

Decision 88 11 029 NOV 9 1988

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CATALYST ENERGY DEVELOPMENT CORPORATION and
 OLCESE WATER DISTRICT,
 Complainants,
 vs.
 PACIFIC GAS AND ELECTRIC COMPANY, a corporation,
 Defendant. (U39E)

ORIGINAL

Case 87-11-028
(Filed November 23, 1987)

OPINION

Pacific Gas and Electric Company (PG&E) and complainants Catalyst Energy Development Corporation and Olcese Water District (Catalyst) request Commission approval of a settlement agreement (Agreement). The Agreement amends Catalyst's Interim Standard Offer No. 4 (ISO4) power purchase agreement with PG&E. PG&E and Catalyst request an order finding the Agreement to be reasonable and authorizing recovery in rates of all payments made under the Agreement through PG&E's energy cost adjustment clause. Provided the Commission grants its approval, as requested, PG&E and Catalyst ask for dismissal of this case with prejudice.

Background

On May 7, 1984, Catalyst signed an ISO4 power purchase agreement (PPA) for the Rio Bravo hydroelectric project located in Kern County, California. Catalyst filled in Article 3(b) of the PPA with the 7.12 MW nameplate rating listed on the existing Federal Energy Regulatory Commission license. Catalyst also elected the firm capacity payment option under Article 5 of the

PPA.¹ A dispute arose when Catalyst decided to add a second turbine and sought to significantly increase and receive ISO4 energy and capacity prices for the incremental sales of power. The parties met and negotiated over the course of several months. In February of 1986, Catalyst executed a Standard Offer No. 1 (SO1) for the sale of power from a second 8.2 MW nameplate turbine.²

On November 23, 1987, Catalyst filed a complaint against PG&E which alleged that PG&E failed to negotiate in good faith. According to Catalyst, PG&E representatives misled and induced Catalyst to enter into agreements that Catalyst would not have signed, but for its reliance on PG&E's misrepresentation. More specifically, Catalyst claimed that, in making its selection for the project size in its PPA, it relied on the advice and representation of PG&E that modifications could be made after execution. The complaint also alleged that PG&E failed to properly communicate to Catalyst the consequences of the firm capacity

1 There are three capacity payment options under ISO4. Under as-delivered option 1, the QF is paid based on the current shortage cost, which is updated periodically (usually on an annual basis) by the Commission. Under as-delivered option 2, payments are based on a fixed forecast of shortage costs, which are not levelized. Under the firm capacity payment option, payments are based on a fixed, levelized forecast of shortage costs. Shortage costs under all payment options are based on the utility's cost of a combustion turbine. The combustion turbine costs are adjusted by a factor known as the Energy Reliability Index (ERI), to reflect the utility's current (or forecasted) need for capacity.

2 Capacity payments under SO1 are equivalent to the ISO4 as-delivered option 1. Energy payments under SO1 are updated quarterly. In contrast, the ISO4 energy payment option selected by Catalyst pays a fixed forecast of energy prices for ten years, as set forth in the PPA.

payment option for hydroelectric projects.³ In addition, Catalyst claims that it was under financial duress when it agreed to sign S01 for the separately metered second turbine. According to Catalyst, this duress was produced by PG&E's refusal to negotiate in good faith.

In its complaint, Catalyst requested the following relief from the Commission:

- (1) That the PPA nameplate capacity be increased from 7,120 kW to 16,000 kW;
- (2) That the project be paid ISO4 prices for the increase;
- (3) That S01 prices be paid for deliveries in excess of 16,000 kW;
- (4) That the capacity payment option be changed from firm capacity to ISO4 as-delivered capacity payment option #2; and
- (5) That PG&E compensate Catalyst for the costs of additional metering and interconnection facilities attributable to the second PPA.

