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Decision 83 12 050 DEC 20 1983

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 No. 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,  
) and August 2, 1983)

And Related Matters.

) Application 82-04-46  
) (Filed April 21, 1982;  
) amended May 12, 1982,  
) July 11, 1983, and  
) August 10, 1983)

) Application 82-04-47  
) (Filed April 21, 1982;  
) amended July 11 and  
) August 2, 1983)

(See Decision 83-09-054 for Appearances.)

OPINION ON PETITIONS FOR MODIFICATION  
OF DECISION 83-09-054

On September 7, 1983 we issued Decision (D.) 83-09-054, which was an interim decision, adopting three payment options for Standard Offer No. 4. These options are to be used by the three applicant utilities in these consolidated proceedings. Our decision followed after a five-week negotiating conference and, subsequently, a prehearing conference lasting two days.

Petitions for modification were filed by the Independent Energy Producers (IEP) and Occidental Geothermal, Inc. (Occidental); a response to both petitions was filed by Southern California Edison Company (Edison), and IEP responded to Occidental's petition.

Occidental's Petition

Occidental points out that our D.83-09-054 directed the utilities to delete the regulatory authority clause, but that Edison's contract contains another clause, termed the "amendment clause" which Occidental thinks could have substantially the same effect as the regulatory authority clause that was deleted. We ordered the regulatory authority clause deleted to afford qualifying facilities (QF) the certainty and sanctity of contract terms and fixed term prices they wanted, but in exchange we did not allow subsequent contract switching. The regulatory authority clause, of course, could have allowed us to essentially change contract terms retroactively. Edison's response is that although the "amendment clause" would apply only if both Edison and the QF agreed that there was a "change in circumstances" necessitating a change in the contract terms, it does not object to removing the clause if keeping it in the contract alarms QFs. We will direct Edison to remove the amendment clause from its Standard Offer No. 4.

The second point raised by Occidental is that Edison's Standard Offer No. 4 is not clear that after the fixed price term or prior to the time of firm delivery, the QF will receive energy payments based on Edison's full avoided operating cost as determined now for Standard Offer No. 2 (for firm delivery based on short-run avoided cost). Edison's response on this point is essentially that it did not mean to build any ambiguity into the contract. It agrees to change the relevant contract provisions by inserting the language underlined below (see Attachment A-7 to Edison's response):

Seller shall be paid a Monthly Energy Payment for Energy delivered by Seller and purchased by Edison at a rate equal to 100% of Edison's published avoided cost of energy based on Edison's full avoided operating cost as updated periodically and accepted by the Commission.

We think the amended contract language proposed by Edison in its response to Occidental's petition is clear enough. Occidental's expressed fear is that a future Commission may decide

that QFs should be paid 80% of utilities' full operating costs, and that, instead of 100%, only 80% would be paid by Edison. With Edison's proposed amendment all the Standard Offer No. 4 contracts refer to "full avoided operating cost." Because the fixed term is 10 years, it is extremely difficult to estimate what short-run avoided costs will be after that period. But it is clear QFs under Standard Offer No. 4 contracts will receive 100% of full avoided cost as those costs are then determined and accepted by this Commission. That is all the certainty contemplated at the negotiating conference, and it is all the certainty we can extend at this time.

Furthermore, on November 16, 1983, Occidental responded to Edison's response by applauding "Edison's good faith in making these important modifications." Occidental therefore seeks to withdraw its petition. IEP, similarly seeks dismissal of that portion of its petition supporting Occidental's petition. We will direct Edison to amend its contract language as proposed. No further amendment is necessary or appropriate.

IEP's Petition

IEP, in addition to supporting the points addressed by Occidental, takes exception to the procedure we set out in D.83-09-054 to initiate the process of having a standardized Standard Offer No. 4. We ordered the three utilities and our staff to work together to develop standard contract language, with the resulting proposed contract to be reviewed in subsequent hearings. While pleased with our effort for more standardization, IEP thinks QFs will be unfairly prejudiced by not being part of all meetings on the subject between the utilities and our staff.

We adopted the procedure because we thought it could expedite at least getting a work product for the many and various QF interests that are parties to these proceedings to review and react to. We thought the initial logistics for the undertaking, which is a complex task, would be more expedient: The many QF representatives will have full opportunity to review the work product filed by the

utilities. Rather than modify the procedure, we suggest that our staff arrange an informal meeting with the utilities and QFs shortly after the utilities file the proposed standard language, which will be served on all parties. Thereafter, any remaining concerns and issues can be more succinctly addressed during hearings. We will not modify the procedure as requested by IEP. We will, however, order the utilities to file the standard contract language six months from today.

#### Conclusion

Standard Offer No. 4, along with the energy price, incremental energy rate and shortage value forecasts adopted by D.83-09-054 has become effective. New incremental energy rates and/or avoided capacity cost values that may be adopted by the Commission in general rate case or ECAC proceedings will not affect the price forecasts established over the fixed payment term under Standard Offer No. 4, until further orders are issued in this proceeding.

No applications for rehearing were filed after D.83-09-054 was issued. We trust there will be no further petitions for modification of that decision, as parties should raise any concerns or proposals relating to Standard Offer No. 4 at the upcoming evidentiary hearing. We will be very reluctant to indulge any petitions that may address or propose piecemeal changes to existing Standard Offer No. 4, because it is being relied on by QFs and utilities alike. Efforts for ex parte modification only cloud an overall endeavor to bring some clarity and certainty so that the QF industry can analyze the standard offers available and make its choices. Procedurally, the next step for parties interested in this standard offer, and any changes for prospective application is to raise these points in the evidentiary hearings.

Findings of Fact

1. The modifications Edison proposes for its Standard Offer No. 4 contract, contained in its response to IEP's and Occidental's petition, are reasonable and should be adopted.

2. QFs are not unduly prejudiced or denied due process by the procedure D.83-09-054 established to have uniform standard contract language proposed.

Conclusions of Law

1. The petition for modification filed by Occidental should be granted, while IEP's petition should be granted in part and denied in part in accordance with our findings in this order.

2. The following order should be effective today to bring certainty quickly and enable QFs and others to expeditiously evaluate contract options.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (Edison) shall amend its Standard Offer No. 4 as it proposes in its response to the petitions for modification filed by the Independent Energy Producers (IEP) and Occidental Geothermal, Inc. (Occidental).

2. The petition for modification of Occidental is granted with respect to Edison's removing the "amendment clause" of its Standard Offer No. 4 contract, and it is granted to the extent of Edison's proposed modifications with respect to the energy price to be paid either before firm production or after the fixed price term.

3. IEP's petition for modification is granted with respect to Edison's being ordered to delete its amendment clause, but denied concerning its proposed modification of the procedure in Ordering Paragraph 5 of D.83-09-054.

4. The compliance filing ordered by Ordering Paragraph 5 of D.83-09-054 shall be filed no later than six months from today.

This order is effective today.

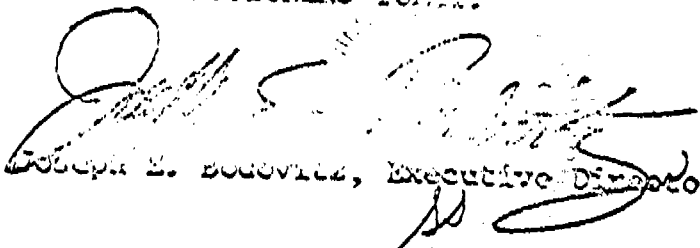
Dated DEC 20 1983, at San Francisco,  
California.

I abstain because of reportable  
financial interest in potential  
small power producers.

PRISCILLA C. GREW  
Commissioner

LEONARD M. CRIMES, JR.  
President  
VICTOR CALVO  
DONALD VIAL  
WILLIAM T. BAGLEY  
Commissioners

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

  
Joseph E. Bogovitz, Executive Director