

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION
Pacific Gas And Electric Company,)
San Diego Gas & Electric Company) Docket No. EL96-48-000
and Southern California Edison Co.)
)

SUPPLEMENTAL COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

On April 29, 1996, Pacific Gas and Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E"), and Southern California Edison Company ("Edison") (jointly "the Companies") filed a Petition for a Declaratory Order, requesting that the Federal Energy Regulatory Commission ("FERC") confirm the delineation of certain facilities as "local distribution" (subject to state regulation and certain other facilities as "transmission" (subject to FERC jurisdiction) based on their existing uses. The petition requested the FERC to clarify that this initial delineation can change as the uses of the facilities change and that facilities may have multiple uses.

On June 3, 1996, Public Utilities Commission of the State of California ("CPUC") Commissioner Fessler issued a Coordinating Commissioner Ruling, scheduling a Technical Workshop on the Transmission/Distribution ("T&D") split proposed by each utility and calling for comments to be filed with the CPUC. A copy of the Coordinating Commissioner's Ruling is provided to the FERC as Attachment A to these comments. On June 13, 1996, the CPUC intervened in this proceeding and represented to the FERC that the CPUC would submit our comments in early August, 1996, after the CPUC had conducted the T&D split Technical Workshop. The T&D split Technical Workshop was convened on July 10, 1996. On June 26, 1996, interested Parties filed comments with the CPUC regarding the T&D split and filed reply comments on July 15, 1996. A copy of the transcript from the CPUC's July 10, 1996 T&D Technical Workshop is provided to the FERC as Attachment B to these comments. A copy of the June 26 and July 15, 1996, comments filed with the CPUC is provided to the FERC as Attachment C to these comments.

As stated in our intervention, the CPUC believes that the T&D split Technical Workshop and review of the comments filed with the CPUC addressing the Companies' filings is a reasonable and efficient means to provide for consultation between the utilities and the CPUC in a public proceeding now conducted the July 10, 1996, T&D Split Technical Workshop and reviewed the parties' comments, the CPUC submits the following supplemental comments regarding the Companies' Petition for Declaratory Order and the three separate appendices.

I.

In Order No. 888, the FERC stated that it would not attempt to draw a transmission/distribution "bright line" for unbundled retail transmission by a utility that previously provided bundled retail service to the end user. Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Docket Nos. RM95-8-000 and RM94-7-001, Order No. 888, 75 FERC ¶61,080, mimeo at pp. 435-436; Fed. Reg. Vol. 61 21540, (April 24, 1996) ("Order 888"). Instead, FERC stated that such determinations should be made using seven local distribution factors. In addition, in instances of unbundled retail wheeling, the FERC stated that it will defer to recommendations by state regulatory authorities concerning where to draw the jurisdictional line under the FERC's technical test for local distribution facilities, and how to allocate the costs for transmission and distribution between state and FERC-regulated rates. *Id.*, Order 888, Mimeo at pp. 437-438. To give deference, the FERC expects state regulators to specifically evaluate the seven local distribution indicators that the FERC is adopting as its technical test for local distribution facilities, and

any other relevant facts (including other technical factors that the state believes are appropriate in view of historical uses of particular facilities). *Id.*

The seven indicators are:

- (1) Local distribution facilities are normally in close proximity to retail customers.
- (2) Local distribution facilities are primarily radial in character.
- (3) Power flows into local distribution systems; it rarely, if ever, flows out.
- (4) When power enters a local distribution system, it is not reconsigned or transported on to some other market.
- (5) Power entering a local distribution system is consumed in a comparatively restricted geographical area.
- (6) Meters are based at the transmission/local distribut measure flows into the local distribution system.
- (7) Local distribution systems will be reduced voltage.

Id., Order 888, Mimeo at p. 402.

The FERC stated that it will take advantage of state regulatory authorities' knowledge and expertise concerning the facilities of the utilities that they regulate by deferring to where states draw the line based on the seven factors. Utilities may file classifications and/or cost allocations for transmission and distribution facilities only after consulting with their state regulatory authorities. If supported by the state authorities and consistent with the principles in Order 888, FERC will defer to utility-specific classifications and allocations that the utility may file at FERC. *Id.*, Order 888, Mimeo at p. 438.

