 Mailed 5/25/2001

Decision 01-05-085 May 24, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion to Implement the Biennial Resource Plan Update Following the California Energy Commission's Seventh Electricity Report.	Investigation 89-07-004 (Filed July 6, 1989)

OPINION ON SOUTHERN CALIFORNIA EDISON COMPANY'S PETITION FOR MODIFICATION OF DECISION (D.) 83-09-054 AND D.82-12-120

I. Summary

This decision addresses Southern California Edison Company's (Edison) July 28, 2000, petition for modification of D.83-09-054 and D.82-12-120. We grant Edison's petition to modify these decisions as more fully stated in this opinion. We find that Edison's Standard Offer 2 contract (SO2) and Interim Standard Offer 4 contract (ISO4), which Edison used as a basis for entering into agreements with qualifying facilities (QFs), do not permit a QF to engage in "simultaneous buy-sell". "Simultaneous buy-sell" is defined for purposes of this decision as a QF selling to Edison the gross output of its generating facility, including the incremental output used to serve its own auxiliary load, or station use,[1] at standard offer energy and capacity prices, while buying from Edison, or other utilities, the power required for the station use at a tariffed rate.

II. The Public Utility Regulatory Policies Act (PURPA) and Standard Offer Contracts

In 1978, in reaction to the nation's dependency on foreign supplies of oil and skyrocketing energy prices, Congress passed PURPA. (16 U.S.C. § 796 *et seq.*)[2] One of PURPA's stated goals is to encourage the development of alternative and renewable generation of electricity in the United States. To serve this end, PURPA sets forth two major provisions. First, PURPA requires utilities to interconnect with and purchase power from QFs[3] at prices up to a utility's avoided cost. Second, PURPA exempts QFs from standard utility cost-of-service regulation.

Following both the passage of PURPA and California statutes encouraging QF development, as well as on its own initiative, the Commission acted quickly to assure that California took immediate steps to develop QF power for anticipated future needs. Among other things, the Commission instituted a rulemaking, Order Instituting Rulemaking 2 (OIR 2), to establish standards governing the prices, terms, and conditions of utility power purchases from QFs. The Commission required the three principal California electric utilities, Edison, Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric

---

[1] The internal electrical needs of a generating facility are referred to as "auxiliary load" or "station use."

[2] California has had a longstanding demonstrated interest in promoting cogeneration and small power production. (See e.g., Pub. Util. Code §§ 2801-2824.)

[3] QFs are cogenerators and small power producers who qualify for certain benefits under PURPA.

Company (SDG&E), to develop and file a series of standardized power purchase contracts (standard offers or standard offer contracts) which were to be formulated upon Commission approved guidelines. (See generally D.82-01-103, 8 CPUC2d 20 (the Guidelines Decision).)

Edison seeks to modify D.82-12-120 and D.83-09-054,[4] both issued in OIR 2.[5] In D.82-12-120, among other things, the Commission approved the utilities' SO2 contracts for compliance with, the Guidelines Decision, subject to the utilities incorporating the principles and provisions reflected in the decision. (D.82-12-120, 10 CPUC 2d 553, 639.)

In D.83-09-054, 12 CPUC2d 604, the Commission approved Edison's (as well as PG&E and SDG&E's) ISO4 contract. This contract also includes the Operating Options.

III. The Operating Options

Edison's SO2 and ISO4 contracts list three types of Operating Options which QFs can select. The language of the options is generally the same in the SO2 and ISO4 contracts.

---

[4] In its petition, Edison sometimes mistakenly cites one of the decisions it seeks to modify as D.83-09-053, instead of D.83-09-054. However, Edison correctly refers to D.83-09-054 in, among other places in the petition, its proposed findings of fact and conclusions of law in the event the Commission grants its petition. The pleadings indicate no party has been prejudiced by Edison's typographical error, and we construe Edison's references to D.83-09-053 as references to D.83-09-054.

[5] We docket and review Edison's petition in Investigation (I.) 89-07-004 since this investigation is the most recent Biennial Resource Plan Update proceeding and is the successor proceeding to OIR 2.

Operating Option I provides that the QF's entire generator output is dedicated to Edison, and that no electrical service (and in some contracts, no standby service) is required.[6]

Operating Option II provides that the QF's entire generator output is dedicated to Edison with separate electric service required.[7]

Operating Option III provides that the QF dedicates to Edison only the portion of the generating facility's output in excess of the QF's electrical requirements.

IV. The Petition

Edison filed this petition for modification on July 28, 2000, requesting that the Commission confirm that, in approving Edison's standard SO2 and ISO4 contracts, it did not intend that Operating Options I and II above of those standard offers would permit "simultaneous buy-sell". Rather, Edison requests that the Commission confirm that Operating Options I and II only permit a QF to sell its output, *less station use*, to the utility at avoided cost prices. Edison believes that the contrary interpretation advocated by the QFs is unreasonable, contrary to PURPA's policies, and has a potential cost impact to ratepayers of $23 million.

The Office of Ratepayer Advocates (ORA), PG&E, Commerce Refuse to Energy Authority (Commerce),[8] and the Independent Energy Producer's

---

[6] The ISO4 states that no electric service or standby service is required. The SO2 states that no electrical service is required from Edison.

[7] Again, the ISO4 states that separate electric service is required, while the SO2 states that electrical service is required from Edison.

[8] Commerce has also sued Edison in Los Angeles Superior Court concerning interpretation of the Operating Options in its nonstandard contract. (See Section V below.)

Association (IEP) filed responses to Edison's petition. ORA and PG&E support the petition, while Commerce and IEP oppose it. IEP primarily argues that the Commission should limit its response to the petition to policy issues, and not involve itself in contract interpretation. Commerce believes that the Commission should defer addressing the issues to the Superior Court, and also opposes the petition on the merits.

Commerce believes that Operating Options I and II of the SO2 and ISO4 contract permit a QF to sell to Edison its gross output, *including its station use*, at the contract price (which historically has been above-market energy and capacity prices), while buying back from the utility power required for its station use at what has historically been a lower tariffed rate.

V. Relevant Federal Decisions and Pending Dispute Between Edison and Commerce

A. The Federal Decisions

Edison states that the need for filing this petition arose out of a pending dispute between Edison and Commerce, as well as a recent federal appellate court decision, *Connecticut Valley* [9]. At issue in *Connecticut Valley* was whether a QF could sell its gross generator output, including the amount necessary for station use, to the purchasing utility and still retain its QF status. In *Connecticut Valley*, the Federal Energy Regulatory Commission (FERC)

---

[9] *Connecticut Valley Electric Company, Inc. v. Federal Energy Regulatory Commission*, 208 F.3d 1037, 1040 (D.C. Cir. 2000) (*Connecticut Valley*), affirming *Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company, L.P. and Related Actions*, 82 FERC ¶ 61,116 (1998), and 83 FERC ¶ 61,136 (1998) (order denying rehearing).

confirmed that, in accordance with its earlier precedent in *Turners Falls Limited Partnership*, 55 FERC ¶ 61, 487 (1991) (*Turners Falls*), a QF may only sell its entire generator output, less the facility's station use, at avoided cost rates to the purchasing utility. FERC recognized that to permit a QF to sell its entire generator output, including power necessary for the QF's station use, at avoided cost rates would be inconsistent with the requirements of PURPA and FERC's implementing regulations that utilities and their ratepayers be in the same financial position as if they had not purchased QF power.

Because there may have been some ambiguity on this issue when FERC's regulations first became effective in the early 1980s, and *Turners Falls* was the first case to definitively announce the consequences of a QF engaging in "simultaneous buy-sell," FERC stated that it would not revoke the QF status of any facility which made sales in excess of this output pursuant to a contract entered into on or before June 25, 1991 (the date of issuance of *Turners Falls*), if those agreements permitted "simultaneous buy-sells." This is so even though a QF does so for the first time pursuant to an option in the original contract, which option is exercised or after the issuance of *Turners Falls*. (*Connecticut Valley*, 82 FERC ¶ 61,116 at pp. 61,418-61,420.)

In denying rehearing in *Connecticut Valley*, FERC explained that it "grandfathered in" pre-*Turners Falls* contracts because FERC believed that invalidating the parties' obligations under an executed PURPA contract was inconsistent with Congress' directive of encouraging cogeneration and small power production.

