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**THIS DOCUMENT CONTAINS
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Chairman Jeffrey
Commissioner Roney
Commissioner Johnson
Commissioner Larson
Commissioner

PLACING AND THE FINANCIAL COMPANY, IRS FORM NO. 2-7507

In the general order of the Federal Power Commission dated June 3, 1971, as a condition (pages 3, 4, and 5) of an order to show cause filed with the Federal Power Commission by the Federal Power Commission, the Commission alleged that the respondent, through its conduct with respect to the Financial Company, Section 2, as required by the Commission's order, is in violation of the Federal Power Act by including the respondent's financial statements and other information in its financial statements and that the respondent's conduct is in violation of the Federal Power Act.

The respondent's failure to comply with the Commission's order is in violation of the Federal Power Act, and the respondent is in violation of the Federal Power Act.

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cc: CI (2)
STOY (2)
750 (2)

for *Bertram H. Schur*
for *James A. Quinn*
for *James A. Quinn*

Transmittal
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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;
Lawrence J. O'Connor, Jr., John A. Carver, Jr.,
Albert B. Brooke, Jr., and Pinkney Walker

Pacific Gas and Electric)
Company) Docket No. E-7597

ORDER ACCEPTING PROPOSED RATE SCHEDULES, GRANTING
WAIVER OF NOTICE REQUIREMENTS, AND DISMISSING COMPLAINT

(Issued June 8, 1971)

Pursuant to Sections 35.12 and 35.13 of the Commission's Regulations under the Federal Power Act (18 CFR 35.1), Pacific Gas and Electric Company ("Pacific"), a public utility subject to the jurisdiction of this Commission, filed on December 18, 1970, an amendment ("Supplement No. 1 to FPC Electric Rate Schedule No. 34"), dated June 4, 1970, to the 1966 Sale and Interchange Contract between Pacific and Sacramento Municipal Utility District ("Sacramento"), and a new agreement ("FPC Electric Rate Schedule No. 45"), dated June 4, 1970, between Pacific and Sacramento. The filing of Supplement No. 1 to FPC Electric Rate Schedule No. 34 is proposed to be effective January 21, 1971. The FPC Electric Rate Schedule No. 45 is to become effective upon commercial operation of Rancho Seco Unit No. 1 and continue until 1993, unless terminated by either party upon six years written notice. The Supplement No. 1 to FPC Electric Rate Schedule No. 34 and the FPC Electric Rate Schedule No. 45 are identified in Appendix A attached hereto.

FPC Electric Rate Schedule No. 45 provides for the continued integration of facilities between Pacific and Sacramento. The new schedule provides for the construction and operation of Sacramento's Rancho Seco Unit No. 1, and a second thermal plant.

FPC Electric Rate Schedule No. 45 will not become effective, until the date Rancho Seco Unit No. 1 becomes commercially operable; at which such time, that schedule will supersede the 1966 agreement (FPC Electric Rate Schedule No. 34).

The proposed FPC Electric Rate Schedule No. 45 provides for the sale of surplus energy from Rancho Seco Unit No. 1, by Sacramento to Pacific, at a price of Sacramento's production cost plus ten percent, but not more than 1.9 mills per kilowatt hour. Pacific is to purchase surplus capacity from the first nuclear unit at the cost of capacity from the unit, but not to exceed twenty-six dollars per kilowatt per year. Beginning in 1977 and until the second nuclear unit is installed, Sacramento will require capacity from Pacific, such capacity to be returned to Pacific from Sacramento's first capacity surplus. Sacramento will also contribute monthly capacity to Pacific in exchange for standby service and will, in addition, receive backup in exchange for its contribution to Pacific's generation reserves. Pacific and Sacramento also provide for an energy exchange account. Finally, Pacific and Sacramento will construct transmission facilities for the first unit's energy.

The Supplement No. 1 to FPC Electric Rate Schedule No. 34 provides for the transition from the present rate schedule to the proposed FPC Electric Rate Schedule No. 45. Prior to Rancho Seco Unit No. 1 becoming commercially operable. Sacramento will be credited with energy in meeting its load requirements, thereby reducing its purchases from Pacific. There are to be no changes in the filed rate under this amendment.

The proposed rate schedule (FPC Electric Rate Schedule No. 45), filed on December 18, 1970, will take effect beyond the 90 (ninety) day maximum notice period, as provided by Section 35.3 of the Commission's regulations under the Federal Power Act. Pacific, concurrently with this filing, has requested a waiver of this notice requirement. We find, it is important to Pacific, Sacramento, and their customers, that the notice requirement be waived. In order to facilitate joint planning between Pacific and Sacramento, and in order to give assurance to those financing Sacramento's construction program,

we find there is good cause to waive the notice requirements of Section 35.3 of the Commission's regulations under the Federal Power Act.

As provided in Section 35.3 of the Commission's regulations under the Federal Power Act, we will provide that Supplement No. 1 to FPC Electric Rate Schedule No. 34, filed December 18, 1970, shall become effective January 21, 1971, thirty days after the filing date.

