Decision **PROPOSED DECISION OF ALJ THOMAS** **(Mailed 2/13/2007)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFICORP (U 901 E), an Oregon Company, for Permit to Construct the Line 75 115kV Conversion Project Pursuant to General Order 131-D.	Application 05-12-011 (Filed December 13, 2005)

(*See* Appendix 2 for a list of Appearances.)

INTERIM OPINION REQUIRING ENVIRONMENTAL IMPACT REPORT

I. Summary

This decision requires that an Environmental Impact Report (EIR) be prepared to evaluate the various routes being recommended for the southern portion of a proposed 115 kilovolt (kV) electric transmission line between the cities of Yreka and Weed in Northern California. The Final Mitigated Negative Declaration (FMND) we certified in Decision (D.) 06-10-047, while good as far as it went, did not evaluate routes that differ from that proposed by PacifiCorp, the applicant here.

The October 2006 hearings and post-hearing briefs revealed serious concerns with the route PacifiCorp proposes. That route would establish a new transmission corridor essentially in the backyards of homeowners whose properties surround a scenic, spring-filled valley in the shadow of Mt. Shasta. Those homeowners ask the Commission to consider an alternative route that follows the route PacifiCorp's transmission lines already follow.

It has never been entirely clear why PacifiCorp prefers a new route through scenic open pastures to a route along an existing transmission corridor, especially given vehement homeowner opposition to establishing a new corridor through their property. The length and cost differences between the routes are minimal; indeed, the entire area of dispute is little more than a mile long. Had PacifiCorp chosen a route without the controversy presented here, we would not be in the situation in which we now find ourselves.

The key concern PacifiCorp raises is that one of the alternative routes the homeowners propose would require a 100-foot rather than a 50-foot right-of-way along the existing transmission corridor. However, there is at least one alternative transmission configuration along the existing right-of-way that would not require widening the right-of-way. Without a full evaluation of the routing alternatives, we would do the community of Weed – and the natural areas surrounding it – a disservice. We need an EIR to fully understand the options available.

PacifiCorp claims a it needs a decision now, asserting it faces curtailments in the Weed area if it does not have an immediate decision so that it can complete construction by June 2007. However, much of the alleged need to rush is entirely due to PacifiCorp's own conduct. It did not file this application until the end of 2005, despite the fact that it claims outages on the lines at issue since at least 2003. It signed a firm transmission contract with a large transmission customer long before it had sought to or received permission from this Commission to upgrade the lines. It is that contract that is creating the line overloading; the local load on the line is just a third of its capacity.

Further, perhaps because this is the first application for a transmission line PacifiCorp has pursued in California, it has been slow in providing the kind of

information necessary for environmental analysis of the route options, as detailed in the hearing record.[1]

Finally, the Commission has already taken extraordinary steps, under very expedited circumstances, to accommodate PacifiCorp's desire to upgrade its lines. In October 2006, immediately upon completion of a Final Mitigated Negative Declaration, we authorized PacifiCorp to construct the 17 of 18.6 miles of the line not in dispute. We understand that despite this extraordinary step and PacifiCorp's professed need for haste, PacifiCorp has constructed only 1/3 to 1/2 of the approved line, and is experiencing problems acquiring right-of-way even on the undisputed portion.[2] Given the protestant homeowners' unwillingness to voluntarily grant PacifiCorp rights-of-way in the disputed area, we seriously question whether PacifiCorp can complete the line by June 2007, the date it asserts the upgrade must be finished.

In view of all of the foregoing circumstances, we cannot allow the final 1.6 miles of the line to be built without environmental analysis of alternative routes. It may have been better to prepare an EIR last fall, instead of a Mitigated Negative Declaration. Had we done that, of course, PacifiCorp would not have had the opportunity to build the lion's share of the line – 17 of 18.6 miles – until the EIR was complete. Instead, we chose to allow PacifiCorp the maximum building time available subject to a very important condition: that nothing we did in approving the first 17 miles would predetermine the outcome of the

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[1] *See* Hearing Exhibit 314 (Letter from Energy Division's Ken Lewis to PacifiCorp detailing delays).

[2] In comments to the proposed decision, PacifiCorp states it has constructed about 90% of the approved line.

disputed portion now before us. We therefore order preparation of an EIR analyzing available alternative routes at the earliest possible time.

II. Background

We allowed PacifiCorp to construct most of the transmission line at issue in D.06-10-047. That decision left open for hearings and further evidentiary submissions a short piece of the route at the southern end, which D.06-10-047 termed the "First Project/Southern Portion" (Southern Portion). In D.06-10-047, we defined this segment of the route as follows:

> The Southern Portion is all of the First Project south of pole 15/44, including any proposed construction between pole 8/45 and the Weed Junction substation, between pole 10/47 and the Weed Junction substation, or south of pole 19/45.[3] All of this construction is in dispute and subject to hearings. Therefore, PacifiCorp may not commence this construction, or pre-construction work, until we render a decision on the Southern Portion.

[3] All pole references are contained in Proponent's Environmental Assessment (PEA) Maps, page 7 of 7 (Appendix A to D.06-10-047).

Several homeowners (collectively, Homeowners) along the Southern Portion filed protests.[4] The City of Weed also filed a protest,[5] but later withdrew it.[6]

The Homeowners protest aspects of the Southern Portion because it would create a new transmission corridor across pastureland adjacent to or on their properties. They propose an alternate route for the relatively short stretch of transmission line that PacifiCorp proposes on or near their property on several grounds, with a principal focus on environmental impact.

Each of the issues raised by the Homeowners was the subject of an October 5-6, 2006 evidentiary hearing and post-hearing briefing in November 2006. In addition, two of the Homeowners, Don and Judy Mackintosh (Mackintoshes) filed a motion asking the ALJ to keep the hearing record open for the submission of additional evidence regarding hydrological conditions in the pasture where PacifiCorp proposes its line.[7] PacifiCorp opposed the motion in part.[8] We discuss the motion below.

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[4] *Don and Judy Mackintoshes' Protest to PacifiCorp Application to Construct a New Transmission Line,* filed Dec. 30, 2005; *Chris and Shelly Pappas' Protest to PacifiCorp Application to Construct a New Transmission Line,* filed Jan. 12, 2006; and *Leonard and Barbara Luiz's Protest to PacifiCorp Application to Construct a New Transmission Line,* filed January 17, 2006.

[5] *City of Weed's Protest to PacifiCorp Application to Construct a New Transmission Line*, filed Jan. 24, 2006.

[6] [City of Weed's] *Withdrawal of Protest*, filed June 14, 2006.

[7] *Revised Motion to Leave Record Open Upon Conclusion of Hearing,* filed October 5, 2006.

[8] *Response of PacifiCorp to Revised Motion to Leave Record Open Upon Conclusion of Hearing,* filed October 29, 2006.

III. Routes at Issue

There are five possible routes at issue, as described in detail below. The EIR should add evaluations of the routes other than Option 3.

A. Option 3 – Already Evaluated in FMND

PacifiCorp prefers the Option 3 route alternative, illustrated in Appendix 2 to this decision. The FMND certified in D.06-10-047 evaluated Option 3 in full; to the extent possible that analysis should be incorporated into the EIR. As shown in Appendix 2, Option 3 begins at pole 15/44,[9] which is located north of the home of protestants Len and Barbara Luiz (Luiz's), and heads south to pole 8/45. At pole 8/45, the new, most hotly disputed portion of the line begins on a corridor not currently used for transmission or other utility lines. There, the line as proposed under Option 3 would turn east, cross a pasture south of the Luiz's home and east of the Mackintoshes' proposed home, and continue to pole 15/48. At pole 15/48, the new line across the Homeowners' property would rejoin the existing line, and head northeast to the Weed Junction Substation.

B. Option 1 – Homeowners' Preferred Route

The Homeowners prefer the Option 1 route alternative, also illustrated in Appendix 2 to this decision. Option 1 would avoid the Homeowners' property and follow existing transmission corridors. While the FMND contains a "constraints analysis" comparing Option 3 to Option 1, it does not evaluate Option 1 in any detail because it concludes that "in [Commission consultant] ESA's professional judgment, the construction of the project along Option 3 is slightly less constrained by hydrology and water quality concerns compared to

[9] The pole numbers in this decision (and Appendices) come from the project maps PacifiCorp submitted with its PEA in December 2005.

Option 1."[10] The EIR should contain an analysis of Option 1 that is as detailed as the FMND's evaluation of Option 3.

As illustrated in Appendix 2 to this decision, Option 1 heads south at pole 15/44 and, instead of turning right across the Homeowners' land at pole 8/45, would continue along the existing transmission corridor to pole 19/45. At that point, located just north of the junction of Highway 97 and the existing route, the line would turn east, and follow Highway 97 in an east-northeasterly direction to pole 15/48, where it would proceed to Weed Junction Substation. By following the existing transmission corridor, Option 1 would avoid the Homeowners' property altogether.

Under Option 1, PacifiCorp would not remove the existing 69 kV line and upgrade it to a 115 kV line. Rather, it would place the new 115 kV line alongside (on the north side of) the existing 69 kV line from pole 19/45 to the Weed Junction Substation. This change would require PacifiCorp to expand the existing 50-foot right-of-way to 100 feet for approximately 1.6 miles to accommodate a new 115 kV transmission line.[11]

C. Option 5 – Same Route as Option 1 Narrower Right-of-Way

Another alternative, known as Option 5, follows the same route as Option 1, but uses a different physical configuration. The Mackintoshes support this route, which would upgrade the existing 69 kV line along Highway 97 to 115 kV, rather than building a new 115 kV line alongside the existing 69 kV line and expanding the right-of-way.

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[10] FMND, page A-7.

[11] *See Testimony of Thomas N. Tjoelker,* Hearing Exhibit 1 (Tjoelker Testimony), p. 6.

Option 5 would also require PacifiCorp's Weed Substation to allow for power to flow to and from Weed Junction Substation. (Weed Substation is located south of the Homeowners' property and south of the intersection of Highway 97 and the new 115 kV line; Weed Junction Substation is located east of the Homeowners' property. PacifiCorp would need to either install a new 115/69/12 kV transformer or a 115/69 kV transformer, which would connect to the existing 69/12 kV transformer already in operation at Weed Substation. Additionally, 115 kV switchgear would need to be installed.

D. Option 4

Option 4 would involve installing new double circuit structures to combine the new 115 kV line with the existing 69 kV line between the Weed Substation and the Weed Junction Substation. It would result in a widened right-of-way with larger structures parallel to Highway 97 for approximately 1 mile. While Option 4 would require a widening of the existing right-of-way, it would be considerably less than the doubling of the existing right-of-way width required under Option 1. The reason for this is that the existing 69 kV line would be removed after the 69 kV conductor was placed on the new poles under the new 115kV conductor. The new poles would, however, be approximately 20 feet taller than the existing 69 kV poles. Visual simulations completed as part of the MND indicate that the increased visual impact of the taller poles is insignificant. Furthermore, Option 4 has the benefit of not requiring transformer upgrades or lengthy outages, since the 69 kV line would be transferred to the new 115 kV poles hot.

E. Option 4 – ALJ3

This option was proposed in ALJ Data Request 3. It is a variation of Option 4, but instead of constructing the new double circuit line alongside the

existing 69 kV line, the 69 kV line would be demolished first and the new line built in its place. As with Option 5, PacifiCorp would need to either install a new 115/69/12 kV transformer or a 115/69 kV transformer, which would connect to the existing 69/12 kV transformer already in operation at Weed Substation. Additionally, 115 kV switchgear would need to be installed

IV. Legal Authority for Preparation of EIR

Nothing in our approval of the Northern Portion of the line (and concurrent certification of the FMND) was intended to foreclose more extensive environmental analysis of the various routes proposed for the Southern Portion. We made this extremely clear in D.06-10-047:

> We do not believe that certifying the Mitigated Negative Declaration is improper under the narrow circumstances presented here. We are only approving the Northern Portion of the route, north of the area in dispute among the parties. The MND does not analyze that Northern Portion separately from the rest of the proposed route, so it is essential to certify the MND to allow construction to begin on that portion. However, we are aware that hearings on the disputed portions of the route occurred October 5-6, 2006, and that the Commission will be issuing a subsequent decision on that portion. *That decision may necessitate additional analysis of environmental impact along the portions of the route not addressed here.*[12]

Our order was equally clear: "Nothing in this decision, the Mitigated Negative Declaration, or prior rulings in this proceeding should be construed as

[12] D.06-10-047, *mimeo.,* pp. 11-12 (emphasis added).

approval for PacifiCorp to construct the First Project/Southern Portion, as described in this decision."[13] PacifiCorp did not appeal this determination.

In briefs filed after the October hearings, the Mackintoshes urged the Commission to require preparation of an EIR that fully evaluated the various route options. They asserted that an EIR is required if there is a "fair argument" that a project may result in significant environmental impact:

> When faced with a challenge to the lead agency's adoption of the negative declaration without preparation of an EIR, the courts have repeatedly held that "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318 and cases cited therein; *see also Quail Botanical Gardens Foundation, Inv. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602. California Environmental Quality Act (CEQA) requires the preparation of an EIR if there is any evidence that a project *may* result in a significant environmental impact. Pub. Resources Code, § 21151(a). "Conversely, an agency may adopt a negative declaration only if there is *no* substantial evidence that the project may have a significant effect on the environment." *Gentry v. City of Murietta* (1995) 36 Cal.App.4th 1359, 1399. Indeed, the CEQA Guidelines provide that a mitigated negative declaration is appropriate only where project revisions or mitigation measure would avoid or minimize the effects to such a degree that "clearly no significant effect on the environment would occur," and "there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." CEQA Guidelines § 15369.5.
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> A court reviews an agency's determination under the "fair argument" test, which mandates that the agency must prepare

[13] *Id.*, ordering para. 13.

> an EIR whenever substantial evidence in the record supports a fair argument that the proposed project may result in significant environmental impacts. *Id*. at 1399-1400; Pub. Resources Code § 21080(c)(1); CEQA Guidelines § 15070(a). "If there is substantial evidence of a significant environmental impact, evidence to the contrary does not dispense with the need for an EIR when it still can be 'fairly argued' that the project may have a significant impact." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1996) 42 Cal.App.4th 608, 617.[14] Under the "fair argument" test, the court must resolve doubts in favor of environmental review, and the agency must prepare a site-specific EIR if a "fair argument" can be made, based on substantial evidence in the record, that the project might result in a potentially significant environmental impact. *Sierra Club, supra,* 6 Cal.App.4th at 1318-1319. (Footnote omitted.) Nor can an agency "hide behind its own failure to gather relevant data." *Gentry*, *supra*, 36 Cal.App.4th at 1378-1379.[15]

We have the authority to order an EIR at this time given the explicit reservation of our right to do so in D.06-10-047. All parties were fully aware that hearings were required on the disputed Southern Portion and that those hearings might lead the Commission to conclude an EIR was necessary.

However, even if we had not included such explicit reservations in D.06-10-047 of our right to order an EIR, the CEQA guidelines make clear that an EIR may be ordered after adoption of an FMND under changed circumstances.

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[14] "A significant effect on the environment is defined as substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." *Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 152; Pub. Resources Code § 21068; CEQA Guidelines § 15382.

[15] *Opening Brief of Donald M. and Judy Mackintosh (Mackintosh Brief),* filed November 7, 2006, at 27-29.

CEQA Guideline 15162, "Subsequent EIRs and Negative Declarations," provides that a subsequent EIR after certification is proper where (among other reasons):

> (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:
>
> (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
>
> (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

The entire hearing record came into evidence after the Draft Mitigated Negative Declaration (DMND) was prepared. While there was some overlap among the comments furnished in the CEQA process and the evidence adduced at hearing, the two processes operated on parallel tracks. Thus, the environmental consultants did not have the hearing record before them in preparing the FMND, and the Commission did not consider that record in certifying that document. Thus, we are clearly within the CEQA Guideline for preparation of a subsequent environmental document.

Further, an EIR is simply the best option in this case, given the stark division among the parties about which route is best, and the lack of full CEQA analysis of options other than Option 3 in the current FMND. We want to have the option of choosing among various routes, and therefore believe the most prudent course at this point is to order preparation of an EIR. The Commission has the discretion under General Order (GO) 131-D to expand the scope of review in order to fulfill its requirements under the Public Utilities Code to protect the public interest. (*See* D.04-12-020, *mimeo.*, p. 2, n.2.) The parties submitted post-hearing briefs summarizing the evidence after the Mitigated

Negative Declaration was certified. The hearings and briefs have led the Commission to believe that an analysis of additional routes is necessary in order to make an informed decision on the project. However, in order to allow the Commission the option to approve either Option 3 or one of these additional routes, a CEQA review of the other routes is necessary. (*See* CEQA Guidelines §§ 15126.6., 15092.) We do not intend for every GO 131-D application to require an EIR, or for every case where different routes are possible to require one, but here we must have the benefit of analysis of alternate routes.

V. PacifiCorp's Need for Haste is a Circumstance of its Own Creation

PacifiCorp claims it must complete the entire line – including the disputed portion – by June 2007 to avoid blackouts. However, at hearing, it was shown that PacifiCorp's local load in the Weed area is far below the transmission capacity on the line at issue. It is PacifiCorp's firm transmission contract – entered into before PacifiCorp had adequate capacity to serve the customer – that has created the risk of reliability problems.

PacifiCorp claims it cannot curtail its customer's firm transmission service without being charged with discrimination. This is incorrect. The Energy Policy Act of 2005 gives priority to native load (local distribution customers) over firm transmission customers in the event curtailments are required on a transmission line: "Congress in section 1233 of EP Act 2005 [Energy Policy Act of 2005] added section 217 to the FPA [Federal Power Act], entitled 'Native Load Service Obligation,' which addresses transmission rights held by load-serving entities. It allows load-serving entities to use their own and contracted-for transmission capacity to the extent required to meet their service obligations, without being

subject to charges of unlawful discrimination."[16] Further, "Order No. 888 [cited by PacifiCorp in its post hearing brief] granted a rollover right to existing firm service customers, but allowed transmission providers to restrict that rollover right if the capacity was reasonably forecasted to be needed to serve native load customers, as long as that restriction was specified in the customer's service contract." (*Id.*, ¶ 62.)[17]

We do not intend by this discussion to adjudicate the rights of PacifiCorp and its customer under the firm transmission contract. By the same token, PacifiCorp's claim that the line must be upgraded by June 2007 is based entirely on its alleged inability to get out from under its obligations to its firm transmission customer, despite its ability to do so in past years. Without the firm transmission obligation, PacifiCorp can easily supply its local load. We are unwilling to foreclose full environmental review under these circumstances.

As we explain in this decision's summary, other delays attributable to PacifiCorp – and our considerable attempts despite those delays to accommodate PacifiCorp's schedule – further persuade us that haste is imprudent. We gave PacifiCorp the right to construct most of the line at the earliest possible moment, with the understanding that the contentious 1.6 miles of the route required more extensive review. We have now considered the evidence at hearing, and are convinced that we must have a range of options before us given the considerable problems the Homeowners raised at hearing about Option 3.

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[16] Federal Energy Regulatory Commission (FERC) Docket Nos. RM05-25-000 & RM05-17-000, *Preventing Undue Discrimination and Preference in Transmission Service*, 71 Federal Register 32636, 32647, ¶ 63.

[17] *See also* cases cited in the *Reply Brief on Behalf of Donald M. and Judy Mackintosh*, filed November 16, 2006, at 8-9.

VI. Mackintosh Request to Hold Record Open After Hearings

During the October 2006 hearing on this case, the Mackintoshes filed a motion asking the ALJ to hold the record open for submission of additional data regarding the hydrology of their property.[18] The data would include data from borings and soil samples taken at the Mackintoshes' property to verify water table levels, 2) expert testimony interpreting the results from the borings and soil samples, 3) existing well logs for the Mackintoshes' property and adjacent properties, and 4) well logs and other relevant documents obtained by Mr. Richard Renouf, a witness at hearing, that were previously not accessible. The Mackintoshes claimed there was good cause to receive the new evidence.

In a response to the Mackintoshes' motion filed on October 20, 2006, PacifiCorp asked that ESA, the Commission's consultant, take borings at three agreed-upon pole locations on the Mackintosh property. PacifiCorp stated that the Mackintoshes had agreed to this plan. In light of this agreement, PacifiCorp asserted, there was no requirement to hold the record open for other material offered by the Mackintoshes. PacifiCorp stated that "gathering and submitting well logs and boring and soil reports from points that are relatively remote from the actual pole locations, as proposed by the [Mackintoshes'] Motion, will not aid in resolving the Protestants' concerns."[19] PacifiCorp expressed concern that this data would unnecessarily require additional expert testimony from both sides: "This [submission of the Mackintosh data] would undoubtedly force both the Protestants and PacifiCorp into unnecessarily having to engage experts to

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[18] *Revised Motion to Leave Record Open Upon Conclusion of Hearing*, filed October 5, 2006.

analyze the information and, potentially, incur the time and expense of further evidentiary hearings in the event of disagreement over their experts' opinions."[20]

In later electronic mail communications with the ALJ regarding the motion, the Mackintoshes stated they no longer wished to submit their property to borings, but did wish to submit well log information. Their counsel stated on November 21, 2006 that,

> You should have been copied on an email in which I provided notice, as Mr. Clark points out, that the Mackintoshes are no longer willing to endanger their springs by allowing ESA to conduct test borings and do not wish to do so themselves, either. They are, however, continuing to gather well log data from neighboring properties that would be affected by the Option 3 route. They believe that that data is relevant to the proceeding and have not withdrawn their motion regarding the record as it relates to that data.

The Mackintoshes have not yet submitted the data. They may file and serve such data within 7 calendar days of the effective date of this decision. They shall indicate in the first paragraph in a cover pleading accompanying the data that this decision allows such submission. Once the Commission receives the data, the ALJ will instruct the parties as to whether further briefing or other response is appropriate. No extensions of time will be allowed, given that the Mackintoshes have had since October 2006 to proffer the new data.

VII. 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 Rule 14.2(a) of the

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[19] *Response of PacifiCorp to Revised Motion to Leave Record Open Upon Conclusion of Hearing,* filed October 20, 2006, at 3.

[20] *Id.* at 3-4.

Commission's Rules of Practice and Procedure. PacifiCorp and the Homeowners filed comments and replies. We make no substantive changes to the proposed decision but make minor changes to improve the discussion and to correct minor errors.

VIII. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Sarah R. Thomas is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The routing for the remaining portion of PacifiCorp's transmission line is hotly disputed.

2. D.06-10-047 made no determination of the proper routing of the Southern Portion of the project, and left open the possibility of further environmental review.

3. The evidentiary hearings on the Southern Portion occurred after the DMND was prepared, and the FMND does not consider the hearing record.

4. PacifiCorp has adequate capacity in the Weed area to serve its local load. Its contract with the firm transmission customer is causing overloading.

5. PacifiCorp has had overloading on the relevant lines since 2003 but did not file its application until 2005.

6. PacifiCorp is having and will have problems securing rights-of-way for the line in question.

7. Several potential routes have been presented.

8. PacifiCorp has been slow in providing certain data to the Commission and its environmental consultants.

9. One alternative route does not require widening the right-of-way along the existing transmission corridor.

10. The FMND evaluated only Option 3 in full.

11. The Commission gave PacifiCorp permission in October 2006 to construct the Northern Portion of the project in response to PacifiCorp's request for an early decision.

12. Evaluation of other routes is necessary so the Commission may consider the full range of options in this proceeding.

Conclusions of Law

1. While CEQA does not require preparation of an EIR in all cases where alternative routes have been proposed, it is within the Commission's discretion to order preparation of an EIR where the only route evaluated in the FMND is disputed.

2. The Commission may order preparation of an EIR after it certifies a FMND if it reserves the right to do so in its certifying decision.

3. A lead agency under CEQA may prepare an EIR after certifying an FMND if new information of substantial importance is available after certification.

4. This decision should not serve as precedent for requiring an EIR in all GO 131-D cases.

5. The Energy Policy Act of 2005 allows load-serving entities to use their own and contracted-for transmission capacity to the extent required to meet their service obligations, without being subject to charges of unlawful discrimination.

6. FERC Order No. 888 granted a rollover right to existing firm service customers, but allowed transmission providers to restrict that rollover right if the capacity was reasonably forecasted to be needed to serve native load customers, as long as that restriction was specified in the customer’s service contract.

O R D E R

IT IS ORDERED that:

1. The Commission shall, through its consultant, Environmental Science Associates, prepare an Environmental Impact Report (EIR) assessing the environmental impacts of all the route options discussed in this decision and any other that the California Environmental Quality Act process may find to be a part of a reasonable range of alternatives.

2. The preparation of the EIR shall occur as soon as possible.

3. The motion filed by Don and Judy Mackintosh (Mackintoshes) to leave the record open after hearing is granted for a period of seven calendar days from the date of this decision. If the Mackintoshes choose to submit new data, they shall file and serve it as instructed herein. In addition, they shall indicate the first paragraph in a cover pleading accompanying the data that this decision allows such submission. Once the Commission receives the data, the assigned Administrative Law Judge will by ruling instruct the parties as to whether further briefing or other response is appropriate. No extensions of time will be allowed, given that the Mackintoshes have had since October 2006 to proffer the new data.

4. PacifiCorp and its contractors will work in cooperation with the Commission and its consultant, ESA, to provide all information necessary to prepare an EIR. PacifiCorp will respond to all Data Requests within a 14-day period. If PacifiCorp determines that it cannot fully respond within the 14-day period this time period can be extended after consultation with the Commission and ESA.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX 2
(Service List)

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(END OF APPENDIX 2)

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