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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company, a California corporation, for a Permit to Construct the Shepherd Substation Project Pursuant to General Order 131-D (U39E).

Application 10-12-003
(Filed December 8, 2010)

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This scoping memo and ruling sets forth the category, scope, and schedule of the proceeding pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules). As this is an application for a Permit to Construct (PTC) a substation, pursuant to General Order (GO) 131-D, the scope of the proceeding will focus only on a review of the Energy Division's final Mitigated Negative Declaration (MND) and its compliance with the California Environmental Quality Act (CEQA), and a determination of whether the Shepherd substation project complies with the Commission's policies governing the mitigation of electric and magnetic fields (EMF) effects using low-cost and no-cost measures. Opening briefs on these two narrow issues shall be filed 21 days following the issuance of the final MND and replies shall be filed 7 days thereafter.

Background

By this application, Pacific Gas and Electric Company (PG&E) seeks a PTC for the Shepherd Substation project which includes, among other components, a new 115/21 kilovolt (kV) substation to be located in unincorporated

Fresno County, California; a new 1.5 mile double circuit 115 kV power line on tubular steel poles; extension of an existing distribution line; the construction of two new underground distribution lines; and the reconductoring of an overhead distribution line.

The Commission received two protests to this application. The Division of Ratepayer Advocates (DRA) protested the application contending that CEQA requires a showing of need for a PTC project and that the application fails to meet that showing. Greg Johnson, a homeowner, also protested the application agreeing with DRA that the application failed to provide a showing of need for the project. Additionally, Mr. Johnson contends that the application fails to consider potentially significant environmental impacts associated with the project and fails to adopt required mitigation measures.

On June 4, 2012, the assigned Administrative Law Judge (ALJ) issued a ruling scheduling a June 21, 2012 prehearing conference (PHC) and requiring parties to file PHC statements. DRA and PG&E complied with the requirement.¹

During the PHC, the assigned ALJ described the scope of issues in an application for a PTC, as set forth by Commission Decision (D.) 94-06-014 adopting GO 131-D. Pursuant to GO 131-D, the Commission's review of an application for a PTC is limited to the review and consideration of a project's environmental impacts pursuant to CEQA and the determination of whether the

¹ Mr. Johnson served, but did not file with the docket office, a copy of his PHC statement. Following the PHC, the assigned ALJ sent an email to Mr. Johnson requiring that his PHC statement be filed with the Commission by July 24, 2012, in order for it to be part of the formal record. Mr. Johnson did not comply; thus, his PHC statement is not part of the record of this proceeding.

proposed project is in compliance with the Commission's policy governing the mitigation of EMF effects using low and no cost measures.

While DRA conceded that there does not have to be a detailed showing of need and cost in a PTC application, DRA maintained that there must be some showing as a general matter and the Shepherd application does not meet that requirement.² PG&E reiterated that the requirements of GO 131-D state that there need not be a detailed showing of need. Further, PG&E noted that the Energy Division's draft Initial Study/Mitigated Negative Declaration (IS/MND) provides an analysis of need for the proposed project including a comparison of the current load serving capacity with the projected load in the future.

The Commission's Energy Division, which is simultaneously conducting the required environmental review of the Shepherd project, issued a draft IS/MND on May 21, 2012.³ Pursuant to CEQA, a public agency shall prepare a draft MND when the IS identifies potentially significant effects but revisions in the proposed project would avoid the effects or mitigate to the point where no significant effects would occur. (CEQA Guidelines § 15070 (b)(1).) A public review period for the draft IS/MND ended on June 22, 2012.

² DRA requested 60 days to obtain discovery.

³ An IS informs the decision makers, responsible agencies, and the public of the proposed project, describes the existing environment that would be affected by the project, and identifies the potential environmental effects that would occur if the project is approved. An IS also identifies the proposed mitigation measures that would avoid or reduce environmental effects. (CEQA Guidelines § 15063.)

Scope of Issues

In determining the scope of this proceeding, we have considered PG&E's application, the protests and PG&E's reply to the protests, as well as the discussion points made during the June 21, 2012 PHC.

Pursuant to GO 131-D, the Commission must find that the Shepherd project complies with CEQA in order to issue a PTC. CEQA requires the lead agency (the Commission in this case) to conduct a review to identify environmental impacts of the project, and ways to avoid or reduce environmental damage, for consideration in the determination of whether to approve the project or project alternative.

The Commission's Energy Division, which is conducting the required environmental review, has issued a draft IS/MND. Pursuant to CEQA, an MND is appropriate where the proposed project may have potentially significant effects on the environment but revisions made or agreed to by the applicant would avoid the effects or mitigate to the point where no significant effects would occur. (CEQA Guidelines § 15070 (b)(1).) CEQA requires that an MND include a Mitigation, Monitoring, Reporting, and Compliance (MMRC) Plan and that the lead agency adopt it as part of its approval of the proposed project. (CEQA Guidelines § 15074(d).) Before granting the PTC, the Commission must consider the Final MND to determine whether it was completed in compliance with and meets the requirements of CEQA, that there is no substantial evidence that the Shepherd project will have a significant effect on the environment, and that the Final MND reflects the Commission's independent judgments and analysis. (CEQA Guidelines § 15004(a) and § 15074(b).)

Finally, pursuant to GO 131-D and D.06-01-042, the Commission must consider whether the project design is in compliance with the Commission's

policies governing the mitigation of EMF effects using low-cost and no-cost measures.

Accordingly, the Commission must determine the following issues in the proceeding:

1. Is there no substantial evidence that the Shepherd project, as revised pursuant to the final MND and MMRC plan, will have a significant effect on the environment?
2. Was the MND completed in compliance with CEQA and does the MND reflect the Commission's independent judgment?
3. Is the proposed project designed in compliance with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures?⁴

Need for Evidentiary Hearing

In its application, PG&E stated that the Commission previously determined that only the issue of environmental review is relevant in a PTC application. Further, PG&E recommended that if environmental concerns are raised, the Commission should address them in a public participation hearing. Resolution ALJ 176-3266 (December 16, 2010) found that hearings may be necessary.

During the PHC, PG&E conveyed its view that hearings are not necessary as PG&E has made all the showings necessary under GO 131-D and there are no facts to debate. DRA explained that it was not ready to argue for evidentiary hearings. DRA requested sixty days for discovery, after which time they would

⁴ The issue of the sufficiency of the Commission's adopted EMF policies is beyond the scope of the proceeding.

be able to advocate on the need for hearings. PG&E reiterated that there are no facts to debate in this case and that discovery is not needed.

Factual evidence related to issues 1 and 2 is properly offered in comments on the draft MND and addressed in the final MND pursuant to the CEQA environmental review process. Upon completion of the final MND, Energy Division shall submit it to the ALJ for admission into the evidentiary record and review and consideration by the Commission. No evidentiary hearing is needed on these issues.

PG&E presents its EMF compliance plan as Exhibit F to its application, and no party challenges PG&E's compliance with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures and/or prepared rebuttal testimony on this issue.⁵ Accordingly, no evidentiary hearings or further evidence is needed on this issue.

Schedule

As described above, upon completion of the final MND, Energy Division shall submit it to the ALJ for admission into the evidentiary record, which shall complete the evidentiary record. Parties may file concurrent briefs on all issues. The following schedule is adopted here and may be modified by the ALJ as required to promote the efficient and fair resolution of the application:

Issuance of final Mitigated Negative Declaration	TBD (anticipated August 2012)
Opening briefs	+21 days
Reply briefs (proceeding submitted)	+7 days
Proposed decision	[no later than 90 days after submission]

⁵ The issue of the sufficiency of the Commission's adopted EMF policies is beyond the scope of the proceeding.

The proceeding should be resolved within 18 months of this scoping memo as provided by Pub. Util. Code § 1701.5.

Parties

Any person who is not yet a party to the proceeding and who wishes to participate in the proceeding by briefing the above issues should file a motion to become a party pursuant to Rule 1.4 of the Commission's Rules of Practice and Procedure.

The ALJ may remove party status from parties who do not participate by briefing, without prejudice to subsequent motion for party status pursuant to Rule 1.4.

Intervenor Compensation

Notices of intent to claim intervenor compensation should have been filed no later than July 22, 2012, pursuant to Rule 17.1(a).

Category of Proceeding/*Ex Parte* Requirements and Need for Hearing

This ruling confirms the Commission's preliminary determination that this is a ratesetting proceeding (Resolution ALJ 176-3266, December 16, 2010.) It appears that hearings are not necessary, but the final determination on the need for hearing will be addressed in the final decision. Accordingly, since this is a ratesetting proceeding *ex parte* communications with the Assigned Commissioner, other Commissioners, and the ALJ are generally prohibited. The limited exceptions to this prohibition and the reporting requirements for *ex parte* communications are described at Pub. Util. Code § 1701.3(c) and in Article 8 for the Commission's Rules of Practice and Procedures.

Assignment of Proceeding

Commissioner Michel P. Florio is the assigned Commissioner and Kelly A. Hymes is the assigned ALJ to the proceeding. Judge Hymes is designated the Presiding Officer.

IT IS RULED that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.
3. This proceeding is categorized as ratesetting. This designation as to the category is appealable under Rule 7.6 of the Commission's Rules of Practice and Procedure.
4. Hearings should not be needed.
5. Kelly A. Hymes is designated the Presiding Officer.
6. *Ex parte* communications, if any, shall comply with Article 8 of the Commission's Rules of Practice and Procedure

Dated July 27, 2012, at San Francisco, California.

/s/ MICHEL PETER FLORIO
Michel Peter Florio
Assigned Commissioner