On January 12, 1971, Northern California Power Agency ("Northern") filed a complaint with this Commission, alleging certain antitrust violations and anticompetitive acts and practices, arising out of FPC Electric Rate Schedule No. 45 and Supplement No. 1 to FPC Electric Rate Schedule No. 34. In particular, complainant alleges that Northern was intentionally excluded from the planning and agreement stages of the proposed second nuclear unit, Pacific is attempting to monopolize the generation of electrical energy in northern and central California by limiting the size of the second nuclear unit, and Northern has been intentionally excluded from being able to purchase bulk nuclear power. These acts and practices, among others, are alleged to grant an undue preference to Pacific, in violation of Section 205(b) of the Federal Power Act, and are therefore, alleged to be unlawful, under Section 205(a) of that Act. Northern, in its complaint, has asked for a hearing, and has requested this Commission to void FPC Electric Rate Schedule No. 45, or to amend said agreement, to increase the size of the proposed second nuclear unit to 1,150 mw; the excess over 830 mw to be made available to Northern for purchase. Pacific has filed, on February 25, 1971, an Answer to Northern's Complaint. On March 12, 1971, Northern filed its Reply to Pacific's Answer.

We find, for the reasons stated herein, that this Commission is without jurisdiction to hear Northern's complaint. We therefore decline to comment on the merits of Northern's allegations inasmuch as they are deemed moot.

Sacramento is a public agency of the State of California and not subject to the jurisdiction of this Commission. On October 10, 1968, Sacramento was granted a provisional construction permit by the Atomic Energy Commission (AEC) 1/ for Rancho Seco Nuclear Unit No. 1. There were no intervenors at the hearings provided by the AEC on issuance of that permit. Once a project is determined to be "useful for industrial or commercial purposes", a commercial license will issue under the Atomic Energy Act. 2/ Section 105 of that Act 3/ gives the AEC power to revoke or suspend licenses where the licensee may be in violation of an antitrust statute, empowers the AEC to report to the Attorney General any antitrust violations, and the AEC must send all Section 103 licenses to the Attorney General for an antitrust review. 4/ If there is determined to be adverse antitrust consequences, the Attorney General will report the same to the AEC, after which the AEC must hold a hearing. Where a construction permit issued prior to December 19, 1970, any party who intervened or sought to intervene, may, within 25 days after notice of filing for a Section 103 operating license, request an antitrust review by the Attorney General. 5/ Under Section 105 of the Atomic Energy Act, the AEC has the power to condition any licenses which it has issued, in order to correct any potential antitrust abuses. 6/

We find that the Atomic Energy Act, and the 1970 Amendments thereto, indicate a close liaison between the AEC and the Attorney General, to investigate and remedy any potential antitrust violations in the licensing procedures of nuclear generating facilities.

1/ AEC Docket No. 50-312.

2/ 1970 Amendments to Section 102 of Atomic Energy Act, 42 U.S.C. §2132 and Section 103, 42 U.S.C. §2133.

3/ 42 U.S.C. §2135.

4/ Ibid.

5/ Ibid.

6/ Ibid.

We find it unmistakably clear, that Section 201(b) of the Federal Power Act, carefully limits our authority and that our jurisdiction does not extend to the "facilities" used for the generation of electrical energy. Although we are mindful of Section 271 of the Atomic Energy Act, which states that normal federal, state, and local regulatory authority over the generation, sale, and transmission of electric energy shall continue, we do not find that the Federal Power Act should be amended by "implication", so as to give this Commission certificate jurisdiction over the facilities of Sacramento.

We are dealing with a complaint, which does not allege rate discrimination, nor does it allege that the the proposed rates are unjust or unreasonable. Northern has requested this Commission to exercise jurisdiction over the size of a nuclear generating unit and to allocate the bulk power generated therefrom, such unit being subject to the licensing provisions of the Atomic Energy Act, and such unit being owned and financed by a government agency of the State of California. We find this Commission has no such jurisdiction.

The Commission further finds:

(1) FPC Electric Rate Schedule No. 45 and Supplement No. 1 to FPC Electric Rate Schedule No. 34, dated June 4, 1970, between Pacific and Sacramento, are just and reasonable and otherwise lawful under the Federal Power Act.

(2) Good cause has been shown to waive the notice requirements to Section 35.3 of the Commission's Regulations under the Federal Power Act (18 CFR 35.3) to permit Pacific to file FPC Electric Rate Schedule No. 45 at this time.

The Commission orders:

(A) Waiver of the notice requirements of Section 35.3 of the Commission's Regulation under the Federal Power Act (18 CFR 35.3) is hereby granted so as to allow Pacific to file FPC Electric Rate Schedule at this time to become effective upon commercial operation of Rancho Seco Unit No. 1.

(B) Supplement No. 1 to FPC Electric Rate Schedule No. 34 is to be effective January 21, 1971.

(C) Northern's complaint is hereby dismissed and these proceedings terminated.

By the Commission.

(S E A L)

Kenneth F. Plumb,
Acting Secretary.