NOT FOR PUBLICATION

Filed Aug 6, 2002

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PACIFIC GAS AND ELECTRIC COMPANY, No. 01-71251

Petitioner, FERC No. ER99-3713

MERCED IRRIGATION DISTRICT, MEMORANDUM

Intervenor,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

PACIFIC GAS AND ELECTRIC COMPANY, No. 01-71270

FERC No. EL98-46

Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

SOUTHERN CALIFORNIA EDISON COMPANY,

No. 01-71297

FERC No. EL-98-46

Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

SOUTHERN CALIFORNIA EDISON COMPANY,

No. 01-71303

FERC No. EL98-46

Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent

On Petition for Review of an Order of the
Federal Energy Regulatory Commission

Argued and Submitted July 9, 2002
Pasadena, California

Before: HUG, FARRIS, and SILVERMAN, Circuit Judges

Pacific Gas & Electric Company ("PG&E") and the Southern California Edison Company ("Edison") (together, "Petitioners") petition for review from a decision of the Federal Energy Regulatory Commission ("FERC" or "Commission") denying rehearing of its order which accepted for filing an executed Interconnection Agreement ("IA") between PG&E and Fresno Irrigation District as well as a similar agreement between Edison and Laguna Irrigation District. FERC required PG&E and Edison to provide a series of "wholesale" electrical interconnections to Laguna and to Fresno so that Laguna and Fresno could take advantage of a California retail access program and enhance competition in the market of electricity.

We have jurisdiction pursuant to Section 313(b) of the Federal Power Act ("FPA"), 16 U.S.C. §8251(b) and we affirm. Because the parties are familiar with the procedural and factual history of this case, we do not recount it here except as necessary to explain our decision.

As this case concerns the Commission's interpretation of the FPA, we will follow the framework enunciated in Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984). Chevron "mandates that absent a clear expression

of congressional intent to the contrary, courts should defer to reasonable agency interpretations of ambiguous statutory language." Fiends of Cowlitz v. FERC, 253 F.3d 1161, 1166 (9th Cir. 2001); see also, City of Seattle v. FERC, 923 F.2d 713, 715 (9th Cir. 1991) (court generally shows "great deference" to the Commission's interpretation of the law it is charged with administering).

Under FPA § 210(c), the Commission cannot grant an application for an order directing interconnection unless it is determined that such order (1) is in the public interest, (2) would either (A) encourage overall conservation of energy or capital, (B) optimize the efficiency of use of facilities and resources, or (C) improve the reliability of any electric utility system to which the order applies, and (3) meets the requirements of FPA § 212. The central issues in this case is whether the interconnection orders in question violate § 212, specifically § 212(h).

In its decision, the Commission rules that § 212(h) presents no barrier to the Commission's order because § 212(h) only applies to requests for transmission and, since here the Commission was only ordering interconnection, § 212(h) is inapplicable.

It is true that some provisions of § 212 do not apply to §210

interconnection orders and only apply to FPA § 211 Commission orders (i.e. orders requiring the transmission of electrical power). However, Petitioners argue that the Commission's interpretation that § 212(h) does not apply to § 210 orders was unreasonable. In support, Petitioners point out that when Congress intended to limit a sub-section of § 212 to transmission orders, Congress expressly provided that the sub-section applies only to an order "under section 824j [§ 211] of this title." See FPA §§ 212(a), (c)(2)(B), (j)(2)(B)(I)(4), (j) and (k); 16 U.S.C. § 824k(a), (c)(2)(B), (i)(2)(B), (i)(4), (j) and (k). Petitioners reason that, since Congress failed to employ such a directive in § 212(h), it must have intended to not exempt interconnection requests (i.e. requests filed under § 210) from the requirements of § 212(h).

The Commission, however, points to the language of § 212(h), which states that "No order issued under this chapter shall be conditioned upon or require the transmission of electric energy . . . ." 16 U.S.C. § 824k(h) (emphasis added). As this wording refers only to orders requiring transmission, the Commission reasoned that § 212(h) does not apply to requests that merely require an interconnection order.

It is noteworthy that Congress omitted language in § 212(h) explicitly

limiting that section to § 210 orders, yet used such language in other sections of § 212. See 2A Norman J. Singer, Sutherland Statutory Construction § 46.06 (6th ed. 2000 & Supp. 2002)("[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.") However, we have held that "canons of construction are mere aids to the determination of legislative intent" and common sense must be the ultimate guide. Polson Logging Co. v. U.S., 160 F.2d 712, 176 (9th Cir. 1947). Because § 212(h) specifically refers to "transmission," we cannot say that the Commission's interpretation (i.e. that § 212(h) only applies to transmission orders and not requests for interconnection) is unreasonable under Chevron.

Accordingly, the petition for review is DENIED.