Decision 87 10 038 OCT 16 1987

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

INTEGRATED ENERGY DEVELOPMENT,

Complainant,

v.

SOUTHERN CALIFORNIA EDISON COMPANY, a corporation,

Defendant.

ORIGINAL

Case 87-02-001
(Filed February 2, 1987)

John D. Quinley, Integrated Energy Development, complainant.
Richard K. Durant, Carol B. Henningson, and Julie Miller, Attorneys at Law, for Southern California Edison Company, defendant.

O P I N I O N

Integrated Energy Development (IED) filed its complaint on February 2, 1987. The complaint concerns IED's dealings with Southern California Edison Company (Edison) with regard to a 8.2 megawatt (MW) biomass-fueled generating plant that IED hoped to construct in Victorville. IED alleges that on April 15, 1985, it signed an interim Standard Offer No. 4 (SO4), which set the terms for sales to Edison of electricity generated at the Victorville facility. IED states that after it signed the offer, an Edison representative said that Edison had temporarily ceased signing SO4 contracts. When IED learned the Commission had suspended the availability of SO4 on April 17, 1985, in Decision (D.) 85-04-075, IED believed that it did not have a binding contract for purchases of its project's generation. IED later found out that the Commission's suspension applied to all projects that had not submitted specific proof of site control. IED alleges that it had informed Edison of its ability to acquire the needed land but had

not supplied documents showing site control. IED, therefore, assumed that its project was subject to the suspension and ceased all efforts to pursue the project.

On June 21, 1985, in D.85-06-163, the Commission modified the scope of the suspension. The Commission allowed a limited exception to the suspension for projects that had tendered a signed SO4 before the suspension but had not submitted evidence of compliance with all terms of the Qualifying Facility Milestone Procedure (QFMP), which had been adopted in D.85-01-038. The utilities were directed to notify all such projects that they would have 60 days to comply with all required elements of the QFMP screening criteria, including project definition, proof of site control, and a project development schedule.

IED alleges that it came within the exception allowed in D.85-06-163, but it never received such notice. It states that it did not become aware of D.85-06-163 until August 1986. In October 1986, its representatives met with Edison's and requested 60 days to show its compliance with the QFMP screening criteria. According to IED, Edison refused its request.

The complaint asks the Commission to order Edison to offer IED 60 days to comply with the QFMP screening criteria and thus to transform the SO4 it signed into a binding contract.

Edison answered the complaint on March 17, 1987, and amended its answer on March 23. Edison denied many of the facts alleged in the complaint and disputed IED's conclusion that it was entitled to 60 days to qualify for SO4. Edison also offered several affirmative defenses.

A telephone prehearing conference was held on April 16, 1987. The issues in dispute were more narrowly defined and the parties agreed to narrow the issues further, if possible, and to stipulate to facts not in dispute.

At the time of the evidentiary hearing, the parties had not entirely resolved the dispute, but a joint stipulation of facts

was submitted in evidence. The evidentiary hearings were held on July 16 and 17, 1987, in San Francisco.

The Stipulated Facts

For purposes of this decision, the important stipulated facts center on several meetings that occurred in April 1985.

IED was owned by J. Jungwirth, Inc., the fictitious name of a partnership owned equally by Kirby Hammond and James Jungwirth. IED's rights to the Victorville project have been acquired by Victorville Power, a partnership. Hammond and Ray Tate, Jr., are the "active general partners."

On April 9, Hammond of IED met with Robert Ferguson of Edison. Ferguson advised IED to submit a project description to Edison. The issue of site control was also discussed.

IED submitted the project description to Edison on April 11. In the cover letter, Hammond requested an SO4 contract with a 20-year term for Edison's purchases from the project.

The parties met again on April 15. At the start of the meeting, both parties expected to be able to execute an SO4 power purchase agreement (PPA) for IED's project. IED signed the agreement during the meeting, but Edison did not.

On April 17, the Commission suspended the availability of SO4. IED received no communication from Edison related to QF matters following April 17. Edison received no communication from IED from April 17, 1985 until October 1986. Hammond and Tate of IED met with Ferguson and Ronald Luxa of Edison on October 27, 1986, to request 60 days to show compliance with the QFMP screening criteria. Edison refused.

Beyond these bare facts, the parties differ substantially in their recollection and interpretation of pertinent events.

IED's Position

According to the testimony of Hammond, IED began development of the Victorville project in the summer of 1984. In the fall of that year, he met with Edison representatives, who

concurred that the proposed location was acceptable for such a project. The original proposal was for a 15 MW plant, but air quality concerns later led to a reduction in size to 8.2 MW.

Hammond heard rumors of an impending suspension of SO4 around the middle of March 1985. He called Edison on April 3 to set up a meeting to explore the requirements for a contract. The meeting was set for April 9.

On April 9, he and Donald Bartz of Douglas Energy Company, a consultant to IED, met with Ferguson. Bartz also testified for IED about this meeting. All aspects of the project were discussed, according to Hammond, including site control. Ferguson asked Hammond to submit an additional report based on a Project Information Outline he supplied. During the discussion, Hammond told Ferguson that IED was in negotiations with the City of Victorville and realtors concerning a 12-acre plot of redevelopment property. IED had been told the details of the purchase and had been informed that no other parties had expressed an interest in the property. Hammond told Ferguson that IED could obtain an option on the property, if necessary. According to Hammond and Bartz, Ferguson never said that an option was a requirement for signing the PPA. Hammond understood that IED's current status regarding site acquisition was sufficient to meet Edison's requirements.

Hammond prepared a report based on Edison's Project Information Outline and express mailed it to Edison on April 11. He also called Ferguson to verify that he had received the package. In that conversation, Ferguson raised no concerns about site control, according to Hammond.

On April 15, Hammond called Edison early in the morning and talked to Dennis Clayton. After apparently consulting with Ferguson, Clayton told Hammond that Edison would sign the PPA, according to Hammond. Hammond immediately flew to Los Angeles. At Edison's offices, he met with Ferguson, who presented him with two

copies of the PPA. Hammond states that after he had signed both copies, Ferguson informed him that Edison had temporarily suspended signing SO4s. According to Hammond, no specific reason was given for Edison's refusal to sign the PPA with IED. Hammond left the meeting disappointed but with the feeling that Edison would sign the agreements later.

After he learned of the suspension order, Hammond contacted the Commission's staff and learned that, unless IED had presented at least an option to purchase the property, the utility was not required to sign the tendered PPA. He attempted to call Bob Edgell, Ferguson's superior at Edison, but he was told that Edgell had changed jobs and that he should talk to Ferguson. But Hammond did not want to speak to Ferguson, because "I knew he was not going to help me."

In March 1986, he briefly discussed reviving the project with Tate, and a new partnership, Victorville Power, was formed.

In August 1986, Hammond first learned of D.85-06-163 and decided to begin pursuing what he felt were IED's rights under that decision.

Hammond met with representatives of Edison on October 27, 1986. At that meeting, Luxa admitted that Edison's failure to notify IED of the 60-day opportunity provided by D.85-06-163 was an oversight, according to Hammond.

From these facts, IED argues two conclusions. First, IED believes that it had a right under D.85-06-163 to be notified of its opportunity to comply with the QFMP screening criteria, particularly site control, within 60 days. IED asserts that it could have easily presented evidence of site control, since it had reassurances from the realtor with exclusive rights to represent the owners of the property that IED would be notified if any other parties expressed interest in the property. IED believed it could have quickly obtained an option to purchase the property and could have completed the purchase within a few months.

IED supplements this argument by stating that Ferguson's communications before April 17 created confusion about what exactly the requirements were for the PPA. As a result of that confusion, IED failed to take steps to provide proof of site control, although it could have if the requirements had been made clear.

Second, IED argues that by the date of the suspension decision, its project had reached a stage when it could have satisfied all contract prerequisites. Under D.86-07-032, IED believes that it should be granted an SO4.

Edison's Position

Edison's version of the facts was presented primarily through the testimony of Ferguson. Luxa added testimony on facts within his knowledge.

IED contacted Ferguson in the fall of 1984 concerning the Victorville project. He explained then that the first step in proceeding was a method of service study. In response, IED in a letter of November 19, 1984, presented the information needed for Edison to initiate a method of service study.

Ferguson did not hear from IED again until the meeting of April 9, 1985. At that meeting, Ferguson explained Edison's policy that contracts would be executed for projects supplying an adequate project description, proof of site control, and, for certain technologies, including biomass projects, an available source of fuel. According to Ferguson, he explained that Edison preferred ownership of the property to demonstrate site control, but an option would be acceptable. His impression was that IED would secure an option on the desired property.

According to Ferguson, the letter and report of April 11 met all the requirements except site control. He was surprised, however, that the size of the project had been reduced from 15 MW to 9.2 MW; this was the first time he was notified of the reduction in size. This reduction would require a new method of service study.

Ferguson testified that he expected that IED would present an option to purchase the property for its project at the meeting of April 15. He was juggling appointments with several developers at the time, and he presented Hammond with the copies of the proposed PPA, then excused himself to deal with other developers and to give Hammond a chance to review the documents. When he returned, he reviewed the documents presented by IED and discovered that proof of site control was still lacking. He explained that IED would need to supply proof that it had exclusive rights to develop the property. According to Ferguson, Hammond then became angry and upset and said that purchasing an option would cost additional money, that this expense was unnecessary, and that he had no intention of purchasing the option. According to Ferguson, Hammond then left abruptly, with no indication that he intended to continue discussions with Edison. Ferguson denies that he stated at this meeting that Edison had suspended signing contracts.

Ferguson interpreted Hammond's actions and statements at the April 15 meeting as a refusal to provide site control and thus an abandonment of the project. This impression was confirmed in his mind as time passed without any further contact from any representative of IED.

He heard nothing further from anyone connected with IED until April 16, 1986, when an attorney, Joaquin Talleda, called him with some questions about the status of IED's project. Talleda stated that he was not yet representing IED.

On October 20, 1986, a representative of IED called Edison to set up the meeting of October 27. At the meeting, Ferguson explained that he believed that IED had abandoned the project, and he did not think that IED was entitled to 60 days to perfect its claim to an SO4. He offered Standard Offer No. 1, the only standard offer available at that time, and he pointed out that IED could file a complaint with the Commission to pursue its claim

for an S04. He denies saying that IED had not been notified under D.85-06-163 because of an oversight. Luxa also denies making this statement.

Based on these facts, Edison makes several arguments.

First, it argues that even if the Commission accepts that there was confusion over the site control requirement, IED had two days between the April 15 meeting and the April 17 suspension decision to obtain the option. The fact that nothing was done shows the weakness of IED's claim and demonstrates its intent to abandon the project.

Second, Edison argues that Hammond's behavior at the April 15 meeting created a reasonable belief that he intended to abandon the project, a belief that was strengthened by his failure to contact Edison again about the project for eighteen months. Under these circumstances, Edison was not obligated by D.85-06-163 to offer IED an opportunity to correct the defects in its submissions.

Third, Edison points out that IED has established absolutely no reason for Edison to treat IED any differently from the many other developers who were seeking S04s at the same time as IED. Edison points out that the Commission noted in D.85-06-163 that Edison had in fact signed many contracts with other developers at this time. When Edison discovered that it had inadvertently neglected to sign the contracts of two developers who had completed and signed the contract, it took it upon itself to petition the Commission for permission to execute the contracts. Edison's behavior at this time does not support IED's suggestion that Edison was treating it unfairly.

Fourth, Edison points out that the purpose of the 60-day period is to make sure that the developers had adequate notice of their obligations under the QFMP. In IED's case, however, the requirement of site control was clearly communicated, and sending a

notice would have been redundant. Thus, Edison concludes that the purpose of D.85-06-163 did not apply to IED's case.

Finally, Edison points out that equity requires parties not to sleep on their rights; that is, to pursue their claims promptly. By the time that IED got around to asserting its claim to the opportunity provided by the 60-day period, eighteen months had elapsed. Edison believes that the Commission has no obligation to come to the rescue of a party that submits its claim so tardily.

Discussion

In summary, IED asserts that it had a right to be notified after the issuance of D.85-06-163 of the opportunity to comply with the QFMP, that it was not notified either because of a failure of communication or Edison's intentional actions. IED requests the Commission to order Edison to allow it a similar opportunity now. Edison, on the other hand, believes that since it had actually notified IED of the site control requirement, the notice required by the decision would have been an idle act. In Edison's view, IED had clearly stated its intent to abandon the project before the suspension order was issued.

However, we would frame the issues somewhat differently, and the following discussion follows our analysis.

The first question for our resolution is whether Edison should have notified IED of its opportunity to comply with the QFMP after the issuance of D.85-06-163.

In D.85-06-163, we discussed several problems that arose as a result of the suspension of SO4. The timing of contract formation was an important and tricky issue. We restated our position that the offer and acceptance theory of contract formation applied to the standard offers, and we reiterated that acceptance of the standard offer, as evidenced by the developer's signature on the completed offer, and delivery of the signed offer to the utility resulted in a binding contract. However, we also noted that in an earlier decision, D.85-01-038, we had stated that the

QFMP requirements of project definition, including proof of site control and a preliminary development schedule, "must be provided [by the developer] prior to signing a power purchase agreement." (D.85-01-038, mimeo., App. B, p. 5.) Applied to the facts of this case, this requirement meant that IED's signing of the offer at the meeting of April 15 was not an effective acceptance of the offer.

D.85-06-163 goes on to note that the actual QFMP adopted in D.85-01-038 did not state that site control must be provided before signing the contract; this sequence was mentioned only in the text and in an appendix. Further, the decision did not require the screening criteria to become part of the standard offer. D.85-06-163 concluded that these and other facts "may have led to qualifying facilities being inadequately notified of their altered responsibilities in signing the interim Standard Offer 4." (D.85-06-163, mimeo., p. 31.) (Qualifying facilities or QFs refer to certain cogenerators and small alternative energy producers who qualify for benefits under the federal Public Utility Regulatory Policies Act of 1978.)

To remedy this situation, D.85-06-163 directed:

> "For those qualifying facilities who tendered interim Standard Offer 4 agreements...but had not complied with or completed the QFMP screening criteria before April 17, 1985, the qualifying facility shall have the opportunity to validate its signature on the standard offer by complying with the QFMP screening criteria <u>within 60 days of the effective date of this order</u>. The utility shall notify each of the affected qualifying facilities by writing within one week of the effective date of this order of the qualifying facility's obligation to comply with the QFMP screening criteria. The notice shall include the exact information the qualifying facility is to supply to the utility (project definition, including proof of site control, and a preliminary development schedule) and the time period permitted for such compliance (60 days). The notice shall also explain that the qualifying facility's signature on its tendered agreement will not become valid until those requirements are

met." (D.85-06-163, mimeo., Ordering Paragraph 2(b), pp. 45-46, emphasis added.)

The terms of this ordering paragraph apply directly to IED's situation. It had submitted a signed agreement and had not complied with the screening criteria. Edison apparently believed that IED had abandoned the project, so no notice was required. Edison also argues that actual notice of the QFMP requirements had been presented to IED, so further notice would have been futile. However, the terms of this ordering paragraph apply perfectly to IED's situation, and Edison had no discretion to exclude any of the QFs tendering offers from the decision's required notice. Edison should have sent IED the notice required by the decision within one week of the effective date of the decision, or by June 28, 1985.

This conclusion, however, does not resolve this case, since the opportunity to comply with the screening criteria expired 60 days after the effective date of D.85-06-163, or on August 20, 1985. We must also decide, therefore, whether Edison's failure to give the required notice justifies giving IED an opportunity to remedy the defects in its attempted acceptance of April 15, 1985, and thus whether IED may now provide proof of site control and qualify for an SO4 agreement. Resolving this issue brings us quickly to examining the reasons for IED's lengthy delay in pursuing its rights under D.85-06-163.

The bare facts are these: Hammond states that he did not become aware of D.85-06-163 until August 1986. He met with Edison's representatives on October 27, 1986, and requested 60 days to supply the required information. His request was refused. The complaint in this case was filed on February 2, 1987.

IED's evidence in this case focused entirely on when Hammond, as an individual, became aware of the decision. However, we believe that our focus should be on when knowledge of D.85-06-163 may reasonably be imputed to IED as the complaining entity. Even if we accept Hammond's testimony that he did not

become aware of D.85-06-163 until August 1986, complainant IED must be imputed with knowledge of the decision if any of its partners had such knowledge. (Corporations Code Section 15009.) Also, if IED or Hammond should have known of the decision at an earlier date, the mere fact that Hammond actually remained ignorant of the decision would not entitle IED to extraordinary treatment.

Several facts leave us with the firm conviction that representatives of IED knew, should have known, or should be imputed with knowledge of the details of D.85-06-163 well before the time that Hammond states he became aware of the decision.

First, according to Ferguson's notes of Talleda's call on April 16, 1986 (Ex. 8), Talleda asserted that IED was an "orphan" entitled to a SO4 contract. D.85-06-163 was the decision that established the status of various categories of QFs who had been referred to as orphans after the suspension decision. This strongly suggests that Talleda was aware of D.85-06-163. We also note that Talleda's firm was on the service list for D.85-06-163. Under these circumstances, it is difficult to give credence to Hammond's statement that Talleda did not mention the claimed status of IED during the course of a one-hour conversation in July 1986.

Second, Hammond obtained two letters at about the same time as Talleda's call to Edison. One was written by William Porter, the real estate agent Hammond had consulted about the Victorville site (Ex. 3). The letter, dated April 30, 1986, is stated to have been written in response to Hammond's request for a written confirmation of the negotiations between Hammond and Porter "prior to April 17, 1985." The letter describes the meeting of the parties and the terms of the oral option that Porter apparently offered Hammond. The second letter is from IED's consultant Bartz to Hammond and is dated May 1, 1986 (Ex. 5). This letter also responds to a request from Hammond to documert Bartz's recollection of the meeting of April 9, 1985, with Ferguson. The bulk of Bartz's letter discussed the issue of site control. What is not

explained adequately in the record is why these letters, with their emphasis on site control, were requested in April 1986 unless IED was pursuing its belief that it had a right to an opportunity to demonstrate site control under D.85-06-163. According to Hammond's testimony, at that time he knew only that Edison had failed to sign the contract before the suspension, and that, according to the PUC staff, unless he had an option Edison would not be compelled to sign the contract. The letters' emphasis on site control is entirely mysterious under Hammond's version of events. His explanation that at that time he was attempting to reconstruct events to show IED's good faith as preparation for negotiations with Edison is unconvincing in light of the content of the letters and IED's failure ever to contact Edison about the project before October 1986.

Third, several of the partners of IED, including Hammond, and of Victorville Power, which succeeded to IED's interest in this project on April 1, 1986, were very active in independent energy development. Hammond testified, for example, that he managed to hear about the impending suspension of SO4 three to four weeks before the Commission's suspension decision. His testimony on this point makes it more difficult to accept that he did not discover that IED had a potential claim to an SO4 until over a year after the decision establishing those rights was issued. Hammond worked during this time as a developer of other, similar projects. Tate and John Quinley, who became partners in Victorville Power on April 1, 1986, were also very active in independent power during this period. We find it unlikely that all of these partners of IED and its successor partnership failed to keep up with the decisions of the Commission in an area affecting their very livelihoods.

Fourth, the records in our formal file, which we may and do officially notice under Rule 73 of our Rules of Practice and Procedure, indicate that Hammond, as a representative of IED, was served with a copy of D.85-06-163 when it was issued. (The

decision was mailed to 959 Hally Avenue, Rohnert Park. In several places in the record, Hammond's address is given as 959 Holly Avenue, Rohnert Park.) In addition, Quinley, who became a partner of Victorville Power in April 1986, is also on the service list for that decision.

