

APR 28 1988

ORIGINAL

Decision 88 04 067 APR 27 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Daniel C. Merrill, M.D.,
Complainant,

vs.

Pacific Gas and Electric
Company,

Defendant.

Case 86-04-038
(Filed April 23, 1986)

OPINION

On April 23, 1986, Daniel C. Merrill, M.D., filed this complaint against Pacific Gas and Electric Company (PG&E). Dr. Merrill seeks an order directing PG&E to provide his hydroelectric project with transmission line capacity or a priority to receive such capacity equal to that to which Dr. Merrill would have been entitled on August 31, 1984.

Background

On August 1, 1984, the Commission issued Decision (D.) 84-08-037 in Order Instituting Investigation (I.) 84-04-077. The investigation was aimed, among other things, at examining transmission constraints on the Northern Portion of PG&E's transmission system. The investigation resulted in the adoption of an interim solution to allow small power producers and cogenerators (qualifying facilities or QFs) to proceed with projects in PG&E's northern transmission system.

The solution, included in a stipulation reached by certain parties to the investigation, provided that affected qualifying facilities would be assessed 1.7 mills/kWh for power

received from PG&E. A portion or all of this assessment could be refundable depending on the Commission's final determination of a qualifying facility's cost responsibility for transmission upgrades.

"Affected QFs" were defined as those located in the Northern Portion of PG&E's service area who sign a power purchase agreement with PG&E. The solution described the maximum MW of QF power that could be interconnected under the terms of the solution in each northern area. The Humboldt area was limited to 90 MW with a total limitation for all areas of 990 MW. This available transmission capacity was to be allocated on a first-come, first-served basis as defined by D.83-10-093. D.84-08-037 further states that "[o]nce this total level is reached, PG&E shall no longer be obligated to interconnect QFs under the terms of the stipulated interim solution." (D.84-08-037, at p. 9.)

Several decisions followed the issuance of D.84-08-037 further refining the solution. First, the Commission concluded in D.84-11-123 that the total MW available for interconnection should be increased to 1150 MW to account for transmission upgrades to bulk lines as well as area lines.

In D.85-01-039, following a limited rehearing on, among other things, access to transmission facilities in PG&E's Drum Division, the Commission made several findings with respect to QF's rights. Specifically, the Commission concluded that it should not be interposed as an arbitrator between two QFs competing for business opportunities such as limited transmission capacity. The Commission determined that such a dispute between QFs is properly the subject of a civil court lawsuit.

With respect to disputes between the QF and the utility, however, allegations of utility misconduct could be reviewed in a Commission complaint proceeding. According to the Commission, however, such a complaint should demonstrate that PG&E had some duty to consider the QF complainant's situation apart from all

other QFs, that PG&E had acted unreasonably, and that PG&E's misconduct had a material adverse impact on the complainant. (D.85-01-039, at p. 8.)

On September 18, 1985, the Commission issued D.85-09-058 closing the investigation. This final order concluded that PG&E may have significant constraints in its northern system during the next ten years which may affect QF development. It was further found that QFs participating in the interim solution would be refunded 1.2 mills/kWh, but would continue to pay .5 mill/kWh until the transmission upgrades associated with the interim solution are completed. With the completion of each upgrade, the QFs whose delivery was constrained by that line would no longer be liable for the .5 mill/kWh charge.

Dr. Merrill's Complaint

Dr. Merrill states in his complaint that the development of his project, the Mawah Creek Hydroelectric Project, was initiated in the fall of 1981. An application for a Federal Energy Regulatory Commission (FERC) permit was filed on January 18, 1982, and a preliminary permit was granted by FERC on May 6, 1982. An application for a minor hydroelectric license was filed on November 23, 1984, and a FERC license for the project was issued on December 31, 1985.

