Decision **PROPOSED DECISION OF ALJ KENNEY** **(Mailed 1/15/2008)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Gas and Electric Company (U39E) for a Certificate of Public Convenience and Necessity for the Russell City Energy Center 230 kV Transmission Line Pursuant to General Order 131-D.	Application 07-11-008 (Filed November 7, 2007)

OPINION GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR A GENERATION TIE LINE

1. Summary

This opinion grants Pacific Gas and Electric Company (PG&E) a certificate of public convenience and necessity (CPCN) to construct and own a 230 kilovolt (kV) transmission line in the City of Hayward. The transmission line will connect a new 600 megawatt (MW) power plant to the electric grid at PG&E's Eastshore Substation. The developer and owner of the power plant is Russell City Energy Center, LLC (RCEC). All costs to construct, operate, and maintain the transmission line will be borne by RCEC.

This proceeding is closed.

2. Procedural Background

In Application (A.) 07-11-008, PG&E requests a CPCN pursuant to Pub. Util. Code §§ 1001 *et seq.*,[1] and General Order (GO) 131-D to construct and own a 230 kV transmission line (Tie-Line) approximately 1.3 miles long that will

[1] All statutory references are to the Public Utilities Code unless otherwise indicated.

connect a new 600 MW gas-fired power plant, known as the RCEC Project, to the transmission grid at PG&E's Eastshore Substation. The RCEC Project is located in the City of Hayward and is expected to come on-line in June 2010. A map of the Tie-Line route is contained in Appendix A of today's opinion.

The Tie-Line is scheduled to be completed by September 2009. The Tie-Line must be finished earlier than the power plant so the power plant can be fully tested prior to operation. Commission approval of the Tie-Line is also needed before financing can be finalized for construction of the RCEC Project, which must begin in early 2008 to be on-line in June 2010.

The Tie-Line facilities will consist of aluminum wire conductor supported by approximately 20 tubular steel poles. The poles will be 85-140 feet tall, approximately 600-900 feet apart, and placed primarily in the transmission right-of-way for PG&E's existing Grant-Eastshore 115 kV power line. The poles placed in the right-of-way will be in line with, and approximately 60 feet west of, the existing towers for the Grant-Eastshore power line.

The estimated cost to build the Tie-Line is $8.644 million, and the estimated cost of ownership is $32,975/month. All costs for the Tie-Line, including construction, operation, and maintenance, will be paid by the owners of the RCEC Project. PG&E states that consistent with Decision (D.) 93-10-039 and D.06-10-048, there is no need to examine the cost effectiveness of the Tie-Line because it will have no financial impact on ratepayers.[2]

PG&E is authorized to buy power from the RCEC Project. Specifically, in D.04-12-048 the Commission determined that PG&E had a need for 2,200 MW of new generation capacity in northern California by 2010. To fulfill this need, the

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[2] D.93-10-039, 51 CPUC 2d 594, 597-598; D.06-10-048, *mimeo*., pp. 4 and 8.

Commission in D.06-11-048 authorized PG&E to procure 2,250 MW of power from seven new power plants, including 600 MW from the RCEC Project.[3]

The California State Energy Resources Conservation and Development Commission (a.k.a. the California Energy Commission or CEC) certified the RCEC Project and Tie-Line in two orders issued on September 11, 2002 and September 26, 2007.[4] The CEC's orders include an environmental analysis of the RCEC Project and Tie-Line. The CEC found that its Conditions of Certification will ensure that the RCEC Project and Tie-Line will not have significant direct, indirect, or cumulative adverse environmental impacts.

PG&E filed A.07-11-008 on November 11, 2007.[5] Notice of A.07-11-008 appeared in the Commission's Daily Calendar on November 14, 2007. In addition, PG&E provided the various notices required by GO 131-D, Section XI.A, including the following:

- Notice of A.07-11-008 provided by direct mail to (i) all owners of property within 300 feet of the right-of-way; (ii) the planning commission and the legislative body for each county or city in which the proposed facility would be located; and (iii) the Federal, State, and local agencies specified in GO 131-D that have jurisdiction over the proposed Tie-Line.
- Notice of A.07-11-008 provided by advertisement in a newspaper of general circulation in the county (Alameda County) in which the proposed facilities will be located.
- Notice of A.07-11-008 provided by posting on-site and off-site where the project will be located.

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[3] D.06-11-048 refers to the RCEC Project as "Calpine Hayward."

[4] CEC Order Nos. 02-0911-02 and 07-0926-04, issued in Docket Nos. 01-AFC-7 and 01-AFC-7C, respectively. PG&E appended the CEC Orders to A.07-11-008.

[5] PG&E filed additional information and documents related to A.07-11-008 on November 26, December 6, December 14, and December 20, 2007.

Californians for Renewable Energy (CARE) filed a protest on December 13, 2007, which urged the Commission to deny A.07-11-008. There were no other protests. PG&E responded to CARE's protest on December 26, 2007. PG&E's response asked the Commission to reject CARE's protest and to grant A.07-11-008. On January 2, 2008, the assigned Commissioner issued a Ruling and Scoping Memo that deemed all of the issues raised in CARE's protest to be outside the scope of this proceeding.

3. Discussion

3.1. Need and Cost

A.07-11-008 is subject to GO 131-D, Section III.A,[6] which states as follows:

> "A. Certificate of Public Convenience and Necessity (CPCN)
>
> No electric public utility shall begin construction in this state of any new…major electric transmission line facilities which are designed for immediate or eventual operation at 200 kV or more…without this Commission having first found that said facilities are necessary to promote the safety, health, comfort and convenience of the public, and that they are required by the public convenience and necessity."

In D.04-12-048 and D.06-11-048, the Commission determined that PG&E has a need for new generation capacity in Northern California and authorized PG&E to procure 600 MW of power from the RCEC Project. The proposed Tie-Line must be constructed in order to deliver the needed power from the RCEC Project to the transmission grid. Therefore, in accordance with GO 131-D, Section III.A, we find that the Tie-Line is (1) necessary to promote the safety, health, comfort, and convenience of the public, and (2) required by the public convenience and necessity.

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[6] GO 131-D implements § 1001 *et seq.* with respect to electric generation, transmission, and distribution facilities. (GO 131-D, Section I.)

PG&E and RCEC have agreed that RCEC will pay all costs for the Tie-Line and that PG&E will construct, own, operate, and maintain the Tie-Line. This arrangement is consistent with the policy of the Federal Energy Regulatory Commission, which requires the costs of connecting new power plants to the grid to be borne by the owners of the power plants.

PG&E represents that none of the costs for the Tie-Line will be borne by ratepayers. Therefore, there is no need for us to consider the cost-effectiveness of the Tie-Line. However, to ensure that ratepayers are protected financially, we will grant A.07-11-008 with the condition that PG&E shall not pass on to its ratepayers any costs, risks, or liabilities associated with the Tie-Line.

3.2. Environmental Review

The Commission is required by the California Environmental Quality Act (CEQA)[7] to consider the environmental consequences of a project that is subject to the Commission's discretionary approval. In doing so, the Commission must act as either a Lead Agency or Responsible Agency. The Lead Agency is the one with the most responsibility for supervising or approving the project as a whole.[8]

In this case, the CEC is the Lead Agency and the Commission is a Responsible Agency. As Lead Agency, the CEC conducted an environmental analysis of the RCEC Project and associated Tie-Line pursuant to the CEC's jurisdiction under Pub. Res. Code §§ 25500 *et seq.*, to site power plants and their related tie-lines. The CEC's siting process and associated documents are functionally equivalent to an Environmental Impact Report.[9]

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[7] The provisions of CEQA are set forth in Pub. Res. Code § 21000 *et seq.*

[8] CEQA Guidelines (Title 14, Division 6, Chapter 3 of the California Code of Regulations) Section 15051(b).

[9] Pub. Res. Code § 25519(c).

