

Decision S9 08 031

AUG 3 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  
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

OPINION MODIFYING DECISION 89-02-017

By this decision, we extend the time within which off-system qualifying facilities (QF) must execute their Standard Offer No. 2 power purchase agreements with San Diego Gas & Electric Company (SDG&E).<sup>1</sup> In addition, SDG&E is directed to provide to off-system QFs, no later than August 31, 1989, its completed Non-Interconnected Operating Agreement, economic harm studies and

<sup>1</sup> The terms "off-system" and "out-of-service area" are used interchangeably to refer to QF resources located outside of SDG&E's service territory or outside of California.

economic curtailment proposal. Certain provisions relating to project fee refunds are also clarified.<sup>2</sup>

A. Background

In Decision (D.) 89-02-017, we determined that four QFs were eligible for SDG&E's Standard Offer 2 (SO2).<sup>3</sup> Three of the eligible QFs represent out-of-service area projects. We encouraged these QFs to meet with SDG&E personnel as soon as possible to identify and exchange information needed by SDG&E to perform line loss studies. We directed SDG&E to complete these line loss studies within 30 days after the out-of-service area QF requested such a study and provided any needed information.<sup>4</sup>

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2 Ordinarily, we allow a full 30 days for protests to the authority sought in a Petition to Modify. (Rules of Practice and Procedure, Rule 8.1.) We have decided, in this instance, to issue a decision prior to the expiration of the protest period. To do otherwise would result in our decision being issued after the August 8, 1989 deadline. Moreover, SDG&E is not prejudiced by our actions. The modifications we make today are intended only to clarify, and not alter, the basic policies we've expressed in prior orders. The relief sought by Petitioners, namely, an extension of time to sign Standard Offer 2, is necessitated by the time constraints that this Commission, and not SDG&E, placed on the Standard Offer solicitation.

3 SO2 is limited to QFs that commit to provide firm capacity. In D.87-11-024, SO2 was reinstated for SDG&E to meet its near-term need for peaking generation. The following four projects were found to be eligible: 1) an out-of-service area 80 MW solar thermal project (Luz Development), 2) an out-of-service area 50 MW geothermal project (Freeport-McMoran Resource Partners), 3) an in-service area 2.4 MW biogass project (O'Brian Energy Systems), and an out-of-service area 50 MW cogeneration project (Bonneville Pacific Corp.).

4 In performing these studies, we directed SDG&E to use the same transmission assumptions and analytic techniques that it uses to model the impacts from its various other off-system resources (e.g., from San Onofre nuclear plants and purchases from the

(Footnote continues on next page)

In addition, we directed SDG&E to raise any claim regarding "economic harm to the ratepayer" in a timely manner:

"In D.88-04-070, we held that a utility generally should contract with off-system QFs unless we determined, on an individual basis, that interconnection with such a QF would result in economic harm to the ratepayer, e.g., by bumping economy energy purchases off an intertie. SDG&E has not suggested that any of these QFs would have this effect; however, it should raise this issue (should it determine that the potential for such an effect exists) no later than the [line loss] studies mentioned above. We would then expect the developer to accept an appropriately crafted economic curtailment provision." (D.89-02-017, p. 27.)

"SDG&E shall raise any claim regarding economic harm to the ratepayer (as specified in D.88-04-070) as soon as possible, and in no event later than this [line loss] study." (D.89-02-017, Conclusion of Law 6.)

In D.89-02-017, we also made provisions for project fee refunds if, as a result of the off-system line loss studies, the QF finds that its project is economically infeasible.<sup>5</sup> Finally, to maintain eligibility for SDG&E's SO<sub>2</sub>, D.89-02-017 required the QF to execute its SO<sub>2</sub> agreement by August 8, 1989.

**B. Petition For Modification**

On July 12, 1989, Freeport-McMoran Resource Partners and Bonneville Pacific Corporation (collectively Petitioners) filed a

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(Footnote continued from previous page)  
utilities in the Northwest and Inland Southwest). See D.89-02-017, page 27.

<sup>5</sup> See D.89-02-017, pp. 28-29, Conclusion of Law 6.

Petition For Modification of D.89-02-017 requesting an extension of the August 8, 1989 deadline for executing their SO2 agreements. Petitioners claim that the extension of time is necessary because SDG&E's delay in the preparation of key studies, negotiations with Petitioners and preparation of certain ancillary agreements has disabled Petitioners from executing the SO2 within the time contemplated by D.89-02-017. Specifically, as of July 12, 1989, Petitioners claim they have not received from SDG&E a complete package of the Non-Interconnected Operating Agreement (NIOA), associated line loss and "economic harm" studies, and proposed curtailment provisions.<sup>6</sup>

Petitioners also request clarification of the project fee refund provisions. Specifically, they request that a QF be allowed to get its project fee back if, as a result of the NIOA (or economic curtailment provision), the QF finds that the project is infeasible.

### C. Discussion

We are dismayed to learn of the delays in executing the SO2 agreements contemplated in D.89-02-017. Petitioners claim that these delays are attributable solely to SDG&E. We do not have a sufficient record before us, at this time, to assess culpability. However, the issues raised by the Petitioners do indicate the need to remind SDG&E of its obligation to 1) meet its burden of proof in

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<sup>6</sup> Pursuant to D.89-02-017, Ordering Paragraph 5, SDG&E filed its SO2 on March 10, 1989. In that document, SDG&E stated its intention to prepare and require off-system QFs to enter into an ancillary agreement (the NIOA). SDG&E described this agreement as "the analog to the Interconnection Facilities Agreement for on-system QFs", and reserved for the NIOA issues of line loss factors, provisions respecting "economic harm to the ratepayer" and "the facilities and procedures necessary to ensure that the off-system QF's power is delivered to SDG&E". (See March 10, 1989 filing, page 2.)

claiming "economic harm" and 2) negotiate in good faith with off-system QFs, pursuant to our prior orders.

In D.88-04-070, we clearly placed the burden on SDG&E, and not the QF, to demonstrate that interconnection with out-of-service area QFs will result in economic harm to ratepayers:<sup>7</sup>

"Absent a utility claim of economic harm, interconnection of out-of-service area QFs should occur without any fuss or additional requirements by the utility. This means, for example, that QFs outside of SDG&E service area are eligible to participate in SDG&E's reinstated SO2. Unless SDG&E raises a claim of economic harm to its ratepayers which is later upheld by the Commission, out-of-service area QFs should be treated no differently than in-service area QFs in their efforts to participate in this reinstated SO2. "  
(D.88-04-070, pp. 1-2.)

We expect any "claim" of economic harm to consist of far more than the utility's mere assertion of a problem. Regardless of where the claim is raised, e.g., before the Commission or during negotiations with individual QFs, it should be substantiated by calculations, studies and other forms of documentation at or shortly after the time it is initially raised by the utility. Otherwise, out-of-service territory QFs are placed in an untenable

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7 D.88-04-070 was issued in I.85-11-008, our investigation into the desirability of power purchases from QFs located outside of the purchaser's service area (or outside of California), and the terms and conditions which should be applied to such purchases. D.88-04-070 left the proceeding open to allow for case-by-case review of these issues. Specifically, upon the petition of a QF denied an interconnection, the Commission will investigate the utility's claim of displaced economy power or other economic harm to ratepayers.

8 Moreover, in D.88-09-067 we denied SDG&E's application for rehearing of D.88-04-070, reiterating the need for SDG&E to raise concrete issues of economic harm on a case-by-case basis.

position: Either they must accept the utility's assertions of economic harm (and resulting mitigation proposals) at "face value", or risk missing strict contract signing requirements, losing their project fee, or both. This is clearly unacceptable.

We therefore direct SDG&E to provide to Petitioners, no later than August 31, 1989, a complete package consisting of its NIOA, economic harm and line-loss studies, and proposed curtailment provisions. We also grant Petitioners' request for 120 days following their receipt of this information within which to execute the S02s.

SDG&E is expected to bargain conscientiously toward a conclusion, in a manner consistent with the good faith standards articulated in D.82-01-103. While petitioners' request additional language to that effect, we believe that California law, as well as our prior orders, clearly require utilities to negotiate in good faith:

"California law imputes a covenant of good faith and fair dealing in every contract. . . . The covenant requires each party to refrain from doing anything to injure the right of the other party to receive the benefits of the agreement. In addition, the Commission has required utilities to act in good faith in negotiations leading to contracts with QFs." (D.89-04-081, p. 7.)

SDG&E is hereby reminded of this obligation. As we have stated in the past, a utility found not to have bargained in good faith will stand in violation of Commission orders, and will be

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9 This duty was stated in D.82-01-103, when we adopted the standard offer contract and set the ground rules for negotiations between utilities and QFs. See D.82-01-103, Concl. of Law 18 and Ord. Par. 28.

open to potential punitive action by this Commission.<sup>10</sup>

Finally, with regard to project fee refunds, we agree with Petitioners that the NIOA or economic curtailment provisions could also affect project viability. It would be unfair to put these developers at risk for their project fees until the terms of these ancillary agreements, and the results of associated studies, are known. Therefore, "Interconnection study", as used in the project fee refund provision, shall be construed to include the NIOA, economic curtailment provisions and associated line loss and economic harm studies.<sup>11</sup> Consistent with the above, we will modify our orders in D.89-02-017 (see Attachment 1).

Findings of Fact

1. Modification of D.89-02-017 is necessary to provide off-system QFs additional time to execute their SO2 agreements with SDG&E.
2. Fairness dictates that a utility's claim of economic harm consist of adequate documentation, and that such documentation be presented to off-system QFs in a timely manner.
3. SDG&E's NIOA and proposed economic curtailment provisions were not available at the time of SDG&E's SO2 solicitation and, like line loss studies, could affect project viability.
4. Petitioners' proposed 120-day extension achieves the goal of allowing off-system QFs sufficient time to respond to SDG&E's proposed ancillary agreements and studies. ✓

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10 D.82-01-103, p. 106.

11 The applicable provision is Section IV.B.5 of the QF Milestone Procedure (see Page 9 of Appendix A in D.87-04-039). That provision clearly states that the QF, and not the utility, determines whether or not the project is feasible after receipt of the relevant information (see Section IV.B.5.b.(iii)). Petitioners' request for further clarification on this point is unnecessary.

Conclusions of Law

1. D.89-02-017 should be modified consistent with the findings above.
2. This decision should be made effective today to ensure the timely exchange of information necessary to implement our directives.

ORDER

IT IS ORDERED that D.89-02-017 shall be modified as follows:<sup>12</sup>

- a. Finding of Fact 16 shall be modified as follows:
  16. It is not appropriate, for purposes of this SO2 solicitation, to put QF developers at risk for their project fees until the (1) results of line loss or economic harm studies and/or  
(2) provisions of the Non-Interconnected Operating Agreement and economic curtailment proposal (as applicable) are known.  
(Changes underlined.)
- b. The following sentence shall be added to Conclusion of Law 4:

In the event that SDG&E raises any claim of economic harm to the ratepayer (as specified in D.88-04-070), the QF should have 120 days following its receipt of the last of the Non-Interconnected Operating Agreement (including associated line loss and economic harm studies) and the "economic curtailment" proposal

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<sup>12</sup> Attachment 1 restates the Ordering Paragraphs of D.89-02-017, in full, as amended by this decision.

within which to execute a power purchase agreement.

- c. The second sentence of Conclusion of Law 6 is modified as follows:

"Interconnection study" as used in that provision should be construed to include a line loss study for an out-of-service territory QF and, if applicable, the Non-Interconnected Operating Agreement, economic curtailment provisions and "economic harm" studies. (Changes underlined.)

- d. The following sentence shall be added to Ordering Paragraph 1:

In the event that SDG&E raises any claim of economic harm to the ratepayer (as specified in D.88-04-070), the QF shall have 120 days following its receipt of the last of the Non-Interconnected Operating Agreement (including associated line loss and economic harm studies) and the "economic curtailment" proposal within which to execute a power purchase agreement.

- e. The second sentence of Ordering Paragraph 4 is modified as follows:

"Interconnection study" as used in that provision shall include a line loss study for an out-of-service territory QF and, if applicable, the Non-Interconnected Operating Agreement, economic curtailment provisions and "economic harm" studies. (Changes underlined.)

- f. The following ordering paragraph shall be added to D.88-05-074:

For the purpose of this S02 solicitation, by August 31, 1989 SDG&E shall provide to off-system QFs a complete package consisting of its Non-Interconnected Operating Agreement associated line loss studies and, as applicable, economic harm studies and curtailment provisions.

This order is effective today.

Dated AUG 3 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
Commissioners

Commissioner Stanley W. Hulett,  
being necessarily absent, did not  
participate.

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

*Victor Weiss*

Victor Weiss, Executive Director

PC

ATTACHMENT 1  
Page 1

Ordering Paragraphs in D.89-02-017,  
as Modified by this Decision\*

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company (SDG&E) shall execute Standard Offer 2 (SO2) power purchase agreements with the qualifying facility (QF) developers, and for the projects, specified in Finding of Fact 2, on the condition that these developers complete any remaining contract signing prerequisites. For purposes of this SO2 solicitation, the QF developer shall execute a power purchase agreement prior to or concurrently with its Interconnection Facilities Agreement with SDG&E (if applicable) but not later than 6 months after the effective date of today's decision. In the event that SDG&E raises any claim of economic harm to the ratepayer (as specified in D.88-04-070), the QF shall have 120 days following its receipt of the last of the Non-Interconnected Operating Agreement (including associated line loss and economic harm studies) and the "economic curtailment" proposal within which to execute a power purchase agreement.

2. SDG&E shall calculate a new capacity price table applicable to the SO2 contracts specified in Ordering Paragraph 1. The table shall be for a single block of 182.4 megawatts but shall otherwise use the same assumptions as the table shown in SDG&E's SO2 solicitation. The new table shall show the last year for coming on-line as 1993.

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\*Changes/additions are noted by underlined sections.

ATTACHMENT 1  
Page 2

3. For purposes of this SO2 solicitation, an out-of-service-territory QF shall have up to 6 months after the power purchase agreement is executed by both parties for the QF to finalize a wheeling agreement, and this deadline shall become an additional milestone. Missing this milestone shall result in forfeiture of the QF's project fee. SDG&E shall modify the reinstated SO2 in its April 22, 1988, compliance filing accordingly.

4. SDG&E shall substitute the project fee refund provision in the current (Fifth) Edition of the QF Milestone Procedure in place of the refund provision in its April 22, 1988, SO2 compliance filing. "Interconnection study" as used in that provision shall include a line loss study for an out-of-service territory QF and, if applicable, the Non-Interconnected Operating Agreement, curtailment provisions and "economic harm" studies.

5. SDG&E shall file modifications to its April 22, 1988, SO2 compliance filing, as specified in Ordering Paragraphs 2, 3, and 4, with all appropriate conforming changes, within 30 days of the effective date of this order.

6. For purposes of this SO2 solicitation, SDG&E shall complete a line loss study within 30 days after the out-of-service-territory QF has requested such a study and has provided any needed information beyond that already included in its project definition. SDG&E shall raise any claim regarding economic harm to the ratepayer (as specified in D.88-04-070) as soon as possible, and in no event no later than this study.

7. For purposes of this SO2 solicitation, by August 31, 1989 SDG&E shall provide to off-system OFs a complete package consisting of its Non-Interconnected Operating Agreement associated line loss studies and, as applicable, economic harm studies and curtailment provisions.

(END OF ATTACHMENT 1)

## Decision \_\_\_\_\_

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OPINION MODIFYING DECISION 89-02-017

By this decision, we extend the time within which off-system qualifying facilities (QF) must execute their Standard Offer No. 2 power purchase agreements with San Diego Gas & Electric Company (SDG&E).<sup>1</sup> In addition, SDG&E is directed to provide to off-system QFs, no later than August 31, 1989, its completed Non-Interconnected Operating Agreement, economic harm studies and economic curtailment proposal. Certain provisions relating to project fee refunds are also clarified.

<sup>1</sup> The terms "off-system" and "out-of-service area" are used interchangeably to refer to QF resources located outside of SDG&E's service territory or outside of California.

A. Background

In Decision (D.) 89-02-017, we determined that four QFs were eligible for SDG&E's Standard Offer 2 (SO2).<sup>2</sup> Three of the eligible QFs represent out-of-service area projects. We encouraged these QFs to meet with SDG&E personnel as soon as possible to identify and exchange information needed by SDG&E to perform line loss studies. We directed SDG&E to complete these line loss studies within 30 days after the out-of-service area QF requested such a study and provided any needed information.<sup>3</sup>

In addition, we directed SDG&E to raise any claim regarding "economic harm to the ratepayer" in a timely manner:

"In D.88-04-070, we held that a utility generally should contract with off-system QFs unless we determined, on an individual basis, that interconnection with such a QF would result in economic harm to the ratepayer, e.g., by bumping economy/energy purchases off an intertie. SDG&E has not suggested that any of these QFs would have this effect; however, it should raise this issue (should it determine that the potential for such an effect exists) no later than the [line loss] studies mentioned above. We would then expect the developer to

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2 SO2 is limited to QFs that commit to provide firm capacity. In D.87-11-024, SO2 was reinstated for SDG&E to meet its near-term need for peaking generation. The following four projects were found to be eligible: 1) an out-of-service area 80 MW solar thermal project (Luz Development), 2) an out-of-service area 50 MW geothermal project (Freeport-McMoran Resource Partners), 3) an in-service area/2.4 MW biogas project (O'Brian Energy Systems), and an out-of-service area 50 MW cogeneration project (Bonneville Pacific Corp.).

3 In performing these studies, we directed SDG&E to use the same transmission assumptions and analytic techniques that it uses to model the impacts from its various other off-system resources (e.g., from San Onofre nuclear plants and purchases from the utilities in the Northwest and Inland Southwest). See D.89-02-017, page 27.

accept an appropriately crafted economic curtailment provision. " (D.89-02-017, p. 27.)

"SDG&E shall raise any claim regarding economic harm to the ratepayer (as specified in D.88-04-070) as soon as possible, and in no event later than this [line loss] study." (D.89-02-017, Conclusion of Law 6.)

In D.89-02-017, we also made provisions for project fee refunds if, as a result of the off-system line loss studies, the QF finds that its project is economically infeasible.<sup>4</sup> Finally, to maintain eligibility for SDG&E's SO2, D.89-02-017 required the QF to execute its SO2 agreement by August 8, 1989.

**B. Petition For Modification**

On July 12, 1989, Freeport-McMoran Resource Partners and Bonneville Pacific Corporation (collectively Petitioners) filed a Petition For Modification of D.89-02-017 requesting an extension of the August 8, 1989 deadline for executing their SO2 agreements. Petitioners claim that the extension of time is necessary because SDG&E's delay in the preparation of key studies, negotiations with Petitioners and preparation of certain ancillary agreements has disabled Petitioners from executing the SO2 within the time contemplated by D.89-02-017. Specifically, as of July 12, 1989, Petitioners claim they have not received from SDG&E a complete package of the Non-Interconnected Operating Agreement (NIOA), associated line loss and "economic harm" studies, and proposed curtailment provisions.<sup>5</sup>

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<sup>4</sup> See D.89-02-017, pp. 28-29, Conclusion of Law 6.

<sup>5</sup> Pursuant to D.89-02-017, Ordering Paragraph 5, SDG&E filed its SO2 on March 10, 1989. In that document, SDG&E stated its intention to prepare and require off-system QFs to enter into an (Footnote continues on next page)

Petitioners also request clarification of the project fee refund provisions. Specifically, they request that a QF be allowed to get its project fee back if, as a result of the NIOA (or economic curtailment provision), the QF finds that the project is infeasible.

C. Discussion

We are dismayed to learn of the delays in executing the SO2 agreements contemplated in D.89-02-017. Petitioners claim that these delays are attributable solely to SDG&E. We do not have a sufficient record before us, at this time, to assess culpability. However, the issues raised by the Petitioners do indicate the need to remind SDG&E of its obligation to 1) meet its burden of proof in claiming "economic harm" and 2) negotiate in good faith with off-system QFs, pursuant to our prior orders.

In D.88-04-070, we clearly placed the burden on SDG&E, and not the QF, to demonstrate that interconnection with out-of-service area QFs will result in economic harm to ratepayers:<sup>6</sup>

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(Footnote continued from previous page)

ancillary agreement (the NIOA). SDG&E described this agreement as "the analog to the Interconnection Facilities Agreement for on-system QFs", and reserved for the NIOA issues of line loss factors, provisions respecting "economic harm to the ratepayer" and "the facilities and procedures necessary to ensure that the off-system QF's power is delivered to SDG&E". (See March 10, 1989 filing, page 2.)

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"Absent a utility claim of economic harm, interconnection of out-of-service area QFs should occur without any fuss or additional requirements by the utility. This means, for example, that QFs outside of SDG&E service area are eligible to participate in SDG&E's reinstated SO2. Unless SDG&E raises a claim of economic harm to its ratepayers which is later upheld by the Commission, out-of-service area QFs should be treated no differently than in-service area QFs in their efforts to participate in this reinstated SO2." (D.88-04-070, pp. 1-2.)

We expect any "claim" of economic harm to consist of far more than the utility's mere assertion of a problem. Regardless of where the claim is raised, e.g., before the Commission or during negotiations with individual QFs, it should be substantiated by calculations, studies and other forms of documentation at or shortly after the time it is initially raised by the utility. Otherwise, out-of-service territory QFs are placed in an untenable position: Either they must accept the utility's assertions of economic harm (and resulting mitigation proposals) at "face value", or risk missing strict contract signing requirements, losing their project fee, or both. This is clearly unacceptable.

We therefore direct SDG&E to provide to Petitioners, no later than August 31, 1989, a complete package consisting of its NIOA, economic harm and line-loss studies, and proposed curtailment

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utility's claim of displaced economy power or other economic harm to ratepayers.

7 Moreover, in D.88-09-067 we denied SDG&E's application for rehearing of D.88-04-070, reiterating the need for SDG&E to raise concrete issues of economic harm on a case-by-case basis.

provisions. We also grant Petitioners' request for 120 days following their receipt of this information within which to execute the S02s.

SDG&E is expected to bargain conscientiously toward a conclusion, in a manner consistent with the good faith standards articulated in D.82-01-103. While petitioners' request additional language to that effect, we believe that California law, as well as our prior orders, clearly require utilities to negotiate in good faith:

"California law imputes a covenant of good faith and fair dealing in every contract. . . . The covenant requires each party to refrain from doing anything to injure the right of the other party to receive the benefits of the agreement. In addition, the Commission has required utilities to act in good faith in negotiations leading to contracts with QFs." (D.89-04-081, p. 7.)

SDG&E is hereby reminded of this obligation. As we have stated in the past, a utility found not to have bargained in good faith will stand in violation of Commission orders, and will be open to potential punitive action by this Commission.<sup>9</sup>

Finally, with regard to project fee refunds, we agree with Petitioners that the NIOA or economic curtailment provisions could also affect project viability. It would be unfair to put these developers at risk for their project fees until the terms of these ancillary agreements, and the results of associated studies, are known. Therefore, "Interconnection study", as used in the

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<sup>8</sup> This duty was stated in D.82-01-103, when we adopted the standard offer contract and set the ground rules for negotiations between utilities and QFs. See D.82-01-103, Concl. of Law 18 and Ord. Par. 28.

<sup>9</sup> D.82-01-103, p. 106.

project fee refund provision, shall be construed to include the NIOA, economic curtailment provisions and associated line loss and economic harm studies.<sup>10</sup> Consistent with the above, we will modify our orders in D.89-02-017 (see Attachment 1).

Findings of Fact

1. Modification of D.89-02-017 is necessary to provide off-system QFs additional time to execute their SO<sub>2</sub> agreements with SDG&E.
2. Fairness dictates that a utility's claim of economic harm consist of adequate documentation, and that such documentation be presented to off-system QFs in a timely manner.
3. SDG&E's NIOA and proposed economic curtailment provisions were not available at the time of SDG&E's SO<sub>2</sub> solicitation and, like line loss studies, could affect project viability.
4. Petitioners' proposed 120 day extension achieve the goal of allowing off-system QFs sufficient time to respond to SDG&E's proposed ancillary agreements and studies.

Conclusions of Law

1. D.89-02-017 should be modified consistent with the findings above.
2. This decision should be made effective today to ensure the timely exchange of information necessary to implement our directives.

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<sup>10</sup> The applicable provision is Section IV.B.5 of the QF Milestone Procedure (see Page 9 of Appendix A in D.87-04-039). That provision clearly states that the QF, and not the utility, determines whether or not the project is feasible after receipt of the relevant information (see Section IV.B.5.b.(iii)). Petitioners' request for further clarification on this point is unnecessary.

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Finally, with regard to project fee refunds, we agree with Petitioners that the NIOA or economic curtailment provisions could also affect project viability. It would be unfair to put these developers at risk for their project fees until the terms of these ancillary agreements, and the results of associated studies, are known. Therefore, "Interconnection study", as used in the project fee refund provision, shall be construed to include the NIOA, economic curtailment provisions and associated line loss and economic harm studies.<sup>11</sup> Consistent with the above, we will modify our orders in D.89-02-017 (see Attachment 1).

#### Findings of Fact

1. Modification of D.89-02-017 is necessary to provide off-system QFs additional time to execute their SO2 agreements with SDG&E.

2. Fairness dictates that a utility's claim of economic harm consist of adequate documentation, and that such documentation be presented to off-system QFs in a timely manner.

3. SDG&E's NIOA and proposed economic curtailment provisions were not available at the time of SDG&E's SO2 solicitation and, like line loss studies, could affect project viability.

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11 The applicable provision is Section IV.B.5 of the QF Milestone Procedure (see Page 9 of Appendix A in D.87-04-039). That provision clearly states that the QF, and not the utility, determines whether or not the project is feasible after receipt of the relevant information (see Section IV.B.5.b.(iii)). Petitioners' request for further clarification on this point is unnecessary.

O R D E R

IT IS ORDERED that D.89-02-017 shall be modified as follows:<sup>11</sup>

- a. Finding of Fact 16 shall be modified as follows:

16. It is not appropriate, for purposes of this SO2 solicitation, to put QF developers at risk for their project fees until the (1) results of line loss or economic harm studies and/or (2) provisions of the Non-Interconnected Operating Agreement and economic curtailment proposal (as applicable) are known.  
(Changes underlined.)

- b. The following sentence shall be added to Conclusion of Law 4:

In the event that SDG&E raises any claim of economic harm to the ratepayer (as specified in D.88-04-070), the QF should have 120 days following its receipt of the last of the Non-Interconnected Operating Agreement (including associated line loss and economic harm studies) and the "economic curtailment" proposal within which to execute a power purchase agreement.

- c. The second sentence of Conclusion of Law 6 is modified as follows:

"Interconnection study" as used in that provision should be construed to include a line loss study for an out-of-service territory QF and if applicable, the Non-Interconnected Operating Agreement, economic

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<sup>11</sup> Attachment 1 restates the Ordering Paragraphs of D.89-02-017, in full, as amended by this decision.

curtailment provisions and "economic harm" studies. (Changes underlined.)

- d. The following sentence shall be added to Ordering Paragraph 1:

In the event that SDG&E raises any claim of economic harm to the ratepayer (as specified in D.88-04-070), the QF shall have 120 days following its receipt of the last of the Non-Interconnected Operating Agreement (including/associated line loss and economic harm studies) and the "economic curtailment" proposal within which to execute a power purchase agreement.

- e. The second sentence of Ordering Paragraph 4 is modified as follows:

"Interconnection study" as used in that provision shall include a line loss study for an out-of-service territory QF and, if applicable, the Non-Interconnected Operating Agreement, economic curtailment provisions and "economic harm" studies. (Changes underlined.)

- f. The following ordering paragraph shall be added to D.88-05-074:

For the purpose of this SO2 solicitation, by August 31, 1989 SDG&E shall provide to off-system QFs a complete package consisting of its Non-Interconnected Operating Agreement associated line loss studies and, as applicable, economic harm studies and curtailment provisions.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

ATTACHMENT 1

Page 1

Ordering Paragraphs in D.89-02-017,  
as Modified by this Decision\*

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company (SDG&E) shall execute Standard Offer 2 (SO2) power purchase agreements with the qualifying facility (QF) developers, and for the projects, specified in Finding of Fact 2, on the condition that these developers complete any remaining contract signing prerequisites. For purposes of this SO2 solicitation, the QF developer shall execute a power purchase agreement prior to or concurrently with its Interconnection Facilities Agreement with SDG&E (if applicable) but not later than 6 months after the effective date of today's decision. In the event that SDG&E raises any claim of economic harm to the ratepayer (as specified in D.88-04-070), the QF shall have 120 days following its receipt of the last of the Non-Interconnected Operating Agreement (including associated line loss and economic harm studies) and the "economic curtailment" proposal within which to execute a power purchase agreement.

2. SDG&E shall calculate a new capacity price table applicable to the SO2 contracts specified in Ordering Paragraph 1. The table shall be for a single block of 182.4 megawatts but shall otherwise use the same assumptions as the table shown in SDG&E's SO2 solicitation. The new table shall show the last year for coming on-line as 1993.

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\*Changes/additions are noted by underlined sections.

ATTACHMENT 1  
Page 2

3. For purposes of this SO2 solicitation, an out-of-service-territory QF shall have up to 6 months after the power purchase agreement is executed by both parties for the QF to finalize a wheeling agreement, and this deadline shall become an additional milestone. Missing this milestone shall result in forfeiture of the QF's project fee. SDG&E shall modify the reinstated SO2 in its April 22, 1988, compliance filing accordingly.

4. SDG&E shall substitute the project fee refund provision in the current (Fifth) Edition of the QF Milestone Procedure in place of the refund provision in its April 22, 1988, SO2 compliance filing. "Interconnection study" as used in that provision shall include a line loss study for an out-of-service territory QF and, if applicable, the Non-Interconnected Operating Agreement, curtailment provisions and "economic harm" studies.

5. SDG&E shall file modifications to its April 22, 1988, SO2 compliance filing, as specified in Ordering Paragraphs 2, 3, and 4, with all appropriate conforming changes, within 30 days of the effective date of this order.

6. For purposes of this SO2 solicitation, SDG&E shall complete a line loss study within 30 days after the out-of-service-territory QF has requested such a study and has provided any needed information beyond that already included in its project definition. SDG&E shall raise any claim regarding economic harm to the ratepayer (as specified in D.88-04-070) as soon as possible, and in no event no later than this study.

7. For purposes of this SO2 solicitation, by August 31, 1989 SDG&E shall provide to off-system QFs a complete package consisting of its Non-Interconnected Operating Agreement associated line loss studies and, as applicable, economic harm studies and curtailment provisions.

(END OF ATTACHMENT 1)