

Decision 87 12 056 DEC 17 1987

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Second application of Pacific Gas and Electric Company for approval of certain standard offers pursuant to Decision 82-01-103 in Order Instituting Rulemaking No. 2.

) Application 82-04-44  
) (Filed April 21, 1982;  
) amended April 28, 1982,  
) July 19, 1982, July 11, 1983,  
) August 2, 1983,  
) and August 21, 1986)

) Application 82-04-46

) Application 82-04-47

) Application 82-03-26

And Related Matters.

) Application 82-03-37

) Application 82-03-62

) Application 82-03-67

) Application 82-03-78

) Application 82-04-21

O P I N I O N

ON QUEUE MANAGEMENT AND RELATED CONTRACT PROVISIONS (REINSTATEMENT OF STANDARD OFFER 2)

In today's decision, we deal with queue management and related contract provisions for Standard Offer 2, soon to be reinstated for San Diego Gas & Electric Company (SDG&E). That offer remains suspended for Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (Edison) until the biennial resource plan update proceeding to follow the California Energy Commission's Seventh Electricity Report.

We approve most of SDG&E's proposals for these provisions, which include (1) procedures for the Qualifying Facility (QF) to establish its priority for a Standard Offer 2

contract and for transmission capacity, and (2) revisions to Standard Offer 2 provisions similar to other provisions recently developed for final Standard Offer 4. However, our approval is limited to the blocks of Standard Offer 2 capacity identified in Decision (D.) 87-11-024, mimeo., pp. 31-42.

The reason for this limited approval is that more time is needed to develop conforming language for Standard Offers 1 and 2, to ensure consistency between SDG&E, PG&E, and Edison, and to implement the curtailment option approved in principle for final Standard Offer 4. Thus, we direct that the parties continue work to develop conforming Standard Offer 1 and Standard Offer 2 contract provisions that incorporate provisions from final Standard Offer 4 where appropriate.

#### I. Background

By D.86-05-024, we suspended the availability of Standard Offer 2 for the signing of new contracts. The concerns prompting the suspension were that our updating and capacity valuation procedures appeared inadequate to reflect the utilities' varying needs for new capacity. We have since made modifications adequate to resolve these concerns (see D.86-11-071, D.87-11-024), although the very low current need for new capacity on the PG&E and Edison systems, and certain considerations specific to PG&E, led us to continue the suspension for those utilities.

In D.87-11-024, we determined to reinstate Standard Offer 2 for SDG&E as soon as possible. We also identified certain steps to precede such reinstatement. Among these steps is the possible adoption, for use with SDG&E's reinstated Standard Offer 2, of certain "contractual safeguards" (such as improvements to the QF Milestone Procedure) that the parties have jointly recommended for final Standard Offer 4 and that SDG&E believes have merit in conjunction with other standard offers. We have also noted the

need for clear rules on "queue management," in order to fairly administer block pricing and transmission allocation. Pursuant to our direction, SDG&E has filed detailed proposals, and other parties have had a concurrent opportunity to file comments, as to both contractual safeguards and queue management.

II. Use of Provisions Developed  
for Final Standard Offer 4

A. Milestones

1. General

The QF Milestone Procedure (formerly, the Interconnection Priority Procedure) was originally intended to deal with QF development in areas with actual or potential transmission constraints. It has become clear that the procedure also serves important functions for utility planning generally and for monitoring the pace of QF development. In the case of SDG&E, these functions assume primary importance because, while SDG&E appears to have adequate in-service area transmission capacity, SDG&E has a near-term need for generation capacity and thus a need for good current information on the progress of its QFs in coming on-line.

We intend that the reinstated Standard Offer 2 contain an appropriate QF Milestone Procedure. There are several respects in which the current edition of the procedure (see D.86-11-005 as modified by D.87-04-039 and D.87-08-028) would not meet SDG&E's needs as well as the milestone provisions developed for final Standard Offer 4. SDG&E recommends that the provisions it identifies from Exhibits 446 and 447 (which contain the final Standard Offer 4 contract form jointly sponsored by Division of Ratepayer Advocates, utility, and QF representatives) be used for its reinstated Standard Offer 2 in place of the milestones contained in the current edition. We approve this proposed substitution.

