

Decision 01-05-077 May 24, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Tri Valley 2002 Capacity Increase Project.

Application 99-11-025  
(Filed November 22, 1999)

**OPINION CERTIFYING FINAL ENVIRONMENTAL IMPACT REPORT**

**Summary**

The Final Environmental Impact Report (FEIR) is certified as the Environmental Impact Report (EIR) for the project which is the subject of this application and is certified for use by responsible agencies in considering subsequent approvals for the project, or for portions thereof.

**Background**

By this application, Pacific Gas and Electric Company (PG&E) seeks a certificate of public convenience and necessity (CPCN) to construct additional transmission and distribution capacity to meet electricity demand in the cities of Dublin, Livermore, Pleasanton, and San Ramon, and unincorporated areas of Alameda and Contra Costa Counties. This project is referred to as the Tri Valley 2002 Capacity Increase Project. In conjunction with its application, PG&E filed a Proponent's Environmental Assessment. The Commission, as lead agency, then retained outside consultants to prepare an EIR for the proposed project pursuant

to the California Environmental Quality Act (CEQA)<sup>1</sup>, and to examine alternatives, including the “No-Project” alternative. The Commission’s Energy Division oversaw the consultants’ work.

As described below, the Commission staff held public scoping meetings in May 2000. The Commission issued its Draft EIR (DEIR) in December 2000. The Administrative Law Judge (ALJ) presided over public participation hearings in February 2001. In April 2001, the Commission issued its FEIR.<sup>2</sup> The FEIR considered each timely comment letter in reaching its conclusions. The FEIR identifies the environmentally superior “build” alignments and an overall environmentally superior project taking the “No-Project” analysis into consideration. This decision deals only with whether the Commission should certify the FEIR and does not determine whether PG&E should be granted a CPCN or if so, what alignment for the project should be adopted. Certification of the FEIR does not prejudice the Commission’s final selection of a route for the project.

### **Notice and Public Participation**

The process of preparing the FEIR included the steps described below, which offered numerous opportunities for public involvement and were designed to maximize agency and public input for the Tri Valley 2002 Capacity Increase Project environmental review process. The scoping process for the Tri Valley 2002 Capacity Increase Project EIR consisted of five elements:

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<sup>1</sup> The CEQA statute appears at Cal. Pub. Res. Code § 21000 *et seq.*

<sup>2</sup> We do not reproduce the FEIR in its entirety in this decision. However, the FEIR was identified as Exhibits 1003, 1003A, and 1004 and is part of the record of this proceeding. The FEIR is also available on the Commission’s website at <http://www.cpuc.ca.gov>.

1. Publication of a Notice of Preparation (NOP) of an EIR and Notice of Public Scoping Meetings soliciting comments from affected public agencies, as required by CEQA, as well as from the public;
2. Public scoping meetings and meetings with agencies;
3. Summarization of scoping comments in a Scoping Report;
4. Distribution of the Scoping Report and scoping comments as appropriate to the commenting agencies, scoping meeting attendees, the EIR team members for use in work planning and impact analysis, and to public libraries designated as project repository sites for members of the public interested in reviewing the report and comments; and
5. Establishment of an Internet web site, electronic mail address, a telephone hotline, and local EIR Information Repositories.

The Commission issued the NOP on April 21, 2000 and distributed it to the State Clearinghouse and city, county, state and federal agencies, affected state and federal legislators, and local elected officials. Interested parties received 30 days to submit comments regarding the content of the EIR. Copies of the NOP were distributed by mail and at scoping meetings. Approximately 430 copies were distributed.

Scoping meetings are held prior to selection of alternatives to be studied in order to receive input from the public regarding the proper scope and content of the EIR. The scoping process is also used to identify alternatives and mitigation measures that should be considered in the analysis.

Three public scoping meetings were conducted as part of the EIR scoping process. An initial mailing list was developed based on PG&E's list of property owners located on or near the route of its Proposed Project, as well as agencies, groups and individuals with a vital interest in the Proposed Project identified by the EIR Team. The Notice of Scoping Meeting was mailed to over 1,100 individuals, groups and government agencies identified for the mailing list. The

dates, times and locations of the three scoping meetings were included in the NOP mailed to affected agencies and parties to this proceeding, about two weeks in advance of the meetings. This information was also posted on the Commission's project website and on the project hotline. On May 3 and 4, 2000, quarter-page ads were published in The Tri-Valley Herald and the Alameda Times-Star, two newspapers in the project area.

Scoping meetings were held May 8, 2000 (Dublin and Livermore) and May 9, 2000 (Pleasanton). In all, approximately 230 people attended the scoping meetings. In July 2000, a scoping report was issued summarizing issues and concerns identified by the public and various agencies during the scoping process. This report was made available for review at the five local EIR Information Repositories<sup>3</sup> and on the Internet, and mailed to agencies and individuals who registered at the scoping meetings or requested copies.

A newsletter was distributed in early November 2000 to describe the EIR process and the alternatives selected for detailed analysis in the DEIR. The newsletter mailing list contained over 11,000 recipients, and included postal carrier routes near the Proposed Project and the alternatives, as well as those added to the mailing list since the mailing of the Scoping Meeting Notice. A Notice of Release of the DEIR was mailed to the project mailing list on

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<sup>3</sup> Placing documents in "repository" sites can be an effective way of providing ongoing information about the project to a large number of people. Repository sites in the proposed project area were established and documents were also made available at the Commission. Repositories were established at the Pleasanton Public Library, San Ramon Library, Livermore Public Library, and Dublin Branch Library. All project documents, including the Draft EIR have been made available upon their release to the public at these locations. A telephone hotline for project information was established at

*Footnote continued on next page*

December 15, 2000. The notification included the dates and times for the informational meetings and public participation hearings. A newspaper notice was also published in the Alameda Times-Star and the Tri-Valley Herald on January 3 and 18, 2001 to announce the release of the DEIR. An additional postcard listing the dates, times, and locations of the three public participation hearings was mailed to approximately 11,000 recipients on February 2, 2001.

Following the release of the DEIR, three informational meetings were held: on January 23, 2001 at Vintage Hills School, Pleasanton; on January 24, 2001 at Dublin Elementary School, Dublin; and on January 25, 2001 at the City of Livermore Council Chambers, Livermore. The purpose of the meetings was to help affected communities understand the proposed project, the findings of the DEIR, and to explain how to participate in the Commission's decision making processes. At the workshop, EIR preparers and Commission staff were available to respond to attendee questions and provide clarification regarding the technical aspects of the proposed project, EIR alternatives, and the impact analysis presented in the DEIR.

A 58-day public review period for the DEIR was established, ending on February 23, 2001. Three public participation hearings were held by the assigned ALJ on February 8, 13, and 15, 2001 at the City of Livermore Council Chambers, Vintage Hills School, and Dublin Elementary School, respectively, to receive oral and written testimony on the DEIR from interested parties.

We have described the public participation and notice process in detail because at the public participation hearings, some speakers raised concerns

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(925) 397-3041. This number receives voice messages and faxes. In addition, a project e-mail address was established at Tri-Valley@aspenerg.com.

about inadequate notice of the Proposed Project and alternatives being considered. CEQA requires that a notice of availability for a DEIR must be issued to the county clerk, all responsible and trustee agencies, and any person or organization requesting, or who previously requested, a copy. In addition, CEQA requires that notice be issued in one of the following three manners: publication in a newspaper of general circulation; posting on and off the project site; and direct mailing to owners and occupants of contiguous property. Rule 17.1 of the Commission's Rules of Practice and Procedure requires two notices in newspapers. Consistent with these requirements, notices of availability were published in the Alameda Times Star and the Tri-Valley Herald on both January 3, and 18, 2001. In addition, on December 15, 2000 the notice of availability was sent to the Tri Valley EIR mailing list. The mailing list consisted of approximately 10,500 recipients and included persons and organizations who had requested to receive a copy, affected landowners, and public agencies. The mailing list was expanded to encompass residents within 300 feet of the Proposed Project and alternatives. The bulk of the mailing list was purchased from a mailing house company based on carrier routes within the Proposed Project and alternative routes. After investigating the concerns over notice, we believe that the notification procedures employed for this project more than meet the requirements of CEQA.

**Adequacy and Certification of the FEIR**

The FEIR must be certified by the lead agency under CEQA before a project may be approved. Certification consists of two steps. First, the agency must conclude that the document has been completed in compliance with CEQA, and second, the agency must have reviewed and considered the FEIR prior to

approving the project. Additionally, the lead agency must find that the FEIR reflects its independent judgment (Pub. Res. Code § 21082.1(c)(3).)

**A. Adequacy of the FEIR**

The FEIR must contain specific information according to the CEQA Guidelines, Sections 15120 through 15132 (CEQA Guidelines).<sup>4</sup> The various elements of the FEIR satisfy these CEQA requirements. The FEIR consists of the DEIR, with revisions in response to comments and other information received. Appendix 2 of the FEIR contains the comments received on the DEIR; individual responses to these comments appear in Section H of the FEIR.<sup>5</sup>

**B. Certification of the FEIR**

The Commission must conclude that the FEIR is in compliance with CEQA before finally approving PG&E's request for a certificate of public convenience and necessity. The basic purpose is to insure that the environmental document is a comprehensive, accurate, and unbiased tool to be used by the lead agency and other decisionmakers in addressing the merits of the project. The document should embody "an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors."<sup>6</sup> It must be prepared in a clear format and in plain language.<sup>7</sup> It must be analytical rather than encyclopedic, and emphasize alternatives over unnecessary description of the project.<sup>8</sup> Most

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<sup>4</sup> Cal. Admin. Code §§ 15122-131.

<sup>5</sup> CEQA Guidelines, § 15132.

<sup>6</sup> *Id.*, § 15142

<sup>7</sup> *Id.*, §§ 15006 (q) and (r), 15120, 15140.

<sup>8</sup> *Id.*, §§ 15006, 15141; Pub. Res. Code § 21003(c).

importantly, it must be “organized and written on such a manner that [it] will be meaningful and useful to decisionmakers and the public.”<sup>9</sup>

We believe that the FEIR meets these tests. It is a comprehensive, detailed, and complete document that clearly discusses the advantages and disadvantages of the environmentally superior routes, PG&E’s proposed route, and various alternatives. We find that the FEIR is the competent and comprehensive informational tool that CEQA requires it to be. The quality of the information therein is such that we are confident of its accuracy.

The Commission should certify the FEIR.

### **Procedural Matters**

On May 14, 2001, the East Bay Regional Park District (EBRP) filed a petition to intervene. EBRPD operates the Shadow Cliffs Regional Recreation Area. One of the alternatives identified in the FEIR S5 borders the eastern boundary of Shadow Cliffs. The S5 alternative had been eliminated as infeasible in the DEIR. EBRPD argues that because this alternative was not previously considered to be feasible, it has been denied the opportunity to provide meaningful comments on it, and therefore it should now be allowed to intervene in the proceeding.

On May 16, 2001, PG&E filed its opposition to EBRPD’s petition. PG&E argues the petition is untimely, fails to show good cause why the petition should be granted, and raises issues that have been fully considered in the CEQA proceedings. On May 21, 2001, with the assigned ALJ’s permission, EBRPD filed a reply to PG&E’s opposition.

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<sup>9</sup> Pub. Res. Code § 21003(b).

It's clear from the documents attached to EBRPD's petition to intervene that EBRPD has closely followed this proceeding. Unlike numerous other parties who have intervened in this proceeding to protect their rights prior to particular alternatives being identified or selected as environmentally superior, EBRPD chose not to intervene, despite the fact that two parks it manages were potentially impacted by alternatives studied in the DEIR. EBRPD's comments as part of the CEQA process are included as part of the FEIR (Exhibit 1003) and are part of the record.

However given that a new alternative was identified in the FEIR that could impact one of EBRPD's parks, we will grant the petition to intervene in order to consider the comments filed by EBRPD and additional information submitted by declaration.

#### **Comments on Draft Decision of the ALJ**

Section 311(g)(3) of the Pub. Util. Code and Rule 77.7(f)(8) of the Rules of Practice and Procedure provide for reduction or waiver of the 30-day period for public review and comment for decisions subject to California statutes that provide for extensive public review and comment and set a deadline for Commission decisionmaking. The draft decision of ALJ Cooke in this matter was mailed to the parties in accordance with Rule 77.7(f)(8) with a shortened period for comments. Comments were filed on May 14, 2001 by PG&E and EBRPD, and reply comments were filed on May 21, 2001 jointly by the City of Pleasanton and the Kottinger Ranch Homeowner's Association (City/KRHA). In addition, PG&E's May 16 opposition to EBRPD's petition to intervene contains its reply to EBRPD's comments.

PG&E has made recommendations to add findings and conclusions to this order. We have made minor revisions to the text of the order as a result of these comments. We make no changes based on the reply comments of City/KRHA.

EBRPD asserts that one of the alternatives in the FEIR will have a potentially significant visual impact on Shadow Cliffs Regional Recreation Area and therefore that the Commission must recirculate the EIR before certifying the FEIR. EBRPD relies on *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas*, 29 Cal. App. 4<sup>th</sup> 1597 (1994) (*Quail*) and Appendix G of the CEQA Guidelines for the criteria by which we should evaluate significance. EBRPD's reliance on *Quail* and Appendix G is misplaced. *Quail* addresses a case wherein the court found that Encinitas should have prepared an EIR in the first instance in order to assess the impacts of a subdivision on an adjacent park, rather than a negative declaration. *Quail* used the "fair argument" standard to determine whether or not an EIR should be prepared. The fair argument standard was expressly rejected by the California Supreme Court in *Laurel Heights Improvement Assn. v. Regents of the University of California*, 6 Cal. 4<sup>th</sup> 1112 at 1135 (1993) (*Laurel Heights II*), for use in determining whether or not an EIR should be recirculated. Appendix G of the CEQA Guidelines deals specifically with criteria that should be reviewed by a lead agency when assessing whether to prepare an EIR or negative declaration. In this case, the Commission has prepared an EIR, so these arguments are not on point with respect to whether the recirculation of the EIR is required.

CEQA Guidelines § 15088.5 states that a "lead agency is required to recirculate an EIR when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review under § 15087 but before certification." Significant new information is specifically

described in the Guidelines. Recirculation is only required if the new information results in a new significant environmental impact occurring. EBRPD asserts that the visual impact of the new alternative identified in the FEIR is significant and attaches photographs to the Declaration of Brad Olson that purport to demonstrate this impact. The record demonstrates that the photos included as Exhibit 1 to the Declaration of Brad Olson are misleading as to the existing visual setting and potential impact of the new alternative. The S5 alternative does not result in a new significant environmental impact and thus no recirculation is required.

Exhibit 1 of EBRPD's declaration purports to show the existing visual setting of Shadow Cliffs Regional Recreation Area in the "Before Project" photo. Exhibit 1000, Figure C.12-6 of the DEIR depicts a portion of this same viewshed and clearly demonstrates the scale of existing transmission facilities and quarry operations. The left third of EBRPD's photo coincides with the right half of Figure C.12-6. Mr. Olson specifically states that this figure is an "accurate depiction of the visual impacts" of the current setting and new transmission lines along Stanley Boulevard (a portion of both the S1 and S5 alternatives). (See p. 3, Declaration of Brad Olson, May 14, 2001.) Thus it is clear, at least with respect to the "After Project" photo, that EBRPD's depiction of the visual impact is deceptive and overstated.

EBRPD argues in its comments on the draft decision and its reply to PG&E's opposition, that a new visual simulation is required to demonstrate the impacts of the S5 alternative. We disagree.

Exhibit 1003 (the FEIR) describes the S5 route (which borders Shadow Cliffs on its eastern boundary) on pages C-7 through C-9. On page C-9, the FEIR describes the existing visual setting and how a new transmission line would

affect the views from Shadow Cliffs, given the existing visual setting. This narrative description, in conjunction with the simulations in Exhibit 1000, make clear that the viewshed from Shadow Cliffs is of a highly disturbed landscape and an industrial structural context. While it might have been useful for an additional visual simulation to be prepared, to dispose of EBRPD's argument we find that the FEIR accurately describes the setting and the potential impacts of the S5 alternative and supports the finding that the S5 alternative would cause adverse but not significant visual impacts. Consistent with CEQA Guidelines § 15088.5, and *Laurel Heights II*, this does not meet the definition of significant new information and thus recirculation is not required.

#### **Findings of Fact**

1. The Commission is the lead agency under CEQA with respect to the environmental review of the project and preparation of the FEIR.
2. The Commission has conducted an environmental review of the project pursuant to CEQA.
3. The FEIR consists of the DEIR, revised to incorporate comments received by the Commission from the proponent, agencies, and the public, and the responses to comments.
4. The FEIR has been completed in accordance with CEQA Guidelines, Sections 15120 through 15132.
5. The FEIR accurately describes visual setting and potential visual impacts of the S5 alternative.
6. The view from Shadow Cliffs Regional Recreation Area is of a highly disturbed landscape and an industrial structural context.

7. The photos included as Exhibit 1 to the Declaration of Brad Olson of EBRPD are misleading as to the existing visual setting and potential visual impact of the S5 alternative.

8. The S5 alternative results in an adverse but not significant visual impact.

**Conclusions of Law**

1. The notification procedures employed for this project more than meet the requirements of CEQA.

2. The processing of the DEIR, and the FEIR, in this proceeding comply with the requirements of CEQA.

3. The contents of the FEIR comply with the requirements of CEQA and represent the Commission's independent judgement.

4. The FEIR should be certified for the project in accordance with CEQA.

5. The S5 alternative results in an adverse but not significant visual impact.

6. Because the S5 alternative does not result in a significant visual impact, recirculation of the EIR is not required.

7. EBRPD's petition to intervene should be granted.

**O R D E R**

**IT IS ORDERED** that:

1. The Final Environmental Impact Report is certified as the Environmental Impact Report for the project which is the subject of this application and is certified for use by responsible agencies in considering subsequent approvals for the project, or for portions thereof.

2. The petition to intervene by the East Bay Regional Park District is granted.

This order is effective today.

Dated May 24, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President

HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners