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Decision No. 81422

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the application of PACIFIC GAS AND ELECTRIC COMPANY for a certificate of public convenience and necessity under General Order No. 131, for a 500-kv transmission line facility from applicant's Midway Substation to an interconnection with Southern California Edison Company's proposed 500-kv transmission line to Vincent Substation. (Electric)	Application No. 52953 (Filed October 29, 1971)
In the matter of the application of SOUTHERN CALIFORNIA EDISON COMPANY for a certificate that the present and future public convenience and necessity require or will require the construction and operation by applicant of a section of the No. 3 500-kv transmission line between Midway Substation and Vincent Substation, together with related appurtenances.	Application No. 52976 (Filed November 8, 1971)

OPINION AND ORDER MODIFYING
DECISION AND DENYING REHEARING

Northern California Power Agency (NCPA) has filed a petition for rehearing of Decision No. 81186. This proceeding concerns the applications of Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) for certificates of public convenience and necessity authorizing each company to construct its portion of a third 500-kv transmission line facility connecting PG&E's Midway Substation and Edison's Vincent Substation, for the purpose of assuring greater reliability of service to

present and future customers. Intervenor NCPA alleged that PG&E had followed a discriminatory anticompetitive policy of refusing to interconnect with NCPA on reasonable terms and requested that any certificate granted to PG&E be conditioned to require an end to such alleged policy.

By our Decision No. 80250 issued July 18, 1972, we held that only those elements of NCPA's position which related to the Midway-Vincent transmission lines were relevant to this certificate proceeding, and therefore ruled that only evidence relating to the Midway-Vincent interconnection would be admitted. Following the hearing we found, inter alia, that NCPA had not proven that PG&E had a policy against interconnection with NCPA and found that granting PG&E an unconditioned certificate would not affect NCPA's ability to interconnect with PG&E. NCPA's application for rehearing contends that the Commission erred (1) in restricting the antitrust evidence to that relating to the Midway-Vincent line, (2) in finding that NCPA had not proven a PG&E policy against interconnection with NCPA, (3) in determining the basis for PG&E's nonacceptance of NCPA's interconnection proposal, and (4) in other factual findings.

Considering NCPA's first contention, we would point out that our restricting the antitrust evidence in this proceeding to that related to the applications before us was in complete accord with our responsibilities as defined by the Supreme Court in NCPA v. PUC, 5 Cal.3d 370 (1971) (Geysers decision), where it held (id. at 380):

> Where such a close nexus between the construction to be approved by the Commission and ... antitrust problems, the Commission cannot ignore the antitrust factors on the ground that they are collateral to the issue of public convenience and necessity. (Emphasis added.)

The full discussions in Decisions Nos. 80250 and 81186 amply demonstrate that we have ignored no antitrust factors in this proceeding, but rather have determined which are materially related to the matter before us. To further clarify this purpose, we shall modify Decision No. 81186 to add an express statement as to the insufficient nexus between the Midway-Vincent interconnection and NCPA's allegations that PG&E has an overall policy of refusing to interconnect with NCPA.

In restricting the scope of this proceeding we also noted that it would not be in the public interest to delay construction of this facility which appeared to be needed, in order to consider broader antitrust issues which could be raised by NCPA in a separate complaint proceeding under Section 1702. For the sake of clarity we will add an explicit Finding 10.c. to this effect.

The appropriateness of our indicating that NCPA's claims should be determined in a separate proceeding has been recognized recently by the United States Court of Appeals for the District of Columbia Circuit.1/ While holding that in deciding whether to approve a certain proposed securities issuance the FPC was required to consider certain antitrust allegations because of the nexus between such financing and antitrust allegations, the D.C. Circuit noted that some applications must be decided in a time frame much more limited than that often contemplated for antitrust litigation and stated that in the context of a particular matter, an application may be approved while the agency reserves decision on the difficult antitrust issue or stands ready to proceed with hearing and consideration of the anticompetitive issues in another proceeding within a reasonable time.2/ 454 F.2d at 953. In affirming the D.C. Circuit the U.S. Supreme Court reiterated the authority and discretion of an agency to approve a transaction and defer determination of antitrust allegations. 41 USLW at 4642.

1/ City of Lafayette, Louisiana v. FPC, 454 F.2d 941 (D.C.Cir.1971), aff'd. sub nom. Gulf States Utils. Co. v. FPC, 41 USLW 4637 (5/14/73).

2/ In keeping with this D.C. Cir. decision the FPC has considered the petitions to intervene and protests of parties wanting to raise antitrust issues in several proceedings as complaints filed pursuant to §306 of the Fed.Power Act, an investigation-upon-complaint statute comparable to §1702 of the Code. Such complaints have been consolidated in a proceeding styled The Cities of Lafayette and Plaquemine, Louisiana v. Gulf States Utils. Co., et al., FPC Docket No. E-7676.

Contrary to NCPA's contention, if its antitrust allegations are considered in a complaint proceeding, there is no change in the burden of proof. In any proceeding a party is responsible for presenting substantial evidence to support its contentions. This rule of law is well established, and the Supreme Court indicated no intention to change it with respect to antitrust issues in its Geysers decision in holding that the Commission is required to consider every issue which bears on the public interest, whether raised by private parties or sua sponte. 5 Cal.3d at 380. For the same reason we did not err in finding that NCPA had failed to meet its burden of proving an anticompetitive policy of PG&E in this proceeding.

Petitioner's contention that our summary of the testimony of PG&E's witness, as set forth in Decision No. 81186, contains error is well taken. Accordingly, that decision will be modified to show that the witness testified that PG&E had not accepted any past interconnection proposal made by NCPA because of a lack of economic benefits to NCPA member cities and to PG&E.

NCPA also challenges our findings that none of its member cities is located near the Midway-Vincent line, that there was insufficient evidence to support the conditioning of PG&E's certificate, and that NCPA has attempted to delay PG&E's construction program. In our view these findings are supported by the evidence and do not warrant further consideration.

IT IS THEREFORE ORDERED that Decision No. 81186 is hereby modified in the following manner:

1. The first sentence of the second paragraph on page 18, mimeo, is deleted and the following is substituted therefor:

> "The witness denied that PG&E has had any policy of refusing to interconnect with NCPA on reasonable terms. He indicated that PG&E had not accepted any interconnection proposal made by NCPA because of a lack of economic benefits to NCPA member cities and to PG&E."

2. The following should be added at the end of the first paragraph on page 20, mimeo, following the phrase "as in these applications.":

> "The nexus between the Midway-Vincent interconnection and NCPA's allegations that PG&E has an overall policy of refusing to interconnect with NCPA is insufficient to require consideration of PG&E's practices on its entire transmission system in this proceeding."

3. The following Finding 10.c. should be added on page 21, mimeo:

> "c. Construction of this facility without condition and without delay is necessary and in the public interest in order to assure reliability of service to present and future customers of Edison and PG&E."

IT IS FURTHER ORDERED that rehearing of Decision No. 81186, as modified by this Order, is denied.

Dated at San Francisco, California, this 30th day of MAY, 1973.

President

Commissioners