Dr. Merrill further states that although PG&E was aware of his project in 1982, he was not informed by PG&E of the August 1, 1984 D.84-08-037 which established a priority list for limited transmission line capacity in Humboldt County. By the time Dr. Merrill became aware of this decision in December, 1984, his project could attain a priority approximately 1,500 MW from the top of the waiting list.

The FERC license obtained by Dr. Merrill for his project requires him to begin construction within two years of the license's issuance and to complete construction within four years. Dr. Merrill states that he has spent over \$60,000 to obtain this

FERC license. Apart from his financial investment, Dr. Merrill asserts that he has been working diligently on his project for the past five years. Despite his efforts and his progress in the FERC licensing process, he now faces expiration of his FERC license due to his low position on the transmission capacity waiting list.

Dr. Merrill requests an order directing PG&E to provide his project with transmission capacity or a priority on the waiting list equal to the one his project would have attained had he been notified of the August 1, 1984 D.84-08-037.

PG&E Answer

PG&E replied that whenever a filing for a hydroelectric project in PG&E's service territory is made at FERC and is noticed in the Federal Register, PG&E sends a general information letter to the project developer. PG&E further states that after the filing for Dr. Merrill's project was noticed in the Federal Register, PG&E on June 28, 1982 sent a general information letter to Dr. Merrill. In this letter, PG&E requested Dr. Merrill to coordinate technical plans for interconnection with PG&E. PG&E then asserts that Dr. Merrill did not respond to this letter until November, 1984.

Because of this gap in communication with Dr. Merrill from June 28, 1982 to November, 1984, PG&E believes it had no reason to believe that Dr. Merrill was continuing the development of his project during this period of time and did not notify him of the August 1, 1984 D.84-08-037. PG&E believes that it has dealt with Dr. Merrill in a responsible manner and that Dr. Merrill's project should not be given a transmission allocation or a higher position on the waiting list.

Evidentiary Hearing

One day of hearing was held on January 28, 1988. The complainant, Dr. Merrill, testified on his own behalf. PG&E presented one witness, Tom Jefferson, a senior resource analyst.

Dr. Merrill's Testimony

Dr. Merrill testified that in 1982 he began development of a small 860 kilowatt hydroelectric power plant on Mawah Creek, a tributary of the Klamath River, in Humboldt County. Dr. Merrill says he relied upon the Public Utility Regulatory Policies Act of 1978 (PURPA) and other federal laws encouraging the development of small power facilities in this undertaking.

Dr. Merrill formally applied with FERC for a preliminary permit on January 18, 1982. Notice of this application was published in the Federal Register.

By letter dated March 12, 1982, PG&E wrote to FERC acknowledging that it had seen notice of the filing and had no opposition to it. Dr. Merrill was sent a copy of this letter.

On May 6, 1982, FERC issued a preliminary permit to Dr. Merrill for the Mawah Creek project. This permit was valid for 18 months, until November of 1984.

In May, 1982, PG&E sent its Special Announcement to Dr. Merrill and others who had shown an interest in developing hydroelectric plants in PG&E's service area. This announcement asked each developer to contact PG&E at an early stage in project development and stated that Tom Jefferson of the Generation Planning Department was available to answer any questions.

On June 15, 1982, Dr. Merrill telephoned Tom Jefferson to discuss the Special Announcement. Dr. Merrill understood from his conversation with Tom Jefferson that until he received a FERC license there was nothing that he could accomplish with PG&E.

By letter dated June 28, 1982, Tom Jefferson documented his version of the telephone conversation with Dr. Merrill. In this letter, Jefferson asked Dr. Merrill to compile three types of information before discussions were continued on Dr. Merrill's project. The categories of information referred to by Jefferson were site location, project operating data, and a theoretical water and power study.

Dr. Merrill then pursued a FERC license for his project. In reliance on his understanding of the telephone conversation with Jefferson, he did not provide any additional information to PG&E during this period of time.

On August 1, 1984, the Commission issued D.84-08-037 and approved the interim solution for the transmission constrained northern system of PG&E. The interim solution provided for 90 MW of QF power to be interconnected with PG&E's Humboldt area transmission system. Priority for the limited transmission capacity was established by the date a QF developer had executed a power purchase agreement and had paid for a detailed interconnection study.

On August 31, 1984, PG&E mailed an announcement to certain QFs to inform them of D.84-08-037 and the availability of limited transmission capacity on a first-come, first-served basis. Dr. Merrill was not sent a copy of this announcement.

Dr. Merrill testified that he did not learn of the interim solution and the allocation of transmission capacity in Humboldt County until December, 1984. He then promptly contacted PG&E and was informed that there was no available transmission capacity for his project. He was advised by PG&E to execute a power purchase agreement to establish a position on the waiting list.

On January 14, 1985 Dr. Merrill executed a Standard Offer No. 4 power purchase agreement. By this time, however, Dr. Merrill was able to establish a position on the waiting list for transmission capacity which would not permit Dr. Merrill's project to interconnect with PG&E's system as long as the 90 MW maximum for the Humboldt area is enforced by the Commission.

Dr. Merrill also claimed that his project would not require any additional upgrades to PG&E's Humboldt area transmission system and that his project would provide electricity to 20 to 30 families in the vicinity that are currently not served

by PG&E or any other electric utility. For these reasons, he believes his project is deserving of hardship consideration even if the Commission should determine that he is not entitled to a transmission allocation under the interim solution.

Tom Jefferson's Testimony

Jefferson currently supervises project coordinators at PG&E who act as liaison between the developer and the utility. Jefferson was the project coordinator that Dr. Merrill contacted in 1982 about his Mawah Creek project.

Jefferson testified that PG&E saw the notice of Dr. Merrill's FERC filing in the Federal Register. PG&E then sent to Dr. Merrill a letter requesting him to coordinate the technical plans for his project with PG&E. PG&E later sent another letter to Dr. Merrill with copies of the various standard offers and again encouraged Dr. Merrill to contact PG&E so that the technical details of interconnection could be worked out. Jefferson said this letter was sent to over 2,000 project developers.

Jefferson also stated that PG&E does not require a hydro developer to have a FERC license in hand until the developer is at the point of delivering power to PG&E.

Jefferson did recall a telephone conversation with Dr. Merrill in June of 1982 but did not remember the details of the conversation. However, he stated that the follow-up letter he sent to Dr. Merrill summarized the substance of their telephone conversation.

Jefferson testified that notices regarding the August 1, 1984 D.84-08-037 were sent to QFs that had signed a power purchase agreement, QFs that had requested and paid for a detailed interconnection study, and QFs that had been in recent contact with PG&E. Jefferson explained that a QF, such as Dr. Merrill's project, which had made only one telephone contact over two years earlier was not considered a QF in recent contact with PG&E.

Jefferson also testified that there were a number of QFs who did not get a transmission allocation or a notice of the interim solution. PG&E received permission from the Commission staff to exercise its business judgment in evaluating the circumstances of each case and in determining whether hardship consideration was appropriate.

Jefferson further explained that PG&E used seven criteria to evaluate hardship cases. These criteria were (1) history of contact with PG&E, (2) progress on interconnection studies, (3) permitting status, (4) financing status, (5) status of equipment, (6) scheduled operation date, and (7) status of construction date. Under these criteria, Jefferson stated that Dr. Merrill's project did not qualify for hardship consideration as PG&E knew nothing about Dr. Merrill's project other than a telephone contact two years earlier.

Jefferson also stated that PG&E studied the transmission constraints in the Humboldt area and concluded that it could interconnect 90 MW of QFs. However, to accommodate this amount of QF deliveries, PG&E at times would have to back down generation at Humboldt Power Plant Units 1 and 2. In order to accommodate more generation, Jefferson testified that PG&E would have to build a new 230 kv line from Humboldt to Cottonwood at a cost of about \$80 million.

Finally, Jefferson referred to the priority list for the Humboldt area and pointed out that all of the projects that received a transmission allocation had signed a power purchase agreement before PG&E sent out its August 31, 1984 notice of the interim solution. Jefferson also noted that Dr. Merrill's project was No. 72 on the waiting list, which is 1,088 MW from the top.

Issues

This complaint case presents the following issues:

1. Whether PG&E had sufficient knowledge of Dr. Merrill's project to include his project on the list of QFs to be notified

of the August 1, 1984 D.84-08-037 interim solution allocating limited transmission capacity in PG&E's northern system?

2. If PG&E had notified Dr. Merrill, would Dr. Merrill have received a transmission allocation for his Mawah Creek project or a significantly higher position on the waiting list?
3. Should PG&E's criteria for hardship cases be expanded to include Dr. Merrill's project?

Discussion

Notice of the August 1, 1984 D.84-08-037

PG&E sent notice of the August 1, 1984 D.84-08-037 to three categories of QFs. Dr. Merrill's project was not included in any of these categories because he had not signed a power purchase agreement, he had not requested an interconnection study, and he had not been in recent contact with PG&E. If Dr. Merrill had signed a power purchase agreement, if he had requested an interconnection study, or if he had been in recent contact with PG&E, PG&E asserts that he would have been notified of D.84-08-037.

PG&E's decision to send notice of D.84-08-037 to QFs that in some manner had demonstrated to PG&E that they were actively developing their projects was a reasonable and responsible way to inform QFs that PG&E had reason to believe would be most interested in the interim solution and the allocation of limited transmission capacity. PG&E could have sent notice to all QFs that had contacted PG&E, regardless of the date of last contact. However, we do not find that PG&E's decision to restrict notice to QFs in

recent contact with the utility was unfair or a breach of any duty the utility had to a QF.¹

With respect to Dr. Merrill's contention that he was instructed by PG&E to obtain his FERC license before contacting PG&E again, we find that it is unfortunate that Dr. Merrill had this understanding from a telephone conversation with Tom Jefferson. The letter sent to Dr. Merrill following up this telephone conversation does not plainly state or even imply that Dr. Merrill should have pursued his FERC license before contacting PG&E again. We conclude that Dr. Merrill chose to focus his efforts on the FERC license as he believed this permit should be obtained before he discussed interconnection with PG&E. We recognize that Dr. Merrill has diligently pursued a FERC license and was actively developing his project after his conversation with Tom Jefferson. However, PG&E had no knowledge of this activity and was under no obligation to monitor the status of the many hydroelectric projects that were the subject of a filing at FERC.

Transmission Allocation in the Humboldt Area

The interim solution approved in D.84-08-037 provides for 90 MW of QF interconnection in the Humboldt area. To interconnect this amount of QF power, PG&E has agreed to alter its usual dispatch of its Humboldt area resources. The 90 MW ceiling for immediate QF interconnection in the Humboldt area was agreed to by PG&E, DRA, and QF representatives. These parties entered into the interim solution with the knowledge that the terms would govern the interconnection of QFs in PG&E's constrained northern system for the immediate future.

¹ PG&E was not required by D.84-08-037 to notify any QFs of the interim solution and its impact on interconnection to PG&E's constrained northern system. PG&E decided on its own motion to inform QFs that PG&E believed were affected by the decision.

PG&E has pointed out that even if Dr. Merrill had been sent a notice of the August 1, 1984 D.84-08-037, Dr. Merrill most likely would not have obtained a transmission allocation. PG&E states that all but one of the QFs that obtained an allocation of the 90 MW available in the Humboldt area established their priority before the notices were sent. And the one QF that established priority after the notices were sent did so just 19 days after the notices were mailed. PG&E observes that after Dr. Merrill was informed of the interim solution and told how to establish priority for transmission capacity, he did not execute a power purchase agreement until two months later. To establish an interconnection priority, Dr. Merrill still would have had to request an interconnection study before establishing priority for an allocation.

Even if we should find that PG&E erred in not sending notice of the August 1, 1984 D.84-08-037 to Dr. Merrill, we would then find that Dr. Merrill still would not have received a transmission allocation as nearly all of the 90 MW was allocated before the notices were sent out. At best, Dr. Merrill only would have been placed higher on the waiting list.

Hardship Consideration

PG&E's seven criteria for hardship consideration are based upon knowledge that PG&E had about the QF's project. Since Dr. Merrill did not keep in contact with PG&E while pursuing a FERC license, Dr. Merrill did not qualify for hardship consideration from PG&E.

Dr. Merrill believes that the hardship criteria should be expanded to include consideration of a QF's recent contact with FERC, size of project, project's effect on the transmission system, benefit to the public, and loss of investment. If such additional consideration is made, Dr. Merrill submits that his project should receive a hardship transmission allocation.

The problem with Dr. Merrill's position is that there are many QFs ahead of Dr. Merrill on the waiting list who also could make a plea for hardship consideration. If the hardship criteria administered by PG&E are to be expanded, then all QFs on the waiting list should be evaluated under the altered criteria, not just Dr. Merrill's project. We do not find that the hardship criteria relied upon by PG&E need to be expanded and reapplied. This would be an academic exercise as there is no available capacity in the Humboldt area under the interim solution.

Findings of Fact

1. On August 1, 1984, the Commission issued D.84-08-037 adopting an interim solution for the interconnection of QFs to PG&E's constrained northern transmission system.
2. The interim solution required PG&E to alter its usual dispatch of resources to accommodate specified amounts of QF deliveries in each transmission area.
3. The interim solution provided for 90 MW of QF interconnection in the Humboldt area.
4. Complainant, Dr. Merrill, is developing a hydroelectric project on Mawah Creek in the Humboldt area.
5. Complainant contends that PG&E failed to notify him of D.84-08-037 and the interim solution's allocation of limited transmission capacity in the Humboldt area.
6. Complainant seeks a Commission order requiring PG&E to provide his project with transmission capacity and an eventual interconnection to the Humboldt area transmission system.
7. PG&E sent notice of the D.84-08-037 to QFs in recent contact with PG&E prior to the issuance of the decision.
8. Since complainant had not contacted PG&E for two years, PG&E did not send to complainant a notice of D.84-08-037.
9. PG&E has made hardship allocations of transmission capacity to QFs that did not receive a transmission allocation initially and were not sent a notice of D.84-08-037.

10. All of the QFs that received transmission allocations in the Humboldt area had signed power purchase agreements before the notices of D.84-08-037 were sent out.

11. All but one of the QFs that received transmission allocations in the Humboldt area had established priority for a transmission allocation before the notices were sent by PG&E.

12. Complainant's project would not have received a transmission allocation even if PG&E had sent complainant a notice of D.84-08-037.

13. There are many QFs ahead of complainant on the waiting list for transmission capacity in the Humboldt area.

Conclusions of Law

1. PG&E's decision to restrict notice of the D.84-08-037 adoption of an interim solution to QFs that had signed a power purchase agreement, had requested an interconnection study, or had been in recent contact with PG&E was reasonable.

2. Complainant has not shown that PG&E's failure to notify him had a material adverse affect upon his project since even if PG&E had sent a notice to complainant, complainant's project would not have received a transmission allocation in the Humboldt area.

3. If the hardship criteria applied by PG&E are expanded or otherwise revised, the altered criteria must be applied to all projects on the waiting list, not just to complainant's project.

ORDER

Therefore, IT IS ORDERED that the complaint of Daniel C. Merrill, M.D. requesting an order directing Pacific Gas and Electric Company to provide his project with transmission capacity is denied.

This order becomes effective 30 days from today.

Dated APR 27 1988, at San Francisco, California

STANLEY W. HULETT
President
DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.



Victor Wessner, Executive Director

