

Decision 89 08 035 AUG 3 1989**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation of the Commission's)
 own motion into the desirability of)
 power purchases from cogenerators)
 and small power producers located)
 outside of the purchaser's service)
 area or outside of California and)
 the terms and conditions which)
 should be applied to such purchases.)

I.85-11-008
 (Filed November 6, 1985)

OPINION

On April 17, 1989 Yankee Caithness Joint Venture (Yankee Caithness) concurrently filed two nearly identical motions:

(1) Petition of Yankee Caithness Joint Venture for Modification of Decision 88-04-070, and (2) Supplement to Petition of Yankee Caithness Joint Venture for Modification of Decision 85-06-163 (hereafter referred to jointly as the Petition). The Petition requests the Commission to confirm (1) that Yankee Caithness' Standard Offer (SO) No. 4 contract and six SO2 contracts are within the scope of this proceeding, (2) that Yankee Caithness may in this proceeding seek to extend the target dates and deadlines in these contracts, and (3) that Yankee Caithness may seek extrapolation of the capacity and energy prices contained in these contracts. Yankee Caithness filed a further Supplemental Memorandum to the Petition on May 11, 1989.

The Petition is opposed by Southern California Edison Company (Edison or SCE). Edison filed a Response to the Petition on May 15, 1989.

Background

Decision (D.) 88-04-070 restructured Investigation (I.) 85-11-008 to allow for review on a case-by-case basis of out-of-service area qualifying facility (QF) interconnection to interties or bulk transmission lines when such interconnection may result in

the displacement of economy energy. The decision also ordered that the petition of Yankee Caithness "to have Edison execute certain standard offer contracts shall be addressed in this proceeding on a schedule agreed to by Yankee and SCE as approved by the administrative law judge."

Discussion

Yankee Caithness asks us to confirm or clarify that seven contracts are within the scope of this proceeding. Yankee Caithness points to Ordering Paragraph 4 of D.88-04-070 which states that "certain standard offer contracts" will be addressed in this proceeding, and argues that this reference to certain contracts includes one S04 contract and six S02 contracts.

Edison opposes Yankee Caithness' request for clarification. Edison argues that the current Petition is, in fact, an untimely attempt to amend its original Petition for Modification filed in November 1985. In April 1985 the Commission suspended S04. Yankee Caithness' original petition requested that the Commission modify D.85-06-163 to allow Edison to execute the S04 contract tendered by Yankee Caithness in November 1984.

Edison states that the six S02 contracts were tendered to Edison in February 1986, after the original Petition for Modification was filed. Then on March 19, 1986, in Decision 86-03-069, the Commission suspended S02. As Edison notes, Yankee Caithness did not file a petition to modify D.86-03-069, nor did it file an amendment to its petition in this proceeding to add the S02 contracts.

Edison is correct. The six S02 contracts were not included in Yankee Caithness' original Petition and Yankee Caithness has not amended its Petition to add the S02 contracts.

Yankee Caithness points to its Prehearing Conference Statement filed February 8, 1988 as evidence of its intent to include the S02 contracts within the scope of this proceeding. We have examined this filing and find nothing to suggest that Yankee

Caithness was seeking to include the SO2 contracts in this proceeding. The statement refers to certain standard offer contracts tendered to Edison in 1984 and early 1985, the statement makes no reference to standard offers submitted to Edison in 1986.

Therefore, we conclude that Ordering Paragraph 4 of D.88-04-070 refers to those certain contracts referenced in Yankee Caithness' Petition for Modification filed in November 1985, and not to other SO2 contracts tendered in 1986.

Although the pleadings at bar are captioned a Petition for Modification or a Supplement to a prior Petition for Modification, they appear to be in the nature of an amendment to the Petition filed in November 1985.¹ Yankee Caithness argues, in the alternative, that if the six SO2 contracts are not within the scope of this proceeding, they should now be included. Yankee Caithness contends that the issues relating to the six SO2 contracts are the same as those relating to the SO4 contracts. Yankee Caithness believes that Edison should not be prejudiced or surprised by the inclusion of these contracts in this proceeding.

Edison counters that the issues associated with the six SO2 contracts are not the same as those pertaining to the SO4 contracts.

We agree with Edison that the rules which provide for fair, timely, and clear prayers for relief should apply to the relief Yankee Caithness is requesting in this proceeding. We also agree that Yankee Caithness failed, prior to the Petition at bar, to provide clear notice to the Commission or Edison that it sought relief for the six SO2 contracts submitted in 1986.

On the other hand, we cannot agree with Edison that a request by Yankee Caithness to amend its prior Petition to include

¹ The text of the Petition states at page 1: "This amendment has two purposes..."

the six SO2 contracts within this proceeding is untimely. There is no express limitation on the time in which Yankee Caithness may request relief. Therefore, we will grant Yankee Caithness' request to have all seven standard offer contracts considered in this proceeding.

While we will allow the six SO2 contracts to be heard in this proceeding, we are not convinced that judicial economy will be served. In its Petition, Yankee Caithness complains at length regarding the delay in having the SO4 contract dispute resolved. Yankee Caithness' request to add six more contracts at this point in the proceeding could further delay the proceeding, especially if all seven contracts are set for hearing together.

While Yankee Caithness may have undertaken some discovery of Edison with respect to the SO2 contracts, Edison has not initiated discovery directed to Yankee Caithness relating to these contracts. Therefore, it may not be possible to schedule both the SO4 contract and the SO2 contracts for hearing at the same time.

A further Prehearing Conference has been set for August 10, 1989, to establish a schedule for consideration of the seven contracts.

Price Schedules and Deadlines

While the first part of the Petition is in the nature of an amendment to a prior pleading, the second part of the Petition is in the nature of a closing brief. In the second part, Yankee Caithness does not cite any prior decision which requires modification or clarification. Instead, Yankee Caithness simply presents argument concerning the relief which it believes it would be entitled, if the Commission finds that Edison acted unreasonably.

We will not opine on the legal relief available to Yankee Caithness before the evidence has been presented. That determination is appropriate only after all facts have been presented and all legal arguments have been heard. An abstract

advisory judgment, as Yankee Caithness seems to request, is an idle exercise at this stage of the proceeding.

Findings of Fact

1. Yankee Caithness filed Petitions to Modify D.88-04-070 and D.85-06-163.
2. The Petitions are opposed by Edison.
3. The Petitions are in the nature of a request to amend a prior request for relief regarding certain standard offer contracts.

Conclusion of Law

It is reasonable to consider in this proceeding contract disputes between Yankee Caithness and Edison regarding seven standard offers submitted to Edison between 1984 and February 1986.

ORDER

Therefore, IT IS ORDERED that:

1. The Petition of Yankee Caithness Joint Venture (Yankee Caithness), as amended by its filings on April 17, 1989, to have Southern California Edison Company (Edison) execute seven standard offer contracts shall be addressed in this proceeding on a schedule agreed to by Yankee Caithness and Edison and as approved by the Administrative Law Judge.

2. Except as provided in Ordering Paragraph 1, Yankee
Caithness' Petitions are denied.

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 Weisser, Executive Director