Fifth, the evidence presented in this case leaves IED's failure to contact Edison for eighteen months completely unexplained. Hammond offered no explanation for this failure. His testimony was that he left the April 15 meeting disappointed but hopeful that Edison would sign the contract after it lifted its temporary suspension. Yet a few weeks later, he declined to call Ferguson, because "I knew he was not going to help me." Nothing in Hammond's testimony gave any indication that Ferguson was untrustworthy or out to get IED, as Hammond's statement suggests. Ironically, this statement is more consistent with Ferguson's testimony that Hammond left the April 15 meeting in anger, apparently feeling that unreasonable requirements were being placed on him.

We conclude that representatives of IED knew, should have known, or should be imputed with knowledge of the terms of D.85-06-163 no later than April 1, 1986 and perhaps as early as late June 1985.

However, even if we accept that no one connected with IED knew or should have known of the decision until August 1986, there still was a substantial delay by IED in pursuing its rights. First, it waited at least eight weeks, from some time in August to October 27, 1986, to meet with Edison to pursue its claim. After Edison's rejection, it waited another three months before filing its complaint with the Commission. Since the original period allowed for curing defects in the acceptance was less than 60 days from the time the utility notified the QF, and since these dates reflect the facts most favorable to IED, we conclude that IED acted unacceptably slowly in pursuing its claim under D.85-06-163.

One of the maxims of jurisprudence is that a party should not sleep on his rights (Civil Code Section 3527). In the circumstances of this case, IED was thus obligated to act promptly to pursue its rights. In light of the circumstances of this case, we believe that IED's request came too late to be granted the relief that it sought. The original 60 days was offered as a temporary expedient to solve some problems that arose from some potential confusion created by our decisions. Moreover, the reason behind the suspension--our fear that ratepayers would be harmed because the prices included in the SO4 were based on out-of-date forecasts--required that the time for clearing up this confusion be kept to a minimum. Furthermore, the reason for the suspension has not diminished with the passing of time; thus, granting IED's requested relief would be unfair to the ratepayers who would ultimately bear the high and outdated costs under the contract IED seeks. Stated in simple terms, IED waited until February 1987 to request the Commission to grant it an opportunity that had expired on August 20, 1985, to qualify for a contract based on economic forecasts from May and June 1983 (when SO4 was negotiated), which the Commission in April 1985 had concluded were dangerously out of date and potentially harmful to ratepayers.

Although Edison should have notified IED earlier, when we balance the equities in this case, the potential harm to ratepayers from IED's requested relief combined with IED's unreasonable delay in pursuing its claim clearly persuade us that we should deny IED's complaint. Because of the potential harm to ratepayers, we are not prepared to say that we would have granted the relief requested by IED even if it had acted more promptly. But we need not reach this question, since we conclude that IED delayed so long in acting that its complaint should be denied.

IED also argued that it qualified for an SO4 under D.86-07-032. That decision applied the rulings of D.86-05-024, which suspended the availability of Standard Offer No. 2, to the

situation of a specific developer. As pertinent here, D.86-05-024 states:

> "If the project in fact had reached a stage by that date where it could have satisfied all contract signing prerequisites (including the screening criteria of the QF Milestone Procedure), then we think that the developer should have a reasonable opportunity to cure deficiencies in its submittals as they existed when the suspension occurred. On the other hand, since the QF Milestone Procedure has been in effect and incorporated in the standard offers significantly earlier than the suspension of Standard Offer 2, we see no reason to authorize a grace period...for the developer to get, e.g., site control." (D.86-05-024, mimeo. p. 24.)

IED's argument apparently emphasizes its belief that it should be granted an SO4 because it could have satisfied all contract signing prerequisites as of April 17, 1985. However, the facts in this case show that it could not have satisfied all prerequisites because it could not have demonstrated site control. It could not have demonstrated site control because it had not then, and it has not now, obtained exclusive development rights to the selected site for its project. As of April 17, it still needed to firm up the terms of the oral option to obtain site control. (See Ex. 3.) As the second sentence of the above quotation demonstrates, D.86-05-024 did not contemplate a grace period to allow developers to obtain site control when they had not done so at the time of the suspension. Therefore, we reject IED's argument.

