

Decision 01-05-086 May 24, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CPN Pipeline Company and CPN Gas
Marketing Company,

Complainants,

vs.

Pacific Gas and Electric Company (U-39 G),

Defendant.

Case 00-09-021
(Filed September 14, 2000)

O P I N I O N

CPN Pipeline Company (CPN Pipeline) and CPN Gas Marketing Company (CPN Marketing) (Complainants)¹ complain against defendant Pacific Gas and Electric Company (PG&E), and request that the Commission issue an order directing PG&E to enter into pipeline interconnection and operational arrangements with CPN Pipeline comparable to those PG&E has entered with other pipelines, and provide backbone transmission service to shippers with delivery points at the interconnection between PG&E's backbone transmission

¹ CPN Pipeline is a Delaware corporation qualified to do business in California. CPN Pipeline is a wholly-owned subsidiary of Calpine Corporation (Calpine), an independent power company. CPN Marketing is Delaware corporation qualified to do business in California. CPN Marketing is a wholly-owned subsidiary of Calpine. CPN Marketing was formed to acquire and aggregate natural gas supplies and to arrange for delivery of such supplies to affiliated natural gas-fired electric generation plants.

system and CPN Pipeline. (Appendix A, map.) Defendant PG&E moves to dismiss for failure to state a cause of action. We grant the motion.

I. The Complaint

Complainants allege that Calpine is constructing new gas-fired electric generating facilities to meet electric generation need. Calpine today has under construction three electric generation power plants which have been certificated by the California Energy Commission. CPN Pipeline, a Calpine subsidiary, has acquired a proprietary natural gas system to deliver natural gas directly to these three new Calpine power plants. CPN Pipeline is a private pipeline whose purpose is to deliver natural gas to affiliated electric generation facilities independent of PG&E's local transmission or distribution services.

CPN Pipeline must be interconnected to PG&E's backbone transmission system to obtain access to interstate natural gas, and also to deliver California natural gas production located on CPN Pipeline's system into PG&E's system. Complainants allege that they have requested, and PG&E has refused to enter into, pipeline-to-pipeline interconnection and operational arrangements similar to those which PG&E has with other pipelines, including, in particular, the Sacramento Municipal Utility District (SMUD).

Complainants allege that PG&E asserts that its tariffs do not provide for pipeline-to-pipeline arrangements; that PG&E will not even contemplate entering into pipeline-to-pipeline arrangements until after the Gas Accord ends in 2003, nor will it presently agree that it will enter into pipeline interconnection arrangements at that time; that PG&E will only interconnect with CPN Pipeline as though each of the multiple interconnection points is an interconnection with a separate entity and as if each is with a single end-use customer for which PG&E delivers natural gas to the burner tip, or as if it were an individual gas

producer connecting directly to PG&E. Complainants allege that there will be no PG&E “End-Use Customer” receiving natural gas from PG&E at these interconnections, nor will there be individual producers delivering natural gas from a wellhead to PG&E.

Complainants allege that PG&E will not provide backbone transmission services to the interconnections between PG&E’s backbone transmission system and CPN Pipeline unless PG&E’s local transmission service rates are paid in addition to its backbone transmission system rates²; that PG&E will incur no local transmission costs to deliver natural gas on its backbone system to CPN Pipeline; and that the forecast amount of local transmission rate payment is approximately \$16 million annually. Complainants assert that there is no tariff, economic, policy, legal or other justification for PG&E to refuse Complainants’ request for pipeline interconnection arrangements or for PG&E to refuse to provide cost-based, backbone-only transmission rates for shippers delivering natural gas on PG&E’s backbone system to CPN Pipeline.

A. The Calpine System

Calpine, through affiliates, currently owns a net interest in approximately 1,322 megawatts (MW) of existing gas-fired and geothermal electric generation in California. Calpine has also received regulatory approvals

² Local transmission service is loosely defined as the intrastate gas transportation system that functions at a lower pressure than the backbone system, and transports gas from that backbone system to the distribution system and directly to some customers. The distribution system has an even lower pressure and smaller pipe diameter. PG&E’s backbone transmission system consists of Lines 300, 400, 401, and Line 2. This large diameter high pressure pipe is primarily used to move gas from interstate pipelines to local transmission systems.

and, through affiliates, has begun construction of a greater than 500 MW gas-fired generation facility in Sutter County (Sutter Energy Center), a 550 MW gas-fired generation facility in Pittsburg (Los Medanos Energy Center), and an 880 MW gas-fired generation facility in Pittsburg (Delta Energy Center) (collectively, the merchant power plants). Sutter Energy Center and Los Medanos Energy Center are scheduled to commence commercial operations before summer peak demands in mid-2001, with Delta Energy Center scheduled to begin generating electricity by mid-2002.

Calpine Natural Gas Company (CNGC), a wholly-owned subsidiary of Calpine, has acquired and owns approximately 164.4 billion cubic feet (Bcf) of proven natural gas reserves in the Sacramento Basin, with about 45,000 MMBtu of daily production capability. CNGC has also acquired gas reserves in Canada and the Rocky Mountain region of the U.S. which may be delivered on interstate pipelines to the California border for delivery by PG&E to CPN Pipeline.

CPN Pipeline owns and operates a proprietary pipeline system within California consisting of approximately 330 miles of gas gathering and gas transmission lines, including newly constructed pipeline laterals which will interconnect to the merchant power plants and to PG&E's system.

CPN Pipeline alleges that it has not, and will not, offer transportation services to the public or any portion thereof, nor has it dedicated, nor will it dedicate, any of its proprietary pipeline facilities to the public. CPN Pipeline will provide transportation services only on behalf of Calpine affiliates; CPN Pipeline will neither bypass PG&E nor compete to provide transportation services to customers of PG&E.

CPN Pipeline will be capable of delivering at least 350,000 MMBtu per day to three currently operational affiliated Qualifying Facilities (QFs)³ and to the merchant power plants. CPN Pipeline is directly connected to its affiliated CNGC California production and is also interconnected to about 45,000 MMBtu per day of natural gas delivery capacity from non-affiliated local production.

CPN Marketing intends to acquire, aggregate, and arrange for delivery of natural gas to the merchant power plants. CPN Marketing has contracted for natural gas supply from CNGC and from non-affiliated local California producers. CPN Marketing will arrange for delivery of natural gas supplies from these affiliated and third party California producers to the existing QF facilities and to the merchant power plants through CPN Pipeline, without the use of PG&E pipeline facilities.

CPN Marketing intends to obtain storage services from nearby third party storage facilities. Complainants anticipate that up to 650,000 MMBtu of daily withdrawal deliverability will be available from non-PG&E storage facilities located in the vicinity of CPN Pipeline, including the Wild Goose and Lodi Storage facilities. Complainants may directly connect to third party storage, and/or CPN Pipeline may develop natural gas storage capability itself. Direct

³ CPN Pipeline currently provides natural gas to three affiliated QFs. The Pittsburg Power Plant provides 70 MW of electric generation and receives natural gas solely through CPN Pipeline. The Greenleaf facilities produce a combined 99 MW of electric generation. Greenleaf 1 now receives 100% of its natural gas through CPN Pipeline. Greenleaf 2 receives 80% of its natural gas from California production delivered by CPN Pipeline and 20% from PG&E through PG&E's local transmission facilities. These arrangements, including the use of PG&E's local transmission system to deliver a percentage of natural gas to Greenleaf 2, will not change with the pipeline-to-pipeline interconnections requested by the Complainants.

access to storage would enable Complainants to deliver gas supply to the merchant power plants on short notice and without the use of PG&E's natural gas system, thereby providing those facilities operating flexibility and reliability beyond the capabilities of local transmission service offered by PG&E.

CPN Marketing also intends to obtain interstate sources of supply and arrange for transportation of such interstate supply through PG&E's backbone natural gas transmission system. CPN Marketing will either obtain PG&E backbone transportation capacity itself or will purchase natural gas from third party shippers holding PG&E backbone capacity. This gas will be delivered by PG&E on its backbone transmission system to the interconnections between PG&E and CPN Pipeline.

B. Complainants' Local Transmission Service Allegations

PG&E does not currently have local transmission facilities capable of providing natural gas service to the merchant power plants or to the existing Pittsburg or Greenleaf 1 QF facilities. PG&E could not deliver the necessary local transmission volumes at the appropriate pressure levels to these electric generation facilities without substantial capital investment. Thus, absent CPN Pipeline being prepared to use its existing pipeline facilities and to construct new pipeline infrastructure, PG&E would be obligated to construct significant amounts of local transmission facilities to deliver natural gas to the merchant power plants.

CPN Pipeline has acquired, and is constructing, the local transmission facilities necessary to serve the merchant power plants. CPN Pipeline is also prepared to make any additional investment in infrastructure which may be necessary to serve the local transmission needs of the merchant power plants.

Complainants offer the merchant power plants the requisite services to meet the specialized needs of electric power plants. These customer-driven services include greater natural gas reliability, relief from PG&E's local transmission constraints, greater flexibility in gas nominations and scheduling to match fluctuating power generation needs, and more cost-effective local transmission service. PG&E could not provide the merchant power plants the equivalent reliability, flexibility, and cost savings, even if PG&E were to construct the infrastructure necessary to serve them.

Since CPN Pipeline, not PG&E, will provide local transmission service to the merchant power plants, and because CPN Pipeline is directly connected to gas reserves and intends to directly connect to storage, the merchant power plants will have an alternate supply source not subject to PG&E-imposed local curtailments or PG&E's local lines being unable to provide service. Further, CPN Pipeline's California supply will not be subject to upstream interstate gas supply interruptions.

PG&E is currently the only natural gas pipeline in northern California providing access to interstate natural gas supplies. To deliver the necessary interstate natural gas supplies to CPN Pipeline, shippers (whether CPN Marketing or third parties) must utilize PG&E's intrastate backbone natural gas transmission system, and CPN Pipeline must physically interconnect to PG&E's backbone natural gas transmission system.

Gas delivered to CPN Pipeline from PG&E's backbone system will not require the use of PG&E's local transmission and/or distribution facilities.

More particularly, Complainants allege that on or about September 23, 1999, CPN Pipeline requested PG&E to interconnect with CPN Pipeline at multiple interconnection points and to enter into pipeline-to-pipeline

arrangements comparable with those PG&E has with other pipelines. On or about June 12, 2000, CPN Pipeline again requested that PG&E enter into interconnection, operating, and balancing arrangements with CPN Pipeline as an interconnecting pipeline, and not as an end-use customer.

PG&E has refused to enter into pipeline interconnection and operational arrangements with CPN Pipeline. In fact, PG&E denies that CPN Pipeline is a pipeline to which pipeline-to-pipeline interconnection arrangements are applicable. Rather, PG&E has claimed that PG&E Gas Rule 15, which addresses PG&E's "extension of gas Distribution Mains," applies to the interconnections between PG&E and CPN Pipeline. PG&E has further stated that it will require the merchant power plants to pay PG&E's local transmission tariffs, even though they are not customers of PG&E, and do not wish to receive any local transmission or distribution service whatsoever from PG&E. PG&E has informed CPN Pipeline that if the merchant power plants do not sign PG&E's *pro forma* Natural Gas Services Agreement, PG&E will not provide backbone service to the interconnections, and/or will charge its default natural gas rate in addition to the backbone transmission rate.

Complainants assert that CPN Pipeline is a proprietary natural gas pipeline. CPN Pipeline is not an end-use customer of PG&E. CPN Pipeline consists of several hundred miles of interconnected pipeline and gathering facilities. CPN Pipeline transports natural gas on behalf of affiliates; it does not sell, hold title to, or consume natural gas. CPN Pipeline desires to interconnect with PG&E at multiple locations, to enable natural gas to be delivered from PG&E to CPN Pipeline, and from CPN Pipeline to PG&E. Gas delivered to CPN Pipeline from PG&E will be redelivered by CPN Pipeline to multiple locations, including one or more of six affiliated electric generation facilities and up to

three separate storage sites. CPN Pipeline, not PG&E, will balance gas supply and loads connected to its pipeline system.

Complainants allege that PG&E will incur no incremental costs associated with its ownership and operation of its local transmission facilities when PG&E delivers natural gas on its backbone system to interconnections with CPN Pipeline and such gas is not transported by PG&E on its local transmission system. By seeking to have Complainants pay PG&E's local distribution rates, PG&E is seeking to have Complainants pay twice – once for the local transmission facilities of CPN Pipeline, which will be used, and again for PG&E's local transmission system, which will not be used.

II. PG&E's Motion to Dismiss

PG&E argues that reduced to its essence, the complaint seeks a “backbone-only” rate for gas service to three merchant generating plants owned in whole or in part by Complainants' corporate parent, Calpine Corporation. PG&E moves to dismiss the complaint on the following grounds:

A. The Gas Accord Expressly Requires Payment of the Very Charges Complainants Seek to Avoid.

Under the “Gas Accord,” a comprehensive, Commission-approved settlement that establishes the rates and terms and conditions of service on PG&E's California gas transmission system for a term that runs through December 31, 2002, the merchant power plants must pay local transmission charges and certain other charges, and not just backbone charges. The complaint impermissibly seeks a special exemption from the approved Gas Accord rate structure during its term.

B. The Issue Complainants Raise will be Addressed in the Proceedings for the Period After the Current Gas Accord Expires.

PG&E recently initiated discussions with all interested parties, including Calpine and other merchant generators, pursuant to Rule 51 of the Commission's Rules in a process known as "Gas Accord II." One of the issues the parties and the Commission will consider in the Gas Accord II proceedings is whether, and to what extent, local transmission charges should be unbundled from backbone transmission charges.

C. Calpine Corporation has Twice Before Unsuccessfully Raised this Issue Before the Commission.

Calpine Corporation should not be permitted to litigate the issue yet again in this complaint, through an affiliate.

D. The Complaint Improperly Seeks Relief that Cannot be Obtained in this Proceeding.

Whether the local transmission charges should apply to end-users in PG&E's service area whose facilities are located near, or directly connected to, PG&E's backbone transmission system, is an industry-wide issue that requires consideration of a multitude of factors. These broad, industry-wide issues cannot properly be addressed in an individual complaint proceeding.

E. The Complaint Fails to Comply with Cal. Pub. Util. Code § 1702 and Rule 9 of the Commission's Rules.

Because the complaint seeks to challenge the reasonableness of the Gas Accord and PG&E's authorized tariff requiring the payment by on-system end-users of the local transmission charges, the provisions of Cal. Pub. Util. Code § 1702, and the parallel provisions of Rule 9(a), are invoked. The complaint does not meet the signature requirements for complaints making such challenges.

Nor does the complaint allege any facts to show that PG&E violated any law, order or rule.

PG&E argues that Complainants are barred from obtaining the relief requested under any cause of action, because the facts as alleged in the complaint unequivocally demonstrate that the merchant power plants are “on-system end-users” as defined in the Gas Accord. Under the Commission-approved rate structure established in the Gas Accord, backbone and local transmission Charges must be paid by all “on-system end-users” without exception. (Gas Accord, 73 Cal.P.U.C.2d at 814, 819 (II.E.14.b and II.H.1.d-e).) Under the Gas Accord, local transmission charges cannot be bypassed by an “on-system end-user,” regardless of the identity of the shipper, the owner of any intermediate natural gas pipelines that may connect to the gas consumer, or the extent of the end-user’s actual use of PG&E’s local transmission pipelines. The facts alleged in the complaint do not make a case for allowing Complainants or the merchant power plants to circumvent the Gas Accord, which requires that all “on-system end-users” using the backbone system must pay for local transmission charges through the term of the Gas Accord. (Gas Accord, 73 Cal.P.U.C.2d at 799, 800 (I.B.1 and I.B.12.)

The Gas Accord Settlement (D.97-08-055) provides that PG&E must “[u]nbundle the rates and service options for transmission system service from distribution system service” and that “[t]he transmission system is defined as PG&E’s backbone and local gas transmission lines.” (Gas Accord, 73 Cal.P.U.C.2d at 799 (I.B.1.)) The Gas Accord provides that “[l]ocal transmission costs are included in a separate local transmission charge, which will be collected from all on-system end-users.” (Gas Accord, 73 Cal.P.U.C.2d at 802 (II.A.), emphasis added.) It further provides that “all on-system transmission-level

end-users must pay local transmission charges.” (Gas Accord, 73 Cal.P.U.C.2d at 814 (II.E.14.b.)) The Gas Accord states:

Four rate components will be applicable to on-system transmission service: a backbone transmission charge, a local transmission charge, a customer class charge, and a customer access charge. Shippers delivering on-system will be charged the backbone transmission charge, and corresponding end-users will be charged the local transmission charge, the customer class charge and customer access charge. (Gas Accord, 73 Cal.P.U.C.2d at 818-819 (II.H.1.a.))