Specifically, SDG&E would include the following milestones in its reinstated Standard Offer 2: QF to maintain site control throughout the entire term of its contract; QF to provide quarterly status reports from contract execution through firm capacity operation; QF to pay for and cooperate in a preliminary interconnection study within three months of contract execution, and a detailed interconnection study not less than two years before the scheduled date of firm capacity operation; QF to begin construction on or before the date specified by the QF in its contract. In each case, the proposed milestone is substantively identical to the jointly sponsored final Standard Offer 4 provision. We approve the use of these milestones, which appear in Section 5 of the final Standard Offer 4 contract form.

2. Firm Capacity Availability

We approve SDG&E's proposal that the same firm capacity availability test supported by most parties (including SDG&E) for final Standard Offer 4 be incorporated in reinstated Standard Offer 2.

SDG&E would add a new milestone relating to firm capacity operation. This milestone would require the QF to begin firm capacity operation by the date specified in its contract. That date could be delayed for up to one year, but only with SDG&E's consent and in no case beyond five years after contract execution. The QF would be required to request the delay no later than six months before the scheduled firm capacity operation date and would have to provide assurance satisfactory to SDG&E that the QF would be able to meet its commitment to SDG&E if the extension were granted. Also, the QF's capacity price would not be escalated from that specified in the contract.

We reject this proposed milestone. Most power plants go through a period of testing and tuning before they achieve firm capacity operation; during this period, they deliver energy into the grid on an as-available basis. Thus, the provisions of interim

Standard Offer 4 distinguished between the date of initial energy deliveries (from which the term of the contract is measured) and the firm capacity availability date (which is when the QF has demonstrated its ability to provide firm capacity). The provisions developed for final Standard Offer 4 are more rigid, but that is because of the importance for purposes of that offer of the QF's meeting the projected on-line date of the avoided resource; these provisions seem to us unnecessarily rigorous for reinstated Standard Offer 2.

We believe that SDG&E's needs are adequately protected by the following provisions. The QF must make its initial energy deliveries within five years of contract execution and must achieve firm capacity operation within one year of its scheduled operation date (as specified in the contract). Also, the QF cannot get an escalated capacity price by virtue of achieving firm capacity later than the scheduled operation date; in other words, the QF's capacity price is to be determined from the scheduled operation date, and will not go higher than the capacity price so computed even though SDG&E's capacity needs subsequently increase. Finally, the QF must make monthly status reports during any period elapsing between its scheduled operation date and its demonstration of ability to provide firm capacity.

SDG&E proposes that, where a QF passes its firm capacity test before its scheduled operation date, the QF would receive as-available capacity payments from the date that it passes the test until the scheduled operation date, after which the QF would receive capacity payments pursuant to the firm capacity price schedule in the contract. We modify this proposal to the extent that it would allow SDG&E to pay nothing for capacity to an on-line QF. The QF that comes on-line before its scheduled operation date is still providing valuable capacity to SDG&E and accordingly should receive as-available capacity payments for operation during this period. (However, we agree with SDG&E that the QF should not

receive payments based on the firm capacity price schedule for any period before the QF's scheduled operation date, even if the QF passes its firm capacity test before that date.) We also note that energy deliveries by the Standard Offer 2 QF, whether before or after it passes the firm capacity test, are paid for on the basis of the purchasing utility's short-run marginal cost.

### 3. Consequences of Missed Milestones

The fundamental principle here is that, if a QF misses any milestone and fails to cure within 30 calendar days of written notice of such failure by SDG&E, the QF would forfeit both its \$5 per kilowatt project and its Standard Offer 2 contract. (This is identical to the provision developed for final Standard Offer 4.) SDG&E proposes, and we approve, several provisions that mitigate such forfeiture where a QF has made initial energy deliveries but fails to achieve firm capacity by the deadline.

