

Decision 09-07-041 July 30, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SOUTHERN CALIFORNIA EDISON COMPANY (U338E) for a Certificate of Public Convenience and Necessity to Construct the Walnut Creek Energy Park 230 kV Transmission Line.

Application 09-04-010
(Filed April 7, 2009)

**DECISION GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

1. Summary

Southern California Edison Company (SCE) is granted a certificate of public convenience and necessity pursuant to General Order 131-D authorizing the construction of approximately 1,200 feet of new 230 kilovolt single-circuit transmission line, or Tie-Line, that will connect a proposed 500 megawatt simple-cycle power plant to the California Independent System Operator controlled grid at SCE's existing Walnut Substation in the City of Industry.

2. Background

Walnut Creek Energy, LLC (WCE), a wholly-owned subsidiary of Edison Mission Energy, seeks to develop a 500 megawatt simple-cycle power plant (the Project) with an expected on-line date of January 2011. The Project is designed as a peaking facility to meet electric generation load in Southern California during periods of high demand, which generally occur during daytime hours and during the summer. The facility will be capable of being dispatched throughout the year but is expected to operate primarily during the utility defined on-peak

and mid-peak periods. The proposed Tie-Line will serve California consumers by delivering power produced by the Project to the California Independent System Operator (CAISO) controlled grid. The site for the Project is a 11.48-acre parcel located in the City of Industry.

WCE sought permission for the Project from the California Energy Commission (CEC). The CEC conducted an environmental review of the Project pursuant to California Public Resources Code § 21000 et seq., and of the proposed Tie-Line pursuant to the California Environmental Quality Act (CEQA). With regard to the Tie-Line, the CEC's approval was premised on compliance with the following conditions:

- 1) The project owner shall construct the proposed transmission lines according to the requirements of California Public Utility Commission's General Order (GO) 95, GO-52, GO-131-D, Title 8, and Group 2. High Voltage Electrical Safety Orders, Sections 2700 through 2974 of the California Code of Regulations, and SCE's EMF-reduction guidelines.
- 2) The project owner shall hire a qualified consultant to measure the strengths of the electric and magnetic fields from the line before and after it is energized.

Pending compliance with these and various other conditions, on February 27, 2008, the CEC granted WCE permission to begin work on the project. WCE then asked SCE to construct the Tie-Line between the Project's generation station switchyard and SCE's existing Walnut Substation. WCE agreed to bear the total costs of the Tie-Line including the construction, operation, and maintenance charges.

On April 7, 2009, SCE filed an application for a certificate of public convenience and necessity (CPCN) to construct the 230 kilovolt (kV) transmission line that would connect the Walnut Creek Energy Park to the

CAISO controlled grid at SCE's Walnut substation. By letter dated April 20, 2009, SWAT-Fame, Inc. complained about the Project, specifically noting its proximity to the Project, the large number of power lines in the area already, and alleging a high incidence of cancer among its employee base.¹

3. Discussion

3.1. Necessity

The Project is designed as a peaking facility to meet electrical generation load in Southern California during periods of high demand. The Project incorporates newer turbine generator technology that provides faster startup times and greater efficiency than prior peaking generators.² We acknowledged the need for additional generation such as the Project will produce in the 2008 Energy Action Plan where we state:

Even with energy efficiency, demand response, and renewable resources, investments in conventional power plants and transmission and distribution infrastructure will still be needed.³

Consistent with the statement above, the proposed Tie-Line will serve California consumers by delivering power produced by the Project during periods of high demand to the CAISO controlled grid. We therefore find it to be necessary.

¹ The SWAT-Fame Inc. letter appears to take issue with the construction of the facility, which runs along the entire side of the SWAT-Fame building less than 100 feet away, rather than the specific Tie-Line proposed which at its closest point is approximately 600 feet from one corner of the SWAT-Fame building. This letter is not part of the formal record but has been placed in the correspondence file for this proceeding.

² CEC Final Decision at 10.

³ Energy Action Plan 2008 Update at 15.

3.2. Financing and Ratepayer Impact

Typically, before granting a CPCN, the Commission must consider an analysis of the financial impacts of the proposed project on the utility's ratepayers and shareholders. The rationale for this line of inquiry has been set forth as follows:

Traditionally, utilities apply for [a] CPCN for new projects which will be placed into the utility's rate base, allowing the utility to earn a rate of return on its investment and to depreciate its capital investment over a reasonable period of time. It is the ratepayers who usually pay these costs. The provisions of the PU [Public Utilities] Code related to CPCN require the Commission to consider the cost effectiveness of a proposed project as a means of meeting a perceived need before saddling ratepayers with the economic burden of new investments.⁴

