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ORIGINAL

Decision 92-10-015 October 6, 1992

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)

(See Appendix A for appearances.)

**OPINION ON JOINT SETTLEMENT FOR  
 MODIFICATION OF DECISION 87-04-039**

1. Summary

We approve a joint settlement between Pacific Gas and Electric Company (PG&E), the Independent Energy Producers Association (IEP), and the Division of Ratepayer Advocates (DRA). The joint settlement modifies Decision (D.) 87-04-039 by modifying the Qualifying Facility Milestone Procedure (QFMP) and discontinues the waiting list of QFs seeking capacity in PG&E's northern area.

The settlement has the following key terms:

- o Discontinues the waiting list for transmission capacity in PG&E's northern area (sometimes referred to as the "northern constraint area").
- o Deletes Section II(B) of the Revised Fifth Edition of the QFMP, which establishes guidelines for Qualifying Facilities (QFs) seeking transmission in PG&E's northern area and the Altamont Pass. (The Fifth Edition of the QFMP is attached to D.87-04-039 as Revised Appendix A.)
- o Requires PG&E to provide available transmission capacity to QFs in the northern area, once a QF requests and pays for an interconnection study and establishes interconnection priority under the QFMP. If there is insufficient

transmission capacity available, PG&E will identify the scope and costs of required transmission upgrades and, if the QF agrees, build the upgrades (with costs of such upgrades allocated in accordance with applicable Commission cost allocation principles).

- o Requires PG&E to provide QFs on the northern area waiting list as of October 29, 1991, with an exclusive opportunity to request an interconnection study and establish interconnection priority for 30 days following Commission approval of this joint settlement.

## 2. History of I.84-04-077

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 QF development. PG&E and other California utilities were named as respondents.<sup>1</sup> Each respondent was required to file a statement 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 predicted transmission limitations.

Because of a desire not to delay QF development until the completion of this investigation, the Commission held workshops to create an interim program for QF development in the northern area

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<sup>1</sup> The other respondents included Southern California Edison Company, San Diego Gas & Electric Company, Pacific Power and Light (now called PacifiCorp), and Sierra Pacific Power.

of PG&E's service territory. PG&E, the Commission staff,<sup>2</sup> and designated QF representatives stipulated that the maximum amount of new QF power that could be interconnected in PG&E's various northern constrained areas totalled 1,150 megawatts (MW).<sup>3</sup> This stipulation became known as the Interim Solution. The Commission adopted this stipulated amount in D.84-08-037 and D.84-11-123.

Faced with requests for over 3,000 MW of QF power in its northern area, PG&E allocated the 1,150 MW of capacity and created a waiting list for the remaining QFs.

In D.84-12-027, the Commission also 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. 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 QFMP.<sup>4</sup> As part of this process, PG&E has maintained two priority lists. One list indicates those projects which have been allocated access to transmission in the northern area. Another list is the northern area waiting list for those projects which have yet to receive transmission allocations.

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2 Then called the Public Staff Division, now called the DRA.

3 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.

4 D.85-01-038 adopted the Interconnection Priority Procedure, which was renamed the QFMP by D.85-08-045. The following decisions also addressed the QFMP: D.85-11-017; D.86-04-053; D.86-11-005; and D.87-04-039.

This opinion is in response to a Joint Settlement of PG&E, IEP, and DRA for Modification of D.87-04-039. That decision adopted the Revised Fifth Edition of the QFMP, the version which is currently in effect. Section II(B) of the QFMP contains a modified procedure directed to the QFs on the northern area waiting list to make the QFMP consistent with the Interim Solution. Section II(B) also applies to PG&E's Altamont Pass area.

### 3. Procedural Background

On October 23, 1991, the Commission issued D.91-10-048 in its current transmission access investigation, Investigation (I.) 90-09-050. The Commission instituted this investigation to develop a nondiscriminatory transmission access policy for nonutility generators to promote competition in the electric generation sector. D.91-10-048 gave policy direction on certain key transmission issues, thus laying the groundwork for further proceedings.<sup>5</sup> In D.91-10-048, slip opinion at pp. 37-38, the Commission stated:

"An issue raised in the Order Instituting Investigation is what to do regarding the waiting list of QFs already seeking transmission capacity in PG&E's Northern constrained area. The waiting list was created pursuant to orders in I.84-04-077. Therefore, the resolution of the above issues will be left in I.84-04-077, where the issue will be taken up shortly, and will not be addressed further here."

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<sup>5</sup> After the issuance of D.91-10-048, the Commission held a negotiating conference, followed by Phase 1 evidentiary hearings on select key transmission issues in order that transmission access be provided, and transmission considerations be taken into account in this year's upcoming solicitation in the Biennial Resource Plan Update (Update). In D.92-09-078, the Commission adopted its Interim Transmission Program.

On December 4, 1991, the then-assigned Administrative Law Judge (ALJ) in this investigation, ALJ Weissman, held a prehearing conference "for the limited purpose of setting an expedited schedule for resolving the status of the QF waiting list."<sup>6</sup> At the December 4 prehearing conference, PG&E, IEP and DRA indicated that they had a draft stipulation regarding the resolution of the waiting list. These moving parties then agreed to pursue a settlement under the Commission's Rules of Practice and Procedure. (See Rule 51 et seq.)<sup>7</sup>

On December 6, 1991, PG&E sent a notice of a December 16, 1991 settlement conference, in accordance with Rule 51.1(b). Members of the northern area waiting list are not necessarily parties to this proceeding. However, this notice was also sent to the QFs on the waiting list.

On December 19, 1991, after the settlement conference, PG&E, IEP, and DRA ("settling parties") filed a settlement entitled "Joint Settlement of PG&E, IEP, and DRA for Modification of D.87-04-039" ("joint settlement"). PG&E's proof of service indicates it served the joint settlement on the service list as well as on the northern area waiting list.

On January 8, 1992, one QF developer, Ronald E. Rulofson filed a document entitled Protest on and Request for Exemption from the Joint Settlement of PG&E, IEP, and the DRA for Modification of

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<sup>6</sup> November 15, 1991 ALJ Ruling Setting Prehearing Conference at p. 1. ALJ Weissman also directed PG&E to mail a copy of this ruling to all of those on the QF waiting list no later than November 21, 1991, to assure that all of those affected by this issue had an opportunity to be heard.

<sup>7</sup> The rules cited in this decision are the Commission's Rules of Practice and Procedure.

D.87-04-039.<sup>8</sup> On January 16, 1992, assigned ALJ Econome issued a ruling extending until February 21, 1992, the time for persons on the northern area waiting list to file comments regarding the joint settlement, and until March 9, 1992 the time to file reply comments. ALJ Econome reasoned that:

"[t]he persons listed on the PG&E Northern Area Waiting List are not parties to this proceeding, yet their interests may be affected by this proposed settlement. Furthermore, since these persons are not parties, they may be unfamiliar with the Commission's Rules of Practice and Procedure." (January 16, 1992 ALJ Ruling Regarding Response to the Joint Settlement and Service on the Northern Area Waiting List.)<sup>9</sup>

Rulofson was the only person to file comments on the joint settlement. PG&E filed reply comments on March 9, 1992. On March 13, 1992, Rulofson attempted to file a response to PG&E's reply comments, which was correctly rejected by the Commission's Docket Office as an additional round of pleadings not permitted by

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8 Although Rule 51.4 provides that a party to a proceeding who does not expressly join in a stipulation or settlement proposed for adoption may file comments contesting all or part of that stipulation or settlement, we treat Rulofson's protest as comments pursuant to Rule 51.4, notwithstanding Rulofson's incorrect designation.

9 Under Rule 51.4, the assigned ALJ can extend the comment period to a proposed settlement. Furthermore, PG&E did not wish to disclose the names of those on the northern area waiting list, alleging confidentiality concerns. Without adjudicating the merits of this claim, the January 16 ALJ ruling also provided that PG&E serve a copy of the Rulofson protest and other relevant documents on the northern area waiting list, and provide a proof of service, with the names of the persons on the waiting list under seal. The ruling also instructed PG&E to file a similar proof of service for all other documents it had served on the waiting list. The ruling also instructed members of the northern area waiting list how to become an appearance to the proceeding in the event they wished to file comments.

our rules without prior authorization from the ALJ. On March 23, 1992, Rulofson petitioned that the Commission accept his response to PG&E's reply comments. On May 13, 1992, ALJ Econome granted Rulofson's petition, noting that Rulofson filed initial comments within the requisite period, that no party opposed his petition, and that the comments did not raise any additional issues.

#### 4. Position of the Parties

##### 4.1 The Settling Parties

The settling parties agree to discontinue the northern area waiting list. PG&E would follow the same process for allocating transmission capacity in the northern area as it has used in other areas, which process is more specifically described below. However, in order to equitably discontinue the waiting list, the settling parties have also adopted provisions that will allow QFs currently on the waiting list to have a first chance at obtaining any available transmission capacity.

The settling parties state that the existence of the waiting list complicates transmission issues relating to future QF bidding of proposed projects in PG&E's northern area. We anticipate that PG&E will hold a Final Standard Offer 4 auction this year.<sup>10</sup> The settling parties maintain that if the settlement is not approved, the Update process could be frustrated since auction winners could have to wait on a list below projects which may lack either a purchase power agreement or interconnection priority pursuant to the QFMP. The settling parties also state that perpetuating the waiting list could also result in a large number of Update bidders placing themselves on the waiting list in

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<sup>10</sup> In the Update, we specify, among other things, a certain amount of capacity (and benchmark prices for that capacity) to be offered through QF bidding in a Final Standard Offer 4 auction.

an effort to ensure that they have a transmission allocation in the future.

For these reasons, the settling parties seek to eliminate the northern area waiting list. The settlement also allows PG&E to apply the same process for allocating transmission capacity in its northern area as it uses in other areas. The primary distinction is that under the joint settlement, there will be no waiting list. QFs in the northern area subject to the QFMP would now have to request and pay for an interconnection study to determine if transmission capacity is available or if an upgrade is necessary. Generally under current procedures, QFs on the northern area waiting list are notified by PG&E of available capacity up to the MW limits established by the Interim Solution, before they can either request and pay for an interconnection study or pass and retain their current position on the waiting list. The key terms of the settlement are set forth in Section 5.1 below.

The settling parties believe that their proposal would benefit the QFs on the northern area waiting list in two ways. First, it would give them an opportunity to use pockets of available capacity that have been identified since the Interim Solution was adopted in 1984. Second, it would give QFs which are serious about developing the ability to obtain transmission capacity now without further waiting.

#### 4.2 Rulofson's Comments

Rulofson is the representative of Eltapom Creek Hydroelectric project, which currently occupies third place on the northern area waiting list overall, and first place on the waiting list for the Humboldt area. Rulofson is the only party to object to the proposed settlement. He opposes the settlement and alternatively argues that we should exempt his project if we approve the settlement.

Specifically, Rulofson objects to the discontinuation of the waiting list after he has made business decisions based upon



the existing rules. He contends that he has worked diligently for a number of years under the waiting list rules to advance his 2.5 MW hydroelectric project. He argues that the proposed settlement has no benefit in the Humboldt area as no capacity exists above the 90 MW already in use. He believes that PG&E will not expand transmission capacity in that area because of excessive costs. He also believes that some of the original 1,150 MW authorized by the Commission for allocation in the northern area under the Interim Solution will become available soon due to a reduced timber harvest and controversy over the spotted owl.

If we do not reject the proposed settlement, Rulofson alternatively proposes varying degrees of exemption that would continue the waiting list for his project and possibly others. Primarily, Rulofson wishes to continue his status for any reallocation of the 90 MW currently on the Humboldt corridor and to avoid paying the \$5/kilowatt (kW) charge and the cost of an interconnection study until he knows the 2.5 MW of transmission capacity necessary for his project are available.

Rulofson also raises the concern that members of the waiting list received his comments and other related filings. He is also concerned that discontinuation of the waiting list will negate the relief we granted to him in D.91-11-053, which adjudicated a complaint case Rulofson brought against PG&E. Finally, Rulofson requests certain factual information from PG&E. However, Rulofson does not indicate any disputed issues of material fact necessary to resolve in order to address the policy issue of whether or not to discontinue the waiting list. Rulofson also requests a hearing "to fully air the alleged benefits and known liabilities of the proposed joint settlement." (Rulofson Comments filed on January 13, 1992, at p. 29.)

#### 4.3 PG&E's Reply

PG&E alone replied to Rulofson's comments. PG&E believes that it is imperative that the proposed settlement be approved in its entirety, and the waiting list be eliminated. PG&E argues that Rulofson's alternate proposals either to exempt himself from the settlement or to establish alternative procedures for QFs on the waiting list would de facto continue the waiting list indefinitely. PG&E believes that making an exception for even one QF to remain on the waiting list would endanger the QF bidding process in the Update by leaving some uncertainty in the northern area of PG&E's service territory. According to PG&E, these uncertainties may cause QFs bidding in the auction not to bid in the northern area, and may result in PG&E and its ratepayers losing low-cost resource opportunities.

PG&E further explained that it planned to present its "LOCATION" proposal in the April 1992 evidentiary hearings in I.90-09-050. The "LOCATION" model develops capacity and energy line loss estimates and transmission upgrade cost estimates for use in bid evaluation in the Update's upcoming Final Standard Offer 4 auction. PG&E states that the uncertainty posed by the waiting list could invalidate its "LOCATION" proposal, and if this proposal is adopted, PG&E would have to ask the Commission to exempt the northern area from its bidding program.

PG&E further states that under the terms of the Interim Solution, QFs on the northern area waiting list are only eligible for a reallocation of the 1,150 MW. Since over 1,000 MW are now operational and the other 150 MW are becoming operational, PG&E questions whether any capacity will soon become available through reallocation.

PG&E argues that the proposed settlement presents a benefit to both the QF industry in general and Rulofson's project in particular. PG&E states the primary benefit is that QFs in the northern area will have first opportunity to use capacity that

exists in excess of the 1,150 MW allocated by the Interim Solution. PG&E did not state whether there is excess capacity in any specific part of the northern area, but admits that there are "pockets of transmission capacity" and other areas that are still constrained.

PG&E also states that costs to Rulofson under the Interim Solution and the proposed settlement do not change. Under each, he would be required to pay a \$5/kW fee and pay to have PG&E perform an interconnection study. The results of the study may indicate that transmission capacity is available for his project. If capacity is not available, he would have to decide whether (1) to pay for an upgrade or (2) not to go forward with his project. In the latter case, PG&E would refund his \$5/kW fee. PG&E also states that the ALJ ruling requiring service of the settlement, Rulofson's comments, and other related filings on the northern area waiting list eliminates any alleged due process concerns Rulofson raises.

#### 4.4. Rulofson's Response to PG&E's Reply

Rulofson's response highlights the same issues discussed in his initial comments. In particular, he argues that it would not be detrimental to PG&E or the Update bidding process to have his project remain on the waiting list. Rulofson believes that it may be difficult for QFs to monitor operations in the northern area to determine when QFs relinquish transmission capacity. As a result, Rulofson believes that QFs in the northern area will have to "guess" when transmission capacity is available and will often guess wrong, thus wasting considerable amounts of time and money spent on an interconnection study.

### 5. Discussion

#### 5.1 Key Terms to Settlement

The joint settlement contains some ambiguity as to the criteria and conditions under which certain QFs on the northern area waiting list will be given a "first chance" to apply for transmission capacity following approval of the settlement. Therefore, we set forth our understanding of key terms of the

settlement, which we believe is a reasonable interpretation, and is in the public interest.

5.1.1 There Will Be No Waiting List

Subject to Section 5.1.2 below, transmission access for QFs subject to the QFMP will no longer be governed by the waiting list. Rather, if a QF requires transmission, the QF must request and pay for an interconnection study. If PG&E determines after the interconnection study that transmission is available and if the QF establishes interconnection priority under the QFMP, the QF will obtain transmission access. If the results of the interconnection study lead PG&E to conclude that sufficient transmission is not available, PG&E will identify the scope and costs of necessary upgrades. If the QF then decides to go forward with the project, PG&E will build the upgrades. The QF's share of the upgrade costs will be governed by applicable cost allocation rules and decisions of this Commission.

There will be no waiting list. Projects for which there is not sufficient existing capacity will have to decide whether to request upgrades be built (including accepting appropriate cost responsibility, where relevant) or withdraw their requests for transmission.<sup>11</sup> Because the waiting list is eliminated, Section II(B) of the Revised Fifth Edition of the QFMP should also be deleted as set forth in Section 5.1.2 below.

5.1.2 Certain QFs Will Receive a "First Chance"

The joint settlement provides certain QFs a "first chance" to request an interconnection study and to establish interconnection priority under the QFMP within 30 days of the effective date of this decision.

Following Commission approval of this joint settlement, PG&E will notify each entity on the waiting list that those QFs on

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<sup>11</sup> In the later case, the QF would be refunded its project fee.

the waiting list as of October 29, 1991,<sup>12</sup> which are still on the waiting list on the effective date of this decision, have 30 days from the effective date of this decision to request an interconnection study. Those QFs which request an interconnection study during this 30-day period will have their interconnection studies done before any other QF study is done, based on their position on the waiting list as of the effective date of this decision. No other QF in PG&E's northern area subject to the QFMP will be permitted to establish interconnection priority in the northern area during this 30-day period.

The joint settlement also provides that if, during this 30-day period, a QF on the waiting list also establishes interconnection priority under Section II(B) of the QFMP (i.e., the section we delete as a result of this decision), they will be given access to available capacity in the northern area in the order in which they appear on the waiting list. For this reason, Section II(B) of the Revised Fifth Edition of the QFMP is deleted effective 30 days from the effective date of this decision. During this 30-day period, its terms will only apply to QFs who are on the waiting list on the effective date of this decision, pursuant to the terms set forth above.

In order to effectuate the "first chance" procedure described above, PG&E will maintain the waiting list for 30 days following the effective date of this decision. However, no QFs will be added to the waiting list on or after the effective date of this decision. After this 30-day period, transmission access for

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<sup>12</sup> October 29, 1991, is the date when the principles of this settlement were presented to the group of parties that had expressed an interest in the subject at a September 1991 workshop in I.90-09-050. The settling parties limit the "first chance" opportunity described in Section 5.1.2, in order to avoid what they term a "gold rush" of entities seeking to take advantage of this opportunity.

QFs subject to the QFMP will no longer be governed by the waiting list, and any QF subject to the QFMP can seek transmission access as set forth in Section 5.1.1, above.

### 5.2 Due Process

Because PG&E has kept the names of the northern area waiting list confidential, Rulofson expressed concern that he was unable to serve his comments on them. However, Rulofson articulated this concern before the assigned ALJ issued her January 16, 1992 ruling. This ruling addressed Rulofson's concern and required PG&E to serve Rulofson's comments and other relevant documents on the northern area waiting list. (PG&E had already served the joint settlement on the list.) Consequently, Rulofson's due process concerns are without merit.

### 5.3 Discontinuation of the Waiting List

The key policy issue underlying the joint settlement which we resolve today is whether to discontinue the northern area waiting list. We hold it is time to do so. We therefore approve the joint settlement.

The Interim Solution and resulting waiting list arose at the beginning of this investigation so that QF development in the northern area would not be delayed until the completion of this investigation. As we specifically stated in D.84-08-037, slip opinion at p. 5:

"First, the stipulation [regarding the Interim Solution] gives QFs certainty about their cost responsibility for transmission upgrades while I.84-04-077 is pending... Second, PG&E agrees to make the operational changes necessary to accept QF power. Without such changes, QF deliveries would be curtailed when other resource availability exceeds transmission capacity in PG&E's northern transmission system."

However, we have never stated that the waiting list would exist in perpetuity. To the contrary, in D.91-10-048, slip opinion at pp. 37-38, we specifically raised the issue of what to do

regarding the northern area waiting list, and stated that issue would be resolved in this investigation.

We agree with the settling parties that the current waiting list system for allocating transmission capacity is inconsistent with the Update bidding program, as well as the Interim Transmission Program we recently adopted in D.92-09-078. Specifically, the continuation of the waiting list is incompatible with PG&E's LOCATION model, which PG&E plans to use to develop transmission values for bid evaluation in the upcoming Final Standard Offer 4 auction. (See D.92-09-078, slip opinion at pp. 16-17.) PG&E states it would be unable to develop LOCATION values (i.e., capacity and energy line loss estimates and transmission upgrade cost estimates for use in bid evaluation) for the northern area as a result of the uncertainty posed by the waiting list. Unless this settlement is adopted, we might be forced to exempt PG&E's northern area from the Update bidding program. Clearly, it is in the public interest that our upcoming Standard Offer 4 auction be open to all eligible QFs regardless of their location.

Furthermore, even if this obstacle were somehow overcome, under the Interim Solution and resultant waiting list, winners of the upcoming Standard Offer 4 auction which require transmission capacity in the northern area could be placed at the bottom of the waiting list. These projects -- low-cost resources -- may become nonviable while waiting for an allocation of transmission capacity. Thus, the projects on the waiting list may prevent auction winners from connecting to PG&E's system in favor of QFs that have been waiting on the list longest. Because of this uncertainty, QFs which need transmission capacity in the northern area might not bid in the auction, and ratepayers could thus be deprived of the benefit of these low-cost resources.

As a result of this settlement, PG&E would apply the same process for allocating transmission capacity in the northern area

as it uses in its other areas. Our understanding is that this settlement governs such transmission access for QFs subject to the QFMP. This Commission also has specific rules which relate to the upcoming Final Standard Offer 4 auction. In particular, we have recently adopted rules specifically tailored for the upcoming auction which govern transmission access and cost allocation. (See D.92-09-078.)

In order to further effectuate the joint settlement, Section II(B) of the QFMP is deleted in its entirety, as set forth in Section 5.1.2 above. Section II(B) contains a modified procedure directed at both QFs in the northern area waiting list and in the Altamont Pass area.<sup>13</sup>

Rulofson does not raise any disputed issues of material fact or legal issues which warrant further hearings or briefing. Rulofson wishes to remain on the waiting list indefinitely in hopes that someone currently holding transmission capacity will relinquish it to him. Under the Interim Solution, PG&E has allocated the original 1,150 MW to QFs which are either operational or becoming so. QFs currently on the waiting list are waiting for a reallocation of capacity that may never come. We do not agree with Rulofson that we should continue the waiting list in order to protect the possibility that one QF on the waiting list may some day obtain an allocation.

Finally, Rulofson argues that it is unfair to discontinue the waiting list after he made business decisions based upon the existing rules, citing D.89-07-058 in support of his position. However, in D.89-07-058, slip opinion at p. 11, we clearly stated that "none of the QFs on the waiting list were promised eventual access to transmission in the constrained areas[.]" While we also

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<sup>13</sup> No party objected to the deletion of Section II(B) as it pertains to the Altamont Pass area.



recognized that it would not have been unreasonable for QFs to expect the details of the program to remain fundamentally unchanged, we never held that the program itself would continue in perpetuity. Moreover, the joint settlement provides for an interim period when certain QFs on the northern area waiting list can apply for a first right to any unused capacity in PG&E's northern area. We believe this advantage is equitable to QFs on the waiting list, while at the same time providing for the discontinuation of the list.

#### 5.4 Rulofson's Requested Exemption

We do not modify the joint settlement to create an exemption for Rulofson's project or other projects on the northern area waiting list. First, we will not adopt a special exemption solely for one project. Second, creating exemptions such as Rulofson suggests for all those on the waiting list could, as a practical matter, allow the waiting list to continue almost indefinitely. For the reasons stated in Section 5.3 above, we do not believe that such a result is in the public interest.

#### 5.5 Rulofson's Formal Complaint

Rulofson argues that the joint settlement is attempting to take away certain relief he obtained in D.91-11-053. As a result of PG&E's failure to provide certain information to Rulofson, D.91-11-053 ordered PG&E to advance Rulofson's project on the waiting list, and to do so in a way that did not disadvantage other projects that had been ahead of Rulofson. Rulofson and another developer now share the first position on the Humboldt list. We do not intend for our decision today to change PG&E's

obligations to Rulofson as a result of D.91-11-053, except as it modifies D.87-04-039 to eliminate the northern area waiting list.<sup>14</sup>

The joint settlement which we adopt also states that "no party takes a position on whether ... PG&E properly administered the eligibility list." Additionally, it states that a party's participation in the joint settlement "is not intended to affect, in any way, legal actions pending by QFs against PG&E arising out of the standard offer contracts, PG&E's administration of the QF program or compliance with Commission orders." (Joint Settlement at pp. 10-11.)

Findings of Fact

1. D.84-08-037 and D.84-11-123 adopted a stipulation which has become known as the Interim Solution.

2. On December 6, 1991, PG&E sent a notice of a December 16, 1991 settlement conference, in accordance with Rule 51.1(b).

3. On December 19, 1991, PG&E, IEP and DRA filed a settlement agreement entitled Joint Settlement of PG&E, IEP, and DRA for Modification of D.87-04-039 ("joint settlement"). On January 8, 1992, Rulofson filed a document entitled Protest on and Request for Exemption from the Joint Settlement of PG&E, IEP, and the DRA for Modification of D.87-04-039. On March 9, 1992, PG&E filed a reply to Rulofson. PG&E has served these and other related filings on the northern area waiting list.

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<sup>14</sup> For instance, if, within 30 days of the effective date of this decision, Rulofson goes forward with his project under the procedure set forth in the joint settlement, and if one of the other projects ahead of which he was moved also decided to go forward, and if PG&E's existing system could not accommodate the 2.5 MW from Rulofson's project and the other project without system upgrades, determining cost responsibility for the upgrades would be based on existing Commission decisions, including D.91-11-053.

4. The continuation of the waiting list could hinder competitive bidding in the upcoming Update Final Standard Offer 4 solicitation.

5. The Commission never stated that the northern area waiting list would continue in perpetuity.

6. The joint settlement provides for an interim period (30 days following the effective date of this decision) when QFs on the northern area waiting list as of October 29, 1991 can apply for a first right to any unused capacity in PG&E's northern area, pursuant to Section 5.1.2 of this decision.

7. The joint settlement does not address whether transmission constraints still exist on portions of PG&E's service territory.

#### Conclusions of Law

1. The comments of Rulofson do not raise any disputed issues of material fact or legal issues which warrant further hearings or briefing.

2. PG&E should discontinue the northern area waiting list pursuant to the terms of the joint settlement.

3. Section II(B) of the Fifth Edition of the QFMP, which section applies to QFs in PG&E's northern area and in the Altamont Pass, should be deleted effective 30 days from the effective date of this decision. During the 30-day period following the effective date of this decision, Section II(B) should apply only to QFs on the northern area waiting list as of the effective date of this decision, pursuant to Section 5.1.2 of this decision.

4. The joint settlement is reasonable in light of the whole record, consistent with the law, and in the public interest.

5. Because we wish a Final Standard Offer 4 auction to take place this year and the continuation of the waiting list could hinder competitive bidding, this decision should be effective immediately.

O R D E R

**IT IS ORDERED that:**

1. The Joint Settlement of Pacific Gas and Electric Company (PG&E), Independent Energy Producers Association, and the Division of Ratepayer Advocates for Modification of Decision (D.) 87-04-039 ("joint settlement") dated December 19, 1991, is adopted.

2. Section II(B) of the Fifth Edition of the Qualifying Facility Milestone Procedure, attached to D.87-04-039 as Revised Appendix A, shall be deleted effective 30 days from the effective date of this decision. During the 30-day period following the effective date of this decision, Section II(B) shall apply only to QFs on the northern area waiting list as of the effective date of this decision, pursuant to Section 5.1.2 of this decision.

3. Within five days of the effective date of this decision, PG&E shall serve a copy of this opinion on the northern area waiting list.

4. Within five days of the effective date of this decision, PG&E shall serve on the northern area waiting list notice of the criteria, procedure, and dates for requesting an interconnection study pursuant to the terms of the joint settlement.

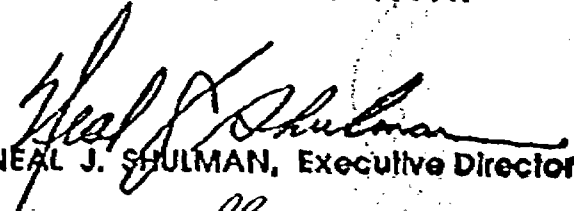
5. PG&E shall file proofs of service of the documents set forth in paragraphs 3 and 4 above with the Commission's Docket Office.

This order is effective today.

Dated October 6, 1992, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
JOHN B. OHANIAN  
PATRICIA M. ECKERT  
NORMAN D. SHUMWAY  
Commissioners

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

  
NEAL J. SHULMAN, Executive Director

APPENDIX A

List of Appearances

Interested Parties: William Manheim, Michael S. Hindus, Randall J. Litteneker, and Mark D. Patrizio, Attorneys at Law, for Pacific Gas and Electric Company; Jan Smutny-Jones, for Independent Energy Producers; Stephen E. Pickett, Ann P. Cohn, Frank A. McNulty, and Tanya D. Scott, Attorneys at Law, for Southern California Edison Company; Skadden, Arps, Slate, Meagher & Flom, by Brett D. White and Steven Greenwald, Attorneys at Law, for Smith River; Morrison & Foerster, by Lynn Haug, Attorney at Law, for Morrison & Foerster; Joseph G. Meyer, for Joseph Meyer Associates; John D. Quinley, for Cogeneration Service Bureau; Alex Sebastian, for Sonoma County Landfill; Donna Stone, for California Department of Water Resources; and Ross Burgess of Mother's Energy, Inc.; Douglas Kerner, and Ronald E. Rulofson, for themselves.

Commission Staff: Judy Lamson and James E. Scarff, Attorneys at Law, and Faramarz Yazdani, for Division of Ratepayer Advocates.

(END OF APPENDIX A)