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Decision 89 01 044 JAN 27 1989 JAN 30 1989

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)
And Related Matters.	Application 82-04-46 Application 82-04-47 Application 82-03-26 Application 82-03-37 Application 82-03-62 Application 82-03-67 Application 82-03-78 Application 82-04-21
Investigation on the Commission's own motion into the transmission system operations of certain California electric corporations regarding transmission constraints on cogeneration and small power production development.	I.84-04-077 (Filed April 18, 1984)

OPINION ON PETITIONS BY PACIFIC GAS AND ELECTRIC COMPANY FOR MODIFICATION OF DECISIONS 84-08-031 AND 84-08-037

I. Introduction

Today's decision concerns two closely related petitions. They raise issues of interpretation in administering power purchase

agreements between Pacific Gas and Electric Company (PG&E) and certain qualifying facilities (QFs), especially those in PG&E's transmission-constrained area.

Because of the relationship between the petitions, we respond to them in a single decision. To that end, and only for purposes of today's decision, we consolidate our investigation of PG&E's transmission constraints (I.84-04-077) with its long-run standard offer application (A.82-04-44 et al.). We discuss the policy issues and agree generally with PG&E's understanding of the prior decisions addressed in the petitions. We also require PG&E to file a status report on the transmission upgrades described by PG&E in Decision (D.) 85-09-058.

II. Positions of the Parties

A. PG&E's Petitions

On August 24, 1988, PG&E filed a petition in our consolidated standard offer proceeding to modify D.84-08-031. Among other things, that decision adopted provisions on limiting a QF's actual rate of power deliveries into the utility's system.[1] PG&E asks the Commission to clarify that the facility nameplate

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1 D.84-08-031, Ordering Paragraph 2, modified Ordering Paragraph 8(f) of D.83-10-093 as follows:

> "A QF's actual rate of power deliveries into the utility's system shall be limited only if the physical limitations of the interconnection facility will otherwise be exceeded. In the event that a QF signs a standard offer prior to the completion of its interconnection study, this provision of the agreement shall be left blank with a footnote indicating that the appropriate number will be entered upon completion of that study."

provision of standard offer contracts, and not the limit on actual deliveries provision, governs the size of the facility.

On the same day, PG&E filed a petition in our transmission constraints investigation to modify D.84-08-037. That decision adopted an "interim solution" to the transmission constraints in PG&E's territory under which QFs are allocated transmission capacity. PG&E asks for clarification that the interim solution's grandfather clause applies only to the original facility, and not to any additions or expansions to that project.[2] PG&E proposes to modify D.84-08-037 by adding the following subparagraph (d) to Ordering Paragraph 1:

> "The exemption stated in paragraph 3, page 11 of the Stipulation and Order applies only to the original facility. Expansions or additions to such facilities are to be treated as new projects subject to the requirements of the interim solution and the Qualifying Facility Milestone Procedure." (PG&E's Petition to Modify D.84-08-037, p. 11.)

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2 The interim solution adopted in D.84-08-037, as modified by D.84-11-123, established a 1,150 megawatt (MW) maximum for QF interconnection in PG&E's northern transmission constrained areas. In effect, the interim solution grandfathered two categories of QFs. The first consisted of QFs that were included in the resource plan used in the transmission planning studies from which the interim solution was derived. These QFs do not appear on the transmission priority eligibility list. The second consisted of QFs that were not in the resource plan, but which had either signed both a power purchase agreement and a special facilities agreement with PG&E prior to the effective date of the decision, or which had been informed in writing by PG&E that adequate transmission existed for their project. These QFs were counted towards the 1,150 MW overall limit, received allocations, and appear on the transmission priority eligibility list. They were, however, exempted from the 0.5 mill/kilowatt-hour (kWh) assessment adopted in D.84-08-037. It is this latter group of grandfathered QFs that PG&E refers to in its petition, and that we refer to in this order.

The background to both petitions is a dispute between PG&E and a QF, Pacific Energy Inc. (Pacific), regarding Pacific's right to build a project addition in the transmission constrained area with a corresponding increase in transmission allocation.[3] Pacific was among the QFs which met the interim solution's grandfather clause requirements, but was not included in the base case transmission studies.[4] PG&E argues that the issues raised in this dispute have broad implications for the QF program, and urges the Commission to affirm PG&E's interpretation.

According to PG&E, the basic interpretation issue concerning D.84-08-031 is whether or not the provision that states the limit on actual deliveries nullifies the separate nameplate capacity provision which defines the project size. PG&E argues that it does not. Under PG&E's interpretation, the QF must install a facility of the size specified in the power purchase agreement (PPA). Within the limits of the QF's transmission allocation, PG&E must purchase the generation produced by the facility under the prices and other terms of the PPA.

In its petition, PG&E acknowledges that the actual output of a facility can vary significantly, depending upon temperature and other climatic conditions, as well as upon the condition of the plant and the manner in which it is operated. PG&E argues that the

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3 In their respective pleadings, PG&E and Pacific debate the validity of Pacific's specific claims at some length. However, as discussed below, the issues to be resolved in this decision involve interpretation of prior Commission orders, so we will not reiterate the facts alleged by either Pacific or PG&E regarding the specifics of the dispute. Rather, we focus our discussion on the parties' positions regarding the policy and intent of D.84-08-031 and D.84-08-037.

4 Pacific's biomass project, at Oroville, appears at the fifth spot on the transmission priority eligibility list. It received an 18 MW allocation of transmission capacity.

limit on actual delivery provision accommodates the inevitably uneven output from a facility, yet ensures that the deliveries never exceed the point at which damage to the interconnection facilities may occur.

PG&E contends that interpreting the actual delivery provision to determine the size of the project would substantially increase ratepayers' costs. According to PG&E, the limit on actual rate of deliveries exceeds the nameplate capacity in most PPAs.[5] Since Interim Standard Offer 4 (ISO4) provides an array of forecasted and fixed prices based on the QF's capacity, PG&E concludes that ratepayers' expenses would increase dramatically under this interpretation.

PG&E also contends that virtually all forecasts of QF development, including those performed by the California Energy Commission (CEC) and the Division of Ratepayer Advocates (DRA), are based on the nameplate ratings of projects. In PG&E's view, an alternate interpretation of project size would seriously impact the method of resource forecasting in both CEC and CPUC proceedings.

PG&E proposes the following addition to Ordering Paragraph 2(a) of D.84-08-031:

> "The limit on actual rate of deliveries is not intended to override the provision in the standard offers which specifies the size of the facility. Notwithstanding the limit on actual deliveries, utilities are obligated to accept only the generation that a facility of the size specified in the agreement could reasonably be expected to produce."

With regard to D.84-08-037, PG&E's position is that "grandfathered" QFs obtained transmission allocations only for their original project size, as shown in the transmission priority

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5 PG&E explains this is because the interconnection equipment is most economically purchased in discrete "off-the-shelf" sizes that rarely match the exact size of the project.

eligibility list. In support of its interpretation, PG&E asserts that the Commission twice ruled that QFs which received transmission allocation under the grandfather clause were properly placed on the eligibility list and counted towards the 1,150 MW overall limit.[6] In PG&E's view, the Commission's refusal to delete grandfathered QFs from the eligibility list demonstrates that those QFs were given transmission priority for a finite number of megawatts. To clarify its intent, the Commission should modify D.84-08-037 by adding the following subparagraph (d) to Ordering Paragraph 1:

> "The exemption stated in paragraph 3, page 11 of the Stipulation and Order applies only to the original facility. Expansions or additions to such facilities are to be treated as new projects subject to the requirements of the interim solution and the Qualifying Facility Milestone Procedure."

PG&E states that it did not in 1984, and does not now, have transmission capacity for indefinite additions to projects that received transmission allocations under the grandfather provisions. If the Commission rejects PG&E's interpretation on this issue, then PG&E requests that the 1,150 MW overall limit, and the affected area limit, be reduced by the amount of any project additions.

B. DRA's Comments

DRA agrees with PG&E that the nameplate provision of a standard offer contract is binding with regard to project size, and DRA offers its own suggested modifications to emphasize this. DRA also agrees that interpreting the actual deliveries provision to

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6 PG&E refers specifically to the Commission's disposition of comments filed on the proposed Interconnection Priority Procedure, and the Commission's disposition in D.85-08-045 of a Petition for Modification of D.85-01-038.

determine the size of the facility would seriously affect the method of utility resource forecasting used by this Commission, the CEC, and the utility industry.

DRA also agrees with PG&E's interpretation of D.84-08-037. DRA points out that, if grandfathered QFs were entitled to claim additional transmission capacity, then the priority rights of eligible QFs could be revoked simply because a grandfathered QF later obtained a contract amendment expanding its project size. DRA does not believe that this was the Commission's intent.

However, DRA believes that PG&E's proposed modification goes too far, noting that the "original facility" may have been amended to allow for project additions prior to the effective date of D.84-08-037. DRA proposes modifying language to clarify that the grandfather clause applies to the facility described in the standard offer as of the effective date of D.84-08-037.

C. Protests by Pacific and Independent Energy Producers

Separate protests to PG&E's petitions were filed by Pacific and Independent Energy Producers Association (IEP). Both Pacific and IEP argue that the issues raised in PG&E's petitions are not "minor" as required by Rule 43 of the Commission's Rules of Practice and Procedure. Both urge the Commission to reject PG&E's petitions as procedurally improper. In the alternative, if the Commission accepts the petitions, Pacific and IEP request that evidentiary hearings be held.

Both Pacific and IEP assert that PG&E's petition to modify D.84-08-037 raises several significant legal and factual questions as to the interrelationship between the interim solution and the contractual rights of QFs within PG&E's constrained areas. According to IEP, the Commission has never addressed the issue of how QFs with a contractual right to expand their facilities would be treated under the interim solution. Pacific asserts that none of the parties to the interim solution "intended it to act as a

physical limitation on power deliveries in contravention of an executed SO4...."[7]

Pacific also believes that PG&E's petition to modify D.84-08-037 raises important factual questions regarding the actual limitations of PG&E's transmission system to receive power from QFs. Both Pacific and IEP argue that PG&E's proposed modifications of D.84-08-037 would significantly alter the contractual rights of "grandfathered" QFs to make facility additions.

Similarly, IEP and Pacific assert that PG&E's proposed modifications to D.84-08-031 are by no means minor. Pacific argues that the facility size provision of the PPA is "merely descriptive" and that that PG&E's interpretation violates "settled Commission precedent." In Pacific's view, PG&E's petition is nothing more than an untimely request for rehearing on an issue that the Commission disposed of in D.84-08-031.

IEP argues that PG&E's proposed modifications would have a "potentially profound effect on other QFs which are not a party to the instant dispute." According to IEP, many QFs, including some who are already on line, relied upon the nameplate figure in the contract as a descriptive figure, rather than a limit. IEP also contends that PG&E seeks to set a standard for QFs which its own generating resources do not meet.

Finally, both Pacific and IEP assert that PG&E is using Commission procedure to avoid "good faith" negotiations in this specific dispute. Both recommend that PG&E's petitions be denied, and that it be ordered to reestablish negotiations with Pacific.

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7 Pacific also asserts that it had such a contractual right to expand its facility size as of the effective date of the Interim Solution.

D. Protest of Woodland Biomass Power

Woodland Biomass Power Ltd. (Woodland) filed a protest to PG&E's request that the 1,150 MW overall limit be reduced if the Commission rejects PG&E's interpretation of the interim solution. Woodland argues that PG&E's alternative petition would create a "floating ceiling" and jeopardize the transmission allocation of Woodland and other QFs just above the 1,150 MW cutoff.[8] Woodland urges the Commission to order hearings to consider alternatives to PG&E's request. In particular, Woodland suggests that we revisit the "big solution," namely, removal of the transmission constraints via upgrades as specified in D.85-09-058.

