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Appeals Court Rules in Cases on Distribution System Access and Fairness of Service

January 25, 2022 | *William S. Huang, Jeffrey M. Bayne*

On January 25, 2022, finding that FERC's decisions "present a troubling pattern of inattentiveness to potential anti-competitive effects of PG&E's administration of its open-access Tariff," the D.C. Circuit issued a combined opinion granting San Francisco's petitions for review of two separate Federal Energy Regulatory Commission ("FERC") orders. The two cases involved longstanding disputes with Pacific Gas and Electric Company ("PG&E") over the city's ability to access PG&E's distribution system and receive wholesale distribution service on fair terms. The court vacated both of FERC's rulings which had been in PG&E's favor.

The first case involved a PG&E requirement that San Francisco install unnecessary and expensive facilities in order to interconnect new, relatively small city customers to PG&E's distribution system. These unnecessary facilities would also be oversized and would take up valuable space that the city could otherwise use for things such as childcare at affordable housing facilities and parking at healthcare centers. The D.C. Circuit found that FERC had failed to engage in reasoned decision-making in allowing PG&E to impose this requirement, and that PG&E had not identified any safety, reliability, or other reasons to support it.

The second case involved a "grandfathering" provision in PG&E's Tariff that gave San Francisco the right to serve certain customers. The court found that FERC had ignored the clear language of the Tariff and improperly allowed PG&E to refuse to provide grandfathered Tariff service to certain of San Francisco's longstanding customer base—city agencies, tenants on city properties, and entities providing service in coordination with the city.

The court remanded both cases to FERC for further proceedings consistent with the court's opinion.
Spiegel attorneys William Huang, Katie Mapes and Jeff Bayne represented the city on these cases. You may read the decision in City & Cnty. of S.F. v. FERC, 24 F.4th 652 (D.C. Cir. 2022), at the link below.

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