The estimated cost of the Tie-Line and related interconnection facilities is \$7.19 million. SCE states that "the construction of the Tie-Line will cause no direct financial impact on SCE's ratepayers as the total costs of the Tie-Line including the construction, operation, and maintenance charges, will be paid entirely by WCE." (Application at 3.) Given SCE's representations, we need not consider the cost-effectiveness of the project or issues related to ratepayer impact. However, in what may be an abundance of caution, as a condition to approval of this CPCN, we direct that SCE may not recover any costs associated with the Tie-Line or the Project from ratepayers. We further direct that SCE shareholders, as opposed to ratepayers, should assume all risk and liability associated with the Tie-Line related to the Project, based on its agreement with WCE, and that SCE

⁴ *Re Pacific Gas and Electric Company*, 51 CPUC2d 594 (Decision (D.) 93-10-039).

may not pass on to ratepayers, directly or indirectly, any costs, risks, or liability associated with the Tie-Line or the Project.

3.3. Compliance with Commission Rules and Orders

SCE has included a description of the project and its location (*see* Application, Appendix B at 5), project maps and engineering and design diagrams consistent with Pub. Util. Code § 1003.5 (Application, Appendices B and F), a construction management plan as required by Pub. Util. Code § 1003.5(e) (Application, Appendix D), cost estimates as required by Pub. Util. Code § 1003.5(d) (Application, Appendix B), and referenced a copy of its articles of incorporation as required by Pub. Util. Code § 1004 (Application at 10).⁵

Based in part on this showing, the CEC determined:

The Conditions of Certification contained in this Decision, if implemented by the project owner, ensure that the whole of the project will be designed, constructed, 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.

(Application, Appendix B at 311.) Thus, SCE has satisfied the other requirements that are necessary for the issuance of a CPCN.

3.4. Environmental Review

Pursuant to CEQA requirements,⁶ the Commission must 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

⁵ SCE did not include a balance sheet and/or statement of income in the application because it is not funding the construction of the Tie-Line.

⁶ The provisions of CEQA are set forth in Pub. Res. Code § 21000 *et seq.*

Agency or Responsible Agency. The Lead Agency is the one with the most responsibility for supervising or approving the project as a whole.⁷

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 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.⁸

CEQA requires the Commission to consider the Lead Agency's environmental documents and findings before acting upon or approving a project.⁹ The Commission must review the CEC's environmental documents and findings, including any Conditions of Certification or mitigation or monitoring programs, if any, as they pertain to the tie-line and cannot rely on the Final Staff Assessment for these purposes. The CEC certified the Final Staff Assessment on February 27, 2008.

The CEC's environmental analysis assessed the impacts of the 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

⁷ CEQA Guidelines (Title 14, Division 6, Chapter 3 of the California Code of Regulations), Section 15051(b).

⁸ Pub. Res. Code § 25519(c).

⁹ CEQA Guidelines 15050(b) and 15096.

its environmental analysis, the CEC adopted Conditions of Certification for the Project and Tie-Line. The CEC found that:

Implementation of the Conditions of Certification contained in the accompanying text 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.
(Application, Appendix B at 311.)

The record in this proceeding includes CEC Order No. 08-0227-02, which contains 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, 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 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).

The entity that submitted comments on the application raises concerns about the potential risks to human health created by the proximity of the electric power lines to individuals working in one of the adjacent buildings.¹⁰ Both the

¹⁰ See footnote 1 *infra*.

CEC and the Commission consider the possibility of health effects from exposure to electric and magnetic fields (EMFs) to be an important issue. The CEC requires WCE to comply with the Commission's policy on field strength management. Specifically, the CEC's final decision directs that:

The project owner shall construct the proposed transmission lines according to the requirements of California Public Utility Commission's GO-95, GO-52, GO-131-D, . . . and Southern California Edison's EMF-reduction guidelines.¹¹ (Application, Appendix B at 266.)

The Commission has examined EMF impacts in several previous proceedings.¹² We found the scientific evidence presented in those proceedings was uncertain as to the possible health effects of EMFs, and we did not find it appropriate to adopt any related numerical standards. Because there is no agreement among scientists that exposure to EMF creates any potential health risk, and because CEQA does not define or adopt any standards to address the potential health risk impacts of possible exposure to EMFs, the Commission does not consider magnetic fields in the context of CEQA and determination of environmental impacts.

However, recognizing that public concern remains, we do require (pursuant to GO 131-D, Section X.A) that all requests for a CPCN include a description of the measures taken or proposed by the utility to reduce the potential for exposure to EMFs generated by the proposed project. We

¹¹ The project owner is required to submit evidence of compliance with these conditions prior to starting construction of the transmission line or related structures and facilities. (Application, Appendix B at 269.)

¹² D.06-01-042 and D.93-11-013.

developed an interim policy that requires utilities, among other things, to identify the no-cost measures undertaken, and the low-cost measures implemented, to reduce the potential EMF impacts. The benchmark established for low-cost measures is 4% of the total budgeted project cost that results in an EMF reduction of at least 15% (as measured at the edge of the utility right-of-way). SCE provides its EMF Field Management Plan and notes that it has implemented magnetic field reduction measures that include:

- Implementing phasing arrangement(s) to reduce magnetic field levels at the edges of the right-of-way.
- Using pole heights that meet or exceed the Preferred Design criteria as specified in SCE's EMF Design Guidelines.
- Placing existing nearby 66 kV subtransmission lines underground.

(See Application, Appendix E.) SCE's EMF plan for the Tie-Line is consistent with D.93-11-013 and D.06-01-042, as well as the applicable national and state safety standards for the Tie-Line.

4. Conclusion

We conclude that the application conforms to our requirements for a CPCN. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3232, dated April 16, 2009 the Commission preliminarily categorized this application as ratesetting and preliminarily determined that hearings were not necessary. No protests have been received. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

6. Comments on Proposed Decision

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Pub. Util. Code and Rule 14(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Dian M. Grueneich is the assigned Commissioner and Darwin E. Farrar is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared on the Daily Calendar on April 7, 2009.
2. No protests have been filed.
3. A hearing is not required.
4. SCE seeks a CPCN from the Commission authorizing the construction of 1,200 feet of 230 kV Tie-Line from the Project to SCE's existing Walnut Substation.
5. SCE will own the Tie-Line.
6. The estimated cost of constructing the Tie-Line and related interconnection facilities is \$7.19 million. SCE represents that the total costs associated with the Tie-Line will be paid by WCE according to the terms of the Large Generator Interconnection Agreement entered into by SCE and WCE.
7. SCE has established that the Tie-line is necessary.
8. The CEC conducted an environmental review of the Project (including the Tie-Line), and approved the Project with certain "conditions of certification" in Application for Certification 05-AFC-2.
9. SCE's EMF plan for the Tie-Line is consistent with D.93-11-013 and D.06-01-042.

10. In this application, we need not consider the cost-effectiveness of the Project, project alternatives, and related financial issues and their impact on ratepayers, since SCE represents that WCE will pay the total costs of the Project and there will be no impact on ratepayers.

11. The “total costs” of the Project, from which ratepayers are insulated, include all construction, operation, maintenance, and administrative charges associated with the entire transmission project as well as all risk and liability which are or may be associated with the project in the future.

12. The CEC is the lead agency under CEQA for the Project and associated tie-line. The Commission is a Responsible Agency under CEQA.

13. The CEC conducted an environmental analysis of the Project and associated tie-line. The CEC found in Order No. 08-0227-02 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.

Conclusions of Law

1. SCE should not recover any costs associated with the new single circuit 230kV line from ratepayers.

2. SCE’s shareholders, as opposed to ratepayers, should assume all risk and liability associated with the transmission project based upon SCE’s agreement with WCE.

3. SCE should be granted a CPCN to construct, operate, and maintain a single-circuit 230 kV transmission line that will connect the Project to SCE’s existing Walnut Substation, in the manner described in this application, subject

to the conditions set forth in this decision, and any related “Conditions of Certification” specified in CEC Application for Certification 05-AFC-2.

4. Pursuant to Pub. Res. Code § 25519(c), CEC Order No. 08-0227-02 is functionally equivalent to an environmental impact report under CEQA. This document is adequate for the Commission’s decision-making purposes, and the Commission has considered this document 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 Walnut Project tie-line should be subject to the Conditions of Certification and Compliance Verifications applicable to the tie-line that are contained in CEC Order No. 08-0227-02.

7. SCE’s Field Management Plan contained in Appendix E of Application 09-04-010 complies with GO 131-D and the low-cost, no-cost EMF policy adopted by the Commission in D.06-01-042.

8. Because of the public need for additional power generation during periods of high demand, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Southern California Edison Company to construct, operate, and maintain approximately 1,200 feet of new single-circuit 230 kilovolt transmission line that will connect a

proposed 500 megawatt simple-cycle power plant to Southern California Edison Company's existing Walnut Substation subject to the conditions in Ordering paragraph 2 and 3 below.

2. Southern California Edison Company shall not recover any costs associated with the new single-circuit 230 kilovolt transmission line project from ratepayers. Southern California Edison Company's shareholders, as opposed to ratepayers, shall assume all risk and liability of the transmission project based on Southern California Edison Company's agreement with Walnut Creek Energy, LLC. Southern California Edison Company may not pass on to ratepayers, directly or indirectly, any costs, risks, or liability associated with the transmission line project.

3. Southern California Edison Company shall comply with, and use its best efforts to assist Walnut Creek Energy, LLC to comply with all applicable conditions of certification related to the transmission project specified in the decision issued February 27, 2008, by the California Energy Commission in Docket No. 05-AFC-2, granting Walnut Creek Energy, LLC's Application for Certification.

4. Application 09-04-010 is closed.

This order is effective today.

Dated July 30, 2009, at San Francisco, California.

MICHAEL R. PEEVEY
President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners