the Partial Settlement are accepted for filing and are made effective on the date agreed upon by the parties. The Commission’s acceptance of the Partial Settlement does not constitute acceptance of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of Section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000).

4. We note that 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,¹ 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.²

5. 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 exception, and, therefore, are exempt from the automatic stay provision.³ Here, we are exercising our regulatory power under Section 205 of the Federal Power Act.

6. This order terminates Docket No. ER00-565-008.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

¹11 U.S.C. § 362(a)(1) (1994 & Supp. 2000).

²11 U.S.C. § 362(b)(4) (1994 & Supp. 2000).

³See *Virginia Electric and Power Co.*, 84 FERC ¶ 61,254 (1998) and *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 (2nd 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).