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CLERK, U. S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
DEPUTY

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CITIES OF ANAHEIM, RIVERSIDE,	)	NO. CV-78-810-MML
BANNING, COLTON and AZUSA,	)	
CALIFORNIA,	)	
	)	ORDER SPECIFYING CERTAIN
Plaintiffs,	)	FACTS TO BE WITHOUT
	)	SUBSTANTIAL CONTROVERSY,
v.	)	AND REQUIRING FURTHER
	)	BRIEFING ON OTHER ISSUES
SOUTHERN CALIFORNIA EDISON	)	
COMPANY,	)	
	)	
Defendant.	)	

On February 3, 1981, plaintiffs filed a Motion to Adjudicate Certain Facts, to Limit the Issues to be Tried, and to Limit the Scope of Discovery. After careful consideration of this motion, the memoranda and evidence submitted in support and in opposition to the motion, the arguments of counsel for all parties, and the entire record in this action, the Court hereby Orders as follows:

1. Although this motion is characterized by plaintiffs as a Rule 16 motion, the Court finds that plaintiffs' motion shall be treated as a motion under Rule 56 of the Federal Rules of Civil Procedure either for summary judgment or for

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1 an order specifying certain facts to be without substantial  
2 controversy. The Court finds that the defendant is not  
3 prejudiced by this recharacterization. The defendant has  
4 fully argued all of the issues presented in this motion,  
5 both orally and in writing, and has submitted voluminous  
6 evidence and affidavits in support of its position.

7 2. The following facts are without substantial contro-  
8 versy, and shall be deemed established for the purposes of  
9 this action:

10 (a) BPA and other PNW entities have had, and  
11 continue to have, low-cost bulk power available for  
12 sale to purchasers outside the PNW area. See Moody  
13 testimony, at pp. 12 and 16;

14 (b) The Cities, as public entities, have a federal  
15 statutory preference to BPA bulk power surplus energy  
16 and surplus peaking capacity marketed outside the PNW  
17 area. 16 U.S.C. §832(c)(a); 16 U.S.C. §837a;

18 (c) Transmission facilities controlled by Edison  
19 and others, known as the Pacific Intertie ("Intertie"),  
20 extend from the PNW bulk power market and connect to  
21 Edison's electric system. See Moody testimony, at pp.  
22 2-3;

23 (d) Access to the Intertie is necessary in order  
24 for the cities to engage in bulk power transactions  
25 with the BPA or other PNW entities. See Plaintiffs'  
26 exhibit #6;

27 (e) Certain contracts entered into by Edison and  
28 others govern access to the Intertie and give Edison

1 and others the power to preclude the Cities from  
2 obtaining access to the Intertie, subject to the  
3 ultimate authority of the FERC. See Plaintiffs'  
4 exhibits #7-11; 16 U.S.C. §824i;

5 (f) The cities of Anaheim and Riverside have  
6 requested direct access to the Intertie. The cities of  
7 Azusa, Banning, and Colton have not. See Plaintiffs'  
8 exhibits #13-16;

9 (g) On August 28, 1973 and September 11, 1973,  
10 P.G. & E. informed the cities of Anaheim and Riverside  
11 that it would not provide them direct access to the  
12 Intertie. See Plaintiffs' exhibit #6 and 20;

13 (h) Edison has informed the cities of Anaheim and  
14 Riverside that it will not provide them direct access  
15 to the Intertie. See Plaintiffs' exhibits #21-24; and

16 (i) The Cities are dependent upon Edison for  
17 transmission of bulk power supplies. See p.48 of  
18 Edison's memorandum in opposition.

19 3. The following principles of law are applicable to  
20 this action:

21 (a) The transmission facilities known as the  
22 Pacific Intertie cannot practicably be duplicated by  
23 plaintiffs. Consequently, the Intertie is essential to  
24 the transmission of bulk power from the PNW area to  
25 plaintiffs. See Associated Press v. United States, 326  
26 U.S. 1, 13 & n. 10 (1945); United States v. Terminal  
27 Railroad Association, 224 U.S. 383, 409 (1912); Hecht  
28 v. Pro-Football, 570 F.2d 982, 992 (D.C. Cir. 1977).

1 (b) Per se rules of antitrust law are appropriate  
2 only when they relate to conduct that is manifestly  
3 anticompetitive. See Northern Pacific R.Co. v. United  
4 States, 356 U.S. 1, 5 (1958).

5 (c) Plaintiffs have failed to demonstrate that  
6 the defendant's restrictions on access to the Intertie  
7 system warrants a per se rule.

8 (d) In Blonder-Tongue Laboratories, Inc. v.  
9 University of Illinois, 402 U.S. 313, 329 (1971), the  
10 Supreme Court abandoned the requirement of mutuality of  
11 parties when applying the principle of collateral estoppel  
12 and held that estoppel will be applied unless the party  
13 can demonstrate that it did not have a full and fair  
14 opportunity, procedurally, substantively, and evidentially  
15 to litigate the issue sought to be estopped in the  
16 prior case. Subsequently, in Parklane Hosiery Co. v.  
17 Shore, 439 U.S. 322 (1979), the Supreme court held that  
18 the trial court is granted broad discretion in determining  
19 whether or not to apply the doctrine of collateral  
20 estoppel. When making such a determination; the trial  
21 court should consider (1) the incentive to fully litigate  
22 in the prior forum; (2) whether the prior judgment is  
23 inconsistent with other decision; and (3) the procedural  
24 limitations on other proceedings. Also see United  
25 States v. ITT Rayonier, 627 F.2d 996 (9th Cir. 1980).

26 (e) Collateral estoppel may be invoked to foreclose  
27 relitigation of issues already determined in an adminis-  
28 trative proceeding. United States v. Utah Construction

1                   & Mining Co., 384 U.S. 394, 421-22 (1966); Paramount  
2                   Transport Systems v. Chauffeurs, etc., 436 F.2d 1064,  
3                   1066 (9th Cir. 1971).

4                   (f) Edison is collaterally estopped from disputing  
5                   the following factual issues determined in FERC  
6                   proceedings:

7                   (i) The Cities and Edison are in actual and  
8                   potential competition at the retail level. See  
9                   Plaintiffs' exhibits #27 at p. 886, and #28 at pp.  
10                   895-98.

11                   (ii) The appropriate rates to compare to  
12                   determine whether Edison subjected the Cities to  
13                   unlawful monopoly pricing ("price squeeze") between  
14                   February 1, 1976 and August 16, 1979 are the A-8  
15                   retail rates paid by Edison's large industrial  
16                   customers and Edison's R-2 wholesale rate paid by  
17                   resale customers, such as the Cities. See Plaintiff  
18                   exhibits #27 at p. 874, and #28 at p. 898.

19                   (iii) Edison's R-2 wholesale rate, paid by  
20                   the Cities, exceeded the A-8 retail rates paid by  
21                   Edison's large industrial customers during the  
22                   period between February 1, 1976 and August 16,  
23                   1979. See Plaintiffs' exhibits #27 at pp. 875,  
24                   882, and #28 at p. 898.

25                   As to these facts, Edison had every incentive to fully  
26                   litigate them before the Administrative Law Judge and  
27                   the FERC. Edison was represented by counsel, permitted  
28                   massive discovery, allowed to present documentary evidence

1 and testimony, permitted to cross examine witnesses,  
2 permitted to object to evidentiary material, and in  
3 general given a full and fair opportunity to litigate  
4 these factual issues. Moreover, Edison was permitted  
5 to appeal the Administrative Law Judge's decision, to  
6 the FERC on two occasions, with the opportunity to  
7 raise each of the objections presently raised in this  
8 Court. The FERC expressly found that each of these  
9 findings was necessary to the proceedings and rejected  
10 Edison's contention that the findings were superfluous.  
11 See Plaintiffs' exhibit #27 at pp. 885-86. The FERC  
12 also indicated that the findings as to these issues are  
13 final, regardless of the disposition of further hearings.  
14 See Plaintiffs' exhibit #28 at p. 898.

15 (g) At this time, the plaintiff has failed to  
16 demonstrate that the FERC has reached a final decision  
17 on whether Edison's R-2 wholesale rate, paid by the  
18 Cities between February 1, 1976 and August 16, 1979,  
19 was cost-justified. See Plaintiffs' exhibit #28 at  
20 p. 899. Collateral estoppel, therefore, shall not be  
21 applied at the present time to this factual issue.

22 4. Plaintiffs' request for an order limiting discovery  
23 is denied at this time without prejudice. The Court finds  
24 that in light of the findings above, the requested restriction  
25 upon discovery may be unnecessary. The parties are reminded,  
26 however, of the requirements of Rule 26 of the Federal Rules  
27 of Civil Procedure to limit discovery to matters relevant to  
28 the subject matter involved in the pending action, and to

1 information that appears reasonably calculated to lead to  
2 the discovery of admissible evidence.

3 5.. Pursuant to Rule 16 of the Federal Rules of Civil  
4 Procedure, the Court hereby directs the attorneys for both  
5 parties to appear on Monday, July 20, 1981 at 10:00 a.m. in  
6 Courtroom 12 for a conference to consider the simplification  
7 of the issues in this case. Prior to this conference, on or  
8 before June 15, 1981, plaintiffs shall submit a brief fully  
9 examining whether or not the following issues are properly  
10 issues for trial in this case:

11 (a) The impact of government regulation of defen-  
12 dant's activities and rates upon plaintiffs' claims in  
13 this action;

14 (b) The impact of Congressional or FERC encourage-  
15 ment of the present Intertie system on plaintiff's  
16 claim;

17 (c) The relevance of conspiracy theory under the  
18 antitrust laws, in light of the contracts entered into  
19 by Edison and others with respect to the Intertie;

20 (d) The relevance of prior settlements or IOAs  
21 entered into between plaintiffs and defendant, on  
22 plaintiffs' present claims;

23 (e) The impact or relevance of PURPA upon plaintiff  
24 claims;

25 (f) The consequences, particularly with respect  
26 to standing, of Azusa, Banning, and Colton's failure to  
27 request direct access to the Intertie; and

28 (g) The relevance of facts concerning future

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availability of bulk power sources outside the PNW to plaintiffs.


Plaintiffs' brief shall also address the question of a bifurcation in this action of the issues of liability and damages.

Defendant may then submit a brief in response to plaintiffs' brief, on or before July 3, 1981.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve, by United States mail, copies of this Order on counsel for plaintiffs and counsel for defendant in this action.

Dated: May 18 , 1981

  
\_\_\_\_\_  
Malcolm M. Lucas  
United States District Judge



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )  
 )  
Florida Power & Light Company ) Docket No. 50-389A  
 )  
(St. Lucie Nuclear Plant, Unit No. 2) )

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Motion to Establish Procedures, For a Declaration That a Situation Inconsistent with the Antitrust Laws Presently Exists and For Related Relief" with Attachments 1-5, Appendices A and B, and indices (without documents) of Appendices C through I, have been served on the following by hand delivery (\*) or by deposit in the U. S. Mail, first class, postage prepaid, this 27th day of May, 1981.

I hereby certify that copies of Appendices C through I (with documents) will be served on all parties, including the Nuclear Regulatory Commission, by hand delivery (\*) or by deposit in the U. S. Mail, first class, postage prepaid, on the 28th day of May, 1981.

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BY

Alan J. Roth