> "In the event that a court were to determine that a QF with a pre-*Turners Falls* contract that has not previously sold up to gross output does in fact have the contractual right to sell up to gross output, and that right has not been modified through, for example, the parties' course of performance, we would consider

> that contract to be 'grandfathered in,' as is the case for those pre-*Turners Falls* contracts under which a QF has consistently sold up to gross output. On the other hand, were a court to determine that a QF has effectively waived its contractual right to sell up to gross output (or lacked such a right in the first instance), then that contract would not be 'grandfathered in.' This approach is consistent with our desire not to upset the settled expectations of parties to pre-*Turners Falls* contracts. We note, however, that we doubt that many QFs, which have operated, from the time they entered into the contracts before issuance of *Turners Falls* in 1991 until the date of issuance of our February 11 order, as if their contracts provide for the sale of only net output, could now show that their contracts require or permit sales up to gross output." (*Connecticut Valley*, 83 FERC ¶ 61, 136 at p. 61,611.)

Turners Falls involved whether a QF could sell to the utility its gross output, including station use, and still maintain its QF status. Well before the issuance of *Turners Falls*, FERC concluded that its regulations did not permit QFs to sell its gross output to utilities at avoid cost prices. In 1981, prior to this Commission issuing the decisions at issue in this decision, FERC stated that the "power production capacity" of a QF facility is:

> "[T]he maximum net output of the facility which can be safely and reliably achieved under the most favorable operating conditions likely to occur over a period of years. The net output of the facility is its send out after subtraction of power used to operate auxiliary equipment in the facility necessary for power generation (such as pumps, blowers, fuel preparation machinery, and exciters) and for other essential electricity uses in the facility from the gross generator output." (See *Connecticut*

> *Valley*, 82 FERC ¶ 61,116 at p. 61,416-61,417, citing *Occidental Geothermal, Inc.*, 17 FERC ¶ 61,231 at p. 61,445.)[10]

In *Power Developers, Inc.*, 32 FERC ¶ 61,101 (1985), FERC reiterated its conclusion which it found implicit in *Occidental*:

> "Our regulations do not contemplate a qualifying facility selling its gross output to a utility. Although section 292.303(a) states that electric utilities are required to purchase 'any' energy and capacity which is made available from a qualifying facility, the Commission has interpreted the capacity of a qualifying facility for purposes of obtaining qualifying status to be its net power production output, rather than its gross output. In *Occidental Geothermal, Inc.*, 17 FERC P 61,231 (1981), the Commission considered whether the applicant's facility was within the 80 MW limit for 'power production capacity' of small power production facilities in section 292.204(a) of the regulations. The Commission there stated that the 'power production capacity' of a facility is 'the maximum net output of the facility which can be safely and reliably achieved under the most favorable operating conditions likely to occur over a period of several years. [footnote omitted]
>
> "*Occidental Geothermal* does not specifically state that qualifying facility sales are limited to net output. However, this limitation is implicit in that order. Were a qualifying facility to sell its gross output to a utility and purchase power for internal use from the utility it would, in essence, be selling more power than the facility, standing alone, is capable of delivering." (*Id.* at p. 61,276.)

---

[10] FERC noted that the limited issue raised in *Occidental* is whether the proposed facility would exceed the 80 megawatt limit for QF facilities as set forth in § 292.204(a) of FERC's regulations. (See *Connecticut Valley*, 82 FERC ¶ 61,116 at p. 61, 417.)

B. Commerce Case

Edison states that all of its active SO2 and ISO4 QF contracts were executed before *Turners Falls* issued. Commerce is a QF who holds a nonstandard ISO4 with Edison. A nonstandard ISO4 is a contract based on the ISO4, with some differing terms negotiated by the parties. Commerce's facility generates electricity from burning waste diverted from landfills.

Commerce has sued Edison in Los Angeles Superior Court alleging that the Operating Options terms of its contract, which Edison states are taken directly from the ISO4, permit it to engage in "simultaneous buy-sell" (i.e., sale to Edison of its gross generating output, including station use.) Like Edison's other active ISO4 contracts, the parties executed this contract before *Turners Falls* issued.

VI. Discussion

A. Compliance With Rule 47(d)

In the event more than one year has elapsed from the effective date of the decision sought to be modified, Rule 47(d) of the Commission's Rules of Practice and Procedure requires an explanation of why the petition to modify could not have been presented within one year of the decision's effective date.

Edison explains that it could not have presented this petition within the one year timeframe because no disputes with QFs arose during that period and Edison was thus unaware that a QF might interpret the Operating Options language contrary to Edison's understanding of them. Also, until April 2000, when the D.C. Circuit affirmed FERC's holding in *Connecticut Valley* grandfathering certain pre-*Turners Falls* QF contracts, it appeared possible that these issues would be resolved as a matter of federal law.

Edison has justified its late submission of this petition under Rule 47(d).

B. Should the Commission Address the Merits of this Petition for Modification?

Commerce concedes that the Commission has jurisdiction over this petition, but requests that the Commission defer to the courts on what it characterizes as a case of contract interpretation. Edison opposes this request, and ORA and PG&E agree that we should address this petition.

The Commission and the courts have concurrent jurisdiction to resolve contract disputes between utilities and QFs. (D.91-06-048, Conclusion of Law 1, 1991 Cal. PUC LEXIS 375 at 8.)

> "There may be no precise line dividing disputes between utilities and QFs that should more appropriately be resolved by the Commission from those more fitting for civil litigation. The array of potential actions may form a continuum with purely policy matters on one end and limited contract disputes on the other." (D.92-02-014, 1992 Cal. PUC LEXIS 936 at 7.)

The parties are currently before the Superior Court regarding their contract dispute on a nonstandard offer contract. What Edison requests here is for the Commission to confirm that its standard SO2 and ISO4 contracts do not contemplate "simultaneous buy-sell" as defined above. Although our resolution of this issue may impact the specific contract dispute between the parties, the issue also impacts the Commission's policies regarding the implementation of PURPA. The Commission has also recognized the importance of the "simultaneous buy-sell" issue when it intervened before FERC in the *Connecticut Valley* proceeding.

This petition presents overriding policy issues regarding the Commission's implementation of PURPA. Moreover, there is a need for a uniform and consistent manner of resolving the issues presented, which resolution could impact generic terms and clauses embedded in numerous standard offer contracts. Therefore, we will address the merits of Edison's petition.

C. The Commission's Basic Policy Governing Standard Offers is Uniformity

The Commission's basic policy governing these standard offer contracts is uniformity, with very few exceptions due to different operating characteristics among utilities.

> "Our basic policy governing the form and terminology used in the standard offer contract is that they should be uniform among the utilities except for the very few aspects that must be utility-specific due to different operating characteristics. See D.83-09-054, ordering paragraph 5; D.83-10-093, ordering paragraph 20. This ensures evenhanded treatment of QFs and promotes a common understanding of the standard offer provisions." (D.88-09-026, 29 CPUC2d 263, 283.)

D. Edison's SO2 Contract Does Not Permit "Simultaneous Buy-Sell"

In D.82-12-120, one of the decisions Edison seeks to modify, we approved the utilities' SO2 contract pursuant to the Guidelines Decision, and subject to the utilities incorporating the principles and provisions reflected in the decision.

The Guidelines Decision and D.82-12-120 reference a "simultaneous purchase and sale" option, but these decisions, when read together, show that the Commission defined such an option as applying to the QF selling to the utility its output, *less that necessary for the QF's station use.*

In the Guidelines Decision, the Commission adopted a staff recommendation to be included in the standard offer contracts concerning a "simultaneous purchase and sale" Operating Option. The Commission generally described this option.

> "Simultaneous purchase and sale is a regulatory convention that allows a QF simultaneously to sell its own generation to the utility while purchasing its requirements from the utility. It is intended to respond to the situation where the retail rate is less than the avoided cost, by providing that the QF receives the full benefit of avoided cost pricing principles. The QF is not required to separate its load from its resources to qualify. The electricity flow is the same regardless. The difference is cash flow." (D.82-01-103 8 CPUC2d at 71.)

In the Guidelines Decision, the Commission discussed this concept generally, and did not state all the details of this arrangement, such as defining whether the QF "load" refers to station use, or an independent electrical host on the QF's site, such as a manufacturing operation at a cogeneration plant.

In D.82-12-120, the Commission again discussed this same "simultaneous purchase and sale" option. In this decision, the Commission distinguished the Operating Options described therein from the "simultaneous buy-sell" arrangement at issue in this decision. In D.82-12-120, the Commission addressed PG&E's (and not Edison or SDG&E's) contracts on this issue by way of example. The Commission described PG&E's Operating Options as "simultaneous purchase and sale" and "surplus only." (10 CPUC2d at 600.) (The actual names for these options in PG&E's SO2 are "net energy output" and "surplus energy output." (*See* PG&E SO2, Article 2(a)(2) at p. 3 and n. 2, attached as Appendix I to Edison's Petition.))

PG&E's "surplus energy output" Operating Option, which corresponds to the "surplus only" option discussed by the Commission, corresponds to Edison's Operating Option III, which provides for the QF's sale to the utility of the facility's output net of auxiliary load and any other use by the

QF (i.e., host load).[11] PG&E's "net energy" option, which corresponds to the "simultaneous purchase and sale" option the Commission discusses in D.82-12-120, expressly provides for the sale of only the facility's net output, i.e., its output *net of station use or auxiliary load*.[12] Under this option, a QF can purchase from the utility energy to supply its independent electrical load at the QF's site, such as the load of a manufacturing operation at a cogeneration facility.[13]

The difference between these two PG&E options is that in the "net energy" option, the QF serves its own auxiliary load and dedicates its net output to the utility while under the latter, the "surplus energy output", the QF sells only its surplus generation after additionally serving another load, such as an industrial load. Thus, when the Commission referred to "simultaneous purchase and sale" in D.82-12-120 and the Guidelines Decision, it was referring to sales net

---

[11] PG&E's SO2 defines "surplus energy output" as the "Facility's gross output, in kilowatt-hours, less station use, and any other use by the Seller, and transformation and transmission losses to the point of delivery into the PG&E system." (Edison's Petition, Appendix I at p. A-4.)

[12] In PG&E's SO2, "net energy output" is defined as the "gross output the Facility produces in kilowatt-hours, less station use and transformation and transmission losses to the point of delivery into the PG&E system." The SO2 defines "station use" as energy "used to operate the Facility's auxiliary equipment. The auxiliary equipment includes, but is not limited to, forced and induced draft fans, cooling towers, boiler feed pumps, lubricating oil systems, plant lighting, fuel handling systems, control systems, and sump pumps." (Edison's Petition, Appendix I at pp. A-3 and A-4.)

[13] FERC has a regulation called the "simultaneous buy-sell" rule (18 C.F.R. § 292.303(a)-(b) (1997), which FERC has interpreted as permitting QF facilities to sell their entire output, *less station use*, (and <u>not</u> the QF's gross output) to the utility. (See generally *Connecticut Valley*.)

of auxiliary load and we did not authorize the type of "simultaneous buy-sell" arrangement at issue in this decision.

Given that our basic policy governing standard offer contracts is uniformity among utilities, with exceptions granted only when necessary to address different operating characteristics, we do not agree with Commerce that somehow we authorized different Operating Options for PG&E than we did for Edison, simply because PG&E's option explicitly states "net energy output," whereas Edison's corresponding option speaks in terms of a QF selling its "entire generator output." If we were authorizing a different policy for each utility on this important issue, we would have explicitly said so. Consistent with our basic policy of uniformity governing standard offer contracts, Operating Options I and II in Edison's SO2 should correlate with PG&E's "net energy output," while Operating Option III should correlate with PG&E's "surplus energy output."[14]

---

[14] Commerce states that Edison inconsistently argues for uniform treatment here, whereas Edison advocated for different treatment from PG&E and SDG&E regarding its truncation period in D.98-09-040. That decision involved the reasonableness of Edison's decision to use a different truncation period than that advocated by ORA, and that used by PG&E and SDG&E. (A truncation period is a period of time use to calculate firm and bonus capacity payments to a QF. The capacity factor of a QF is measured by the amount of energy delivered during a specified period. A QF is paid for firm capacity only up to its contract capacity level. Depending on the time interval chosen, energy delivered above the QF's contract capacity level is excluded (or truncated) in the firm capacity payment calculation.)

In D.98-09-040, the Commission found Edison's contract administration practice on the truncation issue reasonable, even though Edison's truncation period was different from PG&E and SDG&E's. In that decision, the Commission addressed an exception to its general policy of uniformity due to different operational characteristics among utilities. None of the utilities' contracts specified a truncation period, and Edison uniformly administered its truncation period over a 15-year period. These facts are not similar to the instant case, and do not cause us to deviate from our policy of uniformity in this case.

Specific language in Edison's SO2 also supports this uniform treatment. Operating Option II of this contract provides for sale by the QF to Edison of the QF's entire generator output. However, the same standard offer contract contains a recital explaining that Operating Option II contemplates power purchases by QFs from Edison of "that portion of the electrical requirements of the [QF's] Facility which are not supplied by the generating facility… ."[15] This recital would have no meaning if Operating Option II was intended to provide for gross sales by the QF to Edison.

E. Edison's ISO4 Contract Does Not Permit "Simultaneous Buy-Sell"

As stated above, the Commission approved Edison's, PG&E's, and SDG&E's ISO4 in D.83-09-054, less than a year after the Commission approved Edison's SO2. Edison's ISO4 adopted the language of the Operating Options in Edison's SO2 almost verbatim. (See the section discussing the language of the Operating Options above.) The Commission did not separately discuss or analyze the Operating Options in D.83-09-054. The Commission intended Edison's ISO4 Operating Options to have the same meaning as those in Edison's SO2 contract, and did not intend to approve a significant change that would permit a QF to engage in "simultaneous buy-sell."

This conclusion is supported by D.83-09-054 which, in approving the utilities' ISO4 contracts, recognized that the contracts were "consistent in substance"[16] notwithstanding differences in format and contract language.

---

[15] *See* Edison's Petition, Appendix G at Section 2.2)

[16] The ISO4 contracts the Commission approved in D.83-09-054 were developed as a result of a Commission-sponsored negotiating conference. Following the conference, all three utilities submitted proposed ISO4 contracts. The Commission expressed its disappointment that time did not permit all three utilities to draft uniform contract

Footnote continued on next page

(D.83-12-054, 12 CPUC2d at 618.) Neither PG&E nor SDG&E's ISO4 contracts permit a QF to engage in "simultaneous buy-sell" as defined in this decision. Rather, the Operating Options in PG&E and SDG&E's contract specifically exclude the sale of power necessary for "station use" (for PG&E) or "station load" (for SDG&E).[17] This conclusion is also consistent with avoided cost policies underlying PURPA, where a QF should be paid a price equal to the costs it enables the utility to avoid. A QF's actual contribution to the utility's system is its output, excluding station use, since such load (i.e., station use) would not be available for the utility to serve its load in absence of the QF.[18]

F. Commerce's Additional Arguments

Commerce's additional arguments do not persuade us to reach a different result. First, we reiterate that we do not here interpret the specific nonstandard contract between Edison and Commerce, but rather, confirm our intent on the "simultaneous buy-sell" issue in approving Edison's SO2 and ISO4 contracts. For this reason, we also reject Commerce's argument that we should grandfather all contracts entered into before June 1991 from the effect of this decision.

---

language, but noted that each "utility chose its own format and contract language, with the goal, however, of all being consistent in substance (with the exception of certain agreed to utility terms such as curtailment.)" (D.83-09-054, 12 CPUC2d at 618.)

[17] "Station load" is defined as the load related to operation of the plant's auxiliary equipment.

[18] As stated by FERC in *Connecticut Valley*, 82 FERC ¶ 61,116 at p. 61,418, it "is clear to us that a QF facility can only sell energy and capacity from its facility which is actually available, and that, given our interpretation of what a QF is able to sell from its facility, this capacity is limited to the net output of the QF."

We are also not persuaded by Commerce's argument that FERC and this Commission's discussion of standby and backup service call for a different result. Commerce makes a detailed argument that FERC statements regarding standby and backup power are not applicable to QFs engaging in simultaneous purchase and sale show that this Commission intended the utility, and not the QF, to supply the QF's station use. However, when these statements are read in context, they address the rate treatment to be afforded the independent site load (i.e., host load) associated with a QF, not a QF's station use.[19]

VII. Comments on Draft Decision

The draft decision of Administrative Law Judge Econome in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Edison and Commerce filed timely opening and reply comments. We affirm the draft decision, and make minor changes to improve the discussion and correct typographical errors.

Findings of Fact

1. "Simultaneous buy-sell" is defined for purposes of this decision as a QF selling to Edison the gross output of its generating facility, including the incremental output used to serve its own auxiliary load, or station use.

2. The internal electrical needs of a generating facility are referred to as "auxiliary load" or "station use."

3. Edison seeks to modify D.82-12-120 and D.83-09-054. In D.82-12-120, the Commission approved the utilities' SO2 contracts for compliance with, among

[19] Also, Commerce does not address how this argument applies, for example, to PG&E's SO2 and ISO4 contracts, which explicitly provide for the QF to sell to the utility its gross output, less station use.

other things, D.82-01-103, subject to the utilities incorporating the principles and provisions reflected in the decision. In D.83-09-054, the Commission approved Edison's (as well as PG&E's and SDG&E's) ISO4 contract.

4. Operating Options I and II in Edison's SO2 and ISO4 contract state that the QF dedicates its entire generator output to Edison.

