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05-15-12
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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of California Pacific Electric Company, LLC (U933E) for a Permit to Construct Electrical Facilities with Voltages between 50 kV and 200 kV: The 625 and 650 Line Upgrade Project.

Application 10-08-024
(Filed August 30, 2010)

SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

1. Summary

Pursuant to Rule 7.3(a) of the Commission's Rules of Practice and Procedure, this ruling follows a prehearing conference (PHC) held on February 13, 2012, and addresses both scope and schedule for this unopposed application.

2. Background

2.1. Procedural History

Sierra Pacific Power Company (Sierra) filed this application and supporting documents, including a proponent's environmental assessment (PEA), on August 30, 2010, prior to the transfer of its California-jurisdictional facilities to California Pacific Electric Company, LLC (CalPeco) later that year pursuant to Decision (D.) 10-10-017. Thereafter, on January 31, 2011, CalPeco filed a notice of its substitution in place of Sierra as the proponent of the application and stated its intention to file an amendment. By ruling on

February 28, 2011, the Commission's Chief Administrative Law Judge (ALJ) directed that the caption for this proceeding be revised to list CalPeco, rather than Sierra, as the applicant. After conducting its own review of the need for the project and timing, CalPeco filed an amendment to the application on September 30, 2011. As the proposed schedule in the application no longer was viable, CalPeco included a new proposed schedule.

No protests or responses were filed to either the application or the amendment.

2.2. Status of Environmental Review

The Energy Division deemed the PEA complete on December 6, 2010. In July 2011, the Commission's Executive Director, on behalf of the Commission, signed a memorandum of understanding (MOU) with the three other governmental agencies with responsibility for environmental review of the proposed project. Under the MOU, the Tahoe Regional Planning Agency (TRPA) is lead local agency for determining compliance with the Tahoe Regional Planning Compact within the Lake Tahoe Basin and will manage the environmental consultant retained to prepare the environmental documents required by the California Environmental Quality Act (CEQA)¹ and the National Environmental Policy Act (NEPA). The Commission is the lead state agency. The lead federal agency under NEPA is the USDA Forest Service, Lake Tahoe Basin Management Unit and Tahoe National Forest (Forest Service) and the United States Army Corps of Engineers (Corps) is a cooperating agency.

¹ CEQA is codified at Public Res. Code §21000, *et seq.*

Initial procedural schedules developed by CalPeco contemplated that shortly after the signing of the MOU, TRPA would execute a contract with the environmental consultant; however, that contract was not executed until February 2012. Therefore, at the PHC on February 13, 2012, CalPeco presented an updated schedule which contemplated release by December 2012 of a joint environmental document, consisting of an Environmental Impact Report (EIR) prepared under CEQA and an Environmental Impact Statement (EIS) prepared pursuant to NEPA.² The February 13, 2012 schedule also contemplated final project approval before the spring of 2013, which would have enabled full use of the 2013 spring/summer/fall construction window and would have allowed the Line 650 upgrade, which is part of the proposed project, to become operational before the winter of 2013-2014. However during the PHC discussion, both CalPeco and Commission's Energy Division staff cautioned that the environmental consultant's schedule for preparation of the joint EIR/EIS had not been finalized and moreover, that the consultant's preliminary schedule anticipated 83 weeks before release of a final document - a much longer timeline than the 43-48 week period CalPeco had factored into its February 13 schedule. Both CalPeco and Energy Division staff indicated that they expected the timeline for environmental review to be finalized before the end of February.

Accordingly, by e-mail on February 29, 2012, the assigned ALJ asked CalPeco to file the operative environmental schedule and to explain the implications of the schedule for the timing of project construction and operational start up.

² Commission staff has determined that CEQA requires preparation of an EIR for the proposed project and the Forest Service has determined that NEPA requires an EIS.

CalPeco filed a response on March 8, 2012, which includes a revised, proposed schedule, dated February 29, 2012, that anticipates release of a Final EIR/EIS in early July 2013 and project approval at the first Commission meeting in September 2013. CalPeco states that TRPA, Forest Service, and the Corps advise that environmental review cannot be streamlined further. Pursuant to the February 29, 2012 proposed schedule, CalPeco could begin some preliminary construction in September 2013 and might be able to work through October 15, 2013, but would be unable to complete construction before the onset of winter.

3. Authority Sought

CalPeco asks the Commission to grant it a permit to construct (PTC) the 625 and 650 Line Upgrade Project (the project). The project consists of certain upgrades and improvements, between 50 and 200 kilovolts (kV), to the existing North Lake Tahoe transmission system to improve reliability and support new load. The current North Lake Tahoe transmission system is a loop consisting of a series of 60kV and 120kV transmission lines running from Truckee south to Squaw Valley, continuing south to Tahoe City, then east to Kings Beach, and then north back to Truckee. The following lines comprise the existing system:

- One 60kV transmission line (609 Line) and one 120kV transmission line (132 Line) from Truckee to Squaw Valley;
- One 60kV transmission line from Squaw Valley to Tahoe City (629 Line);
- One 60kV transmission line from Tahoe City to Kings Beach (625 Line); and
- One 60kV transmission Line from Kings Beach to Truckee (650 Line).³

³ CalPeco Amendment to Application at 3.

Unlike Sierra, CalPeco proposes to construct the project in three integrated but distinct chronological phases rather than as a single phase. However the project scope and description remain the same:

- Rebuilding the existing 60kV 625 Line from Tahoe City to Kings Beach as a 120kV facility in a new right-of-way (ROW) paralleling the Mount Watson Road (about 15 miles);
- Rebuilding most of the existing 60kV 650 Line from Kings Beach to Truckee as a 120kV facility largely within the existing ROW (about 10 miles);
- Converting the existing Northstar 650 tap into a fold;
- Constructing a new Kings Beach 120kV substation adjacent to the Kings Beach Generation Facility and decommissioning the existing Brockway Substation;
- Reconstructing the Tahoe City Substation as a 120kV substation; and
- Modifying the existing North Truckee Substation, Northstar Substation, and Squaw Valley Substation to accommodate the conversion of 60kV system to a 120kV system.⁴

CalPeco estimates the project cost at \$46,269,000 -- about \$68,000 more than Sierra, with the increase attributable to inflating Sierra's estimates to current-year projections, and to costing a few components that were not included in the prior estimates.

Based on a recent evaluation by its consultant, Tri Sage Consulting (Tri Sage), CalPeco's amendment revises downward, from 3% to 1%, the load growth forecast Sierra's application references. Sierra's higher load growth

⁴ *Id.*, quoting the Sierra application.

forecast relied upon a 1996 study that does not reflect the current economic climate. Based upon Tri Sage's analysis, CalPeco now proposes to develop the project in the following three stages:

- Phase I: rebuild/reconductor Line 650 (Truckee, Northstar, Kings Beach);
- Phase II: upgrade Line 650 Substations;
- Phase III: rebuild Line 625 (Tahoe City to Brockway Summit).

CalPeco's amendment states that the service territory has immediate need for the Phase 1 upgrade because the North Lake Tahoe system is susceptible to low voltage under a worst case N-1 contingency (loss of one line segment).

CalPeco projects that the rest of the project can be deferred beyond Phase I, given the current 1% load growth forecast. However, significant demand increases (ski resort expansion, etc.) could cause CalPeco to revisit the timing for Phases II and III.

CalPeco's March 8, 2013 filing states:

Unfortunately, the February 29 Schedule will not enable construction of Phase I to be completed, as considered necessary by CalPeco, by the 2013 Winter. However, and importantly, if the Environmental Consultant and the Permitting Agencies adhere to the July 2013 date for the issuance of the final EIR/EIS and the Commission is able to accommodate the resulting schedule for its issuance of its final decision, the February 29 Schedule does provide CalPeco the opportunity to commence some limited preventative activities before the 2013 Winter. This start date would (i) perhaps enable CalPeco to complete some scope of work during the limited time available and thus potentially increase reliability during the 2013 Winter; and (ii) would enhance and facilitate

CalPeco's ability to complete construction of Phase 1 prior to the 2014 Winter.⁵

4. Scope of Issues

4.1. Requirements for a PTC

The Commission's General Order (GO) 131-D, Section I, defines an electric "power line" as one designed to operate between 50 and 200kV. Section III.B of GO 131-D requires utilities to first obtain Commission authorization, in the form of a PTC, before beginning construction of a power line.

Under GO 131-D, Section IX.B.1.f, PTC applications for power lines need not include a detailed analysis of purpose and necessity, a detailed estimate of cost and economic analysis, a detailed schedule, or a detailed description of construction methods (beyond that required for compliance with CEQA). PTC applications must, however:

- 1) include a description of the proposed facilities and related costs, a map, reasons the route was selected, positions of the government agencies having undertaken review of the project, and a PEA. (Section IX.B.1);
- 2) show substantive and procedural compliance with CEQA as it pertains to the proposed project, including all public notice provisions (Section IX.B.2-5); and
- 3) describe the measures to be taken or proposed by the utility to reduce the potential for exposure to electric and magnetic fields (EMFs) generated by the proposed project (Section X).

The application, amendment and PEA contain detailed descriptions of the proposed project, and as noted in Section 2.2 of this ruling, the PEA has been

⁵ CalPeco Response to ALJ Inquiry, March 8, 2012, at 3-4.

deemed complete. Now that TRPA has executed a contract with the environmental consultant, the environmental review required by CEQA and NEPA is underway.

CEQA, which governs the Commission's environmental review, is the state environmental law that requires the lead agency, or as here, the lead agencies -- to conduct a review to identify environmental impacts of the project and ways to avoid or reduce environmental damage. The lead agencies must consider this review when determining whether to approve the project or any project alternative. CEQA precludes lead agencies from approving a proposed project or project alternative unless those agencies require the project proponent to eliminate or substantially lessen, where feasible, all significant effects on the environment; the agencies must determine that any unavoidable remaining significant effects are acceptable due to overriding considerations.

A joint EIR/EIS is an informational document that informs the permitting agencies, and the public in general, of the environmental impacts of the proposed project and any project alternatives; designs a recommended mitigation program to reduce any potentially significant impacts; and identifies, from an environmental perspective, the preferred alternative.

I note that the PEA identifies potentially significant impacts in a number of resource areas: aesthetics; air quality; biological resources; cultural resources; geology, soils and seismicity; hazards and hazardous materials; hydrology and water quality; noise; and recreation. Though the PEA concludes that most can be mitigated to a less than significant level, it concludes that construction impacts on air quality may result in temporary, unmitigable significant impacts. Formal scoping will be determinative.

Before acting on CalPeco's request, the Commission also must consider EMF impacts. D.06-01-042, which establishes policy governing EMF mitigation using low-cost and no-cost measures, governs compliance with this aspect of GO 131-D. CalPeco endorses and has filed, as Appendix J to its amendment, the Field Management Plan that Sierra developed to address project-related EMFs.

4.2. Issues to Be Determined; Need for Evidentiary Hearing

The ultimate issue before the Commission is whether the Commission should issue a PTC for CalPeco to construct the proposed project, in three phases, and on the timeline requested. CalPeco asks for an *ex parte* order approving the unopposed application as amended.

To decide this ultimate issue in accordance with the GO 131-D, the Commission must determine the following issues:

1. Will the proposed project create significant adverse environmental impacts?
2. Are there potentially feasible mitigation measures or project alternatives that will avoid or lessen the significant adverse environmental impacts?
3. As between the proposed project and identified project alternatives, which is environmentally superior?
4. Are the mitigation measures or project alternatives infeasible?⁶
5. To the extent that the proposed project and/or project alternatives result in significant and unavoidable adverse environmental impacts, are there overriding considerations

⁶ See, for example, CEQA Guidelines 15091(a)(3).

that nevertheless merit Commission approval of the proposed project or a project alternative?⁷

6. Was the EIR completed in compliance with CEQA, did the Commission review and consider the document prior to approving the project or project alternative, and does the document reflect the Commission's independent judgment?⁸
7. Is the proposed project or project alternative designed in compliance with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures?

As discussed below, at this time there is no apparent need for hearings on any of these issues. If any evidentiary deficit arises, CalPeco will be required to supplement its showing.

Issue nos. 1, 2 and 3: These issues are properly addressed in the course of the CEQA environmental review process and preparation of the EIR. Upon completion of joint EIR/EIS, the assigned Administrative Law Judge (ALJ) will receive in evidence, as reference exhibits, both the draft and final versions. No evidentiary hearings or further evidence is needed on these issues.

Issue nos. 4 and 5: Factual issues requiring further record development could arise once the draft EIR has been released. If, for example, the Commission must make specific findings on feasibility or issue a statement of overriding considerations and the ALJ or I determine that the record is insufficient, supplementation of the record in a timely and legally sufficient manner can be accomplished by requiring a further showing from CalPeco. Such a showing

⁷ See, for example, CEQA Guidelines § 15093.

⁸ See, for example, CEQA Guidelines § 15090.

necessarily would address the specific economic, legal, social, technological or other considerations that render any project alternatives or mitigation measures infeasible⁹ or the specific economic, legal, social, technological, or other benefits of the project that outweigh the adverse environmental impacts.¹⁰ Such a showing *should not* duplicate matters that will be assessed in the EIR (e.g., issues no. 1, 2, 3, and 6.)

Issue no. 6: The Commission will review the EIR to determine whether it was completed in compliance with CEQA, whether it reflects the Commission's independent judgment, and whether to approve the proposed project or project alternative. No evidentiary hearings or further evidence will be needed on this issue.

Issue no. 7: As noted above, CalPeco has filed, as Appendix J to its amendment, a Field Management Plan to address project-related EMF. If the ALJ or I determine that the record on EMFs effects and mitigation is insufficient, CalPeco will be directed to supplement its showing.¹¹

5. Schedule

The schedule below is based upon the February 29, 2012 proposed schedule. This schedule will apply, unless revised by a subsequent scoping memo or by a ruling of the assigned ALJ. In any event, I anticipate that this

⁹ See, for example, CEQA Guidelines § 15093.

¹⁰ See, for example, CEQA Guidelines § 15091.

¹¹ The issue of the sufficiency of the Commission's adopted EMF policies is beyond the scope of the proceeding.

proceeding will conclude within 18 months of the issuance of this scoping memo, in accordance with Pub. Util. Code § 1701.5.

Date	Event
January 4, 2013	Draft EIR/EIS issued for public comment (60 day comment period, through March 5, 2013, encompasses all state/federal agency timelines).
July 3, 2013	Final EIR/EIS issued.
Early August, 2013	Proposed Decision filed.
1 st Commission meeting in September, 2013 (30 days after Proposed Decision filed unless Proposed Decision qualifies for reduction or waiver of review under Rule 14.6 of Commission's Rules of Practice and Procedure).	Commission may act at this meeting or may hold matter to a subsequent meeting.

If the final EIR/EIS is released by July 3, 2013, in accordance with the schedule above, the ALJ and I will use our best efforts to place a proposed decision on the agenda for the first Commission meeting in September 2013. However, because the 2013 public meeting schedule will not be developed until later this year, no date can be projected at this time.

While there is no question that the Commission's environmental review must conform to the requirements of CEQA, I recognize that the timeline for conclusion of this review, which necessarily will delay Phase 1 construction and operation, raises reliability concerns for CalPeco. I urge all involved, including CalPeco and Energy Division staff, to undertake to perform as required, in order to avoid further delay in the schedule and to minimize the risk of outages in the North Lake Tahoe portion of the service territory.

6. Assignment of Presiding Officer

ALJ Jean Vieth will be the Presiding Officer.

7. Categorization

Resolution ALJ 176-3261 categorizes this proceeding as ratesetting and preliminarily determines that no hearings will be necessary. Both preliminary determinations should be affirmed.

IT IS RULED that:

1. The scope of the proceeding is as set forth herein.
2. The schedule for this proceeding is set forth herein.
3. The Presiding Officer is Administrative Law Judge Jean Vieth.
4. Preliminary determinations, that the category of this application is ratesetting and that no hearings are necessary, are affirmed.

Dated May 15, 2012, at San Francisco, California.

/s/ MICHEL PETER FLORIO

Michel Peter Florio
Assigned Commissioner