E. PG&E's Responses

On October 17, 1988, PG&E filed responses to DRA's comments and the protests of Pacific, IEP, and Woodland.[9] First, PG&E concurs with protestants that grandfathered QFs with a contractual right to expand their facilities as of the effective date of the interim solution should have that expansion "grandfathered" together with the original project.[10] PG&E states that its petition was not intended to preclude QF challenges that PG&E's 1,150 MW eligibility list allocates the wrong amount of

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8 Woodland is a 25 MW QF that obtained its full transmission allocation on July 13, 1988.

9 PG&E filed two separate responses to address the comments and protests regarding its petitions to modify D.84-08-031 and D.84-08-037.

10 PG&E restates its position that Pacific did not have a contractual right to expand its grandfathered facility, and provides additional information to support its position in Appendices A and B of its response.

capacity to a particular QF. Rather, it was intended to seek clarification for treatment of grandfathered QFs without such a contractual right. PG&E believes that DRA's proposed language modifications clarify this point, and should be adopted by the Commission.

With regard to its petition to modify D.84-08-031, PG&E argues that Pacific's assertion that the nameplate capacity provision is "merely descriptive" is inconsistent with Pacific's own actions to develop its project and contradicts prior Commission decisions. According to PG&E, both IEP and Pacific misinterpret its petition to imply that a QF must limit actual deliveries to the PPA nameplate under all circumstances. Rather, PG&E argues that its petition only requests confirmation that, unless the facility size provision fails to state the parties' actual agreement, a QF must install a facility of the size specified by the PPA.

PG&E refutes Pacific's and IEP's claims that evidentiary hearings are needed or required on the issues raised by PG&E's petitions. PG&E's basic argument is that the petitions seek clarification of prior Commission orders, which are questions of law, not fact. PG&E also objects to IEP's and Pacific's request that it be ordered to negotiate with Pacific. In PG&E's view, the predicate for negotiations must be a legitimate, good faith disagreement, and Pacific has failed to meet this threshold test. PG&E urges the Commission to resolve the general issues raised in its petitions, even if negotiations resume. Finally, PG&E points out that its petitions do not preclude Pacific (or any other QF) from filing a complaint that (1) PG&E wrongly allocated transmission capacity to a grandfathered facility, and/or (2) the

PPA facility size provision is not binding because of reasons peculiar to the project's specific history.[11]

III. Discussion

A. Are PG&E's Petitions Procedurally Proper?

We first deal with the procedural issue of whether PG&E's petitions are proper under Rule 43 of our Rules of Practice and Procedure.[12] In particular, those opposing the petitions maintain that the subject matter is not "minor," as Rule 43 requires.

Many parties in our proceeding to update and revise the Rules of Practice and Procedure (R.84-12-028) have asked for clarification of Rule 43, and we intend to do so in that proceeding. However, for present purposes, we note that "minor" does not mean insignificant; otherwise, there would be no petitions at all. People do not file petitions, much less applications or complaints, unless the subject matter was important to somebody, in some context.

We use several criteria to judge the propriety of a petition as a procedural vehicle under Rule 43. For example, is the petition "minor" in the sense that it addresses a discrete issue, or does it cause us to rethink all elements of a complex

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11 On October 18, 1988, Southern California Edison Company (Edison) filed a response to the protests to PG&E's petition for modification of D.84-08-031. Edison supports PG&E's interpretation of the nameplate capacity provision. Edison also argues that PG&E's interpretation is necessary to give effect to our contract administration guidelines (D.88-10-032).

12 Rule 43 says, in pertinent part, "Petitions for modification of a Commission decision...shall indicate the reasons justifying relief and shall contain a certificate of service on all parties [and] shall only be filed to make minor changes in a Commission decision or order. Other desired changes shall be by application for rehearing or by a new application." (California Code of Regulations, Title 20, Chapter 1.)

decision or program? A petition is probably the correct vehicle in the former situation, while we would tend to require a new application in the latter. Notice considerations also play a part: petitions in long-closed proceedings are generally disfavored because the service list is likely to be out of date. In such instances, we prefer a new application. Also, a petition should target a generic issue, not a particular adversary. A complaint, rather than a petition, is proper where we are asked to adjudicate a dispute turning on the facts in a particular case.

The issues raised by PG&E's petitions are important but narrowly defined. PG&E has filed its petitions in old but active proceedings in which the affected QF industry and the other utilities are well represented. Finally, while PG&E and certain QFs apparently have had discussions that involve these issues (among others), we are not aware of existing complaints before this Commission where the same subject matter is being litigated. Moreover, we intend to address the issues as narrowly as possible. We do not deprive any QF of its opportunity to litigate the application of the principles we discuss today to that QF's particular situation.[13] For all these reasons, PG&E's petitions are procedurally acceptable.

In addition to the general considerations already discussed, we note that PG&E's petitions respond to specific direction (contained in our guidelines for administration of PPAs with QFs) where clarification of Commission policy is needed:

> "When interpretation disputes arise, these guidelines provide an appropriate framework for negotiating settlements. However, they do not give utilities the license to 'create'

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13 PG&E's and Pacific's filings contain voluminous factual allegations concerning a particular project. We decline to make any findings regarding that project, although we do expect PG&E and Pacific to make use of the discussion here to focus and (we hope) dispose of their dispute.

> interpretation disputes as a means for extracting concessions. The utility should neither search out ambiguity nor contort its interpretation of contract language in order to force the QF to modify its contract, nor request disproportionate concessions in negotiating a settlement of interpretation disputes. To do so would violate our 'good faith' requirement for utilities. If clarification of Commission policy is required, the utility should promptly petition the Commission to resolve the issue." (D.88-10-032, mimeo. p. 25.)

In these circumstances, we cannot fault PG&E for choosing to file these petitions.

B. Limit on Facility Size

We have no difficulty at all in accepting the contention that, as a general proposition, the facility nameplate provision, and not the limit on actual deliveries provision, governs the size of the facility in a standard offer contract.

We have repeatedly stated that all such contracts are project-specific. The drafting of the contracts reflects this. Thus, the project is specifically identified in the contract in various ways (e.g., location, primary energy source). The facility nameplate provision is one of the "identifiers." The provision in question from PG&E's ISO4 PPA says, in pertinent part, that the QF developer "shall provide capacity and energy from its _____ kW Facility...." (Emphasis in original; the blank is to be filled in with the "Nameplate rating of generator[s].")

This language is not, as Pacific contends, "merely" descriptive. Description of the facility is critical to the

specificity of the contract.[14] Our decisions have also long relied on nameplate capacity (or a fraction of nameplate to designate the effective capacity of as-available QFs) for planning purposes. (See, e.g., D.86-07-004, mimeo. p. 71.) A review of our decisions confirms that PG&E's interpretation is not new or original but simply reflects our own usage of nameplate capacity for our regulatory purposes. Finally, this understanding of nameplate capacity comports with traditional canons of statutory construction by giving the terms their full and logical meaning, rather than reducing them to surplusage.

In contrast, the provision limiting actual deliveries never purports to describe the generating facility but relates only to the interconnection. Both PG&E's and QFs' comments make clear that the interconnection (because of the economics of interconnection equipment and the varying output of generators under different conditions) can and should be sized liberally in relation to nameplate capacity of the QF's generator(s). To interpret this provision as somehow denoting the size of the generating facility makes little sense when taking the provision by itself and no sense at all when reading the contract as a whole.

Pacific says that PG&E, by its petitions, is trying to evade its legal obligation to purchase all generation made available by a QF. We do not see any such consequence following from our interpretation of nameplate capacity. The obligation to purchase remains; the question is the terms and conditions applicable to the purchase. We suspended the availability of ISO4 for new contracts several years ago. PG&E need pay ISO4 prices only to the specific projects for which developers hold ISO4

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14 Furthermore, the size of the facility itself is one of the criteria under federal law for determining eligibility for QF status. For example, Federal Energy Regulatory Commission regulations specify that a qualifying small power production facility may not exceed 80 megawatts. (18 CFR § 292.204(a)(1).)

contracts. We are aware that questions of interpretation sometimes arise, particularly in the case of projects that were to be developed in phases.[15] Such questions of interpretation may require analysis of the facts in particular cases, but they do not detract from the validity of the general proposition that the facility nameplate provision governs the size of the facility in a standard offer contract.

We have reached the above conclusions based essentially on our reading of PG&E's ISO4 PPA. For this reason, and because we believe that interpretation of the standard offers should concentrate on the contract provisions themselves, we think modification of D.84-08-031 is unnecessary at this time, so we deny without prejudice PG&E's present petition.

C. Transmission Priority Rights of Grandfathered QFs

PG&E's petition to modify D.84-08-037 seeks to clarify the circumstances under which a "grandfathered" QF can expand the MW size of its project, and retain its interconnection priority for the expanded facility. Parties apparently agree that a grandfathered QF with a contractual right to expand its facility as of the effective date of D.84-08-037 should have that expansion "grandfathered" together with the original project. We concur with that interpretation. The interim solution was never intended to infringe upon the contractual rights of individual QFs grandfathered onto the transmission priority list. However, as discussed above, we agree with PG&E that the contractual right to expand a facility size is governed by the facility nameplate rating provision of the PPA, and not the actual rate of deliveries provision.

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15 At least one of our decisions approves a settlement of a dispute over the MW entitlement of a phased ISO4 project. See D.88-08-021.

PG&E requests further clarification regarding the treatment of grandfathered QFs without such a contractual right. PG&E (with DRA's concurrence) asks us to confirm that grandfathered QFs were only given transmission allocations for the size of their facility, described in the PPA as of the effective date of D.84-08-037.

Only PG&E's interpretation is consistent with our prior decisions adopting the interim solution and Qualifying Facility Milestone Procedure. In D.85-08-045, we explicitly "laid to rest" the question of which grandfathered QFs should be counted towards the 1,150 MW limit, and appear on PG&E's transmission priority eligibility list. We made that determination in response to a specific request for a different approach:

> "All QFs affected by constraints in PG&E's northern system should be allowed to participate in the interim solution based upon the date the QF established priority. It makes no sense to exclude QFs which may have established priority before the issuance of D.84-08-037, but which will interconnect to a constrained line. We will deny Auslam's petition." (D.85-08-045, mimeo. p. 13.)

Hence, our adopted interim solution allocated a finite amount of transmission capacity among all QF projects affected by constraints in PG&E's northern system, including those "grandfathered" QFs, like Pacific, that had established priority before the issuance of D.84-08-037. It follows that all QF projects on the priority list, including those that were grandfathered, were given transmission allocations only for the size of the facility appearing on PG&E's transmission priority

eligibility list.[16] Otherwise, both the 1,150 MW overall limit and the applicable area limits would be exceeded. Further, as noted by DRA, we never intended to allow QFs to expand their grandfathered projects later and claim additional transmission priority at the expense of eligible QFs "further down" on the priority list. This would be patently unfair.

Our prior decisions in this proceeding, together with the discussion above, provide sufficient guidance in interpreting our orders regarding the transmission priority rights of grandfathered QFs. Further modifications to D.84-08-037 are not required.[17]

D. Other Issues

In their protests to PG&E's petition to modify D.84-08-037, both Pacific and Woodland urge the Commission to review PG&E's actions for removing the transmission constraints in its northern system, as specified in D.85-09-058.[18] We agree that it is important to have a thorough knowledge of the status of these upgrades. Without such information, we cannot reasonably determine the planning issues for PG&E that will be examined in our upcoming biennial resource plan proceeding. This information is also

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16 As noted by PG&E, this determination does not preclude a QF from filing a complaint that PG&E wrongly allocated transmission capacity to a grandfathered QF.

17 This disposition renders moot Woodland's protest insofar as the protest is directed to PG&E's alternative request that the overall MW limit be reduced.

18 D.85-09-058 contained two lists of transmission upgrades in PG&E's northern area. The first list was composed of bulk transmission upgrades that were necessary to take the 1,150 MW of QF power under the interim solution. The second list included bulk transmission upgrades that would be necessary to interconnect approximately 2,000 MW of additional QF power in the northern area. In addition, D.85-09-058 contained a list of planned area transmission upgrades. See D.85-09-058, mimeo. pp. 7-8.

relevant for determining the duration of the 0.5 mill/kWh assessment imposed on QFs participating in the interim solution.[19]

Therefore, we require PG&E to file an updated status report on the upgrades specified in D.85-09-058. This report should include an explanation for any changes in PG&E's plans for the upgrades, including any change in the cause or magnitude of the transmission constraints. This report shall be filed in I.84-04-077, but using the service lists for that investigation and the biennial resource plan proceeding. Filing shall be concurrent with PG&E's application in the latter proceeding, i.e., nine weeks after final Energy Commission adoption of the Seventh Electricity Report.[20]

Findings of Fact

1. PG&E's petitions addressed in today's decision concern closely related subjects.

2. A given power plant's output, under various conditions, may exceed its nameplate capacity.

3. Interconnection equipment is routinely purchased in discrete "off-the-shelf" sizes in lieu of special ordering to match exactly the nameplate capacity of the interconnected generator(s).

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19 In D.85-09-058, mimeo. pp. 15-16, we ordered the nonrefundable 0.5 mill/kWh assessment to cease as upgrades occur and remove transmission constraints.

20 The number of parties to be served is considerable, so PG&E, in lieu of serving the entire report, may serve notice that the filing has been made and that a copy can be obtained from PG&E. In addition, PG&E shall send two copies of the report to the Commission Advisory and Compliance Division with a transmittal letter referencing D.85-09-058 in I.84-04-077, as well as today's decision.

4. The various pleadings raise no issues of fact material to disposition of PG&E's petitions.

5. PG&E's petitions were widely served, so that the affected interests were alerted to the subject matter of the petitions.

6. PG&E's petitions concern a generic issue.

7. PG&E's petitions respond to the direction given in D.88-10-032.

Conclusions of Law

1. PG&E's petitions are procedurally proper.

2. Generally, the facility nameplate provision, and not the limit on actual deliveries provision, governs the size of the facility in a standard offer contract.

3. Standard offer contracts are project-specific.

4. A QF that expands the capacity at an existing project is entitled to sell the additional power to the utility but is not necessarily entitled to receive payment for the additional power under the existing PPA. Such entitlement depends on whether the expansion is part of the project specified in the existing PPA. If the expansion goes beyond the project originally specified, the expansion is a new project.

5. Conclusions of Law 2-4 follow from D.84-08-031 (among other Commission decisions) and the plain language of PG&E's ISO4 PPA. Modification of D.84-08-031 is unnecessary at this time.

6. A "grandfathered" QF with a contractual right to expand its facility as of the effective date of the interim solution (D.84-08-037) has that expansion "grandfathered" together with the facility as initially constructed. However, a "grandfathered" QF lacking such contractual right to expand may not claim additional transmission priority for its expansion. Allowing such a claim would be unfair to eligible QFs lower on the priority list.

7. Modification of D.84-08-037 is unnecessary at this time.

8. PG&E should be directed to file an updated status report of the transmission upgrades specified in D.85-09-058.

9. This decision should be given immediate effect to ensure that PG&E has sufficient time to prepare its report in time for concurrent filing with its application in the next biennial resource plan proceeding.

10. The protests and requests for hearing of Pacific, IEP, and Woodland should be dismissed.

O R D E R

IT IS ORDERED that:

1. For purposes of today's decision only, A.82-04-44 et al. is consolidated with I.84-04-077.

2. The petitions of Pacific Gas and Electric Company (PG&E) for modification of D.84-08-031 and D.84-08-037 are denied without prejudice.

3. The protests and requests for hearing of Pacific Energy Inc., Independent Energy Producers Association, and Woodland Biomass Power Ltd. are dismissed.

4. PG&E shall file an updated status report on the upgrades specified in D.85-09-058. PG&E shall prepare and serve this report as directed in Section III.D of the foregoing opinion.

This order is effective today.

Dated JAN 27 1989, at San Francisco, California.

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

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

Victor Weisser, Executive Director