

93054 MAY 19 1981

ORIGINAL

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's)
own motion to establish standards)
governing the prices, terms, and)
conditions of electric utility)
purchases of electric power from)
cogeneration and small power)
production facilities.)

OIR 2
(Filed September 3, 1980)

(See Appendix A for appearances.)

INTERIM ORDER

This matter is presently under submission, following six days of hearing, written comments, and briefs. The record is substantial and the issues complex. Staff suggests that an interim order is appropriate, pending a determination on the merits. We agree.

The subject matter of such an order is suitably framed by staff counsel:

"Although the staff believes that OIR No. 2 is progressing as rapidly as possible and in keeping with the FERC timetable for implementation of the PURPA Section 210 rules, it has always been the staff's intention and desire to encourage the signing of cogeneration and small power production contracts even during the interim period before a final Commission order in this proceeding.

"Throughout the pendency of OIR No. 2 the staff has discussed with respondent utilities the possibility of including a provision in their purchased power agreements which would allow a

qualifying cogenerator or small power producer who accepts a utility interim standard price offer to take advantage of any pricing standard subsequently adopted by the Commission in this proceeding."

Specific contract language is proposed by staff.

Staff proposes that this Commission require that a "utility interim standard price offer" include the following provision:

"This Agreement shall be amended to conform to all orders and decisions which are issued by the California Public Utilities Commission in connection with Order Instituting Rulemaking No. 2 and which affect the utility's purchase of electric power from cogeneration and small power production facilities. This Agreement shall be amended in accordance with this provision within 15 days of the effective date of the applicable Commission order."

Although a consensus has emerged that supports some form of interim order, there are differences of opinion regarding details.

Staff's proposal requires that contracts be amended. Several parties suggest that amendment should be voluntary. Pacific Gas and Electric Company (PG&E) suggests that it should be voluntary at the option of the seller, not the utility.

Staff's proposal is limited to "standard" price offers. Several parties point out the ambiguity of the term "standard" and suggest that it is overly confining. They suggest that nonstandard contracts could also include the term.

There is also concern regarding the implementation provisions. The 15 days proposed by staff is considered unworkable. Parties are also uncertain as to the intended effective date of any amendment, particularly if there are a series of orders in this proceeding.

We are satisfied that these issues are readily resolved by reference to the underlying purpose of this proceeding - to promote cogeneration and small power production. There is no point in an interim order that is not consistent with such a result.

The prospective seller reasonably expects some degree of certainty as the basis for evaluating the economics of the proposed transaction. This certainty can only be provided by allowing the seller an option to amend, rather than requiring the amendment as proposed by staff. In this way the seller will be certain of no less favorable terms than the original contract provides.

This certainty would be destroyed if the utility also has an option to amend the contract. The resulting uncertainty might sufficiently chill the interest of the seller to defeat the purpose of this order. Furthermore, such an option would introduce an unnecessary prudence issue into subsequent ratemaking proceedings - whether the utility reasonably exercised the option.

We see no purpose to limiting the contract provision to "standard" contracts. We agree that such a restriction unnecessarily constrains the parties while providing no corresponding benefit.

Finally, we recognize the need for a clear implementation method. Rather than a hurried amendment period where time runs while parties are evaluating contract terms, we prefer a more orderly method that allows the seller to wait until this matter is completed. In the final order in this proceeding we can provide a deadline for the exercise of the option.

The adopted contract provision is substantially as proposed ✓
by PG&E:

This Agreement may be amended, at the written option of the Seller, to conform to the final decision and order which is issued by the California Public Utilities Commission in connection with Order Instituting Rulemaking No. 2 and which affects the utility's purchase

of electric power from cogeneration and small power production facilities. To exercise this option, Seller must deliver to the purchasing Utility a written notice of election to amend within 90 days of the effective date of the final decision and order in OIR 2. Said amendment shall be effective as of the effective date of this Agreement or as of such other date as may be agreed upon by the Seller and the Utility.

This language is reasonable and should be inserted in all utility contracts with qualifying cogenerators and small power producers signed between the date of this order and a final order in this proceeding.

Findings of Fact

1. Cogenerators and small power producers should not be discouraged from signing contracts during the pendency of this proceeding.
2. Uncertainty over the final outcome of this proceeding could discourage the signing of such contracts.
3. An opportunity to amend the contract following further action by this Commission might encourage the signing of such contracts.
4. The prospective seller reasonably requires some degree of certainty as the basis for evaluating the economics of a proposed transaction.
5. Allowing only the seller to amend the contract would provide the necessary certainty.
6. "Standard" and "nonstandard" contracts are the subject of negotiations.
7. No basis has been shown for distinguishing between "standard" and "nonstandard" contracts for the purpose of this order.
8. The implementation procedure should be fair and workable.

Conclusions of Law

1. A contract term as provided in the body of this decision should be inserted in each contract between respondents and qualifying cogenerators and small power producers signed from the effective date of this decision to the date of the final order in this proceeding.

2. The effective date of this order should be the date of signature in order to provide for timely implementation of the operative provisions.

IT IS ORDERED that respondents shall all include, in each contract between respondents and qualifying cogenerators and small power producers for the purchase of energy or capacity, the following provision:

This Agreement may be amended, at the written option of the Seller, to conform to the final decision and order which is issued by the California Public Utilities Commission in connection with Order Instituting Rulemaking No. 2 and which affects the utility's purchase of electric power from cogeneration and small power production facilities. Said amendment shall be effective as of the effective date of this Agreement or as of such other date as may be agreed upon by the Seller and the Utility.

In order for this option seller must deliver to the purchasing utility a written notice of election to amend within 90 days of the effective date of the final decision and order in case 2.

Such provision shall be inserted until further order of this Commission.

This order is effective today.

Dated MAY 19 1981, at San Francisco, California.

John E. Guyer President
Richard D. Travally
Donald J. Harris
Victor Caber
Priscilla C. Green Commissioners

APPENDIX A
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LIST OF APPEARANCES

Respondents: Robert Ohlbach and David L. Ludvigson, Attorneys at Law, for Pacific Gas and Electric Company; Eugene Wagner, Attorney at Law, for Southern California Edison Company; Margaret Sullivan, Attorney at Law (Colorado, Iowa), for San Diego Gas & Electric Company; John Vetromile, for CP National; and Stoel, Rives, Boley, Fraser & Wyse, by Thomas Nelson, Attorney at Law, for Pacific Power & Light Company.

Interested Parties: Laura B. King, for the Natural Resources Defense Council (NRDC); Morrison & Foerster, by Alan Cope Johnston, Attorney at Law, for Great Western Malting Company/Windfarms, Ltd.; Robert W. Schempp, for The Metropolitan Water District of Southern California; Hanna & Morton, by R. Lee Roberts, Attorney at Law, for Occidental Geothermal, Inc.; John Curtis Lakeland, for Mass-Production Systems; Matthew V. Brady, Attorney at Law, for California Energy Commission; Harry K. Winters, for the University of California; Harvey M. Eder, for Public Solar Power Coalition (PSPC); Miller, Balis & O'Neil, by Robert A. O'Neil, Attorney at Law (Massachusetts, District of Columbia), for the City of Alameda (Bureau of Electricity); Bryan Gross, for South San Joaquin and Merced Irrigation Districts; C. Hayden Ames, Attorney at Law, and Carthrae M. Laffoon, for Geothermal Generation, Inc.; Robert E. Burt and P. R. Mann & Associates, by Philip R. Mann, Attorney at Law, for California Manufacturers Association; James W. Gruebele and Gary Olsen, for the Dairyman's Cooperative Creamery Association; Bert Brook, for the Hudson Lumber Company; C. Edward Taylor, for Louisiana-Pacific Corporation; Donald Hardy, for Pan Aero Corporation; Randall Tinkerman, for Transition Energy Projects Institute; Burton J. Gindler, Attorney at Law, for Kelco; McDonough, Holland & Allen, by Bruce McDonough, Attorney at Law, for San Bernardino Valley Municipal Water District; Harry Davitian, for San Diego Energy Recovery (SANDER) Project; David K. Takashima, for Agricultural Council of California; Mark Henwood, for Henwood Associates, Inc.; Neil K. Holbrook, for Power Towers, Inc.; Frank Hodgson, for Hans W. Wynholds Company; J. C. Solt, for Solar Turbines, Inc.; Latham & Watkins, by David L. Mulliken, for Solar Turbines International; Michael McQueen, Attorney at Law, for Union Oil Company of California; and Otto J. M. Smith and Kenneth R. Meyer, for themselves.

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Commission Staff: Sara Steck Myers, Ellen Levine, and Brian T. Cragg,
Attorneys at Law, and John Quinley.

(END OF APPENDIX A)