II.

As discussed above, there is no objective "bright line" approach to these seven factors. Indeed, there is a fair amount of judgment involved in their application and reasonable people may apply the same seven factors and come out with different, yet supportable results. The CPUC has carefully reviewed the filings of the Companies with reference to the FERC's seven factors. This review has included due consideration of the positions reflected by the Companies and other parties at the July 10, 1996, T&D Split Technical Workshop as well as the comments filed by all the parties. With two minor exceptions, the CPUC supports the T&D split proposed by the Companies. The CPUC review finds that overall, the Companies' T&D split reflects a supportable application of the FERC's seven factors, particularly in light of the historical facts relating to the unique design of each utility's integrated transmission system. The different results reached by Edison, PG&E and SDG&E in applying the FERC seven factors reflect those differences.

The first exception to the CPUC's support of the Companies' proposed T&D split relates to Edison's classification as "transmission" the step-up transformers and switchyard equipment at San Onofre Nuclear Generating Station ("SONGS"), i.e the SONGS 2&3 generator step-up substations, which connect to the transmission grid. The CPUC believes that these facilities are generation-tie and should be classified as generation. It is the CPUC's position that all generation and generation-tie facilities should not be classified as transmission. In its July 15, 1996, reply comments (at p. 9) to the CPUC, Edison "readily acknowledges that generator step- up transformers generally should be reclassified as generation rather than transmission facilities."

Edison apparently has chosen to seek to classify these assets as transmission related because of a mistaken impression that if it did otherwise it may not be able to recover the cost of these assets. In CPUC decisions D.96-01-011 at the CPUC established the ratemaking treatment and cost recovery of all of the generation-related assets of the SONGS power plant excluding the step-up transformers and switchyard equipment. Edison appears to believe that if it does not recover the costs of these assets in transmission rates it will be unable to collect them from the CPUC. This is incorrect. These assets should be classified as generation and Edison should seek recovery of these costs in the same manner as all other SONGS related generation costs. Accordingly, the CPUC encourages and will allow Edison to petition to reopen D.96-01-011 and D.96-04-059 for the limited purpose of including these assets for cost recovery. There are several advantages to this approach, including: consistent application of FERC guidelines; ensuring a "level playing field" between all generators in terms of cost responsibility; and promoting efficiency by ensuring that transmission rates reflect only actual transmission-related costs. For these reasons, Edison's SONGS related generation costs should not be included in the facilities designated as transmission.

The second exception is that Edison appears to have classified some radial generation-ties as part of the

transmission network. These lines should be classified as generation lines and not as part of the transmission network. If these lines are utilized to serve load at some future time, the ISO can then ask the FERC for a change in classification. As we have stated above, all generation and generation-tie should not be classified as transmission. We urge the FERC to carefully scrutinize generation facilities of the Companies that may have been misclassified as transmission.

On balance, the CPUC views the Companies' T&D split as the best first cut of the facilities' proper classification. After the Independent System Operator ("ISO") is up and running, and after some practical experience with the restructured industry, adjustments may need to be made, as appropriate. Thus, the CPUC's petition's request that the FERC clarify that this initial delineation can change as the uses of the facilities change and that the facilities may have multiple uses. To conclude, at this time, the CPUC is prepared to support the Companies' proposed T&D split as discussed above.

III.

The vast majority of the parties' comments filed at the CPUC focused on issues relating to transmission pricing and not on the application of the FERC criteria to evaluate the T&D split. While we acknowledge the importance of these issues, transmission pricing issues will be necessarily addressed in FERC Docket No. EC96-19-000, and not in the instant docket. Furthermore, it is the CPUC's position, that regardless of how the T&D split is made, that split in no way predetermines how transmission pricing, cost allocation or other rate design issues are determined either at the FERC or at the CPUC. The CPUC expects that a variety of rate design and pricing issues will be vigorously debated at both federal and state levels. Again, the T&D split is in no way dispositive of such issues. The other substantive issues discussed by the parties at the July 10, 1996, T&D Technical Conference and raised in their comments related to how much of the transmission system must be under ISO Control in order for the ISO to do its job, which sets of facilities under federal jurisdictional, must by necessity, be under ISO control, and how much of the system must be under state control in order to insure recovery of transition costs.

It is the CPUC's position that the T&D split does not predetermine which facilities must be under ISO control. ISO control issues will be necessarily addressed in FERC Docket No. EC96-19-000.

Furthermore, the CPUC expects that ISO control issues will be determined more by practical operational necessities that will become apparent after the ISO is up and running than by any fixed determination made at this time. It is the CPUC's position that the facilities under control of the ISO, may or may not include all FERC jurisdictional facilities and that the ISO's ability or need to control facilities may change over time. As in the case of transmission pricing and rate design issues, the T&D split is in no way dispositive of such issues.

With respect to the issue of how much of the system must be under state control in order to insure recovery of transition costs, the CPUC relies heavily on Order 888's definitive language regarding the states authority over the service of delivering electric energy to end users. The FERC stated that: [f]irst, even when our technical test for local distribution facilities identifies no local distribution facilities for a specific transaction, we believe that states have authority over the service of delivering electric energy to end users. Second, through their jurisdiction over retail delivery services, states have authority not only to assess stranded costs but also to assess charges for stranded benefits, such as low-income assistance and demand-side management. Because their authority is over services, not just the facilities, n stranded costs and benefits based on usage (kWH), demand (kW), or any combination or method they find appropriate. They do not have to assign them to specific facilities.

Id., Order 888, Mimeo at p. 436. Thus, delineating the T&D split does not in any way limit the states ability to assess stranded costs or to assess charges for stranded benefits.

Finally, the FERC has stated that although it has asserted jurisdiction over unbundled retail transmission in interstate commerce by public utilities, it in no way is asserting jurisdiction to order retail transmission directly to an ultimate customer. Id., Order 888, Mimeo at p. 431. The FERC clarified that nothing in its jurisdictional determination changes historical state franchise areas or interferes with state laws governing retail marketing areas of electric utilities. Id., Order 888, Mimeo at pp. 431-432. The FERC further clarified that the its jurisdiction over the rates, terms, and conditions of unbundled retail transmission is no broader than its authority over transmission used for wholesale transactions and will not affect matters otherwise left to the states by Congress. Id., Order 888, Mimeo at pp. 432-433. The FERC gave as examples, the states' authority under the Federal Power Act

("FPA") to regulate generation and transmission siting. In Order 888, the FERC made clear that the Final Rule will not affect or encroach upon state authority in such traditional areas as the authority over local service issues, including reliability of local service. Id., Order 888, Mimeo at p. 434, fn 544. Accordingly, the states' current authority over safety and reliability issues within the state has not changed in any way as a result of Order 888. For example, the CPUC exercises its jurisdiction over all overhead and underground electric lines in California as to construction standards as well as for general safety and reliability. Thus, it is the CPUC's position that the states retain their authority to enforce construction standards for alines and substations to insure system reliability and the safety of workers and the public.

IV.

In conclusion, the CPUC supports the Companies' delineation of the T&D split as set forth in their applications with the exception of Edison's SONGS 2&3 generation step-up substation, and radial generation ties, which should not be classified as transmission. Furthermore, rate design issues such as cost allocation and transmission pricing and ISO control issues are not decided in this docket and the T&D split in no way determines the resolution of these issues. Finally, the T&D split in no way limits the states' authority to assess stranded costs or to assess charges for stranded benefits, nor does the jurisdictional split in any way alter the states' current authority under the FPA to regulate generation or for transmission siting or for enforcing the safety and reliability of the transmission system within the state.

Respectfully submitted,
PETER ARTH, JR.
EDWARD W. O'NEILL
AROCLES AGUILAR

By:

Arocles Aguilar
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703-2969
Attorneys for the Public
Utilities Commission of
August 14, 1996 the State of California

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon all known parties in this proceeding by mailing by first-class mail a copy thereof properly addressed to each such party.

Dated at San Francisco, California, this 14th day of August, 1996.

Arocles Aguilar