If a QF falls out of the queue and forfeits its Standard Offer 2 contract, the capacity that the QF contracted to provide SDG&E will normally not be available through Standard Offer 2 until the next update. However, if the forfeiture occurs while the offer is still open (i.e., before the block of capacity that included the defaulting QF is fully subscribed or the end of calendar year 1988, whichever occurs first) then the relinquished capacity should be added to the total megawatts then available in that block.

The defaulting QF may execute another contract with SDG&E but must submit a new project definition and a new project fee. Such a QF may sign another Standard Offer 2 contract (depending on availability), but if the QF signs within two years of its default, it receives the lower of the capacity price in the forfeited contract or the price in the then-current firm capacity price schedule. This avoids the possibility of a QF deliberately missing a milestone in order to take advantage of more favorable terms in an updated Standard Offer 2. A further restriction is that the

defaulting QF may not participate in a final Standard Offer 4 auction occurring within two years of the forfeit.

**B. Curtailment**

The curtailment provision developed for final Standard Offer 4 would allow the QF to choose at contract execution between "negative avoided cost" and "economic" curtailment. Under the former option, the utility could curtail the QF's output without a limit on the number of hours but only when the utility system would otherwise experience a negative avoided cost condition. Under the latter option, the utility could curtail the QF's output whenever the utility finds it economic to do so, up to a maximum of 1500 hours per year.

SDG&E supports this approach to curtailment for final Standard Offer 4; however, specific implementing language is still being worked out. SDG&E prefers to reinstate Standard Offer 2 with the existing curtailment provision (negative avoided cost only), rather than delaying reinstatement or reinstating with the curtailment term incomplete.

We think SDG&E's recommendation is prudent. At the same time, we are reluctant to omit the "economic" curtailment option. That option has advantages both for the utility (which gains flexibility in system dispatch) and the QF (which gets a ceiling on the number of hours that it can be curtailed and an energy price adjustment for noncurtailable hours). We can preserve the option and meet SDG&E's concerns by adding to the existing curtailment provision an opportunity for the QF to switch to economic curtailment if and when specific implementing language is developed and is approved by the Commission. The QF would have the right to exercise this switch in curtailment provisions under SDG&E's reinstated Standard Offer 2 for up to one year after contract execution or until the QF becomes operational, whichever occurs first. Thereafter, the utility's consent would be required before the QF could switch to economic curtailment.

The development of implementing language for the economic curtailment option deserves highest priority among the various standard offer contract drafting and coordination tasks that remain in this proceeding. We hope this development is completed in time for all QFs under SDG&E's reinstated Standard Offer 2 to take advantage of this option, and we plan to give further direction on this point in our final compliance phase decision.

C. Abandonment

We approve SDG&E's proposal that the abandonment provision developed for final Standard Offer 4 be incorporated in reinstated Standard Offer 2. SDG&E notes that, while Standard Offer 2 currently allows the utility to derate a QF if the QF fails to meet specific firm capacity performance criteria, there is not now a provision authorizing contract termination based on failure to meet a minimal level of performance. This proposal seems fair to QFs and mitigates planning uncertainty for the utility.

D. Force Majeure

We reject SDG&E's proposal for adapting to Standard Offer 2 the force majeure provision developed for final Standard Offer 4. SDG&E concedes that the interpretation of force majeure is controversial. We do not think this is an occasion to resolve that controversy, even on a limited, ad hoc basis. Furthermore, concern over the existing force majeure provision played no part in our suspension of Standard Offer 2 and need not delay its reinstatement.

The parties jointly sponsoring the final Standard Offer 4 contract provisions emphasized to us (see Exhibit 447) that those provisions embodied many compromises. The fact that a new force majeure provision was agreed to as part of a package tailored for purposes of final Standard Offer 4 does not necessarily justify the assumption that the same provision would be acceptable for Standard Offer 2. This is a particularly dubious assumption with a subject as intricate as force majeure.



