

Decision 89 04 047 APR 12 1989**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 Insti-
tuting 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

**OPINION ON FINAL STANDARD
OFFER 4 CURTAILMENT PROVISIONS**

I. Summary

Today's decision adopts the final Standard Offer 4 (S04) contract provisions set forth in the June 27, 1988 Joint Filing of Southern California Edison Company (SCE); Pacific Gas & Electric Company (PG&E); San Diego Gas & Electric Company (SDG&E); Santa Fe Geothermal, Inc., Union Oil Company of California, Freeport-McMoran Resource Partners (SF/U/F); Independent Energy Producers (IEP) and the Division of Ratepayer Advocates (DRA). We deny the requests of SDG&E, PG&E and SCE to use an alternative curtailment provision in final S04 and Standard Offer 2 (S02) contracts.

II. Background

In Decision (D.) 88-03-079, issued on March 23, 1988, we adopted a uniform set of final S04 contract provisions. With few exceptions, the adopted language reflected the consensus of a working group comprised of SCE, PG&E, SDG&E, DRA, IEP and SF/U/F.¹

With the exception of the curtailment terms, all other recommended terms and conditions for final S04 were presented in the form of specific contract language. In D.88-03-079 we adopted in principle the curtailment terms presented in the working group's Joint Testimony, including a new economic curtailment option. We directed all parties to file recommended contract language conforming with those terms.

On June 27, 1988, the utility/QF/DRA working group jointly filed final S04 contract language, including the curtailment terms approved in principle in D.88-03-079 (Joint Filing).² However in a separate filing, SDG&E raised objections to the "economic curtailment" option, stating that the principles

1 The working group presented joint recommendations for final S04 contract form in July, 1987 (Joint Testimony). The Joint Testimony set forth the agreement among the parties and identified a few areas that remained disputed by PG&E and IEP. The Joint Testimony also described SDG&E as having "concerns" about the administrability of the curtailment terms, but that these concerns would be addressed in the contract language workshops. In D.88-03-079 we reviewed the merits of IEP's and PG&E's objections, and determined that the contract terms and conditions presented in the Joint Testimony should be adopted for final S04, without modification. One contract issue, the possibility of updating the hours of operation of the avoided resource projected for the period after its on-line date, was expressly deferred for later consideration.

2 The June 27, 1988 Joint Filing was endorsed by SCE, IEP, SF/U/F, DRA, PG&E and SDG&E (with the exception of the curtailment provisions).

presented in the Joint Testimony could not be practically administered. SDG&E argued that the option was unduly cumbersome and otherwise inappropriate for its system.

On August 2, 1988, SDG&E submitted a supplemental filing describing a proposed alternative economic curtailment provision (Supplemental Filing). On September 2, 1988, SF/U/F filed comments opposing SDG&E's proposal. SF/U/F argued that SDG&E's proposal changed the principles that the Commission adopted for the economic curtailment option.

In D.88-09-026, issued on September 14, 1988, we rejected SDG&E's technical objections to our adopted curtailment terms. However, we allowed SDG&E further opportunity to develop an alternative that was simpler in operation. Specifically, we directed the utility/QF/DRA working group to file, no later than October 21, 1988, a report on SDG&E's alternative for an economic curtailment option. The report would assess the potential advantages and disadvantages of that alternative.

SDG&E and SF/U/F then formed an ad hoc subgroup to work out their differences. In November, 1988, SDG&E requested an extension for complying with D.88-09-026, stating it was optimistic that agreement would soon be reached among the subgroup members. An extension was granted to December 9, 1988 for filing the report of the full working group.

In December, 1988, SDG&E requested additional time (to January 30, 1989), to file its proposed contract language for economic curtailment. The assigned Commissioner granted SDG&E's request, stating:

"I grant the extension, but I do so reluctantly. The contract drafting process for final Standard Offer 4 has been going on for two years, the economic curtailment option has been the main task remaining for the past year, and the other utilities filed their detailed proposal with appropriate contract language six

months ago. This constitutes SDG&E's third and final extension." (Assigned Commissioner's Ruling dated December 29, 1988.)

On January 30, 1989, SDG&E submitted its proposed alternative curtailment provision. Comments were filed by DRA, PG&E, SCE and SF/U/F.

III. Position Of The Parties

Appendix A presents a summary of SDG&E's alternative curtailment provision, as compared with the working group's Joint Filing, and SDG&E's Supplemental Filing.

According to SDG&E, its alternative proposal meets all of the concerns expressed by SF/U/F with regard to SDG&E's Supplemental Filing, even though SF/U/F subsequently withdrew its support. SDG&E also argues that its proposal addresses the technical concerns it had with the economic curtailment terms embodied in the Joint Testimony.

Finally, SDG&E considers its current proposal to be substantially less complex to administer than the curtailment terms adopted by the Commission. In sum, SDG&E argues that its proposal meets the concerns of all sides. SDG&E requests authorization to use this alternative curtailment provision in its final S04 and S02 contracts, subject to future changes that may occur in the biennial updates.

Both PG&E and SCE recommend that the Commission grant SDG&E's request. They both request Commission approval to use SDG&E's alternative curtailment provision in their final S04 contracts, instead of the provision presented in the June 27, 1988

Joint Filing.³ SCE supports the use of SDG&E's alternative curtailment provision in its SO2 contracts, while PG&E withholds comments on that issue, at this time.⁴ SCE recommends that, if the Commission denies SDG&E's request, further negotiations take place among all parties in the interest of reaching a common resolution on this issue.

In general, DRA supports SDG&E's proposal to use its alternative curtailment provision in final SO4 contracts.⁵ However, DRA adds the following caveat to its endorsement:

"Because the June 27 SO4 contract form resulted from a long negotiating process among the three major utilities, QF representatives, and DRA, no alternative contract provision should be adopted if it would significantly upset the balance struck between the negotiating parties in arriving at that joint proposal. DRA does not believe that SDG&E's proposal would upset that balance. However, the QFs have yet to be directly heard from, and any QFs' comments on SDG&E's filing should be considered carefully." (Comments of DRA, page 2.)

SF/U/F, on the other hand, strongly opposes SDG&E's request for approval of the alternative curtailment provision. SF/U/F states that it agreed in principle to pursue a "split the savings" approach (since such an approach would be inherently simpler) provided that the QF would not be made worse off

3 PG&E makes this request subject to the condition that the alternative curtailment language is construed solely as a revision of the existing curtailment language and not as an occasion to reopen any other provisions of the final SO4 filed jointly on June 27, 1988. Further, PG&E recommends certain utility-specific changes to the language proposed by SDG&E.

4 PG&E argues that it isn't clear that the alternative provision is consistent with the pricing principles and other terms of the suspended SO2, or that this is even an issue "ripe for discussion".

5 DRA is silent on the issue of using this provision for SO2.

economically by virtue of implementation of that curtailment provision. SF/U/F argues that SDG&E's curtailment provision would not leave QFs economically "indifferent". Rather, according to SF/U/F, the energy pricing provisions under SDG&E's proposal would leave a QF substantially worse off economically than under the Joint Filing provision. SF/U/F concludes that SDG&E's alternative curtailment provision does not preserve the balance represented by the final S04 proposed in the Joint Testimony, and approved by the Commission. For these reasons, SF/U/F requests that the Commission reject SDG&E's request, and order that the existing curtailment provision in the Joint Filing be employed in all final S04s and S02s.

IV. Discussion

It is apparent from the comments that there remains substantial disagreement over whether or not SDG&E's alternative curtailment provision should be adopted for S04 (and S02) to replace the curtailment provisions presented in the June 27, 1988 Joint Filing. Not surprisingly, the working group members also disagree over the relative advantages and disadvantages of SDG&E's alternative curtailment provision.

There also appears to be some difference of opinion regarding the objectives of this effort. In D.88-09-026, we allowed SDG&E the opportunity to develop a simpler approach, solely in deference to its remaining concerns over the administrability of the Joint Filing provisions. However, as we stated in that order, we were not convinced that SDG&E's concerns were founded in fact:

"...The utility has to track much cost information in order to maximize its benefits under the option. However, the utility's system dispatchers already track (or should be tracking) most of this information. The utility's billing department may have additional tasks, as SDG&E suggests, but there won't be any for at least a year. SDG&E does

not estimate the time required to develop the needed infrastructure." (D.88-09-026, p- 52.)

Nor did we intend this process to "open up" for renegotiation a selected aspect of the contract terms presented in the Joint Testimony, and approved by this Commission. As SCE points out, the Joint Testimony resulted from a lengthy negotiating process "of give and take discussions" among the parties. In approving the contract form of S04, including the proposed economic curtailment terms, we honored the parties' emphasis that the joint recommendations be treated as a balanced whole:

"Parties to a settlement need room to compromise on issues; no such room exists if the settlement must resolve each issue in exactly the same way as if the issue had been litigated in full. We have concluded that the Joint Testimony's uniform final Standard Offer 4 contract provisions, taken as a whole, are reasonable and in the public interest. That reasonable people might differ on some of the provisions does not negate our conclusion." (D.88-03-079, p. 42.)

We intended only to offer SDG&E one final opportunity to present us with a "win win" situation, namely: an alternative economic curtailment option that was simpler for SDG&E to implement than our adopted terms and that had the support of all Joint Testimony sponsors. Short of that, we remain unwilling to make changes to the Joint Testimony and our approved economic curtailment option for either S04 or S02. Moreover, we will not selectively change this provision of the negotiated S04 contract form, which was presented and subsequently adopted as a "balanced

whole."⁶ As to SCE's suggestion that we allow additional time for further negotiations, we believe that ample opportunity has already been given to SDG&E and other parties to resolve their differences. It is now time to turn our attention and efforts to the issues before us in the imminent biennial update. ✓

Despite the fact that unanimity could not be reached on all SO4 contract issues, we reiterate our commendation to all working group members for their negotiating efforts.⁷ We encourage the working group to continue working cooperatively as we embark on Phase 1 of the biennial update proceeding.⁸

We therefore direct PG&E, SDG&E and SCE to each file a complete copy of their final SO4 contracts, consistent with the June 27, 1988 Joint Filing, within thirty days of the effective date of this order. With regard to SO2, we agree with PG&E that it

6 We also note that the concept of "share the savings" for economic curtailment adders has caused us concern in the past. In D.87-08-047, we cautioned QFs and utilities that the basis for such adders should be the higher cost hours in which the QF would be expected to operate, and not a "share the savings" approach. While SDG&E's proposal may not raise these same concerns (e.g. ratepayer exposure to risk of forecast error), we would need to examine this aspect of ratepayer risk more closely before adopting a "share the savings" economic curtailment option for either SO2 or SO4. (See Decision 87-08-047, pages 9-10, and Finding of Fact 8).

7 See D.88-03-079, pp. 38-39.

8 Our next update cycle begins once the CEC adopts its Seventh Electricity Report (ER-7), which we anticipate will occur in late April or early May, 1989. Therefore, SDG&E still has about a year (depending on the length of our updating process) to develop the administrative capability for implementing our adopted curtailment provisions. We encourage SDG&E to work closely with SCE and PG&E, and learn from their operating and modeling experience, in developing internal procedures that are workable for SDG&E's system. For a description of the scope and schedule for the ER-7 biennial update, see the Notice of Prehearing Conference and Assigned Commissioner's Ruling dated February 27, 1989. ✓

is premature to modify SO2 language at this time. We will address the availability of that offer, and related contract terms, in the biennial update proceeding.

Findings of Fact

1. In D.88-03-079, we adopted the uniform set of final SO4 contract provisions contained in the Joint Testimony filed by a utility/QF/DRA working group. The Joint Testimony included contract terms for an economic curtailment option.

2. On June 27, 1988, the working group jointly filed final SO4 contract language in compliance with D.88-03-079 (Joint Filing). SDG&E raised objections to the economic curtailment terms adopted by the Commission (and embodied in the Joint Filing contract language).

3. In D.88-09-026, we rejected SDG&E's technical objections to our adopted economic curtailment option, but allowed SDG&E the opportunity to develop an option that was simpler in operation. We directed the utility/QF/DRA working group to file, no later than October 21, 1988, a report on SDG&E's alternative, assessing its advantages and disadvantages.

4. At SDG&E's request, the assigned Commissioner granted SDG&E and the working group two extensions to comply with D.88-09-026. A final extension was granted to January 30, 1989.

5. On January 30, 1989, SDG&E filed its alternative economic curtailment option. PG&E, SCE, DRA and SF/U/F filed comments.

6. In their comments, working group members disagreed over the advantages and disadvantages of SDG&E's proposed alternative relative to the economic curtailment provision presented in the Joint Testimony and embodied in the Joint Filing. They also disagreed over whether or not SDG&E's alternative should replace the adopted curtailment provision for final SO4 and/or SO2.

Conclusions of Law

1. Consistent with the Commission's settlement policy, a selected aspect of the negotiated SO4 contract language, which was presented and subsequently adopted as a "balanced whole," should generally not be changed without unanimity among negotiating parties.

2. SDG&E and other parties have been afforded ample opportunity to resolve their differences.

3. Modification of SO2 contract language is under consideration in the next resource plan biennial update.

4. The final SO4 contract language, including the curtailment terms, presented in the June 27, 1988 Joint Filing should be adopted.

5. This opinion and order should be made effective today in order to expedite completion of the work in implementing final Standard Offer 4.

ORDER

IT IS ORDERED that:

1. The final Standard Offer 4 (SO4) contract provisions set forth in Appendices 1 through 5 of the June 27, 1988 Joint Filing of Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), Santa Fe Geothermal, Inc., Union Oil Company of California, Freeport-McMoran Resource Partners, Independent Energy Producers and the Division of Ratepayer Advocates are approved in their entirety.

2. PG&E, SDG&E and SCE shall each file a complete final SO4 in compliance with this decision within 30 days of the effective date of this decision. An original and 12 conformed copies shall be filed with the Commission's Docket Office, and all parties of record shall be served with either the filing or notice that the

filing has been made and how to obtain a copy. In addition, two copies of each filing shall be sent to the Commission Advisory and Compliance Division with a transmittal letter stating the proceeding and decision numbers.

This order is effective today.

Dated APR 12 1969, at San Francisco, California.

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

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

Commissioner Patricia M. Eckert
present but not participating.

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

Victor Weiss
Victor Weiss, Executive Director
JB

APPENDIX A

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COMPARISON OF ALTERNATIVE CURTAILMENT PROVISIONS

<u>Characteristics</u>	<u>June 1988 Joint Filing</u>	<u>SDG&E's Aug. 1988 Suppl. Filing</u>	<u>SDG&E's "Split- the Savings" Alternative Provision</u>
Level of Operation	QF selects, except for negative avoided cost where QF curtail to 30%	Utility may curtail to zero	Utility identifies type: either QF selects, or utility may curtail to minimum of 30%
Number of hours	1,500	500	1,500
Time periods	Off-peak & super off-peak	Off-peak & super off-peak	Types 1 & 2: any TOU period Type 3: off-peak & super off-peak
Payment	<u>Energy:</u> QF receives lesser of incremental price or avoided cost. Price during non-curtailement hours adjusted based on production costing runs. No energy price for negative avoided cost curtailments even when	No energy payments. ERCC and Capacity based on previous calendar year's historical operation	<u>Energy:</u> Types 1 and 2 - Split the savings: if QF is not required to curtail, 1/2 of difference between replacement cost and published price, plus replacement cost. If QF curtails, QF is paid based on 1/2 the difference between replacement

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<u>Characteristics</u>	<u>June 1988 Joint Filing</u>	<u>SDG&E's Aug. 1988 Suppl. Filing</u>	<u>SDG&E's "Split- the Savings" Alternative Provision</u>
Payment (continued)	QF operates at authorized level below 30%. <u>ERCC and Capacity:</u> Based on 12 month rolling average of historical operation.		cost and published price based on historical operation. Type 3: Contract Rate for deliveries up to 30% <u>ERCC and Capacity:</u> Based on previous year's historical operation.
<u>Non-Compliance</u>	No energy, or capacity for hours of non- compliance	Same	Same
<u>Notice</u>	QF notifies of intended operation 1 week prior to curtail- ment hour. Utility may change schedule of curtailments up to 4 hours prior to curtailment.	Same	Same

Source: January 30, 1988 Filing of SDG&E.Note: ERCC (Energy-related Capital Costs) apply only to final
SO4 payments.

(END OF APPENDIX A)

not estimate the time required to develop the needed infrastructure." (D.88-09-026, p. 52.)

Nor did we intend this process to "open up" for renegotiation a selected aspect of the contract terms presented in the Joint Testimony, and approved by this Commission. As SCE points out, the Joint Testimony resulted from a lengthy negotiating process "of give and take discussions" among the parties. In approving the contract form of S04, including the proposed economic curtailment terms, we honored the parties' emphasis that the joint recommendations be treated as a balanced whole:

"Parties to a settlement need room to compromise on issues; no such room exists if the settlement must resolve each issue in exactly the same way as if the issue had been litigated in full. We have concluded that the Joint Testimony's uniform final Standard Offer 4 contract provisions, taken as a whole, are reasonable and in the public interest. That reasonable people might differ on some of the provisions does not negate our conclusion." (D.88-03-079, p. 42.)

We intended only to offer SDG&E one final opportunity to present us with a "win win" situation, namely: an alternative economic curtailment option that was simpler for SDG&E to implement than our adopted terms and that had the support of all Joint Testimony sponsors. Short of that, we remain unwilling to make changes to the Joint Testimony and our approved economic curtailment option for either S04 or S02. Moreover, consistent with our policy on settlements, we will not selectively change this provision of the negotiated S04 contract form, which was presented and subsequently adopted as a "balanced whole," without unanimity

among the settling parties.⁶ As to SCE's suggestion that we allow additional time for further negotiations, we believe that ample opportunity has already been given to SDG&E and other parties to resolve their differences. It is now time to turn our attention and efforts to the issues before us in the imminent biennial update.

Despite the fact that unanimity could not be reached on all S04 contract issues, we reiterate our commendation to all working group members for their negotiating efforts.⁷ We encourage the working group to continue working cooperatively as we embark on Phase 1 of the biennial update proceeding.⁸

We therefore direct PG&E, SDG&E and SCE to each file a complete copy of their final S04 contracts, consistent with the June 27, 1988 Joint Filing, within thirty days of the effective

6 We also note that the concept of "share the savings" for economic curtailment adders has caused us concern in the past. In D.87-08-047, we cautioned QFs and utilities that the basis for such adders should be the higher cost hours in which the QF would be expected to operate, and not a "share the savings" approach. While SDG&E's proposal may not raise these same concerns (e.g. ratepayer exposure to risk of forecast error), we would need to examine this aspect of ratepayer risk more closely before adopting a "share the savings" economic curtailment option for either S02 or S04. (See Decision 87-08-047, pages 9-10, and Finding of Fact 8).

7 See D.88-03-079, pp. 38-39.

8 Our next update cycle begins once the CEC adopts their Seventh Electricity Report (ER-7), which we anticipate will occur in late April or early May, 1989. Therefore, SDG&E still has about a year (depending on the length of our updating process) to develop the administrative capability for implementing our adopted curtailment provisions. We encourage SDG&E to work closely with SCE and PG&E, and learn from their operating and modeling experience, in developing internal procedures that are workable for SDG&E's system. For a description of the scope and schedule for the ER-7 biennial update, see the Notice of Prehearing Conference and Assigned Commissioner's Ruling dated February 27, 1989.

date of this order. With regard to S02, we agree with PG&E that it is premature to modify S02 language at this time. We will address the availability of that offer, and related contract terms, in the biennial update proceeding.

Findings of Fact

1. In D.88-03-079, we adopted the uniform set of final S04 contract provisions contained in the Joint Testimony filed by a utility/QF/DRA working group. The Joint Testimony included contract terms for an economic curtailment option.

2. On June 27, 1988, the working group jointly filed final S04 contract language in compliance with D.88-03-079 (Joint Filing). SDG&E raised objections to the economic curtailment terms adopted by the Commission (and embodied in the Joint Filing contract language).

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