The Gas Accord further states: “The local transmission charge collects local transmission costs and is applicable to all on-system end-users.” (Gas Accord, 73 Cal.P.U.C.2d at 819 (II.H.1.e.)) The Gas Accord provides that during its term: “The local transmission charge is paid by all on-system end-users. This charge is nonbypassable.” (Gas Accord, 73 Cal.P.U.C.2d at 822 (II.I.8.b.))

Under the Gas Accord, the first inquiry is whether an entity is an “on-system end-user.” To be an on-system end-user, the Gas Accord specifically looks at whether the end-user is: (1) located within PG&E’s service territory, and (2) on-system. If these basic requirements are met, then both backbone and the local transmission charges must be paid, regardless of the extent to which the end-use customer makes actual use of PG&E’s local transmission facilities.

The Gas Accord defines “on-system deliveries” as “any point at which deliveries are made to, or for ultimate delivery to...end-use...located in PG&E’s service territory.” (Gas Accord, 73 Cal.P.U.C.2d at 807 (II.E.4.a.)) In contrast, “off-system deliveries” are defined as “any interconnection for delivery outside of PG&E’s service territory.” (Gas Accord, 73 Cal.P.U.C.2d at 807 (II.E.4.b.)) PG&E asserts that it is indisputable that the merchant power plants are “on-system end-users” under this definition, since they are located within PG&E’s

service territory, and Complainants have admitted that they are the end-users of natural gas that has flowed through PG&E's pipeline system. (Complaint, ¶ 72.)

PG&E contends the Gas Accord's use of the phrase "ultimate delivery to end-use" in defining "on-system deliveries" makes clear that the physical interposition of a CPN Pipeline segment between the PG&E backbone and the merchant power plants is irrelevant. The connection point between CPN Pipeline and the PG&E backbone is the point for "ultimate delivery to...end-use."

The Gas Accord also addresses the economic separation issue by providing that shippers delivering on-system will pay the backbone transmission charge, and the corresponding end-user will pay the local transmission charge, plus customer access charges. (Gas Accord, 73 Cal.P.U.C.2d at 818-819 (II.H.1.a).) The approved Gas Accord rate structure thus does not require a direct economic relationship between PG&E and the merchant power plants as a basis for local transmission charges. Calpine's shipper/supplier will have an economic relationship to PG&E, so the shipper/supplier will pay the backbone charge, and when there is a "corresponding end-user" in the PG&E service territory (such as the Calpine merchant power plants), the local transmission charges must be paid by the "corresponding end-user" either directly or through the shipper.

III. Discussion

When one parses the repetitions, the redundancies, and the recondite theories of malfeasance set out in the complaint, it boils down to two alleged wrongs: (1) that PG&E was not willing to physically connect to the CPN Pipeline so that gas would flow in a timely manner to the Calpine merchant power plants; and (2) that PG&E would assess local transmission charges to the Calpine merchant power plants.

The physical interconnection issue has disappeared as PG&E and CPN Pipeline have entered into an agreement (Appendix B) whereby PG&E will construct the interconnection and gas will flow in a timely manner. The only remaining issue is the economic terms under which gas will flow. Simply put, will the Calpine merchant power plants have to pay PG&E's local transmission charges in addition to PG&E's backbone transmission charges?

In our opinion, a hearing is not necessary to resolve the local transmission charge issue. In D.99-11-023 in Application (A.) 99-04-010, we reviewed our standards for dismissing complaints and applications.

On a motion to dismiss a complaint, the legal standard against which the sufficiency of the complaint is measured is whether, taking the well-pleaded factual allegations of the complaint as true, the defendant is entitled to prevail as a matter of law. (E.g., *MCI Telecommunications Corp. v. Pacific Bell*, D.95-05-020, 59 Cal.P.U.C.2d 665, 1995 Cal.P.U.C. LEXIS 458, at p. *29-*30, citing *Burke v. Yellow Cab Co.* (1973) 76 Cal.P.U.C. 166.) In addition, the Commission may properly take official notice of, and consider, the files and records of court and Commission proceedings in ruling on a motion to dismiss. (E.g., *Upper Kern Island Water Ass'n v. Kern Delta Water District*, D.91-05-019, 40 Cal.P.U.C.2d 65, 1991 Cal.P.U.C. LEXIS 244, at p. *14; *City of El Monte v. San Gabriel Valley Water Co.*, D.87-09-065, 25 Cal.P.U.C.2d 393, 1987 Cal.P.U.C. LEXIS 238.) (D.99-11-023 at p. 7.)

By assuming that the facts as alleged in the complaint are true for the purpose of deciding whether to grant a motion to dismiss, we assume that Complainant will be able to prove everything alleged in its complaint. We do not accept as true the ultimate facts, or conclusions, that Complainant alleges, for instance, that PG&E has violated its tariffs. After accepting the facts as stated, the Commission then merely looks to its own law and policy.

A.99-04-010 is pertinent to this complaint for reasons in addition to the standards of dismissal without hearing. In A.99-04-010, we had cause to review the Gas Accord. That application was brought by an entity known as Western Gas Resources – California, Inc. for a certificate of public convenience and necessity to operate a gas pipeline. Calpine Corporation appeared and stated it was part owner of the applicant. D.99-11-023 dismissed the application. Calpine Corporation’s affiliate, CPN Pipeline is now before us, raising many of the same questions raised in A.99-04-010, most pertinent to this complaint the status of an end-user and its responsibility for the local transmission charge.

The Commission had approved PG&E’s Gas Accord settlement agreement (D.97-08-055), and recognized its pertinency to resolve the issues in A.99-04-010:

The Gas Accord requires that on system end users, including noncore users, bypassing [PG&E’s] local transmission system must still pay the tariff rate associated with it (Gas Accord § II.H.(1)(a), (e) and (f) as well as § III.H.(8)(b)) and WGRC in its complaint decries just this provision. (D.99-11-023 at p. 11.)

We observed that “regulated rates for natural gas local transmission and distribution remain the Commission’s policy at this juncture, in order, among other reasons, to assure that the core does not unfairly carry the burden of these fixed costs of the utility with the obligation of universal service” And we considered, but saw “no need to decide whether the noncore can bypass PG&E’s local transmission tariff entirely.” (Id. p. 26.) PG&E argues, and we agree, that this Commission has repeatedly been asked to approve a backbone-only gas transportation rate, and that we have consistently declined.

In D.95-12-053, which declined to adopt a backbone-only rate of the type Complainants now advocate, we recognized multiple questions embedded

within a policy choice regarding backbone-only rates on the PG&E pipeline system:

If we are asked to resolve this matter, there are a number of questions that need to be addressed before adopting a separate backbone-level rate. Some of the questions we have include: Who would be eligible for this rate? Would there be a single backbone rate or separate rates for the northern versus the southern backbone systems? How will rates be determined, embedded cost, capacity brokering, or LRMC principles? How will revenue shortfalls, if any, be handled? Should a distinction be made between customers who are currently directly connected to the backbone system versus those in the future who may choose to directly connect to the backbone system and bypass existing PG&E local transmission facilities? What is the magnitude of the cost shifting that may result from a separately tariffed backbone rate? (*Re Pacific Gas and Electric Company*, (1995) 63 CPUC 2d 414, 451.)

In 1997, the Commission approved the Gas Accord, which provided in several places that all on-system end-users must pay local transmission charges. The Gas Accord defined “on-system deliveries” as “any point at which deliveries are made to, or for *ultimate delivery to ... end-use or wholesale loads* located in PG&E’s service territory.”⁴ There is no dispute that the Calpine power plants are end users of gas located in PG&E’s service territory. In 1999, we again confirmed that “*the Gas Accord requires that on-system end-users, bypassing its local transmission system must still pay the tariff rate associated with it ...*”⁵ Although Calpine

⁴ Gas Accord, 73 Cal.P.U.C.2d at 807 (II.E.4.a.), emphasis added.

⁵ D.99-11-023, *Re Western Gas Resources-California, Inc.*, (1999) P.U.R. slip copy at 11, 1999 WL 1957792 (Cal.P.U.C.) *4, emphasis added, citing Gas Accord II, H.1.a., e., & f. and II, I.8.b.

Corporation asked us to reconsider those decisions on several occasions in 1998 and 1999, we have not done so.

Complainants argue that there is a factual dispute concerning whether the Calpine merchant power plants are “on-system end-users” within the meaning of the Gas Accord. However, paragraph 72 of the complaint alleges that “The Calpine merchant power plants, which are end-users, will not be ‘End-Use Customers’ of PG&E; they will not receive any service from PG&E....” This assertion does not raise a factual dispute. Complainants admit that the power plants are end-users, and they do not dispute that the power plants are located within PG&E’s service area. Thus, this issue is a legal one, not a factual one. As a legal issue, we refer to the Gas Accord, which clearly shows that end-users of gas are on-system if they operate in PG&E’s territory and use the PG&E backbone system, whether or not they use PG&E’s local transmission system. PG&E is transporting gas that will be used in the merchant power plants. Under the Gas Accord, therefore, the Calpine merchant power plants clearly are on-system end-users that must pay the local transmission charges.

The issue Complainants raise – backbone-only rates for electric generators – will be addressed in proceedings for the period after the current Gas Accord expires at the end of 2002. PG&E has recently initiated discussions with all interested parties pursuant to Rule 51 of the Commission’s Rules of Practice and Procedure, in a process known as “Gas Accord II.”

One important issue to be considered in the Gas Accord II proceeding is whether, and to what extent, local transmission charges should be unbundled from backbone transmission charges. A number of parties, including merchant generators, have made clear they would prefer that noncore customers located near the PG&E backbone pipeline be given the opportunity to structure their

affairs based on a further unbundling of backbone and local transmission charges. Customers located away from the backbone, as well as customers who may bear any resulting shortfall in local transmission revenues, can be expected to oppose an unbundled backbone-only rate. Such a rate, it is claimed, would be a departure from our general policy of requiring utilities to charge average cost rates. Finally, it is not clear whether providing a lower gas rate for power plants located along the backbone pipeline, at a distance from PG&E's electric load centers, would provide appropriate incentives for siting power plants at other locations better suited to help maintain the reliability of the electric transmission grid.

To accede to Complainants' request would cause substantial cost shifting which involves complex policy choices, as to which numerous parties have divergent interests and points of view. (See, D.95-12-053, supra pp. 15-16.) We should not preempt the deliberations that will occur through the Gas Accord II process. The relief requested would provide more favorable treatment to specific merchant power plants that would obtain a distinct competitive advantage over other merchant generators in California by avoiding payment of local transmission charges which all other on-system merchant generators must pay. The consequences of granting such an advantage to Calpine are obvious.

A complaint case involving only two parties is not an appropriate forum for determining industry-wide policy. The consequences of granting an advantage to Calpine have not been studied. The more appropriate course for us is to defer the issue of backbone-only rate to the proceeding – "Gas Accord II" – which will establish the rates and terms of conditions for PG&E's pipeline system commencing January 1, 2003, the end of the current Gas Accord term. Calpine and all other interested parties, including competing electric generators and the

representatives of other noncore and core ratepayer interests, will have ample opportunity to participate in those proceedings, and indeed the parties (including Calpine) are already engaged in ongoing multi-party meetings on these very issues.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. The comments filed merely restated the arguments in briefs and will be disregarded. (Rule 77.3.)

Findings of Fact

1. For the purpose of ruling on PG&E's motion to dismiss the application, we assume that the facts set forth in Complainants' application are true, with the exception of ultimate facts.
2. The Commission's policy for PG&E's natural gas operations, at the present time, is set forth in the Gas Accord and requires end-users located in PG&E's service territory to pay the local transmission charge.
3. It is without dispute that the Calpine merchant power plants are end-users of natural gas and are located in PG&E's service territory.
4. The relief requested in the application, for the Calpine merchant power plants to be exempt from paying the local transmission charge, does not comport with Commission decisions and policy.
5. The relief requested by Complainants is exactly the same relief sought by Complainants' parent company, Calpine Corporation, in prior Commission proceedings, which had been denied. No facts have changed since those denials.

Conclusions of Law

1. There are no triable issues of fact. An evidentiary hearing is not necessary, and the preliminary determination that a hearing was needed is reversed.
2. The complaint should be dismissed immediately for failure to state a cause of action.

O R D E R

IT IS ORDERED that:

1. The complaint is dismissed.
2. This proceeding is closed.

This order is effective today.

Dated May 24, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

C.00-09-021 ALJ/RAB/tcg *

(SEE CPUC FORMAL FILES FOR APPENDICES A & B)