5. No disputes regarding the "simultaneous buy-sell" issue arose between Edison and QFs within one year of the issuance of D.82-12-120 and D.83-09-054.

6. Until April 2000, when the D.C. Circuit Court of Appeals affirmed FERC's holding in *Connecticut Valley* grandfathering certain pre-*Turners Falls* contracts, it appeared possible that the issues raised in this petition would be resolved as a matter of federal law.

7. In D.82-12-120, the Commission discussed the Operating Options in PG&E's SO2 contract, neither of which permit "simultaneous buy-sell." When the Commission referred to "simultaneous purchase and sale" in D.82-12-120 and D.82-01-103, it was referring to sales net of auxiliary load, and the Commission did not authorize the "simultaneous buy-sell" arrangement at issue in this petition.

8. Consistent with our basic policy of uniformity governing standard offer contracts, Operating Options I and II in Edison's SO2 should correlate with the analogous Operating Options in PG&E's SO2 contract, and permit a QF to sell its output, less station use, to the utility at avoided cost prices.

9. Edison's ISO4 adopted the language of the Operating Options in Edison's SO2 almost verbatim. The Commission did not separately discuss or analyze the Operating Options in D.83-09-054.

10. In issuing D.83-09-054, we intended that Edison's ISO4 Operating Options to have the same meaning as those in Edison's SO2 contract, and did not intend

to approve a significant change that would permit a QF to engage in "simultaneous buy-sell."

Conclusions of Law

1. Edison has justified its submission of this petition to the Commission more than one year after the effective date of the decisions proposed to be modified.

2. The Commission and the courts have concurrent jurisdiction to resolve contract disputes between utilities and QFs.

3. This petition presents overriding policy issues regarding the Commission's implementation of PURPA. Moreover, there is a need for a uniform and consistent manner of resolving the issues presented, which resolution could impact generic terms and clauses embedded in numerous standard offer contracts. Therefore, the Commission should address the merits of Edison's petition for modification.

4. The Commission's basic policy governing these standard offer contracts is uniformity, with very few exceptions due to different operating characteristics among utilities.

5. Operating Options I and II of Edison's SO2 and ISO4 contracts permit a QF to sell its output, less station use, to Edison at avoided cost prices, and do not permit "simultaneous buy-sell."

6. The following finding of fact should be added to D.82-12-120: "Operating Options I and II of Edison's SO2 contract state that the QF dedicates to Edison the QF's entire generator output."

7. The following conclusion of law should be added to D.82-12-120: "Edison's SO2 does not permit a QF to sell to Edison the gross output of its generating facility, including the incremental output used to serve its own auxiliary load, or

station use, at standard offer energy and capacity prices, while buying from Edison or other utilities the power required for the station use at a tariffed rate."

8. The following finding of fact should be added to D.83-09-054: "Operating Options I and II of Edison's ISO4 contract state that the QF dedicates to Edison the QF's entire generator output."

9. The following conclusion of law should be added to D.83-09-054: "Edison's ISO4 does not permit a QF to sell to Edison the gross output of its generating facility, including the incremental output used to serve its own auxiliary load, or station use, at standard offer energy and capacity prices, while buying from Edison or other utilities the power required for the station use at a tariffed rate."

10. Because of the ongoing dispute between Edison and Commerce, this decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's Petition for Modification of Decision (D.) 82-12-120 and D.83-09-054 is granted as stated in this decision and Ordering Paragraphs set forth below.

2. The following finding of fact shall be added to D.82-12-120: "Operating Options I and II of Edison's Standard Offer 2 (SO2) contract state that the qualifying facility (QF) dedicates to Edison the QF's entire generator output."

3. The following conclusion of law shall be added to D.82-12-120: "Edison's SO2 does not permit a QF to sell to Edison the gross output of its generating facility, including the incremental output used to serve its own auxiliary load, or station use, at standard offer energy and capacity prices, while buying from Edison or other utilities the power required for the station use at a tariffed rate."

4. The following finding of fact should be added to D.83-09-054: "Operating Options I and II of Edison's ISO4 contract state that the QF dedicates to Edison the QF's entire generator output."

5. The following conclusion of law shall be added to D.83-09-054: "Edison's ISO4 does not permit a QF to sell to Edison the gross output of its generating facility, including the incremental output used to serve its own auxiliary load, or station use, at standard offer energy and capacity prices, while buying from Edison or other utilities the power required for the station use at a tariffed rate."

This order is effective today.

Dated May 24, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners