

Decision **PROPOSED DECISION OF ALJ HYMES** (Mailed 4/22/2013)

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)

**DECISION ADDRESSING THE PACIFIC GAS AND ELECTRIC
COMPANY APPLICATION FOR A PERMIT TO CONSTRUCT
THE SHEPHERD SUBSTATION PROJECT**

1. Summary

This decision grants Application 10-12-003 by Pacific Gas and Electric Company (PG&E) for a permit to construct the proposed project known as the Shepherd Substation Project (Proposed Project), pursuant to General Order 131-D. Construction of this project, in unincorporated Fresno County, California, will ensure that the anticipated increased customer electrical demand in this area can be met safely and reliably, while maximizing system efficiency.

The Proposed Project includes:

- Construction of the proposed 115/21 kilovolt (kV) electrical substation;
- A new, 1.5-mile, double circuit 115 kV power line;
- Extension of an existing distribution line; and
- Construction of three proposed distribution lines.

As the Lead Agency for environmental review, we find the Final Mitigated Negative Declaration prepared for the Proposed Project and its March 2013

Addendum meet the requirements of the California Environmental Quality Act.¹ Furthermore, we find that PG&E has complied with Commission requirements to identify no-cost and low-cost measures to be implemented to reduce potential electric and magnetic fields.

This proceeding is closed.

2. Procedural Issues

On December 8, 2010, Pacific Gas and Electric Company (PG&E) filed an Application (A.) 10-12-003, requesting Commission authorization to construct and operate the Shepherd Substation Project (Proposed Project). Simultaneously, PG&E filed its Proponent's Environmental Assessment (PEA).

Due process requires that affected parties be provided adequate notice and opportunity to be heard, such that they can timely protest and participate in the Commission's environmental review and analysis of the Proposed Project. For permits to construct (PTCs), the utility must comply with notice requirements described in GO 131-D, Section XI.A. PG&E represents that it has complied with all applicable notice requirements and submitted documents to support this representation.

The Application was noticed in the Commission's Daily Calendar on December 9, 2010. Two parties, the Division of Ratepayer Advocates (DRA)² and homeowner, Greg Johnson,³ filed protests.

On December 2, 2011, PG&E filed an amendment to A.10-12-003.⁴

1 Public Resources Code Section 21000, et seq.

2 DRA filed a protest on January 10, 2011.

3 Mr. Johnson filed a protest on January 18, 2011.

4 The major components of the project did not change as a result of the amendment. Following the filing of the original application, PG&E determined that additional

On June 21, 2012, the assigned Administrative Law Judge (ALJ) held a prehearing conference to determine the parties, scope, and schedule of this proceeding. The assigned Commissioner and ALJ issued a Ruling and Scoping Memo on July 27, 2012 stating that the scope of the proceeding will focus 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 Proposed Project complies with the Commission's policies governing the mitigation of electric and magnetic fields (EMF) effects using low-cost and no-cost measures. The Scoping Memo also determined that Evidentiary Hearings in this proceeding are not necessary.

Parties were provided an opportunity to file briefs on the issues three weeks following the issuance of the final MND. Only PG&E filed an opening brief and no party filed a reply brief.

3. The Proposed Project

The Proposed Project will provide additional capacity serving the Woodward Distribution Planning Area (DPA) which includes northeast Fresno and northwest Clovis. The electrical needs of the Woodward DPA are currently served by eight transformers at four existing 115/21 kilovolt (kV) substations: Bullard, Clovis, Pinedale and Woodward. All four substations are at full build-out.

PG&E estimates the electrical growth rate of the Woodward DPA to be approximately 5 megawatts (MW) or 1.5 percent per year. The current load of

low-voltage line work would be required to support the substation project. This work includes rebuilding one mile of distribution line outside of the previously-defined project area, extending the exiting overhead distribution line north an additional one-half mile, and shifting the substation 35 feet south to accommodate the power line connection.

the area is 325 MW. With a current capacity of 339 MW, PG&E anticipates the Woodward DPA to be overload by 2.6 MW in 2014 and by 7.5 MW in 2015.

PG&E contends that the Proposed Project will relieve the projected electric system deficiency and ensure the ability of the system to safely and reliably serve the area without interruption or emergency conditions.

The Proposed Project consists of four major elements: construction of the proposed 115/21 kV electrical substation; a new, 1.5-mile, double circuit 115 kV power line; extension of an existing distribution line; and construction of three proposed distribution lines.

The new 115/21 kV distribution substation with three 45 megavolt ampere transformers and a capacity of 135 MW will be located on five acres of property in the southwest corner of Sunnyside and Perrin Avenues in an unincorporated portion of Fresno County. PG&E proposes that the substation will have automated features as well as remote control capabilities, which makes staffing in the substation unnecessary. The substation will be surrounded by a neutral-colored concrete wall on two sides and an eight-foot tall chain link fence on two other sides. Automated 10 feet tall sodium vapor lamps will provide security lighting for the substation. A fiber optic telecommunications line attached to an existing electrical distribution line will be part of the safety and security network.

A double-circuit 115 kV power line approximately 1.5 miles long will be constructed to link the Shepherd substation to the existing Power line. Three distribution alignments will extend south from the substation along Sunnyside Avenue. At Shepherd Avenue, two distribution lines would extend east and west along Shepherd Avenue and one would extend south along Sunnyside to Nees Avenue.

Due to delays resulting from PG&E's amending the application and from the time needed to prepare and issue the Final MND, construction is now scheduled to begin in March 2014 and PG&E plans to begin operating the Proposed Project in June 2015.

4. Environmental Review

CEQA requires that the Commission consider the environmental consequences before acting upon or approving the Proposed Project.⁵ Under CEQA, the Commission must act as either the Lead Agency or a Responsible Agency for project approval. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the Proposed Project as a whole.⁶ Here, the Commission is the Lead Agency. The actions and steps taken for environmental review of the Proposed Project, in accordance with GO 131-D and CEQA, are discussed below.

4.1 Proponent's Environmental Assessment

PG&E included its PEA with the Application, pursuant to GO 131-D, Section IX.B.1.e.⁷ As previously stated, PG&E also included a supplement to the PEA.⁸ The PEA evaluates the environmental impacts that may result from the construction and operation of the Proposed Project. PG&E's PEA contains a project description in Section 3.0, and maps and diagrams in Figures 1.1 through 6.1.

5 CEQA Guidelines, Section 15050(b).

6 CEQA Guidelines, Section 15051(b).

7 The PEA was prepared by PG&E with portions of the PEA prepared by EPG, Inc. of Phoenix, AZ.

8 December 2, 2011 Amendment, Exhibit A.

The PEA concludes that the Proposed Project will have less than significant, or no impact, to all environmental resource categories. Although PG&E does not anticipate significant impacts to any resource category, PG&E incorporates specific procedures into the project construction plans as an added measure of protection to environmental resources that occur in the area (Applicant's Proposed Measures).⁹ We find the Applicant's Proposed Measures (APMs) to be reasonable. We adopt the APMs as part of our approval of the Proposed Project, and require PG&E to comply with the APMs.

4.2 Draft Initial Study/Mitigated Negative Declaration

As the next step in the environmental review, the Commission's Energy Division reviewed the PEA. On June 21, 2011, the Energy Division informed PG&E by letter that the Application was deemed complete for purposes of reviewing environmental impacts, and began preparing an Initial Study (IS). The IS determined that the Proposed Project will not have a significant adverse impact on the environment, but this determination is conditioned on certain mitigation measures.

On May 7, 2012, the Energy Division released for public review a Draft IS/Mitigated Negative Declaration (MND) for the Proposed Project.¹⁰ The Draft IS/MND determined that, with the mitigation incorporated, approval of the Proposed Project will result in less than significant impacts in the areas of aesthetics, agricultural resources, air quality, greenhouse gases, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use planning, mineral resources,

⁹ PEA, Appendix H.

¹⁰ A March 5, 2013 Administrative Law Judge Ruling identified, marked and received into the record the IS/Draft MND as Reference Exhibit A.

noise, population and housing, public services, recreation, transportation and traffic, and utilities and services systems.

As required by CEQA, the Draft IS/MND included a Mitigation, Monitoring and Reporting Program (MMRP). The MMRP describes the mitigation measures, specifically details how each mitigation measure will be implemented, and includes information on the timing of implementation and monitoring requirements. The Commission will use the MMRP as a framework to create a Mitigation Monitoring, Compliance and Reporting Program which will formalize protocols to be followed by Commission third-party environmental monitors and PG&E project staff prior to and during construction. The Commission adopts the MMRP as part of its approval of the Proposed Project.¹¹

The Draft IS/MND was distributed to federal, state and local agencies; property owners within 300 feet of the Proposed Project; and other interested parties (identified in the Draft IS/MND). A Public Notice of the Proposed Project also was published in the local newspaper, announcing the availability of the Draft IS/MND. The 30-day public review and comment period ended on June 6, 2012.

Comment letters on the Draft IS/MND were received from the California Department of Fish and Game; Division of Ratepayer Advocates; Fresno Metropolitan Flood Control District, Property Owners Greg Johnson, Pat Menagh, Vimy and Rohit Sundran, and Timothy and Deanna Watson, and PG&E.

¹¹ CEQA Guideline Section 15074(d).

4.3 Final MND and the Addendum to the Final MND

A Final MND was prepared pursuant to CEQA guidelines, and issued by the Energy Division on January 4, 2013.¹² The Final MND addresses all aspects of the Draft IS/MND, includes the comments received on the Draft IS/MND and the responses to those comments by the Lead Agency (Energy Division), and includes a final version of the MMRP.

Although a few revisions were made to clarify and revise certain mitigation measures described in the Draft IS/MND, the Final MND does not identify any new significant environmental impacts, and does not omit any existing mitigation measures, from those identified in the Draft IS/MND.

The Final MND concludes that the Proposed Project will not have a significant adverse impact on the environment, because the mitigation measures described therein, and agreed to and incorporated by PG&E into the Proposed Project, will ensure that any potentially significant impacts that have been identified with the Proposed Project will remain at less than significant levels.

Staff issued an Addendum to the Final MND in March 2013.¹³ The Addendum was prepared to evaluate the potential impacts of a project modification to the Shepherd project in compliance with CEQA Guidelines 15164.¹⁴

¹² A March 5, 2013 Administrative Law Judge Ruling identified, marked and received into the record the Final MND as Reference Exhibit B.

¹³ An April 17, 2013 Administrative Law Judge Ruling identified, marked and received into the record the Addendum to the Final MND as Reference Exhibit C.

¹⁴ CEQA Guideline 15164 provides:

(b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

The modification increases the number of tubular steel poles from 17 to 18 in order to avoid potential conflicts with the Fresno Metropolitan Flood Control District's plan for a flood control channel located north of Behymer Avenue. The original proposed pole has been relocated approximately 320 feet north along the alignment so that the power line would span the flood control channel.

Relocating the pole north to avoid the planned flood control channel increases the power line span requiring an additional pole just north of Behymer Avenue. The additional pole results in an increase of temporary ground disturbance from 3.0 acres to 3.24 acres and an increase of permanent ground disturbance from 0.17 acres to 0.18 acres.

In the Addendum, staff concluded that the proposed project modification is not a substantial change to the project and does not result in any new significant environmental impacts or any substantial increases in the severity of previously significant impacts. The modification does not otherwise trigger the need to prepare a subsequent Environmental Impact Report or negative declaration pursuant to CEQA Guidelines 15162.

Before granting the Application, we must consider the Final MND and its Addendum.¹⁵ We find that the Final MND (which incorporates the Draft IS/MND) and its Addendum were prepared in compliance with and meet the requirements of CEQA. We further find that on the basis of the whole record, there is no substantial evidence that the Proposed Project will have a significant

c) An addendum need not be circulated for public review but can be included or attached to the final EIR or adopted negative declaration.

d) The decision making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.

¹⁵ CEQA Guideline Section 15004(a).

effect on the environment and that the Final MND and its Addendum reflects the Commission's independent judgments and analysis.¹⁶ We adopt the Final MND and its Addendum in its entirety.

5. Electric and Magnetic Fields

The Commission has examined EMF impacts in several previous proceedings.¹⁷ We found the scientific evidence presented in those proceedings was uncertain as to the possible health effects of EMFs and we did not find it appropriate to adopt any related numerical standards. Because there is no agreement among scientists that exposure to EMF creates any potential health risk, and because CEQA does not define or adopt any standards to address the potential health risk impacts of possible exposure to EMFs, the Commission does not consider magnetic fields in the context of CEQA and determination of environmental impacts.

However, recognizing that public concern remains, we do require, pursuant to GO 131-D, Section X.A., that all requests for a PTC include a description of the measures taken or proposed by the utility to reduce the potential for exposure to EMFs generated by the Proposed Project. We developed a policy that requires utilities, among other things, to identify the no-cost measures undertaken, and the low-cost measures implemented, to reduce the potential EMF impacts. The benchmark established for low-cost measures is 4% of the total budgeted project cost that results in an EMF reduction of at least 15% (as measured at the edge of the utility right-of-way).

¹⁶ CEQA Guideline Section 15074(b).h.

¹⁷ See D.06-01-042 and D.93-11-013.

The Field Management Plan (FMP) contained in the Application¹⁸ addresses the EMF measures that will be taken in connection with the Proposed Project. As no-cost and low-cost options, PG&E will ensure that the major components in the Shepherd Substation meet or exceed the recommended setback distances from the substation fence or property line, and the proposed power lines supplying the substation will be phased for magnetic field reduction. PG&E will also increase by five feet the height of 16 poles nearest to residences so as to reduce EMF at the edge of the right of way. We adopt the FMP for the Proposed Project and require PG&E to comply with it.

6. Conclusion

We have reviewed the Application and, after considering all of the above requirements, find it complete and in compliance with GO 131-D. Based on the analysis of the Initial Study, the Draft and Final MNDs and the Addendum, and the mitigation measures identified therein and incorporated into the Proposed Project, the Commission finds that the Proposed Project will not have a significant impact on the environment. Furthermore, we find PG&E's FMP to be in compliance with the Commission's EMF requirements.

We therefore grant PG&E's Application for a PTC. This Decision also adopts the Final MND (which incorporates the Draft IS/MND and the Addendum), subject to the conditions therein, and authorizes work on the Proposed Project to begin. Before commencing construction of the Proposed Project, PG&E must have in place all required permits, easements or other legal authority for the project site.

¹⁸ Exhibit F.

7. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No party filed comments.

8. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Kelly A. Hymes is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. PG&E's Application for a PTC and the Amendment are complete and meet the notification requirements set forth in GO 131-D.
2. The Final MND (which incorporates the Draft IS/MND and the Addendum) related to the Proposed Project conforms to the requirements of CEQA.
3. The Final MND identified no significant environmental impacts of the Proposed Project that could not be avoided or reduced to non-significant levels with the mitigation measures described therein.
4. The MMRP, included as part of the Final MND, describes the specific mitigation measures to be taken.
5. The measures included in the MMRP are reasonable and consistent with CEQA.
6. The Commission considered the Final MND in deciding to approve the Proposed Project.
7. PG&E has fulfilled all CEQA requirements.
8. The Final MND reflects the Commission's independent judgment.

9. Based on the mitigation measures included in the Final MND, the Proposed Project will not have a significant impact upon the environment.

10. The Proposed Project includes no-cost and low-cost measures (within the meaning of D.93-11-013, and D.06-01-042) to reduce possible exposure to EMF.

Conclusions of Law

1. The Commission is the Lead Agency for compliance with the provisions of CEQA.

2. A Draft IS/MND analyzing the environmental impacts of the Proposed Project was processed in compliance with the requirements of CEQA.

3. A Final MND on the Proposed Project was processed and completed in compliance with the requirements of CEQA.

4. The Draft IS/MND, the Final MND (which includes the MMRP) and the Addendum are consistent with CEQA and should be adopted in their entirety.

5. PG&E should obtain all necessary permits, easement rights or other legal authority for the project site prior to commencing construction.

6. PG&E's Application for a PTC should be approved, subject to the mitigation measures set forth in the Final MND.

7. PG&E's FMP provided in Appendix F of its application should be adopted.

8. This order should be effective immediately so that construction of the Proposed Project can begin.

9. A.10-12-003 should be closed.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company is granted a Permit to Construct the Shepherd Substation Project.
2. The Final Mitigated Negative Declaration (which incorporates the Draft Initial Study/Mitigated Negative Declaration and the March 2013 Addendum) is adopted pursuant to the requirements of the California Environmental Quality Act, Public Resources Code §§ 21000 *et seq.*
3. The Mitigation Monitoring and Reporting Program, included as part of the Final Mitigated Negative Declaration, is adopted.
4. Pacific Gas and Electric Company shall comply with the mitigation measures set forth in the Mitigation Monitoring and Reporting Program of the Final Mitigated Negative Declaration.
5. Pacific Gas and Electric Company shall comply with the low cost and no cost measures in its Field Management Plan provided in Appendix F of its Application.
6. Pacific Gas and Electric Company shall have in place, prior to commencing construction, all of the necessary permits, easements rights, or other legal authority, to the Shepherd Substation Project sites.
7. Energy Division may approve requests by Pacific Gas & Electric Company (PG&E) for minor project refinements that may be necessary due to final engineering of the Shepherd Substation Project so long as such minor project refinements are located within the geographic boundary of the study area of the Final Mitigated Negative Declaration and do not, without mitigation, result in a new significant impact or a substantial increase in the severity of a previously

identified significant impact based on the criteria used in the environmental document; conflict with any mitigation measure or applicable law or policy; or trigger an additional permit requirement. PG&E shall seek any other project refinements by a petition to modify this decision.

8. Application 10-12-003 is closed.

This order is effective today.

Dated _____, at San Francisco, California.