Decision 05-12-009 December 1, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)
Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities.	Rulemaking 04-04-025 (Filed April 22, 2004)

OPINION REGARDING EXPIRING QUALIFYING FACILITY CONTRACTS

Summary

This decision continues the interim relief as provided in Decision (D.) 04-01-050 for Qualifying Facilities (QFs) with expired or expiring contracts from January 1, 2006 until the Commission issues a final decision in the combined two dockets, Rulemaking (R.) 04-04-003 and R.04-04-025. The Investor-Owned Utilities (IOUs) are to continue purchasing power pursuant to a five-year SO1 contract from QFs with a contract set to expire during this term. The pricing terms should be consistent with the guidelines provided in D.04-01-050, and shall be modified to reflect said revised QF pricing policy, as of the effective date of a Commission decision adopting such a revised pricing policy.

Background

In April 2004, the Commission issued two rulemakings, R.04-04-003 to review the IOUs' long-term procurement plans (LTPP) and R.04-04-025 to address pricing terms for QF contracts. QFs have been a resource for electricity in the three IOUs procurement portfolios for over 20 years and many of the long-term contracts the IOUs had entered into with QFs are set to expire in the 2005 to 2006 timeframe. The Commission recognizes that there is a tension between the federal and state policies encouraging and supporting QF resources and the IOUs' concern over the pricing structure for the QF contracts. R.04-04-025 was initiated to establish a pricing mechanism going forward for QF contracts, and as part of the LTPP proceeding, R.04-04-003, the Commission planned to revisit the state's interest in continuing to promote and support QF power.

The two dockets have been combined only for the economies and efficiencies that one round of evidentiary hearings (EHs) can provide to the parties and the Commission.[1] Because R.04-04-025 concerns pricing issues, complex issues have arisen between the parties and the IOUs over data requests, confidentiality, market-sensitive materials, and non-disclosure agreements. While it was anticipated that EHs would have taken place in early 2005, the complexity of the data issues has delayed the preparation of testimony and the EHs are now scheduled for January 2006.

The QF policy and pricing issues have been of concern to the Commission and the stakeholders for quite some time, and while preparing for a final Commission decision on these issues in the combined dockets, R.04-04-003 and

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[1] The proceedings are not consolidated.

R.04-04-025, the Commission has issued a few interim decisions to address QF contracts that were expiring in this time frame between decisions. The most recent interim decision was D.04-01-050, issued in January 2004 that continued the treatment of expiring QF contracts established in earlier interim decisions, D.02-08-071 and D.03-12-062. D.04-01-050 provided relief for QF contracts expiring through the end of 2005.

On August 9, 2005, Administrative Law Judges (ALJs) Halligan and Brown directed parties to file comments on recommendations to the Commission for QF contracts expiring after January 1, 2006, and before the Commission issues a final decision in the combined dockets, R.04-04-003 and R.04-04-025.

Cogeneration Association of California (CAC) and the Energy Producers and Users Coalition (EPUC), the California Cogeneration Council (CCC): Modesto Irrigation District (MID), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE) and San Diego Gas & Electric Company (SDG&E) filed comments. CAC and EPUC, CCC, MID, the Office of Ratepayer Advocates (ORA), PG&E and SCE filed replies.

Parties' Positions

CAC and EPUC suggest that the Commission extend the availability of the five-year SO1 contract provided to QFs with expiring contracts in D.04-01-050, until a final, unappealable decision is issued in this combined docket. They also propose that if the Commission adopts a revised QF pricing policy in the combined dockets, the pricing terms of any contract extended should be modified to reflect the revised QF pricing policy on the effective date of a new Commission decision. CAC/EPUC argue that they need the certainty of the five-year SO1 contracts to obtain financing to make upgrades because they are at a decided disadvantage in competitive Request for Proposal (RFP) bidding situations. CAC/EPU claim that since the QFs are not fully dispatchable, the

IOUs are not inclined to enter into bilateral contracts with the QFs, and the QFs have no other viable options for long term contracts.

CCC also urges the Commission to allow contracts that have expired, or will expire in 2006, to be extended with five-year SO1 contracts, extending the terms set forth in D.04-01-050 until a new Commission decision issues. CCC qualifies its proposal as follows: the utilities should be required to offer five-year SO1 contracts to any QF (1) that was in operation and under contract with a utility at any point between January 1, 1998 and the effective date of the Commission's new QF decision, and (2) whose contract already expired or will expire on or before the earlier of December 31, 2006 and the effective date of the Commission's new QF decision.

MID, a publicly-owned utility providing service to over 103,000 customers, some of whom are in a joint distribution service area with PG&E, is concerned with an ongoing competition transition charge that is paid by some of its load. MID wants to insure that if the Commission does extend any of the QF contracts, that the cost of the extension is not be carried by its customers. MID is resigned to the fact that its customers must pay for some portion of the uneconomic QF costs, but MID's position is that such payments are only for the duration of the existing contracts, and not for any extensions. MID is not taking a position on whether or not, or under what terms and conditions, existing QF contracts should be extended; rather MID is arguing that its customers should not bear any financial obligation for extended contracts.

Since MID filed its comments and recommendations, the Commission has addressed the issue of costs associated with extended QF contracts and

D.05-10-046[2] determined that these costs will be included in ongoing competition transition charge.

ORA did not file comments, but did file a reply in which it recommended that for QFs with contracts expiring in 2006, one-year SO1 contracts should be available to the QFs along with other opportunities the QFs have to participate in the energy market.

PG&E advocates taking "temporary" measures until the Commission issues its final decision on pricing changes and recommends one-year contracts with the QFs selling energy at market-based prices using the Edison Electric Institutes's Master Agreement. Only three of SCE's 11 QF contracts that expire in 2006 will expire before July 1, 2006. Therefore, SCE proposes that the Commission extend the availability of a one-year SO1 contract to QFs with contracts expiring prior to March 31, 2006,[3] subject to a retroactive true-up of pricing terms. SDG&E has only one small QF contract that is set to expire before the Commission issues its QF decision and the utility is currently in negotiations on that contract and needs no direction from the Commission. SDG&E does recommend against adopting any interim treatment for new QF contracts.

In summary, the utilities are either indifferent or opposed to any long-term interim treatment for QF contracts that expire in 2006. The reasons for this resistance run the spectrum from concern over pricing to anticipation that the Energy Policy Act may change the IOUs' obligations to take QF energy. PG&E, in particular, opines that QFs should function as any other energy provider does

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[2] D.05-10-046 disposed of applications for rehearing of D.05-01-031.

[3] At the time SCE prepared its comments, it was anticipated that the Commission would issue a final QF decision before the end of the first quarter 2006.

and submit bids in response to IOU RFPs, negotiate bi-lateral contracts with the IOUs, sell into the competitive market or sell directly to other wholesale power purchasers. PG&E does not recommend that the Commission offer the QFs any long-term treatment while the Commission is working on the QF decision.

Discussion

When the Commission issued D.04-01-050 in January 2004, it did not address all of the outstanding issues concerning existing and new QF contracts, but instead deferred the resolution of the QF issues to rulemakings it anticipated opening in the spring 2004. Instead, D.04-01-050 directed the IOUs to continue purchasing power from the QFs pursuant to a five-year SO1 contract from any QF with a contract set to expire prior to January 1, 2006. The Commission further determined in D.04-01-050 that the pricing terms for any such contract should be consistent with existing Commission short-run avoided cost (SRAC) policy set forth in D.01-03-067, as modified by D.02-02-028.[4] In April 2004, the Commission initiated the LTPP and the avoided cost rulemakings. While the Commission did issue a final decision[5] in the LTPP proceeding, it did not squarely address the future of existing or new QF contracts, and R.04-04-025 is still unresolved.

Therefore, we find ourselves once again needing to issue a decision that covers QF contracts that are set to expire after December 31, 2005, before a final decision issues in the QF dockets.

As set forth above, interested parties and the three IOUs filed comments and reply comments on this topic of interim relief for expiring QF contracts, and

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[4] D.04-01-050, pp. 156-158.

[5] D.04-12-048.

for potential new QF contracts. It is no surprise to find that the IOUs and the QFs continue to view the procurement world from their respective positions: the QFs want long term contract options and strong purchase obligations whereas the IOUs generally want shorter-term contracts with minimal or no purchase obligation. These are important and complex issues that are slated to be resolved by a Commission decision/decisions in R.04-04-025 and R.04-04-003. Therefore, this is not the appropriate decision to address the larger QF issues, including pricing of contracts. This decision will only provide direction to the IOUs concerning QF contracts that expire post-December 31, 2005, and before the Commission issues a final QF decision.

Expiring Contracts

Since the Commission will not determine the SRAC pricing for QF contracts or determine the Commission's ongoing policy of promoting cogeneration resources in this decision, it is reasonable to treat QF contracts that expire during this gap period - January 1, 2006 until a Commission final decision in 2006 - the same as contracts that expire by the end of 2005. D.04-01-050 set forth directives for interim relief for QFs with expired or expiring contracts, continuing the interim treatment (with a five-year instead of a one-year contract term) established in D.02-08-071 and D.03-12-062, for QF contracts expiring prior to the completion of the Commission's final decision on the policy and pricing of QF contracts. This decision will extend that interim treatment for expired or QF contracts from January 1, 2006 until the Commission's final decision. Nothing in this decision impedes a QF and an IOU from reaching an independent agreement on the terms of a continuing or a new QF contract.

In sum, this obligates the utilities to continue purchasing power pursuant to a five-year SO1 contract from any QF with a contract set to expire prior to the Commission's issuance of a final decision in the open QF dockets, R.04-04-003 and R.04-04-025. The pricing terms for any such contract will continue the order from D.04-01-050.

The pricing terms for any such contract should be consistent with existing Commission SRAC policy set forth in D.01-03-067, as modified by D.02-02-028; provided, however, to the extent that the Commission adopts a revised QF pricing policy, the pricing terms of the contract shall be modified to reflect said revised QF pricing policy as of the effective date of the Commission decision adopting a revised pricing policy.

While we recognize that this decision does not resolve any of the outstanding, vexing issues that are of concern to both the QF community and the IOUs, we determine that it is reasonable to continue the interim treatment rather than to attempt to establish a different temporary policy that will affect very few contracts and only be in effect for a short period of time. Evidentiary hearings are set in the combined dockets for January 2006 and parties will have a full opportunity to develop a record on which the Commission will base its long term policy decision on expiring and new QF contracts and on the pricing terms for QF contracts.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Carol A. Brown is the assigned ALJ in R.04-04-003. Susan P. Kennedy is the Assigned Commissioner and Julie M. Halligan is the assigned ALJ in R.04-04-025.

Comments on Draft Decision

The draft decision of the ALJs in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

Comments were received from MID, CCC, CAC/EPUC and PG&E/SCE/TURN/ORA (joint comments). Reply comments were received from SCE and CCC.

In summary, MID asks the Commission to correct the description of its service area, CCC urges the adoption of the decision and CAC/EPUC asks the Commission to update SCE's as-available capacity payment and to make some provisions for new QF contracts. The joint comments from PG&E/SCE/TURN/ORA ask the Commission to revise the decision to provide for a true-up to the extent there is a change between current SRAC pricing and the new methodology adopted by the Commission and to not allow five-year terms for SO1 contracts as proposed. While the arguments of CAC/EPUC and the joint comments may have merit, this decision addresses a discreet problem and only provides interim relief for contracts expiring between January 1, 2006 and when the Commission issues a final decision in the combined QF dockets. The parties will have ample opportunity to develop a full record in the combined dockets, and they will be properly addressed there.

Findings of Fact

1. Commission decision, D.04-01-050, provides interim relief for QFs with contracts expiring prior to January 1, 2006.

2. Pursuant to D.04-01-050, utilities are to continue purchasing power pursuant to a five-year SO1 contract with any QF with a contract set to expire prior to January 1, 2006.

3. The pricing terms of any such contract should be consistent with SRAC policy set forth in D.01-03-067, as modified by D.02-02-028, provided, however, to the extent that the Commission adopts a revised QF pricing policy, the pricing terms of the contract shall be modified to reflect said revised QF pricing policy as

of the effective date of the Commission decision adopting a revised pricing policy.

4. The Commission initiated R.04-04-003 and R.04-04-025 to address the state's future policy toward promoting and supporting QF resources and to establish a new pricing mechanism for QF contracts going forward.

5. The two QF dockets, R.04-04-003 and R.04-04-025 are combined for EHs and the hearings are currently scheduled for January 2006.

6. The three IOUs have a number of QF contracts expiring between the time period covered by D. 04-01-050, January 1, 2006, and the anticipated date for a final Commission decision in the combined QF dockets.

7. We find that it is necessary and reasonable to issue a decision to provide interim relief to the QFs with expiring contracts post-2005, so they are not without Commission support during this lag period.

8. We find that it is reasonable to order the IOUs to continue purchasing power pursuant to a five-year SO1 contract from any QF with a contract set to expire post January 1, 2006, and to have the pricing terms of that contract consistent with the SRAC policy se forth in D.01-03-067, as modified by D.02-02-028, subject to a revised pricing policy by this Commission.

9. We find that it is reasonable to treat contracts expiring in the time period between January 1, 2006 and the Commission's final decision in the combined QF dockets the same as contracts expiring up to January 1, 2006.

Conclusions of Law

1. It is reasonable to extend the interim relief and pricing terms that D.04-01-050 provided for QF contracts expiring prior to January 1, 2006, to QF contracts expiring post January 1, 2006, and pre the Commission's issuance of a final decision in the combined QF dockets establishing the state's policy going

forward for QF resources and the appropriate pricing structure for such resources.

2. The pricing terms of said contract extended pursuant to this decision shall be modified to reflect any revised QF pricing policy as of the effective date of a Commission decision adopting a revised pricing policy.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company are directed to continue purchasing power pursuant to a five-year SO1 contract from any Qualifying Facility (QF) with a contract set to expire after January 1, 2006, and before the Commission's issuance of a final decision in the combined dockets, Rulemaking (R.) 04-04-003 and R.04-04-025.

2. The pricing terms for any such contract should be consistent with existing SRAC policy set forth in Decision (D.) 01-03-067, as modified by D.02-02-028, provided that the pricing terms of the contract shall be modified to reflect said revised QF pricing policy as of the effective date of the Commission decision adopting a revised pricing policy.

This order is effective today.

Dated December 1, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners