

Decision _____

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.)

OPINION GRANTING APPLICATION

I. Summary

This decision approves the application of PacifiCorp for a permit to construct the approximately 1.6 mile Southern Portion of a 115 kilovolt (kV) electric transmission line, as described and conditioned below, near the town of Weed in Northern California. In Decision (D.) 06-10-047, we approved the Northern Portion of the line, which was not controversial and presented no routing options or challenges, without evidentiary hearings.

The Southern Portion of the line was hotly disputed. Therefore, we held evidentiary hearings in October and received briefs on that portion in November 2006. We have considered the parties' positions, and find that the route proposed by PacifiCorp (known as Option 3), while not ideal, presents sufficiently few environmental challenges to allow us to approve that routing as presented. However, we impose conditions intended to address the local homeowners' concerns about damage to their property, over which the line will travel.

A Final Mitigated Negative Declaration (FMND) regarding the project, which we certified in D.06-10-047,¹ finds that each of the identified environmental impacts presented by PacifiCorp's Option 3 can be mitigated to avoid the impact or reduce it to a less than significant level. While several homeowners in the area dispute this conclusion of the FMND, we find no reason to change our determination. Thus, we approve PacifiCorp's application, subject to the FMND's environmental mitigation requirements and the conditions set forth below.

II. Background

We allowed PacifiCorp to construct most of the transmission line at issue in D.06-10-047. That decision reserved 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 19/45.² 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.

¹ We added an addendum to the FMND in D.07-01-034, but it had no effect on the Southern Portion.

² 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 (Homeowners) along the Southern Portion filed protests.³ The City of Weed also filed a protest,⁴ but later withdrew it.⁵

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 evidentiary hearing and post-hearing briefing in October and November 2006. In addition, two of the Homeowners, Don and Judy Mackintosh (Mackintoshes) moved to keep the hearing record open for the submission of additional evidence regarding hydrological conditions in the pasture where PacifiCorp proposes its line.⁶ PacifiCorp opposed the motion in part.⁷ We discuss the motion below.

III. Routes At Issue

There are five possible routes at issue, as described in detail below.

³ *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.

⁴ *City of Weed's Protest to PacifiCorp Application to Construct a New Transmission Line*, filed January 24, 2006.

⁵ [City of Weed's] *Withdrawal of Protest*, filed June 14, 2006.

⁶ *Revised Motion to Leave Record Open Upon Conclusion of Hearing*, filed October 5, 2006.

⁷ *Response of PacifiCorp to Revised Motion to Leave Record Open Upon Conclusion of Hearing*, filed October 29, 2006.

A. Option 3-Already Evaluated In FMND

PacifiCorp prefers the Option 3 route alternative, illustrated in Appendix 1 to this decision. The FMND certified in D.06-10-047 evaluated Option 3 in full. As shown in Appendix 1, Option 3 begins at pole 15/44, 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 1 to this decision to Option 3. 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 Option 1."⁸

As illustrated in Appendix 1 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

⁸ FMND, page A-7.

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.⁹

C. Option 5-Same Route as Option 1, With 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.

Option 5 would also require modifications to 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

⁹ See *Testimony of Thomas N. Tjoelker*, Hearing Exhibit 1 (Tjoelker Testimony), page 6.

would connect to the existing 69/12 kV transformer already in operation at Weed Substation. Additionally, 115 kV switchgear would need to be installed.¹⁰

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 115 kV 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 12kV transformer or a 115/69 kV transformer, which would connect to

¹⁰ Reply to Pacific Power's Response to "Mackintosh Option 5," filed August 17, 2006, at 4.

the existing 69/12 kV transformer already in operation at Weed substation. Additionally, 115 kV switchgear would need to be installed.

IV. The FMND Is Appropriate for this Case

A. The FMND Has Been Certified in D.06-10-047

In D.06-10-047, the Commission authorized PacifiCorp to construct the power lines and associated substation modifications known as the First Project/Northern Portion, subject to PacifiCorp's written agreement to abide by the mitigation measures in the FMND and Mitigation Monitoring, Reporting and Compliance Program (MMRCP), which was a part of the FMND.

Ordinarily, the Commission would approve a project of this size in a single decision. However, PacifiCorp requested that the Commission accelerate the decision on the Northern Portion so PacifiCorp might commence construction there before the winter 2006 - 2007 rains begin.¹¹

In D.06-10-047, the Commission adopted the FMND which applies to the entire project (both the Northern and Southern Portion). The project includes upgrading of more than 90% (18.5 miles out of 20.1 miles) of existing transmission line (the Northern Portion). The Commission left open in D.06-10-047 the question of whether to authorize PacifiCorp to construct 1.6 miles of new transmission line (the Southern Portion) and this question is the subject of this decision.

¹¹ In its August 10, 2006 Motion, PacifiCorp explained that it needed to complete the First Project in its entirety by June 1, 2007 in order to prevent potential system overloads. It stated that it must begin construction in October 2006 in order to ensure completion of the First Project before next year's heavy load season. (D.06-10-047, slip at p. 6.)

In adopting the FMND for the entire project, the Commission noted that PacifiCorp had filed a PEA, which detailed the construction methods and possible environmental impacts of the project. The PEA concluded that all potentially significant impacts of the project could be avoided or mitigated to less than significant level. (D.06-10-047, slip at p. 7.)

The Commission independently reviewed the potential environmental impacts of the project pursuant to California Environmental Quality act (CEQA). On September 1, 2006, it released a Draft Mitigated Negative Declaration (DMND) regarding the project for public review and comment. The DMND identified the potential effects on the environment from the construction and operation of the project in order to evaluate the environmental significance of these effects. The DMND found that there might be temporary and permanent environmental impacts in the following areas, but concluded that all such impacts would be mitigated so that the impact on the environment could be less than significant: Aesthetics; Agricultural Resources; Air Quality; Biological Resources; Cultural Resources; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use, Plans and Policies; Noise; Public Services; Transportation and Traffic; and Utilities and Services. The DMND found no impact or less than significant impact in the following areas: Geology, Soils, and Seismicity; Mineral Resources; Population and Housing; and Recreation. (*Id.* at pp. 8-9.)

After release of the DMND, the Commission took comments for a period of 30 days. Five parties submitted timely written comments and eight gave verbal comments at a public meeting on September 20, 2006. None of the comments altered the conclusion in the DMND that all potentially significant

environmental impacts could be mitigated to a less than significant level with appropriate mitigation measures. (*Id.* at p. 10.)

On October 17, 2006, the Commission issued its FMND, containing responses to all comments received on the DMND. Also, a MMRCP was prepared to ensure that the mitigation measures are properly implemented. The MMRCP describes specific actions required to implement each mitigation measure, including information on the timing of implementation and monitoring requirements. (*Id.*)

D.06-10-047 found that, consistent with CEQA's requirements, the "Initial Study, the DNMD and FMND together provide a detailed and competent informational document and reflect the independent judgment and analysis of the Commission. Accordingly, we adopt the FMND including the MMRCP prepared for this project." (*Id.*)

B. While An Environmental Impact Report (EIR) Might Provide The Commission With More Options, It Is Not Legally Required in This Proceeding

As stated above, the Commission has certified the FMND in this proceeding. While D.06-10-047 did not foreclose an additional look at environmental issues in considering the approval of the Southern portion, there is no requirement that we prepare an EIR. The test in this case is not whether a superior project could have been conceived but whether applicant's proposal can be built without significant impacts on the environment, or whether those impacts can be reduced to a less than significant level. In D.06-10-047, we found that Option 3 met that test and therefore certified the FMND. Nothing presented at hearing alters the conclusion of the FMND.

Finally, the issue remains concerning the impacts of delay in this project. California has gone through a series of energy crises, including a crisis a few

years ago in which service interruptions occurred in large parts of this state. To prepare an EIR that is not legally required and reject a FMND that is legally adequate would jeopardize the ability to have this project constructed in a timely fashion to prevent possible summer curtailments to PacifiCorp's customers.

The Homeowners believe that FMND is inappropriate and the Commission should have conducted an EIR. We have reviewed the Homeowners' arguments which are summarized below. This review does not cause us to change our determination regarding certification of the FMND.

C. The FMND Adequately Addresses The Homeowners' Environmental Concerns

1. The FMND's conclusion that there are no unmitigable impacts to aesthetic and visual resources is well supported

The new power line along Option 3 will be visible to certain residents along the route and to individuals traveling along portions of Hoy Road. However, the FNMD finds that any impacts of the project on aesthetic and visual resources can be mitigated to a less than significant level.

Completing Option 3 will require 16 new poles to be installed. The FMND requires that new poles be located, to the extent feasible, in positions that minimize their visibility, and in certain cases, that shrubs, trees, or other plantings be installed to further minimize visual impacts. (FMND at 2-12 and 2-13.) The FMND relies on before and after visual simulations of views along Hoy Road and from private residences to confirm that the new poles and conductors' visual effects on views from Hoy Road are less than significant. The Homeowners extensively criticize the validity of the simulations.

However, we are not convinced that the methods used to create the visual simulations were faulty or inaccurate. The FMND states that its visual analysis

applies professionally accepted methods including documentation of the visual setting and the use of accurate computer generated visual simulations to portray project-related visual change. As stated in the FMND, “the MND photos and visual simulations are reasonable and accurate. For purposes of CEQA visual impact assessment, the visual simulations provide technically sound and reasonable support for the conclusions presented in the MND.” (See FMND at 2-55.)

The Homeowners believe that Hoy Road should be considered a “scenic vista” as defined by the DMND at 2.1-13 as “an open and expansive public view encompassing valued landscape features including ridgelines and mountains.”¹² However, as the FMND notes at 2-55, Hoy Road “is not distinguished by a scenic route designation,” and the Homeowners’ evidence does not convince us that this determination is in error.

The DMND finds that the visual effects of Option 3 would be visible to travelers driving along a limited segment of Hoy Road and, under typical driving speeds, the affected view would be brief in duration. (See 2.1-43.) The DMND then includes two mitigation measures to reduce the visual effects to less than significant levels. These two measures include setting certain poles back from the edge of the roadway or locating them to take advantage of screening provided by existing vegetation, and planting trees and shrubs to help in screening the views. (See DMND at 2.1-43; FMND at 2-12-2.14.) Walkers along

¹² The Homeowners note that Hoy Road is included as part of one of several recommended tours of the area on a map entitled “Highways & Byways of Siskiyou County” which is sponsored by the Mount Shasta Visitors Bureau. According to the Homeowners, Hoy Road is used by bicyclists, motorcyclists, car clubs and other tourists, and is sometimes used as a site from which to photograph Mt. Shasta.

Hoy Road in the vicinity of the new line would see it for a longer duration. However, as stated above, the FMND finds that simulations of views along Hoy Road demonstrate that the new poles and conductors will have very little visibility. The DMND also provides that non-specular (non-glaring) conductor to be used to reduce the glare effects and visual contrast between the transmission line and its landscape setting. (*See* DMND at 2.1-45.)

The Homeowners also argue that the Option 3 may significantly affect views from their private residences. The DMND states that examination of views from the Mackintoshes new residence shows that intervening vegetation would generally screen views of the new 1.6 mile line from the new hillside residence. (DMND at 2.1-43.) Moreover, PacifiCorp states it can configure the new poles with Core 10 steel, which will turn brown so it has a wooden appearance, to be similar in appearance to the existing pole. (*See* PacifiCorp's Reply Brief at p. 18.) The DMND also provides for the same mitigation measures described above to be used to mitigate the visual effects on the private residences.

Finally, the Homeowners argue that the mitigation measures described above are vague and unenforceable. However, the mitigation measures are clarified in the FMND at 2-12 to 2-14. As stated in the DMND at 5-6, the Commission "has the authority to halt any construction, operation, or maintenance activity associated with the project if the activity is determined to be a deviation from the approved project or adopted mitigation measures." Additionally, the Commission has statutory authority to enforce its orders against a public utility. (*See, e.g.,* Pub. Util. Code § 2017.) Therefore, nothing argued by the Homeowners causes us to reevaluate our certification of the FMND on the basis of aesthetic and visual resources.

2. The FMND's conclusion that there are no unmitigable impacts to hydrological resources is well supported

The Homeowners argue that the FMND ignores substantial evidence that the construction of Option 3 has the potential to adversely affect groundwater under the Mackintoshes' and other landowners' property in the project area. The Macintoshes state that construction of the line would require siting of transmission poles that would need to be installed 10 to 25 feet into the ground, citing the FMND, Mackintosh Comment Letter on DMND, Attachment 1 at 3. The Mackintoshes state that, according to their expert Renouf, installation at this depth has the potential to damage the water supply relied upon by local property owners. The Homeowners believe that this evidence requires the Commission to prepare an EIR rather than to certify the MND.

The Homeowners state that Renouf, a licensed contractor who has drilled many wells in Siskiyou County, testified that drilling holes, as proposed in the project, puts the water table at risk. Renouf concluded that the static level on the area's aquifers, including aquifers below the Option 3, are similar to an ancient lake bed. According to Renouf, the springs are all producing flowing water caused from an impervious layer which is the bottom of the lake. If the lake bottom were to be punctured, Renouf posits that production of one or more of the springs possibly would be diminished or lost altogether. Renouf cites a similar problem that occurred over 80 years ago near the present-day city of Mt. Shasta.

PacifiCorp contends that Renouf is unqualified to opine on the potential impacts of drilling holes in the pastureland along Option 3, because he lacks expertise with respect to general geologic morphology of the area or the specific geology along the Option 3 route. PacifiCorp further argues that Renouf is unfamiliar with published studies, data and other reference materials relating to

likely geologic structures along the route and the Commission therefore should not find Renouf credible. PacifiCorp also argues that no facts support Renouf's opinion that drilling holes along Option 3 could reduce or stop production of one or more springs. According to PacifiCorp, Renouf's opinion is based on speculation that the geographic structure supporting the water table in the area is the same as that of a lake near the City of Mt. Shasta that dried up about 80 years ago after an attempt to clean the lake bottom caused the lake to disappear into the ground.

The FMND responds at length to the Homeowners' arguments on this issue, and modified its discussion in response thereto. (See FMND at 2-58 to D.32.)

"Springs in the vicinity of the new 1.6 mile segment [Option 3] appear to have formed along a contact between the gigantic debris avalanche deposit (described earlier) mapped by Crandell (1989) and younger, overlying lava flows and moraine deposits depicted by Wagner and Saucedo (1987). The permeability of lava flows tends to vary considerably depending on the somewhat random distribution of joints and contacts; this may explain, in part, the seemingly random distribution and varying magnitude of the various spring discharges along a given formation or contact. As Mack (1060) points out, so far as is known, water-table (*i.e.*, an unconfined, free water surface) conditions exist throughout most of the valley. Given the density of springs throughout the valley and field observations made regarding the local topography and geology, the springs and seeps in the vicinity of the new 1.6 mile segment are likely maintained by a free water surface, an artesian condition, or some combination of both.

"Most of the proposed pole locations for the new 1.6 mile segment are downslope of observed springs or seeps; the three poles (immediately east of Hoy Road) upslope of observed springs or seeps are well above the elevation of the springs (*i.e.*, more than 10 feet) and/or are not in relatively close proximity to the springs. Under artesian conditions, the water would originate at an elevation

no higher than the existing water table and the conduit carrying this water would manifest (on the surface) in the immediate vicinity of the spring. According to maps and well logs (Mack, 1960; Crandell, 1989; Wagner and Saucedo, 1989), the general depth to the volcanic bedrock and the static water table (*i.e.* approximately 100 feet below ground surface) extends well beyond 10 feet along the new 1.6 segment right-of-way. Thus, any aquifer supporting artesian conditions in the vicinity of the new 1.6 mile right-of-way would be well below the proposed 10 foot depth required for pole installation. Further, assuming a relatively vertical conduit to the surface, the upslope poles, due to their higher elevation and/or distance from existing springs, would not substantially interfere with groundwater movement. Under free water surface conditions, it is highly unlikely that the implementation of the Proposed Project (specifically, digging 10 feet deep holes for the placement of new poles) could affect the flow of groundwater that is maintaining the springs, as this process operates on a relatively large scale and is not confined by an upper layer that could be affected by pole installations. (FMND at 2-59, emphasis added.)

Renouf based his opinion on poles dug to a depth of between 10 and 25 feet. (Mackintosh Opening Brief at p. 41.) The FMND finds that the impact on hydrology of Option 3 is less than significant based upon poles dug to a depth of 10 feet deep. Thus, nothing argued by the Homeowners causes us to reevaluate our certification of the FMND on the basis of hydrological resources.

However, we make explicit what may seem to be an implicit condition of the FMND: based on applicant's project description our approval of Option 3 is conditioned on construction of the pole depths and associated guy stubs on the Southern Portion of project not in excess of 10 feet. (See also discussion of the Homeowners' Motion in Section X below.)

3. The FMND's conclusion that there are no unmitigable impacts to biological resources is well supported

The Homeowners argue that Option 3 will cross wetlands, meadows, and springs, and the use of heavy machinery and road construction in building Option 3 has the potential to damage wetlands as well as plant and animal species.

The Homeowners state that their properties support many different types of birds, wildlife, waterfowl and aquatic species. The Homeowners also argue that a thorough study to evaluate the presence of sandhill cranes or nests should be conducted because of the evidence that the cranes could nest in the Option 3 project area.

However, the DMND determines that Option 3 is not suitable for sandhill crane nesting:

“However, on closer examination, the value of the meadow decreases somewhat. The sandhill crane nest sites are limited to the wetlands set within open grasslands where the cranes can more easily see predators, which is not the case here. And while the eastern half of the route is generally drier and the soils thus suitable for small mammal burrows, most of the meadow is perennially too wet to support a large population of raptor prey species, even though raptors are frequently observed soaring there.” (DMND at Appendix A, A-2.)

The FMND also states that there are no records of cranes nesting in the meadow being crossed by Option 3, nor are they likely to nest there. “Crane nests are found in venues such as the Modoc Plateau and the Shasta Valley, described by Mayer and Laudenslayer as ‘remote portions of extensive wetlands or sometimes in shortgrass prairies.’” (FMND at 2-62.)

The DMND and FMND also contain mitigation measures that require PacifiCorp to implement the proposed project during non-nesting season if

possible, and if not, to stop work pending pre-construction nest surveys by a qualified biologist for greater sandhill cranes and Swainson's hawk. This mitigation measure also states that no construction activities shall occur within 0.5 miles of active nests from February 15 and July 15. (*See* FMND at 2 27.)

The Homeowners argue that, although the DMND acknowledges the presence of bald eagles and discuss their nest area, the DMND is legally inadequate because it does not identify the location of these nests and therefore inadequately evaluates the impacts of the project on bald eagles. However, the DMND states that the Option 3 area does "not contain any potential nesting, roosting, or foraging habitat for the bald eagle, and no eagle nests or roosts would be directly affected" by Option 3.

The Homeowners argue that the DMND and FMND do not adequately address potential damage to wetland habitat. However, wetland protection is addressed in both these documents, which find that the mitigation measures will reduce potential impacts to a less than significant level. The mitigation measures require PacifiCorp to site its poles and project construction to avoid wetland areas when feasible. When infeasible, PacifiCorp is still required to alter specific locations of the poles and access roads at the final design stage to avoid wetland impact. Prior to any unavoidable disturbance of wetlands, PacifiCorp is required to obtain a permit from the United States Army Corps of Engineers and/or the California Department of Fish and Game, which permits require a series of compensatory actions, such as fully restoring hydrology, and replanting or improving wetland habitat in the vicinity. (*See* DMND at 2.4-26 and FMND at 2-14 to 2-15.) Therefore, nothing argued by the Homeowners causes us to reevaluate our certification of the FMND on the basis of biological resources.

4. The FMND's conclusion that there are no unmitigable impacts to farmland is well supported

The Homeowners argue that activities needed to install Poles 9 and 11 are likely to produce erosion on the Luiz property. However, the FMND, in response to these concerns, notes that the characterization of the type of soil on the property in question is not susceptible to severe erosion. (FMND at 2-75.) Nothing argued by the Homeowners causes us to reevaluate our certification of the FMND on the basis of farmland resources.

5. The DMND's analysis concerning land use plans or policy is well supported

The DMND explains that the Commission has sole and exclusive jurisdiction over the siting and design of the proposed project. Although this project would be exempt from local land use and zoning regulations and permitting, General Order (GO) 131-D, Section III.C requires "the utility to communicate with, and obtain the input of, local authorities regarding land-use matters and obtain any non-discretionary local permits." The DMND therefore provided its land use plan and policy discussion for informational purposes. (DMND at 2.9-21.)

The Homeowners argue that Option 3 conflicts with the Siskiyou County General Plan (Plan) because it sites transmission poles in sensitive natural resource areas, which, according to the Plan, should not be done in the absence of compelling or contravening considerations. We do not believe the DMND or FMND, with the directed mitigation measures, are inconsistent with this provision, especially given that construction should conclude by summer 2007.

The Homeowners also argue that the Plan states that whenever possible, increased demand for transmission should be accommodated with existing facilities or their upgrade or reconstruction, followed by new construction along

existing transmission or utility corridors. PacifiCorp proposes only 1.6 miles of new transmission line. The FMND notes that PacifiCorp's total project includes modification or upgrade of four existing substations (with no new substations) and upgrading more than 90% (18.5 miles out of 20.1 miles) of existing transmission. Thus, priority was given to upgrading existing facilities and the FMND concludes that the project will not conflict with the Plan in this respect. Therefore, nothing argued by the Homeowners causes us to reevaluate our certification of the FMND on the basis of land use plans or policy.

6. The FMND's constraints analysis

The Administrative Law Judge (ALJ) ordered a constraints analysis to compare the environmental constraints from construction and operation of Option 3 with Option 1. As stated above, this analysis, considering biological, visual, hydrological, and cultural resources, found that the environmental constraints identified in Option 1 are slightly greater than the potential constraints for Option 3. (DMND, Appendix A-11.) The Homeowners argue that the constraints analysis is flawed because it fails to provide a good faith evaluation of the options by understating the environmental impacts of Option 3, overstating the environmental impacts of Option 1, and ignoring ALJ Option 4.

The constraints analysis is not a required by CEQA to support a Mitigated Negative Declaration. When an Initial Study determines that a Mitigated Negative Declaration is the appropriate level of CEQA documentation, the Mitigated Negative Declaration is not required to consider project alternatives and need only consider the project as proposed. (FMND at 2-57.) The FMND states that the level of analysis in the constraints analysis is neither purported to be a CEQA-level of detail for a complete assessment of alternatives, nor is it required to be such.

Given that the constraints analysis is not required under CEQA, and given the limitations of the analysis, the Homeowners' criticisms do not convince us to reach a different outcome. Under CEQA and GO 131-D, we are not required to make further findings regarding this analysis.

V. PacifiCorp Has Adequately Demonstrated That The Project is Needed

The Homeowners argue that PacifiCorp has failed to demonstrate that the Southern Portion of the project is needed by the summer 2007. The Homeowners argue that the planned operation of Roseburg Forest Product's new wood-fired 10 megawatt (MW) generator will prevent overloading on Line 14 for at least five years. The Homeowners also maintain that PacifiCorp can also serve all local area retail load by curtailing service to PacifiCorp's firm transmission customer. Finally, the Homeowners believe that if the Commission determines that the Southern Portion of the project is needed before the summer 2007, that it should not approve Option 3 but should approve one of the other options because they all achieve the project goals with fewer environmental impacts and greater consistency with community values.

PacifiCorp argues that Roseburg Forest Products cannot be brought on line until the project which is the subject of this application is completed. Further, according to PacifiCorp, if this generator is operating at full capacity, it would still not reduce overloading on Line 14 under summer peak conditions, and the problem may worsen if retail load continues to grow, as PacifiCorp projects. PacifiCorp also argues that it does not have the legal authority to curtail power to only one customer on a discriminatory basis, and therefore, completion of the project before the summer 2007 is necessary to ensure that PacifiCorp can reliably serve its customers.

The parties make much of the technical aspects of whether Roseburg Forest Products can connect to PacifiCorp's system without the transmission project we are considering. We need not address those issues because we agree with PacifiCorp that it would be imprudent for the utility to rely solely on Roseburg's generation to avoid curtailments during the summer peak period because the generator is not yet on line, and PacifiCorp will not have any control over the dispatching of the generator and no contractual rights to its output.

One principal reason that PacifiCorp needs this transmission line is that one of its customers decided in 2004 to renew the firm service contract. Even though without this customer, its existing line would not be overloaded, PacifiCorp states that under federal law, it had no choice but to renew the contract. (*See e.g.*, Federal Energy Regulatory Commission (FERC) Order 888.) The Homeowners argue that PacifiCorp could curtail this large customer during peak periods or obtain extension of a voluntary curtailment agreement to resolve the problem.

PacifiCorp has stated that FERC Order 888 requires curtailment on a nondiscriminatory basis. According to PacifiCorp, this Order would also subject distribution load in the Weed and Mt. Shasta areas to curtailments.

In the past, when the existing Line 14 was subject to overloading, PacifiCorp responded in relevant part by negotiating emergency reductions in firm transmission service from its large transmission customer. PacifiCorp demonstrated that this transmission customer does not intend to enter into a similar arrangement for the summer 2007. We do not believe that involuntary curtailments are a long-term solution to avoiding the construction of new transmission lines in this case. Therefore, we find PacifiCorp needs to complete this project for the summer 2007.

VI. There Is No Evidence That PacifiCorp Cannot Complete Option 3 By Summer 2007

In its briefs, the Homeowners argue against the Commission approving Option 3 because they believe the need for PacifiCorp to use eminent domain to obtain new rights-of-way will delay PacifiCorp's acquisition of these easements. The Homeowners insist that they will not voluntarily negotiate to sell rights-of-way over their property to PacifiCorp, and that the utility will be unable to acquire these easements without a lengthy court proceeding.

There is no evidence in the record that PacifiCorp cannot obtain these easements to complete the project by the summer 2007. Once an eminent domain action is filed, the utility may seek an initial order of possession of the property, and, if necessary, thereafter have a trial on the fair market value. Moreover, PacifiCorp also has to obtain easements to pursue Option 1, and there is a potential for eminent domain actions along that option as well. Whether or not the eminent domain matter may delay construction is conjecture at this point, and we should not consider this fact in acting on PacifiCorp's application.

VII. Electric and Magnetic Field Reduction Measures

Pursuant to Section X.A of GO 131-D, an application for a permit to construct must include a description of the measures that the utility has taken or proposes to take to reduce the potential exposure to electric and magnetic fields (EMF) generated by the proposed facility. These measures must be in compliance with prior Commission orders. In D.93-11-013, the Commission concluded that when constructing new projects, a utility should implement, at a minimum, all no-cost steps it can to reduce any resulting changes to EMF exposure.

PacifiCorp provided EMF information in Exhibits E and F to its application (EMF California Design Guidelines and Preliminary EMF Management Plan, as

well as the utility's April 5, 2006 supplement regarding EMF calculations or graph of EMF intensity vs. distance from the project; see also DMND, Section 1.10.)

VIII. Conditions Imposed

As stated above, we condition our approval of Option 3 on the depths of the poles on the Southern Portion of the First Project and associated guy stubs not exceeding 10 feet.

Additionally, several residents in the Weed area testified at hearing to maintenance problems along PacifiCorp's existing transmission lines. The Commission's Energy Division is investigating these concerns, and Commission GO 95 requires utility line owners to maintain their property at certain levels. As a condition of this decision, we will require PacifiCorp to serve the service list of this proceeding with any inquiries it receives or has received from the Energy Division regarding maintenance of its lines in the Weed area, and any responses it furnishes or has furnished. Further, once the Energy Division concludes its investigation of the concerns expressed at hearing, PacifiCorp shall file and serve on the service list for this proceeding a compliance Advice Letter explaining any action it will take in response to the complaints or as a result of the investigation.

Finally, we note that the MMRCPP contains extensive safeguards designed to protect the environment during and after construction of the project. PacifiCorp must meet all such safeguards, and the Commission retains authority to stop work in the event of violations. A mitigation monitor must be on the scene during any construction with the potential to create a significant environmental impact or other impact for which mitigation is required. The mitigation monitor is responsible for ensuring that all procedures specified in the

monitoring program are followed. (MMRCP at 5-7.) Thus, there will be careful scrutiny of the construction process.

IX. Other Arguments

The Mackintoshes claim that Option 3 violates the California Legislature's preference for new transmission lines to be located within existing right-of-way. To reduce financial hardships and avoid adverse environmental impacts, the Legislature has declared that it is in the best interests of the state to accomplish the following in priority order:

1. Encourage the use of existing rights-of-way by upgrading existing transmission facilities where technically and economically justifiable.
2. When construction of new transmission lines is required, encourage expansion of existing right-of-way, when technically and economically feasible.
3. Provide for the creation of new rights-of-way when justified by environmental, technical, or economic reasons as determined by the appropriate licensing agency. Stats. 1988, ch. 1457.

However, the new rights-of-way created by Option 3 are justified by environmental reasons, as set forth in the FMND. Moreover, while it might be preferable to route the line differently, it is not unlawful to route a line along a new transmission corridor. Thus, we find that the preferences set forth above do not prohibit siting the line along Option 3.

The Mackintoshes also claim Option 3 conflicts with community values because a large number of community members expressed opposition to Option 3 in a petition entered in evidence, and a small number expressed opposition at hearing. PacifiCorp challenges certain factual assertions in the petition, which may have misled community members, and notes that neither the

City of Weed nor the County of Siskiyou oppose the application (although Weed at one time filed a protest and later withdrew it).

While the Commission is required to consider community values as part of an application for a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001, this is not a CPCN case. Rather, PacifiCorp seeks authority under GO 131-D, which contains no community values prerequisite. While we are not prepared to address whether and the extent to which a GO 131-D case ever may consider community values, we are not persuaded that the petition adequately presented all sides of the controversy. While Option 3 is opposed by many area residents, we have not heard from residents along Option 1, who may have their own concerns. On balance, therefore, we do not find that community values can overcome the determinations in the FMND about the lack of unmitigable environmental impact from Option 3.

X. Other Matters

During the October 2006 evidentiary hearing, the Mackintoshes filed a motion asking the ALJ to hold the record open for submission of additional data regarding the hydrology of their property. The data would include data from borings and soil samples taken at the Mackintoshes' property to verify water table levels, expert testimony interpreting the results from the borings and soil samples, existing well logs for the Mackintosh and adjacent properties, and well logs and other documents obtained by Renouf that were previously not accessible.

In response, PacifiCorp asked that ESA, the Commission 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 need to hold the record open for other material offered by the Mackintoshes.

In later email 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. The Mackintoshes have not yet submitted the data.

While we appreciate the concerns voiced with respect to the potential hydrological impacts of Option 3, we will not continue to hold this record open to receive information that could have been provided or ascertained prior to now. However, one item that may be of potential concern is that the Macintoshes' comments to the DMND include a data request response from the applicant that indicates that for a least one specific pole location, depths greater than 10 feet were considered for alternative means of construction. (Comment Letter D, attached Data Request 2.6 at 3.). Thus, it appears that pole placement considered by PacifiCorp potentially would lead to an impact not anticipated in the FMND, which only considered pole depth of up to 10 feet.

Therefore, as stated above, in order to allow this necessary project to go forward, we will make explicit what might seem an implicit condition for construction of Option 3; that is, unless applicant wishes to delay this matter to consider the hydrological impacts from deeper pole placement, construction of the poles along the Southern Portion of the project shall be undertaken to ensure that the pole depth and associated guy stubs will not exceed 10 feet. With this added condition, the Mackintoshes' October 5, 2006 motion is denied.

All other outstanding motions are denied.

XI. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Sarah R. Thomas is the assigned ALJ in this application.

XII. Comments on Alternate Proposed Decision

The Proposed Decision of ALJ Thomas and the Alternate Proposed Decision of assigned Commissioner Peevey were simultaneously mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure.

Comments and reply comments to the alternate proposed decision of Commissioner Peevey were received from PacifiCorp and the Homeowners. We make no substantive changes to the alternate proposed decision but make minor changes to improve the discussion and correct minor errors.

Findings of Fact

1. The FMND is appropriate for this case.
2. The Commission certified the FMND in D.06-10-047.
3. The FMND identified no significant environmental effects of Option 3 that could not be avoided or reduced to less than significant levels by mitigation measures or changes to the project that have been accepted by PacifiCorp.
4. The FMND adequately addresses the Homeowners' environmental concerns regarding the Southern Portion of the project.
5. The FMND's conclusions that there are no unmitigable impacts to aesthetic and visual resources, hydrology, biological resources and farmland are well supported.
6. The FMND's analysis concerning land use plans or policy is well supported.

7. The Commission has considered the FMND in determining to approve the Southern Portion of the project.

8. With implementation of the mitigation measures included in the FMND, the project will not have a significant effect on the environment.

9. PacifiCorp has adequately demonstrated that the project is needed.

10. There is no evidence that PacifiCorp cannot complete Option 3 by summer 2007.

11. The EMF measures PacifiCorp presents comport with Commission requirements.

Conclusions of Law

1. The FMND has been processed and completed in compliance with the requirements of CEQA.

2. The project should be approved, subject to the MMRCPP included in the FMND.

3. An EIR is not legally required in this case.

4. The constraints analysis was not required by CEQA, but merely was an aid to the decision makers.

5. Option 3 does not violate Stats. 1988, ch. 1457.

6. Community values as shown in this case do not dictate a rejection of Option 3.

7. All outstanding motions should be denied.

O R D E R

IT IS ORDERED that:

1. PacifiCorp is authorized to construct Option 3 of the Southern Portion of the project, as described in this decision, subject to the conditions set forth below and the mitigation measures to avoid or mitigate the reasonably foreseeable

adverse environmental effects of the project, described in the Final Mitigated Negative Declaration (FMND) for the project which we certified in Decision 06-10-047.

2. As a condition of this decision, based on PacifiCorp's project description, we will require PacifiCorp to construct the poles along the Southern Portion of the project to ensure that the pole depth and associated guy stubs will not exceed 10 feet.

3. As a condition of this decision, we will require PacifiCorp to serve the service list of this proceeding with any inquiries it receives or has received from the Energy Division regarding maintenance of its lines in the Weed area, and any responses it furnishes or has furnished. Further, once the Energy Division concludes its investigation of the concerns expressed at hearing, PacifiCorp shall file and serve on the service list for this proceeding a compliance Advice Letter explaining any action it will take in response to the complaints or as a result of the investigation.

4. The Executive Director shall supervise and oversee construction of the project insofar as it relates to monitoring and enforcement of the mitigation conditions described in the FMND. The Executive Director may delegate his duties to one or more Commission staff members or outside staff. The Executive Director is authorized to employ staff independent of the Commission staff to carry out such functions, including, without limitation, the on-site environmental inspection, environmental monitoring, and environmental mitigation supervision of the construction of the project. Such staff may be individually qualified professional environmental monitors or may be employed by one or more firms or organizations. In monitoring the implementation of the environmental mitigation measures described in the FMND, the

Executive Director shall attribute the acts and omissions of PacifiCorp's employees, contractors, subcontractors, or other agents to PacifiCorp.

5. PacifiCorp shall comply with all orders and directives of the Executive Director concerning implementation of the environmental mitigation measures described in the FMND.

6. The Executive Director shall not authorize PacifiCorp to commence actual construction until PacifiCorp has entered into a cost reimbursement agreement with the Commission for the recovery of the costs of the mitigation monitoring program described in the FMND, including, but not limited to, special studies, outside staff, or Commission staff costs directly attributable to mitigation monitoring. The Executive Director is authorized to enter into an agreement with PacifiCorp that provides for such reimbursement on terms and conditions consistent with this decision in a form satisfactory to the Executive Director. The terms and conditions of such agreement shall be deemed conditions of approval of the application to the same extent as if they were set forth in full in this decision.

7. The Energy Division shall supervise and oversee the construction of the project insofar as it relates to monitoring and enforcement of the mitigation measures described in the FMND. The Energy Division may designate outside staff to perform on-site monitoring tasks. The Commission project manager (Energy Division, Environmental Projects Unit) shall have the authority to issue a Stop Work Order on the entire project, or portions thereof, for the purpose of ensuring compliance with the mitigation measures described in the FMND. Construction may not resume without a Notice to Proceed issued by the Environmental Projects Unit of the Energy Division.

8. PacifiCorp's right to construct the project as set forth in this decision shall be subject to all other necessary state and local permitting processes and approvals.

9. PacifiCorp shall file a written notice with the Commission, served on all parties to this proceeding, of its agreement, executed by an officer of PacifiCorp duly authorized, as evidenced by a resolution of its board of directors duly authenticated by a secretary or assistant secretary of PacifiCorp, to acknowledge PacifiCorp's acceptance of the conditions set forth in this order. Failure to file such notice within 75 days of the effective date of this decision shall result in the lapse of the authority granted by this decision.

10. The Executive Director shall file a Notice of Determination for the project as required by the California Environmental Quality Act and the regulations promulgated pursuant thereto.

11. All conditions imposed by the Commission in Decision 06-10-047 shall also apply to this decision.

12. All outstanding motions are denied.

13. Application 05-12-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX 1

(See Proposed Decision of ALJ Thomas)

APPENDIX 2 (Service List)

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(END OF APPENDIX 2)

[Peevey APPENDIX 1 to A0512011](#)