PG&E answered Catalyst's complaint on December 23, 1987, with a Motion to Dismiss. PG&E denied many of the facts alleged in the complaint. With regard to the capacity size and payment option issues, PG&E characterized Catalyst's decisions as "bad choices" made by experienced engineering consultants. PG&E argued that the duty of good faith does not require a utility to question or make business decisions for the qualifying facility. PG&E further denied the allegations that Catalyst was coerced into signing S01.

³ Under the ISO4 firm capacity payment option, hydroelectric projects are explicitly excluded from receiving payments for as-delivered capacity in excess of firm capacity.

for the additional power. PG&E urged the Commission to dismiss the complaint to prevent others from violating settlements.

A prehearing conference was held on March 3, 1988 before Administrative Law Judge (ALJ) Cragg. At the prehearing conference, ALJ Cragg expressed his intent to deny PG&E's Motion to Dismiss, noting that there were factual disputes that required resolution in hearing. ALJ Cragg encouraged the parties to settle the dispute. On April 12, the parties reached agreement as to the terms of the proposed settlement. On August 12, 1988, PG&E and Catalyst filed a Motion to Dismiss Complaint and for Approval of Settlement, as described below.

The Settlement

Under the terms of the settlement, Catalyst and PG&E agree to the following modifications to Catalyst's existing PPA for the Rio Bravo project:

- (1) For the 7.12 MW ISO4, Catalyst will change its capacity payment election from the existing 2,000 kW firm capacity to option 1, as-delivered capacity.
- (2) Catalyst will terminate the existing SO1 contract and all deliveries from the project will go through a single meter.
- (3) Catalyst will receive ISO4 fixed energy prices pursuant to the existing 7.12 MW PPA for up to 41.7 million kWh annually. All energy deliveries above 41.7 million kWh in any year will be paid published, as-delivered SO1 energy prices.

A copy of the settlement agreement is included in this order as Appendix A.

Ratepayer Benefits

According to the parties' August 12 filing, the settlement benefits ratepayers because it removes the risk of paying substantial overpayments. Had Catalyst prevailed in its complaint, PG&E would have been obligated to purchase an additional

8.9 MW of energy at ISO4 fixed prices and 16 MW of capacity at as-delivered option 2 prices.

Under the terms of the settlement, Catalyst receives ISO4 energy prices only for the amount it could have delivered under its 7.12 MW ISO4, assuming a 66.9 percent capacity factor. All excess deliveries of energy will be purchased at SO1 prices. The parties estimate that this provision saves ratepayers the risk of paying over \$23 million in energy overpayments over the life of the PPA.⁴

The parties also state that the settlement benefits ratepayers with respect to capacity payments. They estimate that the change from as-delivered option 2 (Catalyst's requested relief) to option 1 (per the Agreement) saves ratepayers \$16.9 million over the life of the PPA.⁵

The parties also point out that the settlement resolves the dispute between them, saving the further time and resources of the Commission in resolving this dispute.

DRA's Comments

The Division of Ratepayer Advocates (DRA) filed its comments on the settlement on September 16, 1988.

DRA's position is that the settlement represents a reasonable resolution of the parties' dispute while protecting the

4 The \$23.8 million figure represents the difference between ISO4 forecast energy prices during the fixed period and forecast SO1 energy prices for the 8.9 MW of incremental sales. The forecast of SO1 variable energy payments is based upon DRA's 1986 ECAC Supplemental Marginal Cost Table (DRA ECAC forecast). The net present value (NPV) of these savings in 1988 dollars is approximately \$12.3 million.

5 The \$16.9 million figure represents the reduction in capacity payments based upon as-delivered payment option 1 rather than option 2. The capacity revenue is based upon the DRA ECAC forecast. The NPV of the reduction in 1988 dollars is \$7.2 million.

ratepayers' interest. DRA states that the settlement provides Catalyst with revenue certainty with respect to its ISO4 payments by having another turbine available as backup. At the same time, the settlement protects the ratepayers from exposure to prices that are higher than those under current standard offer contracts. DRA recommends that the Commission approve the settlement.

Discussion

In evaluating this settlement agreement it is necessary to consider both 1) the terms of the settlement compared to a scenario where Catalyst would have prevailed in this case, and 2) the terms of the settlement relative to the original terms of Catalyst's ISO4 and SO1 contracts (assuming PG&E prevailed). Although we have not decided the merits of the parties' positions in this dispute, we are persuaded that a genuine dispute does exist and we will examine the proposed settlement in light of the possibility that, absent a settlement, either party might prevail.

We are persuaded by the parties' and DRA's comments that ratepayers are substantially better off under the settlement compared to a scenario where Catalyst would have prevailed in this case. As described above, the parties estimate that the settlement saves ratepayers from paying an additional \$19.5 million in net present value (NPV) under this scenario.⁶ This figure does not include the amounts requested by Catalyst in its complaint for the additional costs of metering and interconnection facilities.

Had PG&E prevailed in this case, Catalyst would be paid ISO4 energy prices only for energy deliveries from a 7.12 MW project. According to DRA, PG&E and Catalyst, the terms of the

⁶ The \$19.5 figure represents the combined savings for energy and capacity (NPV in 1988 dollars) as presented in the parties' August 12, 1988 filing. We accept this number as an illustration, rather than a precise calculation, of the benefits that ratepayers may expect under this scenario.

settlement limit the amount of energy deliveries paid for at ISO4 prices to a level comparable to the output of a 7.12 MW project. Hence, with regard to energy payments, it appears that ratepayers are left indifferent relative to the original ISO4 and SO1 contracts.

Capacity payments under the original ISO4 contract were based on the firm capacity option. Had PG&E prevailed in this case, Catalyst would have been bound by that selection for the 7.12 MW project, and would not have been allowed to change to as-delivered option 1. Hence the relevant comparison for this scenario is between projected payments under the as-delivered option 1 and under the firm capacity option.

None of the filings in this case presented a comparison of these two capacity payment streams. However, the calculations are relatively easy to perform. We estimate that ratepayers would pay Catalyst slightly less (in net present value) under the as-delivered option 1 for 7,120 kW than under the firm capacity option for 2,000 kW.⁷ We conclude that ratepayers are no worse off under the settlement agreement as compared to the original contracts.

Based on the above, it appears that ratepayers are left at a minimum indifferent, and most likely better off under the settlement agreement when compared to the potential outcomes of

7 The difference is approximately \$1.2 million in NPV (1988 dollars). For the firm capacity option, we multiplied 2,000 kW by the firm capacity price (\$184/kW, per D.86-10-038 Ordering Paragraph 6) for the 30-year term of the contract and discounted the payments using a 11.5% discount factor. This yields a NPV in 1988 dollars of \$3.1 million.

For the as-delivered option 1, we conservatively assumed that the project provides the full 7.12 MW of capacity (regardless of actual hydro conditions). As-delivered capacity payments were discounted at 11.5% to yield a NPV in 1988 dollars of \$1.8 million.

litigation. In addition, the settlement is a final resolution of this dispute, which conserves the Commission's time and resources and protects PG&E and its ratepayers from any exposure to liability. We are persuaded that, in light of all the circumstances, the settlement and resulting PPA amendments are reasonable and that PG&E should be allowed to recover in rates all payments properly made under the agreement.

In D.88-10-032 we adopted final guidelines to govern our consideration of proposed settlements between electric utilities and QFs. Although this settlement was reached even before proposed guidelines had been issued for comment, we have examined the proposed settlement in light of the final guidelines, and find the two to be in close agreement.

Findings of Fact

1. Catalyst filed a complaint against PG&E on November 23, 1987 with regard to its ISO4 contract for a 7.12 MW hydroelectric project. The complaint alleged that PG&E failed to negotiate contract modifications (e.g. project size and capacity payment election) in good faith. The complaint further alleged that PG&E's refusal to negotiate in good faith created financial duress, which forced Catalyst to sign a SO1 for a second (8.2 MW) separately metered turbine.

2. In its complaint, Catalyst requested relief which included 1) paying ISO4 fixed energy prices for the 16 MW project currently included under the existing ISO4 and SO1 contracts; and 2) changing the capacity payment option from firm capacity to as-delivered capacity option 2 for the full 16 MW.

3. PG&E answered Catalyst's complaint and disputed many of the facts alleged in the complaint.

4. Catalyst and PG&E have filed a joint stipulation and motion, setting forth the terms of the settlement of their dispute and the PPA amendments resulting from the settlement. The parties request the Commission to find that the settlement and the PPA

amendments are reasonable, and to authorize PG&E to recover in rates all payments made under the agreements.

5. Under the terms of the settlement, Catalyst will change its capacity payment election from the existing 2,000 kW firm capacity to option 1, as-delivered capacity. Catalyst will also receive ISO4 fixed energy prices for up to 41.7 million kWh annually, with deliveries above that amount to be paid as-delivered energy prices. Catalyst will also terminate the existing S01 contract and all deliveries from the project will go through a single meter.

6. The parties estimate that the ratepayer benefits resulting from the settlement, as compared to Catalyst's requested relief, have a total net present value of approximately \$19.5 million.

7. Under the settlement, ratepayers would pay Catalyst close to the same amount (in net present value) for energy and capacity compared to the original ISO4 and S01 contracts.

8. The settlement is the final resolution of the parties' dispute.

Conclusions of Law

1. The settlement between Catalyst and PG&E is a fair and reasonable compromise of the parties' dispute.

2. Ratepayers are left at a minimum no worse off, and most likely better off under the settlement when compared to the potential outcomes of litigation.

3. The settlement and PPA amendments entered into between PG&E and Catalyst are reasonable, and PG&E should be authorized to recover all payments properly made under the settlement and the PPA.

ORDER

IT IS ORDERED that:

1. The settlement and Purchase Power Agreement (PPA) amendment entered into by Pacific Gas and Electric Company (PG&E) and complainants Catalyst Energy Development Corporation and Olcese Water District (Catalyst) in connection with Catalyst's hydroelectric project in Kern County are reasonable and are approved.

2. PG&E is authorized to recover in rates all payments properly made under the settlement and PPA amendment.

3. The joint motion for an order approving the settlement and dismissing the complaint is granted.

4. Catalyst's complaint is dismissed with prejudice.
This order is effective today.

Dated November 9, 1988, at San Francisco, California.

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

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

Victor Weisser

Victor Weisser, Executive Director

APPENDIX A

1
2 FIRST AMENDMENT
3 TO THE
4 POWER PURCHASE AGREEMENT
5 FOR THE
6 LONG-TERM ENERGY AND CAPACITY
7 POWER PURCHASE AGREEMENT
8 BETWEEN
9 OLCESE WATER DISTRICT
10 AND
11 PACIFIC GAS AND ELECTRIC COMPANY
12
13

14 WHEREAS, Olcese Water District ("Seller"), on April 4, 1985, and
15 Pacific Gas and Electric Company ("PGandE"), on June 26, 1985, executed an
16 Interim Standard Offer No. 4 Long-Term Energy and Capacity Power Purchase
17 Agreement (the "Agreement") for a proposed hydroelectric facility to be
18 located at Rio Bravo near Bakersfield, California (the "Facility"); and
19

20 WHEREAS, Seller, on July 14, 1986, and PGandE, on August 1, 1986,
21 executed a Standard Offer No. 1 As-Delivered Capacity and Energy Power
22 Purchase Agreement for the Facility; and
23

24 WHEREAS, Seller requests PGandE to terminate the As-Delivered
25 Capacity and Energy Power Purchase Agreement; and
26

27 WHEREAS, Seller requests to amend the Agreement by changing its
28 capacity sale election from firm capacity to as-delivered capacity; and

APPENDIX A

1
2 WHEREAS, PGandE is willing to agree to Seller's request to
3 change the capacity sale election in exchange for commensurate ratepayer
4 benefits; and

5
6 WHEREAS, Seller requests PGandE to amend the Agreement by
7 increasing the Facility's generator nameplate rating, as specified in
8 Article 3(b), from 7,120 kw to 16,000 kw; and

9
10 WHEREAS, PGandE is willing to agree to Seller's request to
11 increase the Facility's generator nameplate rating in exchange for
12 commensurate ratepayer benefits; and

13
14 WHEREAS, Seller and PGandE agree that the prices for capacity
15 and energy delivered at a rate up to and including 7,120 kw shall be based
16 on the existing Agreement; and

17
18 WHEREAS, Seller and PGandE agree that PGandE will accept
19 deliveries of energy and capacity at a rate in excess of 7,120 kw and pay
20 for that energy and capacity delivered at a rate in excess of 7,120 kw
21 based on full short-run avoided operating costs established for Standard
22 Offer No. 1 as determined by the CPUC from time to time; and

23
24 WHEREAS, Seller and PGandE agree to change Seller's capacity
25 election and capacity price; and

26
27 WHEREAS, Seller and PGandE agree that all other terms and
28 conditions of the Agreement, including the net energy output option (which

1 requires Seller to sell the Facility's entire gross output, less only
2 station use and transformation and transmission losses to PGandE), will not
3 be changed;

4
5 NOW THEREFORE, Seller and PGandE hereby agree to amend the
6 Agreement as follows ("the First Amendment"):

7
8 1. DEFINITIONS

9
10 Underlined terms shall have the same meaning stated in
11 Appendix A, Section A-1 DEFINITIONS, pages A-2 through A-7, of the
12 Agreement.

13
14 2. ARTICLE 3 PURCHASE OF POWER

15
16 2.1 Amend Article 3(a), page 5, lines 6-8, to read:

17
18 "(a) Seller shall sell and deliver and PG&E shall
19 purchase and accept delivery of capacity and energy at the voltage level of
20 70 kV."

21
22 2.2 Amend Article 3(b), page 5, lines 10-11, to read:

23
24 "(b) Seller shall provide capacity and energy from its
25 16,000 kW (combined two-turbine total generator nameplate) Facility located
26 at Rio Bravo near Bakersfield."

27
28 2.3 Amend Article 3(d), page 5, lines 18-21, to read:

APPENDIX A

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2 "(d) To avoid exceeding the physical limitations of the
3 interconnection facilities, Seller shall limit the Facility's actual rate
4 of delivery into the PGandE system to 16,000 kW."

5
6 2.4 Amend Article 3(g), page 6, line 12, to read:

7
8 "(g) The transformer loss adjustment factor is N.A."

9
10 3. ARTICLE 4 ENERGY PRICE

11
12 Amend Article 4, page 7, lines 1-5, to read:

13
14 "During each year of the fixed price period, Seller shall be
15 paid for energy delivered to PGandE as follows:

16
17 (a) the initial 41,700,000 kwh at prices equal to 100 percent of the
18 prices set forth in Table B-1, Appendix B, plus 0 percent of
19 PGandE's full short-run avoided operating cost; and

20
21 (b) deliveries exceeding 41,700,000 kwh at prices equal to 0 percent
22 of the prices set forth in Table B-1, Appendix B, plus 100 percent
23 of PGandE's full short-run avoided operating costs.

24
25 During any year of the fixed price period, in no event shall
26 more than 41,700,000 kwh of energy deliveries by Seller to PGandE
27 during a year be paid at prices set forth in Table B-1, Appendix B.

28

APPENDIX A

1 4. ARTICLE 5 CAPACITY ELECTION AND CAPACITY PRICE

2 Amend Article 5, page 10, lines 13-26, to read:

3
4 Firm capacity - kW for years from the
5 firm capacity availability date with payment determined in accordance with
6 Appendix E. Except for hydroelectric facilities, PGandE shall pay Seller
7 for capacity delivered in excess of firm capacity on an as-delivered
8 capacity basis in accordance with As-Delivered Capacity Payment Option
9 set forth in Appendix D.

10
11 OR

12
13 X As-delivered capacity with payment determined in
14 accordance with As-Delivered Capacity Payment Option 1 set forth in
15 Appendix D."

16
17 5. APPENDIX D AS-DELIVERED CAPACITY

18
19 Amend Appendix D by deleting lines 9-10, page D-4, and
20 substituting the following:

21
22 "The Facility is non-remote."

23
24 6. APPENDIX E FIRM CAPACITY

25
26 Amend Appendix E by deleting lines 21-22, page E-9, and
27 substituting the following:
28

1 "The Facility is non-remote."
2

3 7. APPENDIX F INTERCONNECTION
4

5 7.1 Section F-2 (POINT OF DELIVERY LOCATION SKETCH),
6 attached hereto and incorporated herein, is hereby appended to the
7 Agreement.
8

9 7.2 Section F-3 (INTERCONNECTION FACILITIES FOR WHICH SELLER
10 IS RESPONSIBLE), attached hereto and incorporated herein, is hereby
11 appended to the Agreement.
12

13 8. EFFECT ON AGREEMENT
14

15 Except as expressly modified by the First Amendment, the
16 provisions of the Agreement shall remain unchanged.
17

18
19 9. ENTIRE AGREEMENT; MODIFICATION
20

21 The First Amendment constitutes the entire agreement of the
22 Parties with respect to the subject-matter thereof and supersedes any and
23 all prior negotiations, correspondence, understandings and agreements
24 between the Parties respecting the subject-matter thereof. The First
25 Amendment may be further amended or modified only by a written instrument
26 signed by the Parties hereto.
27
28

APPENDIX A

10. CPUC APPROVAL, REASONABLENESS

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2
3 As a condition precedent to the effectiveness of this First
4 Amendment, PGandE and Seller shall submit this First Amendment to the CPUC
5 for a determination that the provisions hereof are reasonable and that
6 PGandE acted prudently in negotiating this First Amendment. PGandE and
7 Seller shall support the reasonableness of this First Amendment before the
8 CPUC in an application by PGandE and Seller for approval and a dismissal,
9 with prejudice, of Seller's pending complaint before the CPUC. If the CPUC
10 does not approve the reasonableness of this First Amendment and the
11 prudence of PGandE in negotiating it, the First Amendment shall be null and
12 void.

13
14 11. TERMINATION OF STANDARD OFFER NO. 1

15
16 Seller, on July 14, 1986, and PGandE, on August 1, 1986,
17 executed a Standard Offer No. 1 As-Delivered Capacity and Energy Power
18 Purchase Agreement for the Facility. On the date that this First Amendment
19 is approved by the CPUC, and Seller's complaint is thereby dismissed with
20 prejudice by the CPUC, said Standard Offer No. 1 Power Purchase Agreement
21 is terminated.

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IN WITNESS WHEREOF, Seller and PGandE hereto have caused this
First Amendment to be executed by their duly authorized representatives and
it is effective as of the last date set forth below.

OLCESE WATER DISTRICT

PACIFIC GAS & ELECTRIC COMPANY

By: *Martin I. Davis*

By: *Robert J. Haywood*

Type Name: Martin I. Davis

Robert J. Haywood

Title: Vice President

Title: Vice President, Power
Planning and Contracts

Date Signed: 6-21-88

Date Signed: 7/5/88

ratepayers' interest. DRA states that the settlement provides Catalyst with revenue certainty with respect to its ISO4 payments by having another turbine available as backup. At the same time, the settlement protects the ratepayers from exposure to prices that are higher than those under current standard offer contracts. DRA recommends that the Commission approve the settlement.

Discussion

In evaluating this settlement agreement it is necessary to consider both 1) the terms of the settlement compared to a scenario where Catalyst would have prevailed in this case, and 2) the terms of the settlement relative to the original terms of Catalyst's ISO4 and SO1 contracts (assuming PG&E prevailed). Since we have not yet adjudicated this case, or examined the merits of either parties' position in this dispute, we must evaluate the ratepayer impact of both outcomes, and assume that either is plausible.

We are persuaded by the parties' and DRA's comments that ratepayers are substantially better off under the settlement compared to a scenario where Catalyst would have prevailed in this case. As described above, the parties estimate that the settlement saves ratepayers from paying an additional \$19.5 million in net present value (NPV) under this scenario.⁶ This figure does not include the amounts requested by Catalyst in its complaint for the additional costs of metering and interconnection facilities.

Had PG&E prevailed in this case, Catalyst would be paid ISO4 energy prices only for energy deliveries from a 7.12 MW project. According to DRA, PG&E and Catalyst, the terms of the

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litigation. In addition, the settlement is a final resolution of this dispute, which conserves the Commission's time and resources and protects PG&E and its ratepayers from any exposure to liability. We are persuaded that, in light of all the circumstances, the settlement and resulting PPA amendments are reasonable and that PG&E should be allowed to recover in rates all payments properly made under the agreement.

Findings of Fact

1. Catalyst filed a complaint against PG&E on November 23, 1987 with regard to its ISO4 contract for a 7.12 MW hydroelectric project. The complaint alleged that PG&E failed to negotiate contract modifications (e.g. project size and capacity payment election) in good faith. The complaint further alleged that PG&E's refusal to negotiate in good faith created financial duress, which forced Catalyst to sign a SO1 for a second (8.2 MW) separately metered turbine.

2. In its complaint, Catalyst requested relief which included 1) paying ISO4 fixed energy prices for the 16 MW project currently included under the existing ISO4 and SO1 contracts; and 2) changing the capacity payment option from firm capacity to as-delivered capacity option 2 for the full 16 MW.

3. PG&E answered Catalyst's complaint and disputed many of the facts alleged in the complaint.

4. Catalyst and PG&E have filed a joint stipulation and motion, setting forth the terms of the settlement of their dispute and the PPA amendments resulting from the settlement. The parties request the Commission to find that the settlement and the PPA amendments are reasonable, and to authorize PG&E to recover in rates all payments made under the agreements.

5. Under the terms of the settlement, Catalyst will change its capacity payment election from the existing 2,000 kW firm capacity to option 1, as-delivered capacity. Catalyst will also receive ISO4 fixed energy prices for up to 41.7 million kWh

annually, with deliveries above that amount to be paid as-delivered energy prices. Catalyst will also terminate the existing SO1 contract and all deliveries from the project will go through a single meter.

6. The parties estimate that the ratepayer benefits resulting from the settlement, as compared to Catalyst's requested relief, have a total net present value of approximately \$19.5 million.

7. Under the settlement, ratepayers would pay Catalyst close to the same amount (in net present value) for energy and capacity compared to the original ISO4 and SO1 contracts.

8. The settlement is the final resolution of the parties' dispute.

Conclusions of Law

1. The settlement between Catalyst and PG&E is a fair and reasonable compromise of the parties' dispute.

2. Ratepayers are left at a minimum no worse off, and most likely better off under the settlement when compared to the potential outcomes of litigation.

3. The settlement and PPA amendments entered into between PG&E and Catalyst are reasonable, and PG&E should be authorized to recover all payments properly made under the settlement and the PPA.

ORDER

IT IS ORDERED that:

1. The settlement and Purchase Power Agreement (PPA) amendment entered into by Pacific Gas and Electric Company (PG&E) and complainants Catalyst Energy Development Corporation and Olcese Water District (Catalyst) in connection with Catalyst's hydroelectric project in Kern County are reasonable and are approved.

2. PG&E is authorized to recover in rates all payments properly made under the settlement and PPA amendment.
3. The joint motion for an order approving the settlement and dismissing the complaint is granted.
4. Catalyst's complaint is dismissed with prejudice.
This order is effective today.
Dated NOV 9 1988, at San Francisco, California.

STANLEY W. HULETT
President

DONALD VIAL
FREDERICK R. DUDA
G. MITCHELL WILK
JOHN B. OHANIAN
Commissioners