ALJ/SAW/jo

Decision 90 04 025 APR 11 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company for an order approving the First Amendment to the Power Purchase Agreement for Long-Term Energy and Capacity between Catalyst/Sunsweet Cogeneration Limited Partnership and Pacific Gas and Electric Company regarding deferral of the purchase of long-term capacity and energy from the Yuba City cogeneration facility.

U39-E

Application 90-02-004
(Filed February 1, 1990)

OPINION

Summary

In this decision, we approve an amendment of the Interim Standard Offer 4 (SO4) agreement between Pacific Gas and Electric Company (PG&E) and Catalyst/Sunsweet Cogeneration Limited Partnership (CSLP) for the Yuba City Cogeneration Qualifying Facility (QF) project. The amendment postpones for 1-2 years the contractual date by which CSLP must deliver power from the Yuba City project to the PG&E system. In return, CSLP has agreed to a ten-year reduction in capacity payments and to specified levels of curtailment by PG&E within the first ten years. The amendment is prompted by a delay in allocation of transmission capacity which may have occurred during the pendency of a PG&E/Division of Ratepayer Advocates (DRA) joint proposal to modify the rules under which transmission access is allocated in transmission constrained areas (Joint Petition). We rejected the Joint Petition in Decision (D.) 89-07-058.

Background

The QF is a 49 MW gas-fired cogeneration facility to be constructed in Yuba City. The S04 agreement for this project was signed by the developer on April 11, 1985 and by PG&E on April 16, 1985. Pursuant to the agreement, the QF must deliver power to the PG&E system no later than April 16, 1990.

From a time that preceded the signing of the agreement and continued until August 3, 1989, project development was constrained by the apparent lack of adequate transmission capacity in the vicinity of Yuba City.

On April 18, 1984, the Commission issued an order instituting an 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 DRA.

totalled 1150 MW.[2] The Commission adopted this stipulated amount in 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 after further 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.

CSLP's Yuba City project was placed on the waiting list on January 15, 1985. According, to Harold E. Dittmer, who submitted a declaration on behalf of the QF, CSLP began taking steps in mid-1988 to assure timely project development in anticipation of receiving transmission allocation. Among other things, CSLP hired a consultant to monitor the eligible and waiting lists in the transmission constrained area. By developing a data

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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.

base tracking the status of various QF projects, CSLP was reportedly able to strategically time other development expenditures. CSLP says it anticipated receiving its transmission allocation in late 1988. CSLP maintained contact with the Sutter County Air Pollution Control District regarding permit status, began to work with other potential contractors concerning project schedules and costs and contacted Sunsweet about the lease of the project site.

On January 27, 1989, PG&E and DRA filed the Joint Petition which proposed modifying the rules that controlled access to transmission allocation. The proposed changes were intended to encourage those QFs that were not seriously proceeding with their projects to voluntarily remove themselves from PG&E's northern constrained area transmission allocation list, and to give ample opportunity to those QFs newly receiving transmission allocations to complete their projects by extending the 5-year operation deadlines.

Two aspects of the proposal would have affected those QFs that already possessed transmission allocations when the Joint Petition was filed or received allocations while it was pending:

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

2. Grandfathering Provision. Projects that received transmission allocations after January 1, 1988 but before Commission approval of the proposal would have been eligible for a deferral program allowing for a 3- 5-year delay of the project.

For various reasons, we rejected the Joint Petition in D.89-07-058, issued July 19, 1989.

According to CSLP, rumors of the imminent filing of the Joint Petition began to circulate in late 1988, and projects which CSLP felt had no chance of success started to come back to life. CSLP asserts that by April 1989, developers of projects which it had considered to be dead or dying were accepting or indicating that they were considering accepting allocations. Neither DRA nor PG&E contests these assertions. At approximately this time, CSLP filed comments in response to the Joint Petition expressing its concern that the pendency of the Joint Petition could interfere with its ability to obtain a transmission allocation.

According to Dittmers, CSLP continued its project development activities despite the risk of spending money on a project with a very uncertain future. Dittmers asserts that CSLP undertook the following project-related activities during the second and third quarters of 1989:

1. Maintained close contact with equipment suppliers and contractors. Secured delivery positions for long lead time equipment items for the project (e.g., the gas turbine package). Kept in contact with key suppliers and determined that delivery could have been obtained in time to meet the needed schedule for the original contract deadline had a timely transmission allocation been received. Examples:

   a. A firm delivery schedule for a gas turbine generator packages was obtained.

   b. Assurance of delivery of a steam generator adequate to fit a very short construction cycle was obtained. This required a commitment to paying cash deposits and cancellation charges.

   c. Adequate delivery for the main transformer and switch gear was established.

2. Reached agreement with Sunsweet securing the project site.

3. A term sheet regarding financing was obtained from a major investment banker and a determination was made that financing could be obtained on a timely basis.

4. Formal discussions were initiated with PG&E concerning the transmission allocation matter and extension of the five-year on-line date. Formal discussions began on June 14, 1989 and continued until late 1989 when a formal letter of understanding was reached.

5. Maintained the active status of the air permit.

6. Continued to monitor the viability of projects ahead of CSLP on the transmission waiting list.

According to Dittmers, CLSP continues to pursue completion of the project and has spent approximately $850,000.

In the decision rejecting the Joint Petition, we considered the request of CSLP and others that a day-for-day extension of the 5-year deadline be granted to match the period of time during which the petition was pending. In denying that request, we stated:

> "We are not persuaded by these arguments to grant an extension of the five-year deadline. 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 deadline, 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."

Only 15 days after our rejection of the Joint Petition, CSLP received a transmission allocation of 41.418 MW from PG&E. It received the rest of its allocation about one month later. However, as of the date when the allocation was completed there was insufficient time available for CSLP to construct the project and meet the April 16, 1990 deadline for delivering power to PG&E. CSLP continued to seek from PG&E, and eventually obtained, its agreement to a modification of the contractual on-line date which would allow CSLP to preserve its rights to sell power to PG&E pursuant to its interim SO4 contract.

On February 1, 1990, PG&E filed this application requesting approval of the contract modifications. DRA filed a protest to the application, dated March 1, 1990, requesting that the agreement be rejected. CSLP responded to the DRA protest in a reply dated March 14, 1990. PG&E responded to the protest on March 15, 1990. All parties agreed that this matter could be resolved without holding evidentiary hearings.

<u>The Deferral Agreement</u>

The negotiated deferral is comprised of the following elements:

1. Deferral of the Operation Date.

The PPA includes a requirement that the QF supply power to PG&E no later than five years after the date when the contract is finalized. The five-year date for the Yuba City project is April 16, 1990. Under the proposed modification of the agreement, referred to as the First Amendment, the earliest the QF may begin to receive interim SO4 firm capacity prices is April 16, 1991, one year after the original deadline. Energy deliveries may begin as

early as December 1, 1990, but payment, prior to April 16, 1991, will be at energy prices as set forth in the PPA, with no payment for capacity. The latest date at which initial energy deliveries can begin is April 16, 1992.

2. Reduction in Capacity Prices.

Under the PPA, the project would have been eligible for a firm capacity price tied to its date of operation. Since the operation deadline was April 16, 1990, the price received would have been no higher than the 1990 firm capacity price. The First Amendment states that the 1990 price will apply regardless of the QF's actual firm capacity delivery date. In addition, a $4/kW discount on firm capacity payments was negotiated, resulting in payments of $192/kW-year for the first ten years of firm capacity deliveries. After the end of the first ten years, payments will be based on the full 1990 price of $196/kW-year.

3. Physical Curtailment of the QF.

Pursuant to the First Amendnent, PG&E has the right to reduce power deliveries from the QF during the first 10 years following the firm capacity availability date. During the first 5 years, CSLP would curtail deliveries from the QF up to 4,000 hours per calendar year during the off-peak and super off-peak hours. During the second 5 years, CSLP would curtail deliveries up to 3,000 hours per calendar year during off-peak and super off-peak hours.

<u>Positions of the Parties</u>

The Commission's Final Guidelines for Contract Modifications, as set forth in D.88-10-032), preclude modifications

to power purchase contracts unless the QF is determined to be viable.[4] Where there is a close question as to whether a project is viable, a QF should be granted an extension of time only if substantial concessions are made affecting other contract terms.

In support of the proposed contract modifications, PG&E argued that the QF would have been viable if it had received its transmission allocation by April 1, 1989, that there is a reasonable probability that the QF would have received its allocation by that date if the Joint Petition had not been filed, and that the contract modifications would result in significant ratepayer benefits.

In support of its finding of viability PG&E argues that:

1. CSLP has secured the major permit needed to proceed with the proposed project (an Authority to Construct from the Sutter County Air Pollution Control District, issued January 15, 1986).

2. CSLP had retained experienced contractors willing to construct the QF before expiration of the original five-year deadline.

3. CSLP had secured arrangements for the timely procurement of the equipment needed for a cogeneration project.

4. Prudential-Bache Capital Funding is prepared to furnish construction and permanent financing for the project.

5. CSLP provided PG&E with a project cash flow analysis which confirms the economic viability of the project.

6. Site control has been demonstrated.

7. PG&E would supply the natural gas needed to fuel the project.

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

PG&E further argues that the reduction in firm capacity payments and physical curtailment of energy deliveries during the first ten years will result in ratepayer savings with a 1990 net present value of $16.8 million.

DRA agrees that it is entirely plausible that the QF would have been viable if it had received its transmission allocation by April 1, 1989. However, DRA argues that viability cannot be measured by what might have been. Instead, the inquiry should be limited to determining whether, in fact, the QF had all of the ingredients in-hand to meet its contractual commitments in the absence of a deferral. According to DRA, since CSLP did not get its transmission allocation in time, it could not have been viable. DRA argues that the fact that CSLP did not receive its transmission allocation in April 1989, that it did not receive financing at that time, and that it did not begin construction at that time is a function of the QF's, not the ratepayers' development risk. In addition, DRA asks whether the QF would qualify for a force majeure exception to the viability requirement and concludes that it would not.

DRA does not contest PG&E's arithmetic in calculating ratepayer savings, but asserts that there cannot be any savings when a contract modification revives a lifeless project. Instead, DRA states that, if the agreement is approved, ratepayers will suffer a loss equal to the amount by which lifetime payments under the interim SO4 contract are projected to exceed actual avoided cost. DRA estimates that amount to be $70 million. In addition, DRA suggests that PG&E's estimate of $16.8 million in savings cannot be considered as a fixed amount, but must be thought of as the top of a range of potential savings.

In its response to DRA's protest, CSLP argues that the proposed agreement does not resolve a viability dispute--it resolves a transmission access dispute which would have otherwise been the subject of a complaint proceeding. In its response, PG&E

adds that the $70 million number offered by DRA is an apparent miscalculation, that at a minimum the projected savings resulting from the agreement would have to be subtracted from that amount before potential overpayments could be calculated.

Discussion

Normally, a modification of a standard offer contract can be found reasonable if the underlying project is viable and if concessions are made by the QF which enure to the benefit of ratepayers. No one disputes that the price and operation concessions made by CSLP in this instance will lower the costs which ratepayers would otherwise face if the Yuba City project were to go on line pursuant to an interim SO4 contract in the absence of those concessions. In addition, no one disputes that the Yuba City project was viable in every respect other than the lateness of its transmission allocation.

PG&E and CSLP say that the agreement which is the subject of this proceeding was reached in order to avoid the filing of a complaint. In order to assess the reasonableness of that agreement, it is relevant to consider the underlying dispute that the agreement was designed to resolve. However, we will not decide, in this proceeding, who would prevail on the merits if the underlying dispute was litigated.

The gist of CSLP's complaint is that the QF should have been awarded a transmission allocation at an earlier date. In reaching the agreement, PG&E has acknowledged that the Yuba City project could have been completed on time if the transmission allocation had been made by April 1, 1989 and that it is reasonably likely that CSLP would have received its allocation by that date if the Joint Petition had not been pending at the time. Thus, the debate in this application focuses on the weight to be given to the pendency of the Joint Petition and the effect it may have had on CSLP's ability to receive a timely transmission allocation.

DRA argues that the pendency of the Joint Petition should be given no weight at all because, regardless of the reasons, CSLP has failed to complete the Yuba City project on time and the project is, therefore, nonviable. We cannot agree with DRA, since the viability of the QF may have been unreasonably impeded by the pendency of the Joint Petition. CSLP was ready to perform pursuant to its interim SO4 contract if it was granted timely access to a means of transmission.

As the project developer, CSLP has to absorb the risk that PG&E may not be able to provide timely transmission access. However, in this instance, the transmission capacity exists, and was made available to the Yuba City project soon after the Joint Petition was resolved. The Joint Petition represented a good faith effort by PG&E and DRA to improve access to transmission allocations in Northern California. Nonetheless, the pendency of the Joint Petition may have frustrated the ability of some QFs to obtain transmission access. It would be unfair to deny CSLP the right to deliver power pursuant to a valid contract if that delivery was frustrated by even the most well intended action by PG&E, the party who has promised to pay for timely delivery.

We can never know with certainty that the Yuba City project would have received timely transmission access in the absence of the Joint Petition. Equally, we will never be able to state with certainty that any individual QFs with higher priorities than CSLP's would have foregone transmission allocations or removed themselves from the priority list at an earlier date if the Joint Petition had never been filed. However, logic suggests that the launching of the Joint Petition could have altered the strategies of QFs which received transmission allocation before the Yuba City project but had little hope of timely development under the existing rules.

What would the prudent developer of such a project do in light of the Joint Petition? QFs receiving transmission

allocations had to pay a fee of $5/kW. Under the existing rules, if the transmission allocations were surrendered, the fees would not be returned. The amnesty provision in the Joint Petition proposal suggested that lifeless QFs would get their money back if they waited until after Commission approval of the Joint Petition to relinquish their transmission allocations. Under existing rules, the Commission does not approve deferrals of the contractual on-line dates for projects which are not viable. The grandfathering provision in the Joint Petition proposal would have allowed any QF which received its transmission allocation on or after January 1, 1988 to get a 3 to 5-year deferral regardless of viability. Under such circumstances, what QF developer with an existing transmission allocation would not wait until after consideration of the Joint Petition before choosing to step out of line? At a minimum, there would be a chance to get a refund of the $5/kW fee. In addition, there was the chance of getting an extra 3-5 years to come on-line, which might be just the time needed to bring some projects back to life.

DRA responds to these circumstances by arguing that there are many reasons why a stagnant QF, with no hope of meeting its deadline might accept or hold on to its transmission allocation. Such reasons could include the QF's misunderstanding of its contractual obligations, an unreasonably optimistic sense of its ability to meet its five-year deadline, a belief that there might be a midnight-hour increase in the transmission capacity available in the constrained area, apathy, or a thousand other things. However, DRA asserts, regardless of whether it makes good business sense for a nonviable QF to accept or hold on to a transmission allocation, the QFMP allows it to do just that. While DRA's argument makes sense when viewed in light of the existing rules, the pendency of the Joint Petition may have temporarily changed things. Although the Joint Petition did not formally change the rules, it may have changed expectations in a way that could not

have been reasonably foreseen by CSLP or other QFs attempting to assess their development risks. The Joint Petition, although well intentioned, may have encouraged stagnant QFs to wait for a better deal. This would have worked to the disadvantage of CSLP. The fairness of denying CSLP the relief it seeks would have to be assessed in light of the fact that the proposal which changed the expectations within the marketplace was endorsed by PG&E, the party with whom CSLP formed its contractual commitment to deliver power.

In further support of its position, DRA offered the example of a hypothetical bill proposed in Congress which would, if enacted, eliminate transition tax benefits that were relied upon by CSLP. In the DRA hypothetical, CSLP's financier, who had evaluated CSLP's economic viability based on its expected tax benefit, withdraws its offer for financing pending a vote on the bill. CSLP becomes nonviable because it is unable to obtain alternate financing in time to begin construction and meet its five-year deadline. The bill is ultimately voted down. DRA argues that ratepayers should not subsidize reviving the contract in that situation, because the fact that something might change is a risk inherent in project development, and development risks are the QF's, not the ratepayers' burden.

DRA is persuasive in suggesting that ratepayers should not shelter QFs from outside factors which alter their perceptions of project development risk or which alter the perceptions of those lenders or contractors upon whom a QF must rely for project development. However, in this instance, we appear to be dealing not with a potential government action which affects CSLP's perception of risk, but with action which may have induced some stagnant QFs who stood in CSLP's way to stay put. No matter how much risk CSLP was willing to absorb, it could not move other QFs off of the transmission priority list.

So long as the fundamental rules of the QF program remain unchanged, the intransigence of other QFs on the waiting list is a

risk that CSLP is left to bear. However, if the contracting utility's own action encourages lifeless QFs to retain their transmission allocations, fairness requires us to look further. In this instance, we appear to be faced with an otherwise viable QF, whose sponsors continued to diligently pursue project completion and to resolve the hazards which they perceived as being inherent in the pendency of the Joint Petition. The fact that transmission allocation became available for the Yuba City project so soon after the rejection of the Joint Petition further suggests that this QF would have received its allocation at the beginning of 1989 in the absence of the pending Joint Petition.

Conclusion

In this proceeding, we need not determine if the pendency of the Joint Petition harmed CSLP in its effort to obtain transmission allocation in a timely manner. It is sufficient to find that the proposed modifications resolve a legitimate dispute between the parties (concerning transmission access) in a reasonable manner and that the agreement appropriately secures additional ratepayer benefits in exchange for the extension of the contractual deadline. The proposed modifications to the interim SO4 agreement between PG&E and CSLP concerning the Yuba City project are reasonable and should be approved. In addition, the QFMP start of operation milestone date for the project should be extended to April 16, 1992, commensurate with the negotiated deferral of the PPA Article 12 five-year deadline.

Findings of Fact

1. The QF is a 49 MW gas-fired cogeneration facility to be constructed in Yuba City.

2. The SO4 agreement for this project was signed by the developer on April 11, 1985 and by PG&E on April 16, 1985; pursuant to the agreement, the QF must deliver power to the PG&E system no later than April 16, 1990.

3. From a time that preceded the signing of the agreement and continued until August 3, 1989, project development was constrained by the apparent lack of adequate transmission capacity in the vicinity of Yuba City.

4. Since 1984, PG&E has maintained two first-come first-served priority lists: one which indicates those QF 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.

5. CSLP's Yuba City project was placed on the waiting list on January 15, 1985.

6. CSLP began taking steps in mid-1988 to assure timely project development in anticipation of receiving transmission allocation.

7. On January 27, 1989, PG&E and DRA filed the Joint Petition which proposed modifying the rules that controlled access to transmission allocation.

8. According to CSLP, rumors of the imminent filing of the Joint Petition began to circulate in late 1988, and projects which CSLP felt had no chance of success started to come back to life.

9. CSLP filed comments in response to the Joint Petition expressing its concern that the pendency of the Joint Petition could interfere with its ability to obtain a transmission allocation.

10. CLSP continues to pursue completion of the project and has spent approximately $850,000.

11. In the decision rejecting the Joint Petition, we denied the request of CSLP and others that a day-for-day extension of the 5-year deadline be granted to match the period of time during which the petition was pending.

12. Only 15 days after our rejection of the Joint Petition, CSLP received a transmission allocation of 41.418 MW from PG&E.

13. CSLP received the rest of its allocation about one month later.

14. As of the date when the transmission allocation was completed there was insufficient time available for CSLP to construct the project and meet the April 16, 1990 deadline for delivering power to PG&E.

15. Under the proposed modification of the agreement, referred to as the First Amendment, the earliest the QF may begin to receive interim S04 firm capacity prices is April 16, 1991, one year after the original deadline.

16. Under the proposed agreement, energy deliveries may begin as early as December 1, 1990, but payment, prior to April 16, 1991, will be at energy prices as set forth in the PPA, with no payment for capacity.

17. The latest date at which initial energy deliveries can begin under the proposed agreement is April 16, 1992.

18. The proposed agreement contains a $4/kW discount on firm capacity payments was negotiated, resulting in payments of $192/kW-year for the first ten years of firm capacity deliveries; after the end of the first ten years, payments will be based on the full 1990 price of $196/kW-year.

19. Pursuant to the First Amendment, PG&E has the right to reduce power deliveries from the QF during the first 10 years following the firm capacity availability date.

20. No one disputes that the price and operation concessions made by CSLP in this instance will lower the costs which ratepayers would otherwise face if the Yuba City project were do go on line pursuant to an interim S04 contract in the absence of those concessions.

21. No one disputes that the Yuba City project was viable in every respect other than the lateness of its transmission allocation.

22. The agreement which is the subject of this proceeding was reached in order to avoid the filing of a complaint.

23. In reaching the agreement, PG&E has acknowledged that the Yuba City project could have been completed on time if the transmission allocation had been made by April 1, 1989 and that it is reasonably likely that CSLP would have received its allocation by that date if the Joint Petition had not been pending at the time.

24. The debate in this application focuses on the weight to be given to the pendency of the Joint Petition and the affect it may have had on CSLP's ability to receive a timely transmission allocation.

25. The Joint Petition represented a good faith effort by PG&E and DRA to improve access to transmission allocations in Northern California.

26. The pendency of the Joint Petition may have frustrated the ability of some QFs to obtain transmission access.

27. The launching of the Joint Petition could have altered the strategies of QFs which received transmission allocation before the Yuba City project but had little hope of timely development under the existing rules.

28. Although the Joint Petition did not formally change the rules, it may have changed expectations in a way that could not have been reasonably foreseen by CSLP or other QFs attempting to assess their development risks.

29. The fact that transmission allocation became available for the Yuba City project so soon after the rejection of the Joint Petition further suggests that this QF would have received its allocation at the beginning of 1989 in the absence of the pending Joint Petition.

Conclusions of Law

1. The QF would have been viable if it had received its transmission allocation by April 1, 1989.

2. There is a reasonable probability that the QF would have received its allocation by that date if the Joint Petition had not been filed.

3. The contract modifications would result in significant ratepayer benefits.

4. In order to assess the reasonableness of that agreement, it is relevant to consider the underlying dispute that the agreement was designed to resolve.

5. The fairness of denying CSLP the relief it seeks would have to be assessed in light of the fact that the proposal which changed the expectations within the marketplace was endorsed by PG&E, the party with whom CSLP formed its contractual commitment to deliver power.

6. So long as the fundamental rules of the QF program remain unchanged, the intransigence of other QFs on the waiting list is a risk that CSLP is left to bear.

7. If the contracting utility's own action encourages lifeless QFs to retain their transmission allocations, fairness requires us to look further.

8. In this proceeding, we need not determine if the pendency of the Joint Petition harmed CSLP in its effort to obtain transmission allocation in a timely manner; it is sufficient to find that the proposed modifications resolve a legitimate dispute between the parties (concerning transmission access) in a reasonable manner and that the agreement appropriately secures additional ratepayer benefits in exchange for the extension of the contractual deadline.

9. The proposed modifications to the interim SO4 agreement between PG&E and CSLP concerning the Yuba City project are reasonable and should be approved.

10. The QFMP start of operation milestone date for the project should be extended to April 16, 1992, commensurate with the negotiated deferral of the PPA Article 12 five-year deadline.

ORDER

IT IS ORDERED that the application is approved.

This order is effective today.

Dated APR 11 1990, at San Francisco, California.

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

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

NEAL J. SHULMAN, Executive Director