Findings of Fact

1. IED filed a complaint against Edison on February 2, 1987. The complaint alleged that IED had signed an SO4 on April 15, 1985. The complaint further alleges that Edison failed to notify IED of its opportunity to comply with the QFMP screening criteria within sixty days of D.85-06-163, as directed by that decision.

2. Edison answered IED's complaint and disputed that IED was entitled to an opportunity to qualify for SO4. Edison asserts that IED had actual notice of the requirements of the QFMP screening criteria before April 17 and further notification would have been an idle act.

3. IED and Edison filed a joint stipulation of certain facts.

4. IED began work on a 15 MW biomass project located in Victorville in the summer of 1984. IED met with Edison to discuss the location of the project in November 1984. IED's next contact with Edison was a telephone call on April 3, 1985. During the intervening period, IED had reduced the size of the project to 8.2 MW because of air quality concerns.

5. On April 9, 1985, Hammond and Bartz met with Ferguson to discuss the project. The issue of site control was discussed at this meeting. Ferguson advised IED to submit a project description.

6. IED express mailed the project description to Edison on April 11, 1985. The cover letter requested an SO4 contract with a 20-year term for the project. Hammond also called Ferguson on that day.

7. Hammond and Ferguson met again on April 15, 1985. IED signed the contract at this meeting.

8. On April 17, 1987, the Commission issued D.85-04-075, which suspended the availability of SO4. D.85-04-075 was modified on June 21, 1985, by D.85-06-163, which directed utilities to notify "those qualifying facilities who tendered interim Standard Offer 4 agreements...but had not complied with or completed the QFMP screening criteria before April 17, 1985," of their opportunity to comply with the screening criteria within 60 days of the date of D.85-06-163.

9. The QFMP screening criteria, as established in D.85-01-038, included "proof of site control such as exclusive

option for land or developments rights." As of April 17, 1985, IED had not submitted proof of site control to Edison.

10. Edison did not notify IED of its rights to comply with the screening criteria within sixty days, as directed in D.85-06-163.

11. IED did not directly contact Edison about the project until October 1986. On October 27, 1986, Hammond and Tate met with Ferguson and Luxa concerning the project.

12. Victorville Power, a partnership, succeeded to IED's interest in the Victorville project on April 1, 1986. Among the initial partners in Victorville Power were Hammond, Tate, and Quinley.

13. Talleda called Ferguson on April 16, 1986, to inquire about the status of the Victorville project. Talleda's questions indicated that he was familiar with the provisions of D.85-06-163.

14. Porter's letter of April 30, 1986, and Bartz's letter of May 1, 1986, state that the letters were solicited by Hammond and primarily discuss site control issues.

15. Hammond and Tate were active in other independent energy projects in 1985 and 1986.

16. Talleda's law firm, Hammond, and Quinley were mailed copies of D.85-06-163 on June 27, 1985.

Conclusions of Law

1. As of April 17, 1985, IED had tendered a signed SO4 contract to Edison. Because IED had not submitted proof of site control as required under the QFMP, IED's signature did not result in a binding agreement. Edison should have notified IED of its opportunity to comply with the QFMP screening criteria within 60 days of the effective date of D.85-06-163.

2. The period for orphan QFs to comply with the QFMP screening criteria expired on August 20, 1985.

3. IED and IED's successor, Victorville power, should be imputed with the knowledge of their partners.

4. IED knew or should have known of the provisions of D.85-06-163 no later than April 1, 1986, and the evidence suggests that IED knew of the decision as early as late June 1985.

5. The prices contained in SO4 in April 1985 were partially based on economic projections available in May and June 1983, when SO4 was negotiated.

6. IED delayed an unreasonable time before pursuing its claim under the provisions of D.85-06-163.

7. Permitting IED to obtain an SO4 at this time would likely lead to unreasonable harm to ratepayers.

8. IED's claim should be denied.

O R D E R

IT IS ORDERED that the complaint of Integrated Energy Development against Southern California Edison Company is denied.

This order is effective today.

Dated OCT 16 1987, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
Commissioners

Commissioner John B. Ohanian, being necessarily absent, did not participate.

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Victor Weisser, Executive Director