Decision 89 07 058 JUL 19 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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 JOINT PETITION BY THE DIVISION OF RATEPAYER ADVOCATES AND PACIFIC GAS AND ELECTRIC COMPANY FOR MODIFICATION OF DECISION 87-04-039

Summary

Pacific Gas and Electric Company (PG&E) and the Commission's Division of Ratepayer Advocates (DRA) have proposed a series of modifications to the Qualifying Facilities Milestone Procedure (QFMP) as it affects qualifying facilities (QFs) which are seeking transmission access in PG&E's northern constrained area. In that portion of PG&E's service territory, there are transmission constraints which preclude the unlimited addition of new QFs to its system. The proposed modifications are intended to make additional transmission allocations available to waiting QFs by encouraging QFs with no hope of development within their 5-year contractual deadlines to relinquish claims they may have to transmission access. Most of the projects seeking transmission access have contractual commitments to come on-line within the next 12 months.

The efforts of PG&E and DRA to address this issue are commendable. It is evident that the two petitioners have worked extensively with concerned QFs in an effort to forge a workable approach. In addition, PG&E and DRA offered to modify some aspects of their proposal in response to problems raised during the comment

period. Nonetheless, their efforts have underscored the difficulty in making eleventh-hour adjustments to a one-time program in a way which preserves legitimate business expectations while remaining consistent with our over-all goals in the implementation of the QF program. In this decision, we reject the Petition to Modify because we are not convinced that it would achieve its stated goals; nor are we persuaded that the balance of QF and ratepayer interests is best served by changing the QFMP, as it affects projects in the transmission-constrained areas, at this late date.

Procedural Background

On April 18, 1984, the Commission issued an order instituting this investigation of the electric utilities' transmission systems to determine whether transmission limitations existed which would constrain the development of cogeneration and small power projects (QFs). PG&E, Southern California Edison (SCE), San Diego Gas and Electric (SDG&E), Pacific Power and Light (PP&L) and Sierra Pacific Power (Sierra Pacific) were named as respondents. Each was required to file statements assessing the likelihood that QF development would be constrained by transmission system limitations in its territory over the next 10 years. PG&E stated that it then expected the capacity of parts of its northern bulk and area transmission systems to be exceeded at times during the next 10 years due to QF development. None of the other utilities responded by predicting transmission limitations.

PG&E, the Commission staff,[1] and designated QF representatives stipulated that the maximum amount of new QF power that could be interconnected in the various constrained areas

1 Then called the Public Staff Division, now called the Division of Ratepayer Advocates (DRA).

totalled 1150 MW.[2] The Commission adopted this stipulated amount in Decision (D.) 84-08-037 and in D.84-11-123. Two weeks later, the Commission ordered a continuation of an existing suspension of Payment Option #3 for interim Standard Offer 4 (SO4) and found that a milestone procedure should be established for measuring the progress and commitment of each QF and assessing the nature of the QF market (D.84-12-027). In D.84-12-027, the Commission indicated that such a milestone procedure would be developed as part of this investigation.

Since then, we have issued numerous decisions first establishing and then modifying the Interconnection Priority Procedure, which was later renamed the QF Milestone Procedure (QFMP).[3] As part of this process, PG&E has maintained two first-come first-served priority lists: one which indicates those projects which have been allocated access to transmission in the constrained area, and another which is a waiting list for those projects which have yet to receive transmission allocations. This opinion is in response to the Petition (Joint Petition) of PG&E and DRA (Petitioners) for Modification of D.87-04-039. That decision adopted the Revised Fifth Edition of the QFMP, the version which is currently in effect.

The Joint Petition was filed on January 27, 1989. A deadline of April 18, 1989 was established for the filing of

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2 The total available capacity was derived by adding together estimates of available capacity in each of eight smaller portions of PG&E's northern area. For a specific project seeking interconnection, the total capacity available would be irrelevant if there was insufficient capacity available in the specific local area.

3 See, for instance, D.85-01-038, D.85-08-045, D.85-11-017, D.86-04-053, and D.86-11-005.

comments in response to the Joint Petition. Protests were submitted by:

1. California Save Our Stream Council, Inc. (SOS)
2. Ronald E. Rulofson (Rulofson)
3. Walter Hammeken (Hammeken)
4. Friends of the River, Sierra Club Mother Lode Chapter, et al. (FOR)

In addition comments were submitted by:

1. Woodland Biomass Power (Woodland)
2. Delta-Dynamis, Inc. (Delta-Dynamis)
3. Independent Energy Producers Association (IEP)
4. Simpson Paper Company (Simpson Paper)
5. GWF Power Systems Company, Inc. (GWF)
6. Catalyst/Sunsweet Cogeneration Ltd Partnership (Catalyst/Sunsweet)

Letters commenting on the Joint Petition were received from:

1. Assemblyman Byron Sher, dated March 16, 1989
2. Donald B. Head, Director of Public Works for Sonoma County, dated April 5, 1989
3. Frank H. Wilson, Wilson-7 Energy Systems, dated April 9, 1989
4. William R. Archibald, FloWind Corp., dated April 7, 1989

On May 18, 1989, PG&E and DRA each filed responses to these protests and comments. A deadline of June 5, 1989 was set for the submission of final comments.

The Proposal

PG&E and DRA state that there are three purposes behind their proposal:

1. To encourage those QFs which are not seriously proceeding with their projects to voluntarily remove themselves from PG&E's northern constrained area transmission allocation list,

2. To provide an opportunity for certain QFs in the constrained area to postpone operation by extending the 5-year operation deadline, and

3. To strengthen the QFMP requirements in the transmission constrained area in a manner intended to prevent projects from "stagnating" on the allocation list.

PG&E and DRA emphasized that the proposal should be accepted or rejected in its entirety. The elements of the proposal contained in the Joint Petition can be summarized as follows:

1. **Amnesty Proposal.** A 90-day amnesty period would be set during which QF's on the transmission allocation list could withdraw their projects, terminate their power purchase agreements (PPA's) and receive a full refund of their QFMP project fees.

2. **Blanket Deferrals.** The sponsors of any QF which moves off the waiting list as a result of the amnesty program and is allocated transmission capacity would be invited to sign a deferral agreement, delaying the project from 3 to 5 years. Any project for which a deferral agreement is not signed within 60 days of the approval of the amnesty program would not be entitled to an extension of the 5-year on-line date. The fixed prices paid to a QF electing deferral would be the fixed energy and capacity prices the QF would have received if the original operation deadline had applied. If a project needed to begin operation before the minimum 3-year deferral date, it would be paid under an as-delivered arrangement until the

contractual deferral date. If a QF on the allocation list could demonstrate viability under the original 5-year deadline, shorter deferrals could be pursued.

3. **Grandfathering Provision.** Projects which received transmission allocations after January 1, 1988 but before Commission approval of this proposal would be allowed to choose to participate in the deferral program.

4. **Reporting Requirement.** Quarterly status reports would be required from each QF in order to remain on the transmission priority list.

5. **Interconnection Information Requirement.** Those projects for which the utility must perform an interconnection study would be required to provide the utility with any additional needed information within 6 months or risk removal from the transmission priority list.

Discussion

The issues raised in the protests and comments filed in reaction to the Joint Petition fit into several general categories.

Projects Which Received Allocations After January 1, 1988

PG&E and DRA argued that, as a matter of equity, QFs which received transmission allocations after January 1, 1988 but prior to the approval of the Joint Petition should be allowed to defer their projects under the same conditions as QFs which receive transmission allocations after approval of the Joint Petition. Various objections were offered by those filing protests and comments. Woodland Biomass argued that this grandfathering provision was too narrow and should be expanded to grant amnesty to any project which terminated its Power Purchase Agreement (PPA) after January 1, 1988. GWF commented that the deferral option should be made available to all QFs which had been offered

transmission after January 1, 1988, even if they had initially rejected the offer. Delta-Dynamis suggests that PG&E not be required to renew offers of allocations to projects that have previously lost their allocations due to failure to meet QFMP requirements other than Milestone 12.[4]

In response, PG&E argued that its proposal is not unfair to projects which had failed to maintain transmission allocation or had voluntarily vacated the transmission list because it does nothing to change their status. PG&E suggests that those offered allocations after January 1, 1988, who turned allocations down or failed to maintain them should be placed on the bottom of the waiting list if these QFs wish to participate in the deferral program. However, PG&E states that it strongly opposes any proposal which would restore such projects to their former positions.

DRA offered a slightly different modification. It suggested that QFs which were offered a transmission allocation after January 1, 1988 but which have since lost the allocation for failure to meet a requirement of the QFMP should be restored to the waiting list in the order which existed as of January 1, 1988. At the same time, DRA suggested that those projects which voluntarily requested and received rescission of their PPAs should not be given this opportunity.

GWF argued, in response, that there is no convincing rationale for giving preferred treatment to those lifeless projects which stayed on the transmission priority list over those which, in good faith, removed themselves from the list. GWF suggested that those receiving transmission allocations after January 1, 1988, who kept their PPAs alive should be given priority treatment even if

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4 The requirement that the project meet the contractual 5-year time limit for coming on-line.

they initially rejected the allocation. Finally, SOS argues that the creation of any distinction based on January 1, 1988 or any other past date is arbitrary and does nothing to overcome any inequities which may exist.

An obvious question posed by the Joint Petition is whether it is likely to have the desired effect of clearing non-viable projects off the transmission allocation list.[5] The Grandfather Provision appears to work against that goal. On the surface, it seems only fair to extend the offer of automatic deferrals to QFs which received transmission allocations in the months just prior to the proposed amnesty program. However, any method for determining how far the benefit should be spread will be arbitrary, by definition. As the comments indicate, the approach chosen by the Petitioners benefits some, but appears unfair to others. Of greater concern, however, is the fact that under the Grandfathering provision, some non-viable QFs which currently have allocations would be given on-line extensions of as long as 5 years, no questions asked. Instead of clearing these non-viable projects off the list, the Joint Petition would bring some of them back to life. This result is contrary not only to the stated goals of the Joint Petition, but to the thrust of our approach to contract administration, as well. As discussed below, although we have sanctioned the granting of deferrals to QFs where there are clear benefits to ratepayers from doing so, we have strictly limited such deferrals to viable projects. We find no persuasive reason for departing from that restriction in this instance.

Negotiated Deferrals

In the Joint Petition, PG&E, and DRA proposed that any project moving onto the transmission allocation list after

5 A viable project is one which is reasonably certain to operate on or before its contractual deadline in the absence of a deferral.

January 1, 1988, including those receiving allocations as a result of the amnesty proposal, be allowed to "negotiate" 3- to 5-year deferrals. Both Woodland Biomass and Delta-Dynamis argued that PG&E should not be able to negotiate with QFs for such deferrals--they should be available to those QFs as a matter of right. The apparent fear is that PG&E would carry special advantage into any such negotiations and might extract from QFs concessions which were not contemplated by the Joint Petition. PG&E responded by suggesting that a standard set of terms should govern QF deferrals, that the only detail to be "negotiated" would be the exact length of the deferral within the 3- to 5-year boundaries.

In essence, under the proposed program, PG&E would grant deferrals without negotiating at all. This is part of our concern. In D.88-10-032, in which we set forth our Final Guidelines for Contract Administration of Standard Offers, we emphasized that a modification of a standard offer contract should only be agreed to if commensurate concessions are made to the benefit of ratepayers.[6] If an otherwise non-viable QF is brought back to life by granting a deferral in the absence of price or non-price concessions, the balance required in the guidelines has not been struck. In its response to comments, PG&E removed any doubt that the proposed modifications would lead to this result.

Concerns Specifically Directed to Small Hydroelectric Projects

SOS, FOR, and Assemblyman Sher all expressed concern that the proposal to allow some non-viable QFs to receive deferrals could bring back to life many small hydroelectric (small hydro) projects which are on the waiting list and are incapable of delivering power by their contractual deadlines. FOR argues that the potential for greater small hydro development makes this

6 D.88-10-032, Conclusion of Law 4, mimeo. page 45.

decision one which should be subject to the requirements of the California Environmental Quality Act (CEQA) which could include the preparation of an environmental impact report. SOS and Assemblyman Sher suggest that, at a minimum, any new small hydro projects allowed to receive transmission allocations be required to comply with all applicable state laws.

In response, PG&E objected to the notion of singling out one group of QFs for special treatment or requirements, but stated that it did not object to a requirement that all QF projects obtaining deferrals as a result of the Petition must comply with all valid, applicable requirements of California state regulatory authorities. DRA, on the other hand, would specifically address the small hydro issue by revising Section IV(C) of the QFMP, which sets forth the definition of the Critical Path Permit. DRA would add the requirement that hydro facilities subject to Section 2821 of the Public Utilities Code obtain the certification of the State Water Resources Control Board prescribed by statute.

Because we reject the Joint Petition on other grounds, the implications of this proposal for accelerated small hydro development need not be addressed.

Problems Introduced by Changing the Rules

Hammeken owns a project which he chose to construct even though it was on the QF waiting list for a transmission allocation. He states that he decided to build the project without an assurance of transmission access after having assessed the likelihood of gaining that access under the current rules. While he remains willing to accept that risk, he argues that it is unfair to now change the rules in a manner which might decrease his chances of gaining access to transmission. He states that his concern is derived from the portion of the Joint Petition which would allow non-viable projects with transmission allocations as well as non-viable projects ahead of his QF on the waiting list to receive

deferrals. This is a factor that he says he could not have taken into account when assessing his investment risk.

The Joint Petitioners claim to have at least partially responded to Hammeken's concerns by modifying their proposal to include a two-phased approach to new transmission allocations. Remaining allocations would first be offered to projects not requiring deferrals. Then, whatever is left would be made available to the other projects on the waiting list.

While this alteration appears responsive to Hammeken's problem, it underscores the hazards of changing the rules midway through a program. An undetermined number of business decisions were made and investment risks were assessed on the basis of the existing rules. While none of the QFs on the waiting list were promised eventual access to transmission in the constrained areas, it would not have been unreasonable to expect that the program would remain fundamentally unchanged. If the Joint Petition was adopted, who knows how many other adjustments to this program would later be required to meet reasonable business expectations. Without greater confidence that the Joint Petition would accomplish its intended purpose, we choose not to take on this risk.

Inconsistency with Commission Policy

Both SOS and FOR asserted that the Joint Petition is inconsistent with Commission policy, as expressed most clearly in the Final Report to the Legislature on: Joint CEC/CPUC Hearings on Excess Electrical Generating Capacity (SB 1970 Report) which, in part, sets forth a "tough but fair" approach to managing the contracts of QFs which have yet to go on-line. The SB 1970 Report stated that all parties to QF contracts are obliged to meet the terms of their original agreements. "In general," it concluded, "a tough but fair policy means that both QFs and utilities should honor the contracts as written, but contract modifications should be considered where it is in the ratepayer's best interest to do so." (At p. i.) PG&E responded to the argument only by saying

that it is "baseless" and that the authors of the SB 1970 Report were sensitive to the problems in the transmission constrained area. DRA did not respond to the argument.

SOS and FOR are correct in stating that the Joint Petition is inconsistent with our policy as set forth in the SB 1970 Report. That report stated that contractual on-line deadlines should be handled as follows (at page 98):

> "[The CEC and the CPUC] think that the best way to resolve this difficult issue is by requiring that the five year deadline be enforced, although exceptions may be made where one of two special circumstances can be shown. The first circumstance is where the QF cannot come on-line within five years of contract execution because of an event constituting force majeure. The second circumstance is where the QF could indisputably meet the deadline, but where there would also be benefits to ratepayers from deferring the on-line date of the project."

The projects which would be affected by the Joint Petition cannot generically be said to fit within the limits of either SB 1970 Report exception. More importantly, the Joint Petition is inconsistent with the specific contract administration guidelines we adopted in Rulemaking 88-06-007, which followed the issuance of the SB 1970 Report. That rulemaking culminated in D.88-10-032, which adopted our "Final Guidelines for Contract Administration of Standard Offers" (Guidelines).

Both the SB 1970 Report and our Guidelines state that the inability to obtain transmission capacity in PG&E's transmission constrained area is unlikely to be viewed as a valid force majeure. (SB 1970 Report, p. 102; Guidelines, sec. III.5; D.88-10-032, Conclusion of Law 24, mimeo., p. 47.) Although we cannot foresee a circumstance where PG&E's transmission constraints would create or contribute to a valid claim of force majeure, we do not have to resolve that question in this decision.

Our Guidelines also emphasize the importance of establishing the viability of a QF before granting a deferral (or extension) the QF's five-year on-line date, a concern also expressed in the SB 1970 Report. (See, e.g., Guidelines, sec. III.6.) It cannot be said that all the non-operating QFs subject to transmission constraints would meet the 5-year deadlines in the absence of deferrals. In fact, the implications in the Joint Petition are just the opposite. Blanket deferrals would be offered to certain QFs partially because they would be unable to otherwise satisfy their contracts. As we explained at page 104 of the SB 1970 Report:

> "[W]e refuse to eviscerate the five-year deadline by allowing a deferral for every project that requests one. The benefit of a deferral comes from delaying a project that would clearly come on-line within five years; there is no benefit in deferring a project that could not otherwise meet the five-year deadline."

The Joint Petition, on the other hand, would grant deferrals in the transmission constrained area for projects whether or not they could come on-line during the contractual five-year period. We see no overriding benefit which would justify so dramatically departing from our current policy.

Viable vs. Non-viable Projects

A key component of the Joint Petition is that any project gaining access to transmission allocation as a result of the amnesty (as well as any project currently on the allocation list which received its allocation after January 1, 1988) would be offered a 3- to 5-year deferral. The deferral would be offered whether or not the project is considered to be viable. Current Commission policy favors deferrals only for viable projects.

Several commentors (including Rulofson, Hammeken, Simpson Paper, and Catalyst/Sunsweet) objected to the fact that the Joint Petition would allow non-viable projects to claim a transmission

allocation and receive life-saving deferrals while potentially viable projects would remain on the waiting list and, perhaps, never receive transmission allocations. In response, the Petitioners modified their proposal by creating a two-phase process for claiming any transmission allocations made available by the amnesty program. First, allocations would be offered to projects which agree not to request any deferrals or other contract extensions. Then, any remaining allocations would be offered to projects making no such promises. Deferrals would also be available to projects which received allocations after January 1, 1988, and have taken actions to preserve their priorities, whether or not they are otherwise viable.

The problem raised by commentors and the responses of the Petitioners underscores the complications resulting when deferrals are offered to otherwise non-viable projects. As discussed above, we do not see merit in such a fundamental change to our existing policy. In addition, the two-phased approach described above raises curious contradictions. Under the proposal as modified, deferrals would be allowed for some projects which already have transmission allocations, even if they are otherwise non-viable (the Grandfathering Provision). This is inconsistent with our guidelines, which prohibit deferrals for non-viable projects. Then, in order to qualify for the first phase of new transmission allocations, QFs on the waiting list which are clearly viable would be precluded from ever seeking deferrals. This is inconsistent with our guidelines, which allow for deferrals where there are clear benefits to ratepayers. Finally, any remaining transmission capacity would be available to other QFs on the waiting list, who are likely to be non-viable, but who would nonetheless be encouraged to accept deferrals. Thus, the Joint Petition would help non-viable projects retain the right to use lucrative interim SO4 contracts while discouraging the deferral of projects which

have more viable demands to the high contractual rates. We cannot support such a proposal.

Ratepayer Impact Issues

FOR argues that it would be very expensive for ratepayers if projects holding interim SO4 contracts which are due to expire were allowed to revive their projects by receiving extensions of up to 5 years in their contractual operating dates. SOS suggests that PG&E should bear the risk of payments in excess of actual avoided costs as a result of SO2 or SO4 contract extensions. In addition, SOS focuses on the dollars returned to project proponents under the amnesty proposal which otherwise would accrue to the benefit of ratepayers. SOS argues that QFs have no right to ask for their deposits back, because if actual avoided costs had exceeded SO4 and various projects failed, the deposits would have been the ratepayer's only liquidated damages. Finally, SOS argues that the Joint Petition would violate the Federal Public Utilities Regulatory Policies Act of 1978 (PURPA) by providing an opportunity for more payments to QFs at rates above avoided cost. In support of this point, SOS referred to, but did not cite, a federal court decision involving the Orange & Rockland Company.

PG&E responded to concerns of negative ratepayer impacts by saying that these arguments ignore the real benefits accruing to ratepayers through deferral of a QF project. In response, FOR stated that PG&E's position ignores the much more substantial benefits accruing to ratepayers if interim SO4 contracts for non-viable projects are simply not renewed, extended or deferred. As for the PURPA argument, PG&E asserts that SOS gives no comprehensible basis for its position. DRA did not respond to issues concerning ratepayer impacts.

Based on the record before us, we can reach no conclusion as to the likely impacts on ratepayers if the Joint Petition were to be granted. We are equally unable to determine what impact, if any, a prediction of ratepayer impacts would have on a decision on

the merits of the Joint Petition. However, it is clear that there exist triable issues of fact concerning potential ratepayer impacts and their significance which are not adequately addressed in the filings before us.

The Need for Hearings

SOS argued that the issues raised by the Joint Petitioner are not the type of minor issues which are properly the subject of a Petition for Modification. Instead, SOS position is that the underlying OII should be reopened and that the proposal should be subject to evidentiary hearings. SOS asserts that the Petitioners should be required, in those hearings, to demonstrate the ratepayer benefits from the amnesty program. In addition, it is argued that parties should address alternatives to the Joint Petition, including efforts to make the remaining transmission capacity available to QFs with SO1 and final SO4 contracts.

Rulofson stated that if hearings were held, he would present evidence concerning the existence of non-viable QFs on the transmission allocation and waiting lists and the amount of capacity that he asserts would be available if the Commission properly enforced its existing rules. Hammeken asked that the Joint Petition be "heard and be subject to modification" in response to the problems he raised about the effects of changing the rules at this late date.

PG&E responded by claiming that no parties properly requested that hearings be held.

We disagree. As discussed above, SOS and FOR have adequately demonstrated the need for evidentiary hearings to address ratepayer impacts. In addition, we would wish to more carefully consider the implications of the Joint Petition on viable QFs who are on the waiting list. Although the Petitioners have modified their proposal to accommodate the concerns of Rulofson and Hammeken, it is not clear that they have successfully preserved the rights and legitimate expectations of those on the waiting list.

If we were inclined to grant the Joint Petition, hearings would be necessary. This would create a serious problem, in that it would add months to the time needed to resolve this matter and contribute to any uncertainties that it has generated in the QF market. However, a decision to deny the Joint Petition merely maintains the status quo and does not require hearings.

Credit for Time Absorbed by the Joint Petition Process

Rulofson, Catalyst/Sunsweet, and Delta-Dynamis argued that the filing of the Joint Petition on January 27, 1989, disrupted the status quo. Since it was suggested that the rules under which they operated might soon change, it is argued that many projects may have lost momentum. Rulofson and Catalyst/Sunsweet asked that, if the Joint Petition is rejected, all QFs on the transmission allocation and waiting list in the transmission-constrained area be given a day-for-day extension of time for meeting contractual obligations equal to the time during which the Joint Petition was pending. Delta-Dynamis argued that any order issued in response to the Joint Petition should reflect the period during which the outcome was pending, no matter what direction that order takes. PG&E and DRA did not respond to this issue.

We are not persuaded by these arguments to grant an extension of the five-year deadlines. The mere fact that a petition to modify our policies in the transmission constrained area was filed does not alter the obligations of the QFs (and PG&E) under the standard offer contracts. We expect that QFs have continued to fulfill those obligations to the best of their abilities, rather than rely on the possibility that we might approve the Joint Petition. Were we to grant an extension of the five-year deadlines, we would be unilaterally altering a fundamental term in the existing standard offer contracts, without benefit of hearings and without the consent of the parties to the contract. That would contravene our oft-stated policy that a deal

is a deal. If an individual QF affected by the pendency of the Joint Petition wishes to have its contractual obligations modified, it may seek to negotiate a modification with PG&E. As with other efforts to modify existing standard offer contracts, the negotiations should be guided by D.88-10-032 and our Guidelines, including the viability guidelines.

Findings of Fact

1. PG&E and DRA believe that the transmission allocation list in PG&E's northern transmission constrained area contains many projects which have no hope of meeting their contractual on-line obligations.

2. PG&E and DRA further believe that the current QFMP process fails to force or encourage such projects to relinquish their transmission allocations.

3. The proposals contained in the Joint Petition are intended to encourage those QFs which are not seriously proceeding with their projects to voluntarily remove themselves from PG&E's northern constrained area transmission allocation list.

4. It is unclear whether the proposal taken as a whole would effectively meet its intended goal.

5. The proposal would provide an opportunity for certain QFs in the constrained area to postpone operation by extending the contractual five-year operation deadline.

6. It is our established policy to encourage operation deferrals only for projects which are reasonably certain to operate on or before their contractual deadlines in the absence of a deferral and where the deferral would result in clear benefits for ratepayers.

7. Under the proposal, PG&E would offer deferrals to some projects whether or not they would be reasonably certain to operate on or before their contractual deadlines in the absence of a deferral.

8. Changing the existing transmission allocation rules at this time would introduce new uncertainties and complications, without clear benefits.

9. The record before us is insufficient to allow us to determine whether or not the proposal as a whole would result in clear benefits to ratepayers.

10. An extension of the five-year deadline in existing standard offer contracts as requested by commentors would be a unilateral alteration of a fundamental term in existing standard offer contracts, without the consent of the parties to the contract.

Conclusions of Law

1. As a whole, the proposals contained in the Joint Petition are inconsistent with existing Commission policy.

2. Based on the record before us, we cannot conclude that it would be in the best interest of PG&E or its ratepayers to grant this petition.

3. The petition should be denied.

4. The commentors' request for an extension of the five-year deadline to reflect the pendency of the Joint Petition should be denied.

O R D E R

IT IS ORDERED that:

1. The Joint Petition for Modification of D.87-04-039 is denied.

2. PG&E shall continue to undertake all reasonable efforts to encourage the release of transmission allocations currently held by projects which have no hope of meeting their contractual obligations.

This order is effective today.
Dated JUL 19 1989, at San Francisco, California.

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

Commissioner Patrick M. Eckert, being necessarily absent, did not participate.

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

[illegible], Executive Director

8. Changing the existing transmission allocation rules at this time would introduce new uncertainties and complications, without clear benefits.

9. The record before us is insufficient to allow us to determine whether or not the proposal as a whole would result in clear benefits to ratepayers.

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3. The petition should be denied.

4. The commentors' request for an extension of the five-year deadline to reflect the pendency of the Joint Petition should be denied.

O R D E R

IT IS ORDERED that:

1. The Joint Petition for Modification of D.87-04-039 is denied.

2. Those projects on the waiting list for transmission allocations in Pacific Gas and Electric Company's (PG&E) northern transmission constrained area and all projects in that area which received transmission allocations after January 1, 1988, shall be eligible for extensions of time for complying with unmet QFMP milestones resulting in an overall extension of Milestone 12 equal to the number of days between January 27, 1989 and the date of this decision.

3. PG&E shall continue to undertake all reasonable efforts to encourage the release of transmission allocations currently held by projects which have no hope of meeting their contractual obligations.

This order is effective today.

Dated _____, at San Francisco, California.