

PROPOSED DECISION

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Ratesetting
1/16/2014 Item 8

Decision PROPOSED DECISION OF ALJ KIM (Mailed 12/13/2013)

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 Cressey-Gallo 115 kV Power Line Project Pursuant to General Order 131-D (U39E).

Application 11-11-020
(Filed November 30, 2011)

DECISION GRANTING PACIFIC GAS AND ELECTRIC COMPANY A PERMIT TO CONSTRUCT THE CRESSEY-GALLO 115 KV POWER LINE PROJECT PURSUANT TO GENERAL ORDER 131-D

1. Summary

This decision grants Pacific Gas and Electric Company a permit to construct the Cressey-Gallo 115 kilovolt power line, commonly referred to as Cressey-Gallo Project. This proceeding is closed.

2. Proposed Project

By Application (A.) 11-11-020 (Application), Pacific Gas and Electric Company (PG&E) seeks a permit to construct (PTC) the Cressey-Gallo 115 kilovolt (kV) Power Line Project, a new, approximately 14.4-mile-long, single-circuit power line needed to improve transmission system reliability for customers in north-central Merced County, California (Project).

The Project consists of constructing a new 115 kV power line between Cressey and Gallo substations to form a power line loop with two other area substations, Livingston and Atwater. The new transmission loop will allow

power to flow from another direction when there is an outage on a line feeding the loop, avoiding customer service interruptions from single-line outages in this area. As proposed, the Project includes:

- Constructing a new, approximately 14.4-mile, single-circuit 115 kV power line interconnecting Cressey Substation and Gallo Substation.
- Upgrading the bus configurations at Cressey Substation and replacing the existing radial power line transition into the substation within the existing substation property.
- Expanding Gallo Substation to add switchgear and upgrade the bus configurations.

The Project is located in the San Joaquin Valley in Merced County near the City of Livingston, California. The Project route is oriented primarily east-to-west between Cressey Substation and Gallo Substation, intersecting with State Route 99 south of the City of Livingston. The Project will connect Cressey Substation (located at the southeast corner of West Lane and Meadow Drive, approximately 2 miles east of the community of Cressey) to an expanded Gallo Substation (located on the property of the Gallo Winery facility at 18000 River Road, approximately 4 miles west of the City of Livingston).

3. Procedural Background

PG&E filed the Application, on November 30, 2011. In addition to the Application, PG&E filed the Proponent's Environmental Assessment, in compliance with the Commission's Rules of Practice and Procedure 2.4, and General Order (GO) 131-D. On December 4, 2011, PG&E filed a Compliance Filing including a declaration of advertising, posting, and mailing to affected governmental bodies and property owners giving notice of the application, including newspaper publication, as required by GO 131-D, Section XI(A) Protests were filed by two property owners.

Two protests have been filed with the Commission's Docket Office. PG&E has filed replies, dated January 19, 2012 and February 28, 2012, to those two protests. The protests raised issues relating to environmental review of the Proposed Project, primarily noting potential visual and aesthetic impacts and electric and magnetic field (EMF) concerns as well as decline in property value.

The Commission held a prehearing conference (PHC) on June 27, 2012 to discuss the scope and procedural schedule for this case and to take appearances in order to develop a service list. During the PHC, parties represented that talks were underway to address issues raised in the protests, which largely appeared to relate to California Environmental Quality Act (CEQA) concerns, through the Commission's Energy Division's environmental review process. The Commission's Energy Division representative indicated its environmental review process would take several months, and possibly more. Parties were also provided the explanation of the interplay between this formal proceeding and the environmental review being conducted by the Commission's Energy Division and that if the interest in this proceeding relates to the preferred route of PG&E's proposed project, development of alternatives to the proposed project, or other aspects of the environmental review of this project, then the parties should participate in the environmental review process, as opposed to the formal proceeding.

Meanwhile, with the PG&E's Proponent's Environmental Assessment which provided a starting point for environmental review, the Commission's Environmental Division conducted its independent environmental review of the Cressey-Gallo Project in compliance with the CEQA.

On July 2, 2012, the Assigned Administrative Law Judge (ALJ) issued an order directing PG&E to file a status update on the progress made in the environmental review process.

On September 5, 2012, PG&E filed the status conference statement indicating the environmental process was still underway, but that PG&E was not aware of any issues raised by parties or other participants that will not be addressed during the environmental review. There are no disputed issues of fact that require evidentiary hearings outside of the environmental review process.

On February 27, 2013, the Commission's Energy Division released a Notice of Intent to Adopt a Mitigated Negative Declaration for the Cressey-Gallo 115 kV Power Line Project showing that the Proposed Project, as mitigated, would not have any significant effects on the environment. The Draft Mitigated Negative Declaration and Supporting Initial Study (Draft IS/MND).

The Draft IS/MND underwent a public review period from February 27, 2013, through March 29, 2013.

On June 7, 2013, the Commission's Energy Division released a Final Mitigated Negative Declaration¹ and Supporting Initial Study for the Cressey-Gallo 115 kV Power Line Project (Final IS/MND), showing that the Proposed Project, as mitigated, would not have any significant effects on the environment. The Final IS/MND details the Proposed Project, evaluates and describes its potential environmental impacts, identifies those impacts that could be significant, and presents mitigation measures to avoid or minimize these impacts.

¹ The Final MND is hereby identified as reference Exhibit A and received into the record of this proceeding.

4. Scope of Issues

Pursuant to GO 131-D, in order to issue a permit to construct (PTC), the Commission must first find that the Proposed Project complies with the CEQA.² As discussed below, our determination that the Proposed Project complies with the various CEQA requirements outlined below is one of the main issues in this proceeding.

Because the Commission is the lead agency under CEQA, CEQA requires the Commission 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 a project alternative. If the initial study shows that there is no substantial evidence that the proposed project may have a significant effect on the environment, or if the initial study identifies potentially significant effects and the project proponent makes or agrees to revisions to the project plan that will reduce all project-related environmental impacts to less than significant levels, then the lead agency shall prepare a proposed negative declaration or mitigated negative declaration subject to public notice and the opportunity for the public review and comment. (CEQA Guidelines §§ 15070-15073.)

CEQA also requires that, prior to approving the project or a project alternative, the lead agency consider the proposed negative declaration or mitigated negative declaration along with any comments received during the public review process, and that the lead agency adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record that there is no substantial evidence that the project will have a

² Public Resources Code Section 21000, *et seq.*

significant effect on the environment and that the proposed negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis. (CEQA Guidelines § 15074(a)-(b).)

If the lead agency adopts a mitigated negative declaration, CEQA requires that it also adopt a program for monitoring or reporting on the changes or conditions required to mitigate or avoid significant environmental effects. (CEQA Guidelines § 15074(d).)

Under CEQA, a lead agency may change or substitute a mitigation measure without recirculating the mitigated negative declaration when the agency concludes as a result of the public review process that a proposed mitigation measure is infeasible or otherwise undesirable, and finds that the revised mitigation measure is equivalent or more effective in mitigating environmental impacts than the original measure. (Pub. Res. Code § 21080(f); CEQA Guidelines §§ 15073.5(c)(1), 15074.1.) "Equivalent or more effective" means that the changed or substituted measure avoids or reduces the impact "to at least the same degree" as the original measure and will not itself create any new adverse impacts. (CEQA Guidelines § 15074.1.) There must be a public hearing regarding the change, but if the lead agency is already holding a hearing on the project and mitigated negative declaration, it is sufficient if the change in mitigation is made or discussed at the agency's hearing on the project. (CEQA Guidelines § 15074.1.)

In addition to our determination of CEQA compliance, and pursuant to GO 131-D and Decision (D.) 06-01-042, the scope of this proceeding also includes review of whether the Proposed Project has been designed in a manner consistent with our EMF policy. In short, the Commission will not certify a project unless

its design is in compliance with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures.

5. Environmental Impacts and CEQA Compliance

As part of the environmental review, the Commission's Energy Division received three comment letters during the public review period, and one comment letter was received after the close of the public review period. Because the protests filed in this proceeding raised issues that were primarily within the confines of CEQA environmental review, those parties were also redirected by the ALJ, during the PHC, to participate in the Commission's Energy Division's public environmental review process for the Proposed Project. Both PG&E's and the Commission's Energy Division representatives were also directed, during the PHC, to contact and communicate with the individuals who submitted the protests in this proceeding to raise issues that were primarily within the confines of CEQA environmental review and to ensure those issues are addressed in the environmental review process.

Prior to issuance of the Final IS/MND, the Draft IS/MND was circulated for a 30-day public review period beginning February 27, 2013, and ending on March 29, 2013. Three comment letters were received during the public review period from the following entities: (1) California Department of Fish and Wildlife (CDFW); (2) Jeff Dickey, an individual; and (3) PG&E, the project applicant. PG&E also submitted a comment letter after the close of the public comment period. The above-referenced comments and the Commission's Energy Division's responses to these comments are included in the Final IS/MND, along with revisions that merely clarify, amplify or make insignificant modifications to the Final IS/MND.

The Final IS/MND, which Energy Division issued on June 7, 2013, is hereby marked as Exhibit 1 and admitted into the evidentiary record. The Final IS/MND is a result of the above public review process and it found that, with the incorporation of mitigation measures identified in the Mitigation Monitoring Plan included therein, all project-related environmental impacts would be reduced to less than significant levels.

Specifically, as a result of the public review process, the Commission's Energy Division has also concluded that mitigation measures MM B-5, MM B-7 and MM B-8, as identified in the Draft IS/MND, are infeasible or otherwise undesirable. Therefore, the Commission's Energy Division has deleted those mitigation measures and substituted for them other measures MM B-5 that would protect valley elderberry longhorn beetle, MM B-7, that would avoid impacts on nesting birds, and MM B-8, that would avoid impacts to roosting western red bat, which the Commission's Energy Division has determined are equivalent or more effective. We agree with those determinations and attendant changes.

The Final IS/MND makes appropriate revisions in response to the comments but does not identify any new significant environmental impacts, and does not omit any existing mitigation measures, from those identified in the Draft IS/MND except for three revised mitigation measures which the Commission's Energy Division determined are equivalent or more effective in mitigating or avoiding potential significant effects and do not themselves cause any potentially significant effects on the environment.

Based on the foregoing, the Commission finds this Application complies with GO 131-D. Based on the record in this proceeding, we find there is no substantial evidence that the Proposed Project will have a significant effect on the

environment. There is substantial evidence that, with the incorporation of mitigation measures identified in the Mitigation Monitoring Plan included therein, all project-related environmental impacts can be reduced to less than significant levels. The changed or substituted mitigation measures, as revised, are equivalent or more effective in mitigating environmental impacts than the original measures. The Final IS/MND has been prepared and completed in compliance with CEQA.

In preparing the Final IS/MND, the Commission's Energy Division has thoroughly analyzed the environmental consequences of the Proposed Project as reflected in the Final IS/MND. The Commission has reviewed and considered the Final IS/MND and approve and adopt its content, including the Mitigation Monitoring Plan.

6. EMF

The Commission has examined EMF impacts in several previous proceedings.³ 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 an interim 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 four percent of the total budgeted project cost that results in an EMF reduction of at least 15 percent (as measured at the edge of the utility right-of-way).

Here, in accordance with Section X(A) of GO 131-D, D.06-01-042 (EMF Decision), and PG&E's EMF Design Guidelines prepared in accordance with the EMF Decision, PG&E's plan to incorporate "no cost" and "low cost" magnetic field reduction steps in the project design.

The Commission's EMF Decision and PG&E's EMF Design Guidelines require PG&E to prepare an EMF Field Management Plan (FMP) that indicates the no-cost and low-cost EMF measures that will be installed as part of the final engineering design for the project. The FMP evaluates the no-cost and low-cost measures considered for the project, the measures adopted, and reasons that certain measures were not adopted. To reduce the magnetic field strength levels from the electric power facilities, PG&E proposes to raise the height of eighty poles in the rural residential land use areas by ten feet taller than otherwise required. There are no other feasible low-cost field reduction measures that can be implemented on this project.

The Commission has reviewed PG&E's Application, which also describes the measures taken as part of the Proposed Project to reduce the EMF exposure

³ See D.06-01-042 and D.93-11-013.

and finds the Proposed Project is designed in compliance with the Commission's policies governing the mitigation of EMF effects using low-cost and no-cost measures.

7. Categorization and Need for Hearings

In Resolution ALJ 176-3286 dated December 15, 2011, the Commission preliminary categorized this application as Ratesetting, and preliminary determined that hearings were necessary. Because no protests were filed that required resolution in the hearing, and all issues were resolved through the CEQA process, the hearing determination is changed to state that no evidentiary hearings are necessary.

8. Comments on Proposed Decision

The proposed decision of ALJ Kim 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 Comments were filed.

9. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Kimberly H. Kim is the assigned ALJ in this proceeding.

Findings of Fact

1. With the implementation of the mitigation measures identified in the Mitigation Monitoring Plan set forth in the Final IS/MND and attached to this order, all environmental impacts of the project would be reduced to less than significant levels.

2. Revisions made to the Draft MND merely clarify, amplify or make insignificant modifications, as reflected in Final IS/MND, and therefore do not require recirculation under CEQA Guidelines § 15073.5(c)(4).

3. As revised, mitigation measure MM B-5 is equivalent or more effective pursuant to CEQA Guidelines § 15074.1(d), because the revised measure avoids methods of identifying and marking buffer zones to protect valley elderberry longhorn beetle habitat which may harm cattle, but also requires highly visible means to identify the buffer zones.

4. As revised, mitigation measure MM B-7 is equivalent or more effective pursuant to CEQA Guidelines § 15074.1(d), because the revised measure provides additional clarity and detail regarding survey methods, monitoring, and nesting bird exclusion methods. The revised measure also expands required survey areas and no disturbance buffers for Swainson's hawk and white tailed kite, requires coordination with CDFW to determine whether raptor nests are active or may be removed, and expands the time frame for nesting season.

5. As revised, mitigation measure MM B-8, is equivalent or more effective pursuant to CEQA Guidelines § 15074.1(d), because the revised measure clarifies how surveys will be conducted and when presence of active roosts should be assumed, eliminates incremental tree trimming as a potential method to passively evict bats from tree roosts, and requires coordination with CDFW to develop passive eviction methods.

6. 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; there are no feasible low-cost measures (within the meaning of D.93-11-013, and D.06-01-042) to reduce possible exposure to EMF.

7. The Final IS/MND was prepared and completed in compliance with CEQA.

8. The Commission has reviewed and considered the information contained in the Final IS/MND.

9. The Final IS/MND reflects the Commission's independent judgment and analysis.

Conclusions of Law

1. PG&E should be granted a PTC the Cressey-Gallo 115 kW power line, commonly referred to as Cressey-Gallo Project in conformance with the Mitigation Monitoring Plan attached to this order.

2. Hearings are not necessary.

3. This proceeding should be closed.

4. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company is granted a Permit to Construct the Cressey-Gallo 115 kilovolt power line, commonly referred to as Cressey-Gallo Project in conformance with the Mitigation Monitoring Plan attached to this order.

2. The Mitigation Monitoring Plan, included as part of the final Initial Study/Mitigated Negative Declaration, is adopted.

3. Energy Division may approve requests by Pacific Gas and Electric Company (PG&E) for minor project refinements that may be necessary due to final engineering of the Cressey-Gallo 115 kilovolt Power Line Project so long as such minor project refinements are located within the geographic boundary of the study area of the Environmental Impact Report 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.

4. The hearing determination is changed to no hearings are necessary.
5. Application 11-11-020 is closed.

This order is effective today.

Dated _____, at San Francisco, California.