Therefore, we will not change the existing force majeure provision in Standard Offer 2 at this time. We do encourage the parties to consider such a change when developing conforming Standard Offer 1 and Standard Offer 2 contract provisions that apply to PG&E, SDG&E, and Edison, and that incorporate provisions from final Standard Offer 4 where appropriate.

E. Events of Default

We approve SDG&E's proposal for incorporating certain provisions on notice, cure, and effect of default. This proposal includes some final Standard Offer 4 language regarding liquidated damages; SDG&E stresses that this additional language does not make any substantive change to the existing liquidated damages provision (Section 19) in its Standard Offer 2, and we approve its proposal with this understanding. We agree with SDG&E both that the substance of existing liquidated damages provisions should also be reconsidered in light of the refinements developed for final Standard Offer 4, and that such reconsideration should be deferred to later workshops.

III. Establishing Priority

Under this heading, we consider SDG&E's proposals on how a QF becomes entitled to a Standard Offer 2 contract and to transmission capacity on the SDG&E system. With one additional provision, we find these proposals satisfactory.

Briefly, the QF establishes its priority in a Standard Offer 2 contract block on the day when the QF has both paid a \$5 per kilowatt project fee (based on the nameplate rating of the project) and has submitted an acceptable project definition to SDG&E. Either a satisfactory escrow account or irrevocable letter of credit approved by SDG&E suffices for purposes of the project fee. The project definition consists of a completed QF application

form; the form itself is the same one that SDG&E has used as its initial screening tool for QF projects for several years.

The QF establishes its priority for transmission capacity on the day when the QF, having already established its contract priority, requests and pays for an interconnection study. This requirement is essentially the same as in the existing QF Milestone Procedure and is satisfied by a request for either a preliminary or detailed interconnection study.

We agree with SDG&E's separation between establishing priority for a Standard Offer 2 contract and for transmission capacity. The reason is that transmission capacity should not be allocated until the utility has performed a study of the project in question to determine whether transmission capacity on the utility system is likely to suffice to accommodate that project. A QF can request performance of a study as early as it likes but must request such a study no later than specific deadlines. (See Section II.A.1 above.)

We also agree with SDG&E that the QF be required to sign a Standard Offer 2 contract with SDG&E within six months of submitting the QF's project definition. The QF must also provide acceptable proof of site control no later than the date of contract signing.

The QF Milestone Procedure provides that the QF's project fee will be refunded only in certain specified circumstances. SDG&E's proposal is silent on this subject. We think the refund provision is still appropriate and direct SDG&E to include that provision in its reinstated Standard Offer 2.

#### IV. The Last Steps Before Reinstatement

SDG&E has done a good job in developing queue management and related contract provisions for Standard Offer 2. SDG&E's proposals are consistent with the tenor of comments filed

concurrently by other parties (PG&E, Edison, the California Energy Commission, and the Division of Ratepayer Advocates). Counsel for Santa Fe Geothermal, Inc., Union Oil Company of California, and Freeport-McMoRan Resource Partners (SFG/U/F) stated two reservations (regarding force majeure and treatment of the QF that achieves firm capacity early) in a letter to the presiding administrative law judge, and SDG&E has indicated that it is willing to respond to SFG/U/F's concerns, if the Commission desires further comment. However, we believe that the record is adequate to enable us to approve SDG&E's proposals, with the modifications and limitations mentioned above. SFG/U/F's concerns need not delay this limited reinstatement but should be addressed during our workshops to conform and coordinate the short-run standard offers.

The steps remaining before reinstatement of Standard Offer 2 for SDG&E are now in the nature of compliance filings. These steps are (1) revised capacity price schedules pursuant to our third interim opinion in this proceeding, and (2) a Standard Offer 2 contract form revised to reflect the queue management and related provisions approved in today's decision. We direct SDG&E to file amendments to its Standard Offer 2 contract (Application 82-03-78) consistent with today's decision. SDG&E shall file these amendments as soon as feasible, and in no event later than the due date for its revised Standard Offer 2 capacity price schedules.

Findings of Fact

1. Preparatory to reinstatement of Standard Offer 2 SDG&E has proposed certain new or revised provisions for that offer. These provisions relate to procedures whereby a QF establishes and maintains its priority for a Standard Offer 2 contract and for transmission capacity.

2. Except for its proposal regarding force majeure, and certain aspects of its proposal regarding firm capacity availability, SDG&E has made appropriate use of provisions recently developed for final Standard Offer 4. Force majeure is a

controversial topic, and revisions to the existing provision in Standard Offer 2 should be deferred to the workshops to conform and coordinate the short-run standard offers.

3. A Standard Offer 2 QF that comes on-line in the period before its scheduled operation date nevertheless provides valuable capacity to the purchasing utility. During that period, the utility's as-available capacity price correctly represents the QF's capacity value to the utility.

4. SDG&E's proposals on milestones, described in Sections II.A.1 and II.A.3 of the opinion, are reasonable for purposes of the limited reinstatement of Standard Offer 2.

5. SDG&E's proposed firm capacity availability test is reasonable for purposes of the limited reinstatement of Standard Offer 2.

6. The following provisions regarding the QF's initial energy deliveries and achievement of firm capacity operation are reasonable for purposes of the limited reinstatement of Standard Offer 2. The QF must make its initial energy deliveries within five years of contract execution and must achieve firm capacity operation within one year of its scheduled operation date (as specified in the contract). Also, the QF cannot get an escalated capacity price by virtue of achieving firm capacity later than the scheduled operation date; in other words, the QF's capacity price is to be determined from the scheduled operation date, and will not go higher than the capacity price so computed even though SDG&E's capacity needs subsequently increase. Finally, the QF must make monthly status reports during any period elapsing between its scheduled operation date and its demonstration of ability to provide firm capacity.

7. SDG&E's Standard Offer 2 currently provides for curtailment of the QF's output under negative avoided cost conditions. An economic curtailment option has been developed in principle for final Standard Offer 4 and appears workable for

Standard Offer 2, provided that specific implementing language can be developed in timely fashion.

8. SDG&E's proposals regarding abandonment and events of default are reasonable for purposes of the limited reinstatement of Standard Offer 2.

9. The existing provision on project fee refund in the QF Milestone Procedure is reasonable for purposes of the limited reinstatement of Standard Offer 2.

10. SDG&E's proposals for establishing priority, described in Section III of the opinion, are reasonable for purposes of the limited reinstatement of Standard Offer 2.

Conclusions of Law

1. Standard Offer 2, with the addition of the new and revised provisions found reasonable herein, should be reinstated for SDG&E, limited to the blocks of capacity identified in D.87-11-024.

2. Workshops should be scheduled shortly after the final decision in the compliance phase of this proceeding to develop uniform queue management and related contractual safeguard provisions for use in Standard Offers 1 and 2 by PG&E, SDG&E, and Edison.

3. This order should take effect immediately so as to complete as soon as possible all steps preliminary to the reinstatement of Standard Offer 2 for SDG&E.

ORDER ON QUEUE MANAGEMENT AND RELATED  
CONTRACT PROVISIONS PRELIMINARY TO THE  
REINSTATEMENT OF STANDARD OFFER 2

IT IS ORDERED that the San Diego Gas & Electric Company (SDG&E) shall file amendments to its Standard Offer 2 Contract (Application 82-03-78) consistent with today's decision. SDG&E

shall file these amendments as soon as feasible, and in no event later than the due date for its revised Standard Offer 2 capacity price schedules pursuant to the third interim opinion and order in this proceeding.

This order is effective today.

Dated DEC 17 1987, at San Francisco, California.

STANLEY W. HULETT  
President  
DONALD VIAL  
G. MITCHELL WILK  
JOHN B. OHANIAN  
Commissioners

Commissioner Frederick R. Duda  
being necessarily absent, did not  
participate.

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

  
Victor Weiser, Executive Director