The CEC's environmental analysis assessed the impacts of the RCEC Project and Tie-Line with respect to transmission line engineering, safety and nuisance; air quality; public health; hazardous materials management; worker safety/fire protection; biological resources; soil and water resources; cultural resources; geological and paleontological resources; waste management; land use; noise; socio-economics; traffic and transportation; and visual resources. As a result of its environmental analysis, the CEC adopted Conditions of Certification for the RCEC Project and Tie-Line. The CEC found that:

> The Conditions of Certification…if implemented by the Applicant, ensure that the project will be designed, sited, and operated in conformity with applicable local, regional, state, and federal laws, ordinances, regulations, and standards, including applicable public health and safety standards, and air and water quality standards.
>
> Implementation of the Conditions of Certification…will ensure protection of environmental quality and assure reasonably safe and reliable operation of the facility. The Conditions of Certification also assure that the project will neither result in, nor contribute substantially to, any significant direct, indirect, or cumulative adverse environmental impacts.[10]

CEQA requires the Commission to consider the Lead Agency's environmental documents and findings before acting upon or approving the project.[11] The record in this proceeding includes CEC Order Nos. 02-0911-02 and 07-0926-04, which contain the CEC's environmental analysis and Conditions of Certification. We have reviewed the CEC's environmental documents and findings as they pertain to the Tie-Line. We conclude that the CEC reasonably found that the proposed Tie-Line, as conditioned, will not result in any

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[10] CEC Order No. 02-0911-2, pp. 1 – 2, Findings of Fact (FOF) 2 and 3 and Ordering Paragraphs (OPs) 2 and 5; see also CEC Order No. 07-0926-04, p. 2, FOF 2 and 3 and OPs 2 and 3.

[11] CEQA Guidelines Sections 15050(b) and 15096.

significant direct, indirect, or cumulative adverse environmental impacts. Therefore, consistent with CEQA Guideline 15091(a)(1), we will adopt the CEC's Conditions of Certification that pertain to the Tie-Line. The CEC is responsible for monitoring compliance with its Conditions of Certification. Thus, there is no need for the Commission to adopt a separate program for monitoring and enforcing compliance with the CEC's Conditions of Certification as would otherwise be required by CEQA Guidelines Section 15091(d).

There is one matter in the CEC's environmental documents that is not directly related to the Tie-Line, but which affects the Commission. Specifically, in Order No. 07-0926-04, at page 64, the CEC found that (1) the additional power provided by the RCEC Project would require the reconductoring of PG&E's 115 kV Eastshore-Dumbarton transmission line, and (2) the potential impacts of the reconductoring would not be significant if PG&E takes certain actions. The Commission has primary jurisdiction over the reconductoring.

The CEC's recommended actions call for PG&E to (i) work with regional, State, and federal agencies to identify potential impacts from the reconductoring; (ii) develop and implement measures to avoid, eliminate, or reduce the impacts to a level of less than significant; and (iii) take specified actions to avoid traffic and safety-related impacts occurring during the construction phase of the project.[12] PG&E states that it will demonstrate that it has implemented the CEC's recommendations in an advice letter filed pursuant to GO 131-D.[13]

To ensure that there are no significant impacts from the reconductoring, we will order PG&E to implement the CEC's recommendations and to

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[12] The CEC's recommended actions are identified in the CEC Staff Assessment, which PG&E filed at the Commission on December 14, 2007, in response to a Ruling issued by the assigned Administrative Law Judge (ALJ) on November 30, 2007.

[13] PG&E response filed December 14, 2007, Question and Answer 9.

demonstrate that it has done so in its forthcoming advice letter filed pursuant to GO 131-D for the reconductoring of the Eastshore-Dumbarton transmission line. Commission staff may reject the advice letter if PG&E fails to demonstrate compliance or fails to provide any additional information requested by staff.

3.3. Compliance with EMF Policy

GO 131-D, Section X, requires an application for a CPCN to construct a tie-line to describe measures taken by the utility to reduce potential exposure to electric and magnetic fields (EMF) generated by the proposed facilities. In D.06-01-042, the Commission affirmed its existing policy of requiring no-cost and low-cost mitigation measures to reduce EMF levels from new transmission lines. The Commission also adopted rules and polices to improve utility design guidelines for reducing exposure to EMF.

PG&E provided a Transmission Magnetic Basic Field Management Plan for the Tie-Line (Management Plan) in Appendix J of A.07-11-008. PG&E's Management Plan describes how the proposed Tie-Line route and configuration will reduce exposure to magnetic fields at low cost or no cost. Based upon our review, we find that PG&E's Management Plan complies with the EMF policy adopted by the Commission in D.06-01-042.

4. Categorization and Need for Hearing

In ALJ Resolution 176-3203, dated November 16, 2007, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that hearings are not needed. The Assigned Commissioner's Ruling and Scoping Memo issued on January 2, 2008, affirmed that this is a ratesetting proceeding and that hearings are not needed.

5. Assignment of Proceeding

Timothy Alan Simon is the assigned commissioner and Timothy Kenney is the assigned ALJ in this proceeding.

6. Comments on the Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

Findings of Fact

1. In A.07-11-008, PG&E requests a CPCN to construct and own a Tie-Line to connect the RCEC Project to the transmission grid.

2. In D.04-12-048 and D.06-11-048, the Commission determined that PG&E has a need for 2,100 MW of new generation capacity in Northern California and authorized PG&E to procure 600 MW of power from the RCEC Project. The proposed Tie-Line must be constructed in order to deliver the needed power from the RCEC Project to the transmission grid.

3. The owners of the RCEC Project have agreed to pay all costs for the Tie-Line.

4. The CEC conducted an environmental analysis of the RCEC Project and associated Tie-Line. The CEC found in Order Nos. 02-0911-02 and 07-0926-04 that the proposed Tie-Line, with the CEC's Conditions of Certification, would not result in, nor contribute substantially to, any significant direct, indirect, or cumulatively adverse environmental impacts. The CEC is responsible for monitoring and enforcing compliance with its Conditions of Certification.

5. The CEC concluded in Order No. 07-0926-04, at page 64, that the potential effects from the reconductoring of the 115 kV Eastshore-Dumbarton transmission line would not be significant if certain actions identified in the CEC's order are taken. PG&E intends to demonstrate that it has taken these actions in a forthcoming advice letter filed at the Commission pursuant to GO 131-D.

Conclusions of Law

1. The proposed Tie-Line is (i) necessary to promote the safety, health, comfort, and convenience of the public, and (ii) required by the public convenience and necessity.

2. The CEC reasonably concluded that its adopted Conditions of Certification will assure that that the Tie-Line will not result in, or contribute substantially to, any significant direct, indirect, or cumulatively adverse environmental impacts.

3. There is no need to consider the cost-effectiveness of the proposed Tie-Line because PG&E's ratepayers will not bear any of the costs for the Tie-Line pursuant to the following order.

4. PG&E should be granted a CPCN pursuant to GO 131-D to construct, own, operate, and maintain the Tie-Line as described in A.07-11-008, subject to the conditions in the following order.

5. To ensure that there are no significant impacts from the reconductoring of the 115 kV Eastshore-Dumbarton transmission line, PG&E should implement the CEC's recommended actions identified in CEC Order No. 07 0926-04, at page 64, and which are described in PG&E's document filed at the Commission on December 14, 2007, at Question and Answer 9. PG&E should demonstrate that it has implemented, or will implement, these actions in its forthcoming advice letter filed pursuant to GO 131-D for the reconductoring of the Eastshore-Dumbarton transmission line.

6. PG&E's Transmission Magnetic Basic Field Management Plan contained in Appendix J of A.07-11-008 complies with GO 131-D and the low-cost, no-cost EMF policy adopted by the Commission in D.06-01-042.

7. The following order should be effective immediately so that construction of the Tie-Line for the RCEC Project may begin expeditiously.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Pacific Gas and Electric Company (PG&E) pursuant to General Order (GO) 131-D to construct, own, operate, and maintain a 230 kilovolt (kV) transmission line from the Russell City Energy Center (RCEC) Project to PG&E's Eastshore Substation, subject to the following conditions:

   a. PG&E shall not recover from its ratepayers, either directly or indirectly, any costs for the transmission line, including any costs to construct, own, operate, or maintain the line. Nor shall PG&E pass on to its ratepayers, either directly or indirectly, any risks or liabilities associated with the transmission line.

   b. PG&E shall comply with all Conditions of Certification and Compliance Verifications applicable to the transmission line that are contained in Order Nos. 02-0911-02 and 07-0926-04 issued by the California Energy Resources Conservation and Development Commission (CEC) in Docket Nos. 01-AFC-7 and 01-AFC-7C.

2. PG&E shall implement the CEC's recommended actions identified in CEC Order No. 07 0926-04, at page 64, and which are described in PG&E's document filed at the Commission on December 14, 2007, at Question and Answer 9. PG&E shall demonstrate that it has done so in an advice letter pursuant to GO 131-D regarding the reconductoring of the 115 kV Eastshore-Dumbarton transmission line. Commission staff may reject the advice letter if PG&E fails to include the required information or fails to provide other information requested by staff.

3. Application 07-11-008 is closed.

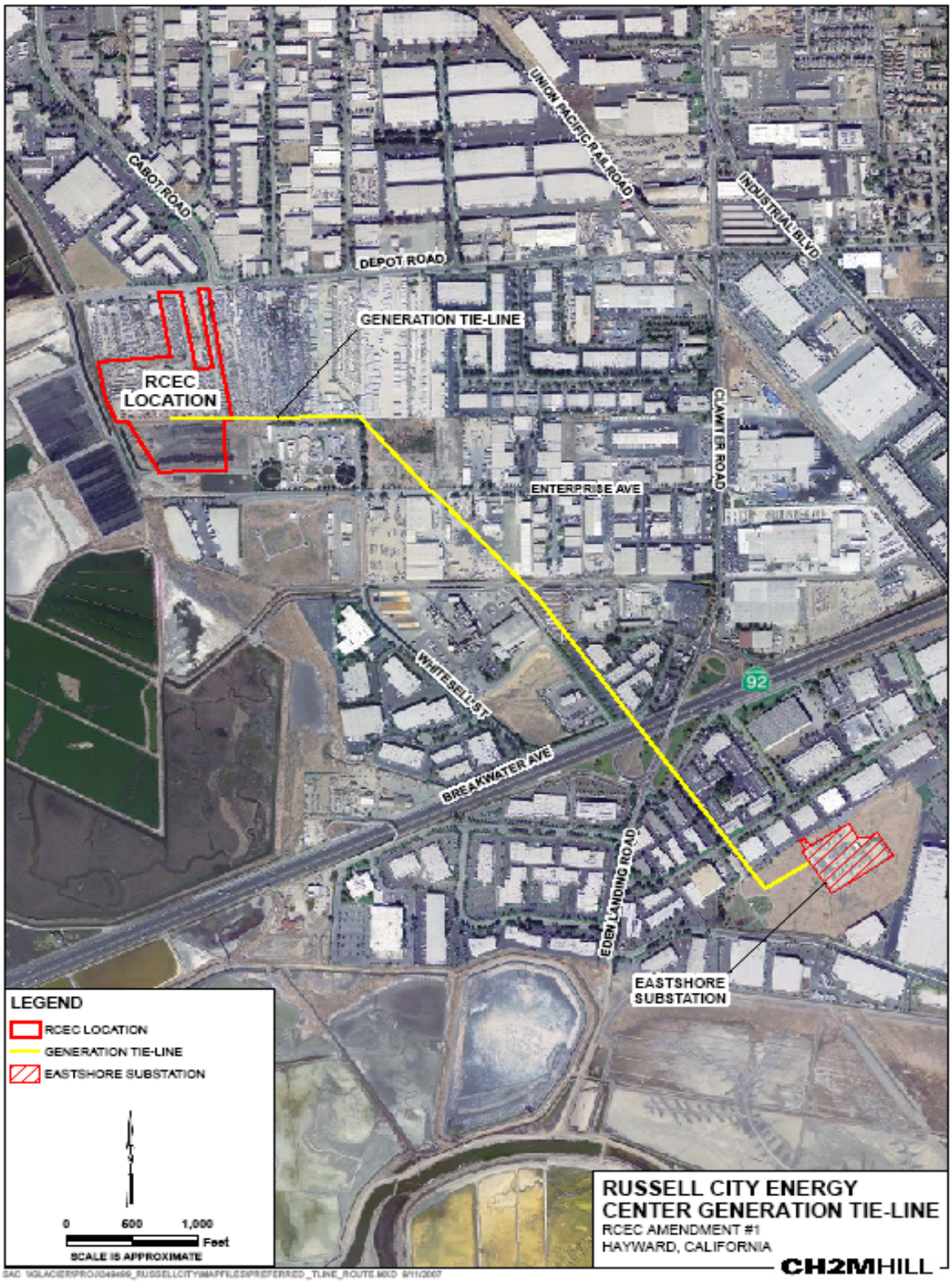
This order is effective today.

Dated _____, at San Francisco, California.

Appendix A

Map of the RCEC Tie-Line Route

APPENDIX A



(END OF APPENDIX A)