

Decision 07-05-024 May 3, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application of Pacific Gas and Electric Company (U 39 M), Southern California Edison Company (U 338-E), and San Diego Gas & Electric Company (U 902-E) for an Order Authorizing Spare Transformer Sharing Agreement Pursuant to Public Utilities Code Section 851.

Application 07-01-032
(Filed January 18, 2007)

(See Appendix A for a List of Appearances.)

OPINION APPROVING TRANSFORMER SHARING AGREEMENT

TABLE OF CONTENTS

<u>Title</u>	<u>Page</u>
I. Summary.....	2
II. Background and Chronology	2
III. Summary of the Transformer Sharing Agreement.....	3
IV. Implementation of the Agreement in California	6
V. Discussion.....	8
VI. CEQA.....	10
VII. Assignment, Categorization, and Need for Hearing	11
VIII. Waiver of Comment Period	11
Findings of Fact	11
Conclusions of Law.....	12
ORDER	13

Appendix A: List of Appearances

Appendix B: Summary of Principal Terms

Appendix C: Transformer Sharing Agreement

OPINION APPROVING TRANSFORMER SHARING AGREEMENT

I. Summary

This Opinion grants Application (A.) 07-01-032 wherein Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) (collectively, “the Joint Applicants”) request authority under Pub. Util. Code § 851¹ for approval of an agreement to sell transformers to each other and other utilities following specified types of events.

II. Background and Chronology

In A.07-01-032, the Joint Applicants ask the Commission to approve a Transformer Sharing Agreement (TSA) pursuant to § 851. The purpose of the TSA is to provide the signatories (“Participating Utilities”) with prompt access to sufficient spare transformers to restore electric service following a terrorist attack on utility substations. The principal terms of the TSA are contained in Appendix B of today’s Opinion. A copy of the TSA is contained in Appendix C.

The concept for the TSA began in 2004 when the Edison Electric Institute (EEI) initiated a study of utilities’ transformer inventories that would be available in the event of a terrorist attack on utility substations. In January 2005, the EEI formed a Task Force with representatives from approximately 30 utilities. The Task Force determined that sharing the industry’s existing inventory of spare transformers would provide the most cost-effective way to mitigate the risk of long-term loss of service from coordinated attacks on utility substations.

¹ All statutory references are to the Public Utilities Code unless otherwise specified.

At the June 2005 EEI meeting, the CEOs of several utilities adopted a Task Force recommendation to develop an agreement to share spare transformers in a manner that assured recovery from an attack on five substations. The TSA was finalized in December 2005 and distributed to utilities for execution in February 2006. As of November 1, 2006, 47 utilities from across the United States had executed the TSA.

In July 2006, the EEI submitted a single application to the Federal Energy Regulatory Commission (FERC) for approval of all utilities nationwide to participate in the TSA. FERC approved the application on September 22, 2006, providing blanket authorization for future transfers of transformers under the TSA made in response to a Triggering Event, subject to notice to FERC of the transfer and the final sales terms.²

III. Summary of the Transformer Sharing Agreement

The TSA requires each signatory to maintain a specific number of spare transformers of various voltages. The number of spare transformers a Participating Utility must own or commit to acquire in each voltage class is based on the aggregate needs of the voltage class and the number of transformers that the Participating Utility has in service in that voltage class. This ensures that the number of spare transformers owned collectively by the Participating Utilities in a given voltage class is sufficient to provide replacement transformers to any Participating Utility in that voltage class whose in-service transformers are disabled by a "Triggering Event" as defined in the TSA.

² 116 FERC P61,280, paras. 17, 21, and 22. The term "Triggering Event" is defined, *infra*.

The total number of spare transformers for each class is equal to the number of transformers needed to restore the system following an attack on the five most critical substations in the voltage class. Each Participating Utility must maintain a share of the required number of spare transformers in each class in which it participates, as determined by the Participating Utility's share of the megavolt amperes of all transformers in that class.³ A Participating Utility need not purchase additional spare transformers if that utility has a sufficient number of existing spares, including in-service spares, to commit under the TSA.

A Participating Utility has until June 30, 2008 to procure any spare transformers needed to meet its commitments under the TSA.⁴ June 2008 was selected to provide sufficient time to obtain the required regulatory approvals to participate in the TSA and to permit Participating Utilities sufficient lead time to obtain additional spare transformers, if necessary. Due to similar concerns over lead time in procuring transformers, a Participating Utility that wishes to withdraw from the Agreement must provide two year's notice of withdrawal.⁵

Upon the occurrence of a Triggering Event, a Participating Utility has the right to "call" on the spare transformers of other Participating Utilities in its voltage class. The TSA defines a "Triggering Event" as one or more coordinated acts of deliberate terrorism, as defined by the Homeland Security Act of 2002,⁶

³ TSA, sec. 1.1, Definitions.

⁴ TSA, sec 3.1.

⁵ TSA, sec. 10.1.

⁶ Homeland Security Act of 2002, 6. U.S.C. sec. 101(15) (2006, Supp.). The Homeland Security Act defines "terrorism" as any act that is dangerous to human life or potentially destructive of critical infrastructure or key resources, is a violation of law, and appears to be intended to (i) to intimidate or coerce a civilian population;

Footnote continued on next page.

resulting in both (1) the destruction or long-term disabling of one or more electric transmission substations, and (2) the declaration of a state of emergency by the President pursuant to the National Emergencies Act.⁷ A Participating Utility is obligated to sell its spare transformers to the calling party, up to the selling utility's full commitment in the applicable voltage class⁸

The selling utility (Seller) has the option of selling transformers at either the replacement cost of the transformers or net book value. The purchasing utility (Buyer) must pay the sales price selected by the Seller and ancillary costs, such as freight and any tax attributable to the sale.⁹ The Seller is obligated to obtain replacement transformers no later than 18 months after the sale.¹⁰

The TSA is nationwide in scope. Participating Utilities in a given voltage class may call the spare transformers of the other utilities participating in that voltage class, even if the other utilities are in different states.

(ii) influence the policy of a government by intimidation or coercion; or (iii) affect the conduct of government by mass destruction, assassination, or kidnapping.

⁷ TSA, sec. 1.1.

⁸ TSA, sec. 4.1.

⁹ TSA, sec. 1.1, "Purchase Price."

¹⁰ TSA, secs. 1.1, Definitions, and 3.3, Obligation to Replace. The Settler must provide written notice of the total purchase price to the Buyer no later than six months after the transfer is complete. (sec. 4.7.) The Buyer may object by way of written notice to a TSA sub-committee. If the sub-committee fails to determine the purchase price within 20 business days, or if the Buyer and Seller do not agree with the purchase price determined by the sub-committee, the parties may pursue other remedies.

IV. Implementation of the Agreement in California

In order to participate in the TSA, a utility must secure all necessary regulatory approvals within 18 months from the date they execute the TSA.¹¹

The Joint Applicants executed the TSA on the following dates: PG&E - March 15, 2006; SCE - March 17, 2006; and SDG&E - March 21, 2006.

The Joint Applicants represent that the TSA enhances their ability to restore service rapidly following a terrorist attack. This is because the Participating Utilities do not have to rely on manufacturers to provide replacements for transformers destroyed by an attack. Thus, the long lead time associated with ordering a new transformer - up to 18 months - is avoided.

The following table shows the transformer classes that PG&E, SCE, and SDG&E intend to participate in and the number of transformers that each anticipates it will commit to the program:

Transformer Class	PG&E	SCE	SDG&E	Total
500 -230 kV	6	7	3	16
230 - 115 kV	6	1	--	7
230 - 138 kV	--	--	1	1
Total Transformers	12	8	4	24

The Joint Applicants state that the spare transformers in the above table are FERC-jurisdictional assets and that the associated revenue requirement falls under FERC's jurisdiction.¹² The number of the Joint Applicants' transformers

¹¹ TSA, secs. 2.1 and 2.3.

¹² SCE states that it may participate in lower voltage classes of transformers that fall under the Commission's jurisdiction. If this occurs, SCE will file another application that seeks the appropriate ratemaking treatment for those assets.

subject to the TSA may change over time as overall participation in a given voltage class changes.

PG&E and SDG&E do not need to purchase any transformers to comply with the TSA, as they already have enough in-service spares to meet their TSA commitments. SCE will need to purchase two transformers in the 500 - 230 kV class to meet its obligations under the TSA. The cost of the two transformers will be approximately \$6.0 million and recovered through FERC-jurisdiction rates. If a Triggering Event occurs and the Joint Applicants' spares are called under the TSA, then they would have to replace as many transformers as are called. In such an event, the Joint Applicants would receive full reimbursement at either the replacement cost or book value of the called transformers.

The Joint Applicants anticipate that the annual cost of the TSA will be *de minimis*. To the extent the transformers are in-service spares, the Joint Applicants already have an obligation to maintain those transformers in reliable working condition. Thus, there are no incremental maintenance costs incurred by designating these same transformers to meet the Joint Applicants' TSA commitments. SCE estimates that it will spend \$2,500 annually to maintain the two additional transformers that it intends to purchase.¹³

The Joint Applicants participate in various TSA Committees. This participation requires each of the Joint Applicants to devote approximately two staff days per year. With the exception of the initial organization meetings, virtually all participation has occurred via conference calls organized by the EEI.

¹³ SCE did not provide other costs associated with the two transformers, such as depreciation and rate of return.

Finally, each of the Joint Applicants paid a one-time fee of \$10,000 when it joined the TSA. Thereafter, the TSA Executive Committee determines the annual dues sufficient to cover the costs of administering the TSA. The Joint Applicants represent that annual dues have not yet been determined or paid.

V. Discussion

A.07-01-032 requests authority under § 851 to encumber and sell transformers in accordance with the TSA. Section 851 states, in part, as follows:

No public utility...shall sell...or otherwise dispose of or encumber the whole or any part of its...property necessary or useful in the performance of its duties to the public...without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$ 5,000,000)....

Section 851 applies when, as here, the ratemaking treatment of the property is subject to FERC jurisdiction.¹⁴ The purpose of § 851 is to enable the Commission to review a proposed transaction, before it takes place, in order to take such action as the public interest may require. The Commission has broad discretion under § 851 to approve or reject a proposed transaction. Where appropriate, the Commission may attach conditions to a transaction in order to protect and promote the public interest.¹⁵

The primary question for the Commission in § 851 proceedings is whether the proposed transaction is in the public interest.¹⁶ We find that the TSA is in the public interest and should be approved pursuant to § 851. The electric

¹⁴ D.03-12-056, D.01-09-048, D.99-10-066, and D.98-01-053.

¹⁵ D.01-06-007, 2001 Cal. PUC LEXIS 390, *24; D.3320, 10 CRRC 56, 63.

¹⁶ D.00-07-010, *mimeo.*, p. 6.

transmission system is vital to the public health, safety, and welfare. If the transmission system is attacked, it is imperative that the system be restored to service as rapidly as possible. The TSA will help achieve that goal in a way that minimizes the cost of acquiring and maintaining an inventory of spare transformers needed to repair the transmission system following an attack. Equally important, the TSA does not interfere with the Joint Applicants' ability to use their transformers committed to the TSA program to provide service to their own customers in accordance with Good Utility Practices.¹⁷

FERC requires the Joint Applicants to provide notice of every transfer of transformers under the TSA and the final sales terms. We will require the Joint Applicants to concurrently file the same notice at the Commission.¹⁸

As set forth in A.07-01-032, the Joint Applicants' participation in the TSA is limited to transformers whose costs are recovered via rates set by FERC.¹⁹ Consequently, today's Opinion does not authorize recovery of any costs. However, as noted by SCE, if a Joint Applicant chooses in the future to expand its participation to encompass lower voltage class transformers that fall under our jurisdiction, that Joint Applicant should file a separate application seeking the appropriate ratemaking treatment for those assets.

¹⁷ TSA, sec. 1.1, Definitions for "Good Utility Practices" and "Permitted Dispositions."

¹⁸ The authority granted by FERC to transfer spare transformers applied only to transfers made in response to a Triggering Event. (116 FERC P61,280, para. 17.) The authority granted by today's Opinion is likewise limited to transfers of spare transformers made in response to a Triggering Event.

¹⁹ A.07-01-032, Section V.

VI. CEQA

The California Environmental Quality Act (CEQA)²⁰ applies to discretionary projects approved by public agencies. The basic purpose of CEQA is to “inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities.”²¹

A.07-01-032 is subject to CEQA because the activities contemplated therein consist of discretionary projects that require Commission approval in order to proceed. Under CEQA, the Commission must act as either a Lead Agency or Responsible Agency. Because there is no other agency involved at this time, the Commission is the Lead Agency with respect to A.07-01-032.

Public Resources Code Section 21000 *et. seq.*, and Title 14 of the California Code of Regulations Sections 15000-15387 (hereafter, "CEQA Guidelines") enumerate various categorical exemptions to the requirement for environmental review under CEQA. CEQA Guideline 15301 grants a categorical exemption to "Class 1" activities that include the repair of existing structures, facilities, or mechanical equipment involving negligible or no expansion of use beyond that existing at the time of the Lead Agency's determination.

The TSA and today's Opinion allow nothing more than the repair of utility infrastructure damaged by a terrorist attack, with the repaired infrastructure having negligible or no expansion of use beyond that existing at the time of the Lead Agency's determination. We find, therefore, that our approval of

²⁰ Public Resources Code Section 21000, *et seq.*

²¹ Title 14 of the California Code of Regulations, Section 15002.

A.07-01-032 is exempt from environmental review under CEQA pursuant to CEQA Guideline 15301.

VII. Assignment, Categorization, and Need for Hearing

Michael Peevey is the assigned Commissioner and Timothy Kenney is the assigned Administrative Law Judge for this proceeding.

In Resolution ALJ 176-3186, dated January 25, 2007, the Commission preliminarily categorized A.07-01-032 as a ratesetting proceeding and preliminarily determined that hearings are not necessary. There were no protests or other responses to A.07-01-032, and there were no objections to the preliminary determinations. In light of the record, we affirm that this is a ratesetting proceeding and that hearings are not necessary.

VIII. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Therefore, the otherwise applicable 30-day period for public review and comment on the Proposed Decision is waived pursuant to § 311(g)(2) and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure (Rules).

Findings of Fact

1. In A.07-01-032, PG&E, SCE, and SDG&E request authority under § 851 to encumber and sell transformers in accordance with the TSA contained in Appendix C of this Opinion
2. The electric transmission system is critical to public health, safety, welfare. It is of utmost public importance that the transmission system be rapidly repaired and returned to service in the wake of a terrorist attack on the system.
3. The TSA provides a fair, workable, and cost-effective mechanism to rapidly acquire transformers that may be needed to restore electric service following a terrorist attack on utility substations.

4. FERC requires utilities to notify FERC of any transfers of transformers under the TSA and the final sales terms of any such transfers.
5. Today's Opinion does not authorize the recovery of any costs.
6. The TSA and today's Opinion allow nothing more than the repair of utility infrastructure damaged by a terrorist attack, with the repaired infrastructure having negligible or no expansion of use.

Conclusions of Law

1. This is a ratesetting proceeding. No hearings are necessary.
2. It is in the public interest to grant PG&E, SCE, and SDG&E authority under § 851 to encumber and sell their spare transformers in accordance with the TSA.
3. The authority granted by today's Opinion should be limited to encumbrances and sales associated with Triggering Events as defined in the TSA.
4. PG&E, SCE, and SDG&E should file at the Commission a notice of every transfer of transformers that occurs under the TSA. The content and timing of the notice should be the same as the notice that PG&E, SCE, and SDG&E are required to provide to FERC.
5. Approval of A.07-01-032 is exempt from environmental review under CEQA pursuant to 14 Cal. Code Regs. § 15301.
6. This is an uncontested matter in which the decision grants the relief requested. Therefore, the otherwise applicable 30-day period for public review and comment is waived pursuant to § 311(g)(2) and Rule 14.6(c)(2).
7. The following order should be effective immediately so that the TSA may become effective expeditiously.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) are granted authority under Pub. Util. Code § 851 to encumber and sell their spare transformers in accordance with the Transformer Sharing Agreement (TSA) in Appendix C of this Opinion.
2. The authority granted by this Order is limited to encumbrances and sales associated with Triggering Events as defined in the TSA.
3. PG&E, SCE, and SDG&E shall file at the Commission's Docket Office a notice of every transfer of transformers under the TSA. The notice shall be filed at the same time and have the same content as the notice that PG&E, SCE, and SDG&E are required to provide to the Federal Regulatory Energy Commission.
4. Application (A.) 07-01-032 is granted.
5. A.07-01-032 is closed.

This order is effective today.

Dated May 3, 2007, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
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Appendix A
List of Appearances

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Last Update on 13-APR-2007 by: SMJ
A0701032 INITIALLIST

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