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 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

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

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 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:

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

[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.

- 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.

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

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

> 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 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.[7]

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.

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[7] Because the Tie-Line was approved by the CEC under Pub. Res. Code §§ 25000 *et seq.*, A.07-11-008 is exempt from Pub. Util. Code § 1002(a) pursuant to § 1002(b).

3.2. Environmental Review

3.2.1. Tie-Line

The Commission is required by the California Environmental Quality Act (CEQA)[8] 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.[9]

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.[10]

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

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

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

[10] Pub. Res. Code § 25519(c).

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.[11]

CEQA requires the Commission to consider the Lead Agency's environmental documents and findings before acting upon or approving a project.[12] Here, the project before the Commission is the Tie-line. The Tie-Line 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 existing transmission right-of-way.

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

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

[12] CEQA Guidelines 15050(b) and 15096.

findings as they pertain to the Tie-Line, and we find these documents are adequate for our decision-making purposes.

We conclude that the CEC reasonably found that the proposed Tie-Line, as conditioned, will not result in any significant direct, indirect, or cumulative adverse environmental impacts. Therefore, consistent with CEQA Guidelines 15091(a)(1) and 15096(h), 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 us to adopt a program for monitoring and enforcing compliance with the CEC's Conditions of Certification as would otherwise be required by CEQA Guideline 15091(d).

3.2.2. Eastshore-Dumbarton Transmission Line

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, the CEC found in Order No. 07-0926-04, at page 64, 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 mitigation measures **similar to** those identified in the [CEC] Staff Assessment are applied to the project.[13]" The Commission has primary jurisdiction over the reconductoring project.

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[13] CEC Order No. 07-0926-04, p. 64. Emphasis added.

The CEC Staff Assessment concluded that the impacts of the reconductoring project would likely be less than significant in the following areas if "standard mitigation measures" are implemented[14]:

- Air Quality
- Facility Design
- Hazardous Materials Management
- Power Plant Efficiency
- Power Plant Reliability
- Public Health
- Worker Safety
- Socioeconomic Resources
- Waste Management
- Worker Safety

The CEC Staff Assessment also identified three areas of concern: biological resources, cultural resources, and traffic and transportation. The CEC Staff's findings and conclusions in each of these areas are summarized below.

Biological Resources. The CEC Staff found that reconductoring the Eastshore-Dumbarton 115 kV transmission line could adversely affect sensitive biological resources in the vicinity of the transmission line. To avoid these impacts, the CEC Staff recommend that (1) PG&E submit its final project description (including wetlands delineations, results of sensitive species surveys,

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[14] CEC Staff Assessment, p. 5.6-19. PG&E filed a complete copy of the CEC Staff Assessment on December 14, 2007.

and a revised assessment of potential impacts) to the Commission to ensure that the project complies with applicable laws, ordinances, and regulations (LORs); and (2) PG&E consult with the California Department of Fish and Game, U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Army Corps of Engineers, Regional Water Quality Control Board, and the Bay Conservation and Development Commission to identify potential impacts and develop measures to avoid, eliminate, or reduce the impacts to a less-than-significant level. The CEC Staff concluded that it is unlikely the reconductoring project would significantly impact biological resources if PG&E complies with all applicable LORs, uses standard Best Management Practices (BMPs) for construction activities, and implements the mitigation measures that may be proposed by the previously identified governmental agencies.

Cultural Resources. The CEC Staff Assessment recommended that PG&E conduct a survey of archaeological and historic sites after the major work areas for the reconductoring project are identified. If sensitive sites are identified, then PG&E and the Commission should perform a preconstruction assessment, develop a training program, and monitor work activities within sensitive sites. If cultural material is discovered, construction should be halted until the find is evaluated. The CEC Staff further recommended that archaeological sites be evaluated for listing in the National Register of Historic Places (NRHP) or the California Register of Historic Resources (CRHR). If avoidance of archaeological sites is impossible, data recovery should be done for those sites that are recommended for the NRHP or CRHR. In addition, the Native American Heritage Commission should be contacted to determine if there are any sacred sites in the vicinity of the work. The CEC Staff concluded that it is unlikely the

reconductoring project would significantly impact cultural resources if the aforementioned procedures and measures are employed.

Traffic and Transportation. To mitigate the potential impacts on the surrounding roadway system, the CEC Staff recommended (1) that work crews avoid adding any vehicles to local roadways during peak travel times by using off-site facilities for staging and laydown, non-peak hour scheduling, and carpooling to the job site; and (2) installation of protective structures to reduce the potential for construction material falling on motorists, bicyclists, or pedestrians. The CEC Staff concluded that it is unlikely the reconductoring project would significantly impact traffic and transportation if the aforementioned measures are employed.[15]

After reviewing the substantial evidence in the record of this proceeding, we find pursuant to CEQA Guidelines 15091(a)(1) and 15096(h) that the CEC reasonably concluded that it is unlikely the proposed reconductoring project will result in any significant direct, indirect, or cumulative adverse impacts if the mitigation measures identified in the CEC Staff Assessment (and summarized above) are implemented. To ensure there are no significant impacts, we will order PG&E pursuant to our authority under Pub. Util. Code § 701 to implement the mitigation measures identified in the ordering paragraphs of this opinion. The adopted mitigation measures are substantially similar to those in the CEC's Staff Assessment. PG&E shall demonstrate that it has or will implement the adopted mitigation measures in a compliance advice letter filed pursuant to

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[15] CEC Staff Assessment, pp. 5.6-19 – 5.6-20.

GO 96-B, Sections 7.5.3 and 7.6.1. Commission staff may reject the advice letter if it fails to demonstrate that PG&E has or will implement the adopted mitigation measures or if PG&E does not provide 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 Administrative Law Judge (ALJ) in this proceeding.

6. Comments on the Proposed Decision

The ALJ's proposed decision was mailed to the parties in accordance with § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. CARE filed comments on January 22, 2008. PG&E filed opening and reply comments on February 4 and 11, 2008, respectively. The parties' comments have been reflected, as appropriate, in the final decision adopted by the Commission.

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 is the lead agency under CEQA for the RCEC Project and the associated Tie-Line. The Commission is a Responsible Agency under CEQA.

5. 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.

6. CEC Order No. 07-0926-04 states at page 64 that the potential effects from the reconductoring of the 115 kV Eastshore-Dumbarton power line would not be significant if mitigation measures similar to those identified in the CEC Staff Assessment are applied to the reconductoring project.

7. The measures that PG&E is required by this opinion to implement for the 115 kV Eastshore-Dumbarton reconductoring project will prevent any significant direct, indirect, or cumulative adverse impacts from the project. These measures are substantially similar to those identified in the CEC Staff Assessment.

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. 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.

3. 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.

4. Pursuant to Pub. Res. Code § 25519(c), CEC Order Nos. 02-0911-02 and 07-0926-04 are functionally equivalent to an environmental impact report under CEQA. These documents are adequate for the Commission's decision-making purposes, and the Commission has considered these documents in its decision-making process in accordance with CEQA Guideline 15096(f).

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

6. Pursuant to CEQA Guideline 15096(g)(1), and to ensure there are no adverse environmental impacts from the Tie-Line, the granting of a CPCN for the Tie-Line should be subject to the Conditions of Certification and Compliance Verifications applicable to the Tie-Line that are contained in CEC Order Nos. 02-0911-02 and 07-0926-04.

7. To ensure that there are no significant impacts from the reconductoring of the 115 kV Eastshore-Dumbarton power line, PG&E should implement the measures identified in the following order. The adopted measures are substantially similar to those identified in the CEC Staff Assessment, which is referenced in CEC Order No. 07-0926-04, at page 64.

8. PG&E should demonstrate in a compliance advice letter filed pursuant to GO 96-B, Sections 7.5.3 and 7.6.1, that it has implemented, or will implement, the measures for the reconductoring of the Eastshore-Dumbarton transmission line that are required by the following order. The advice letter should be rejected it fails to demonstrate compliance with the adopted measures or if PG&E fails to provide additional information requested by staff.

9. 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.

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

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 file a compliance advice letter pursuant to GO 96-B, Sections 7.5.3 and 7.6.1, to demonstrate that it has or will implement the following measures for the Eastshore-Dumbarton 155 kV Reconductoring Project:

    a. The advice letter shall demonstrate that PG&E has or will implement all appropriate measures with respect to the following environmental and engineering disciplines: air quality, facility design, hazardous materials management, power-plant efficiency and reliability, public health, worker safety, socioeconomic resources, waste management, and worker safety.

    b. The advice letter shall provide the final description of the Eastshore-Dumbarton 115 kV Reconductoring Project. The description shall include (i) wetland delineations, (ii) results of all sensitive species surveys, and (iii) an assessment of potential impacts.

c. The advice letter shall demonstrate that (i) PG&E has consulted, to the extent required by applicable laws, ordinances, and regulations, with all resource agencies that have jurisdiction over the Project; (ii) PG&E has or will implement the mitigation measures identified by these agencies, and (iii) PG&E will use standard Best Management Practices (BMP) for construction activities.

d. The advice letter shall demonstrate that PG&E has or will implement the measures for archaeological and cultural resources that are described on page 5.6-20 of the CEC Staff Assessment, including a survey for such resources.

e. The advice letter shall demonstrate that PG&E has or will implement BMPs with regard to traffic, transportation, and safety precautions that comply with local permit requirements.

f. The advice letter shall provide a monitoring and reporting program to ensure compliance with measures during project implementation.

g. The advice letter shall be effective pending disposition by the Commission's Energy Division. Commission staff may reject the advice letter if it fails to comply with this order or if PG&E fails to provide additional information requested by Commission staff.

3. Application 07-11-008 is closed.

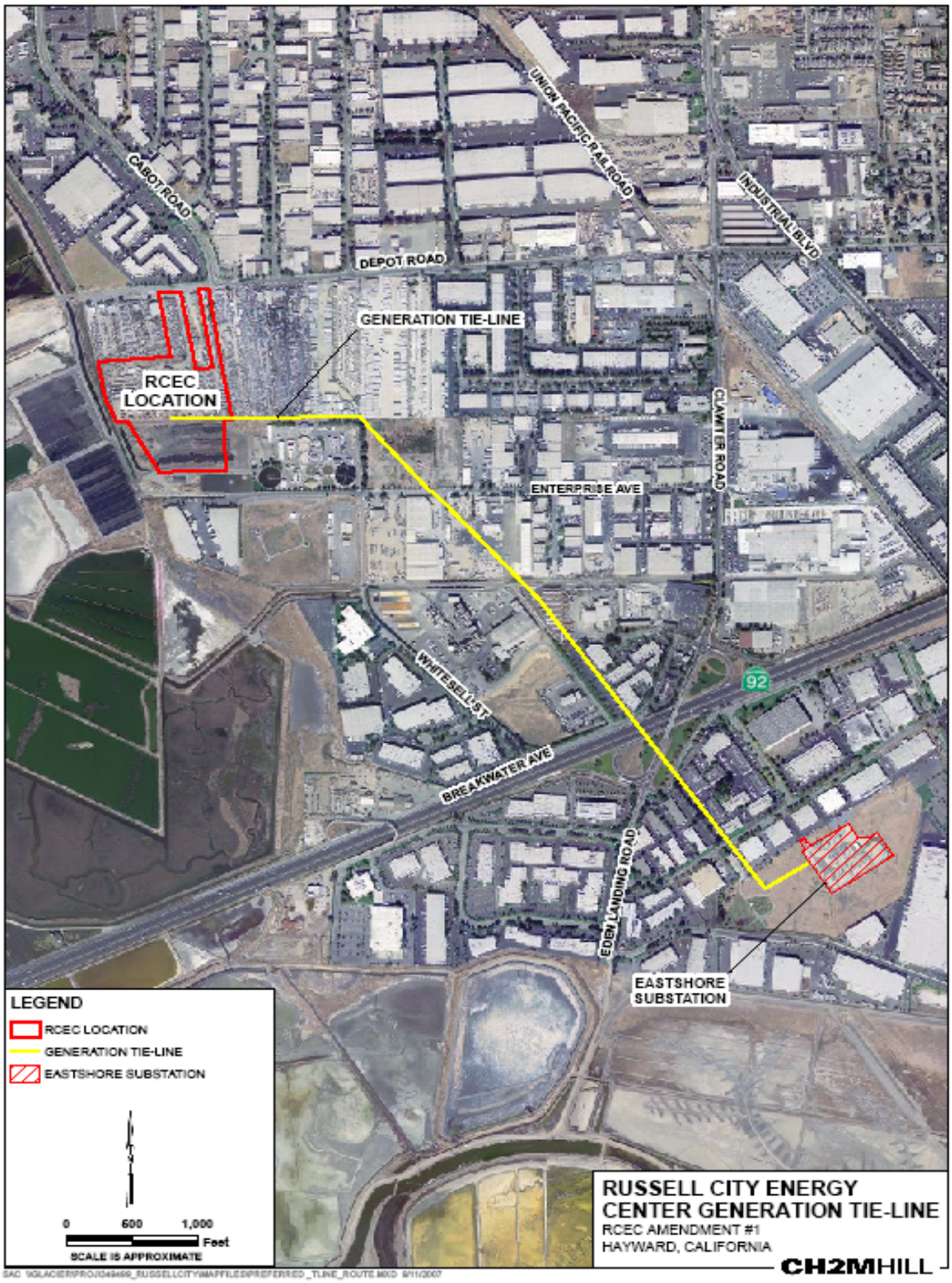
This order is effective today.

Dated _____, at San Francisco, California.

Appendix A

Map of the RCEC Tie-Line Route

APPENDIX A



(END OF APPENDIX A)