Decision 06-10-047 October 19, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFICORP (U 901 E), an Oregon Company, for Permit to Construct the Line 75 115kV Conversion Project Pursuant to General Order 131-D.	Application 05-12-011 (Filed December 13, 2005)

INTERIM OPINION GRANTING APPLICATION IN PART

I. Summary

This decision approves, in part, the application of PacifiCorp for a permit to construct a 115 kilovolt (kV) electric transmission line and associated substation modifications between the cities of Yreka and Weed in Northern California. The decision also certifies the Final Mitigated Negative Declaration (FMND) prepared in connection with the project in accordance with the California Environmental Quality Act (CEQA).

We are only approving a portion of the line and substation changes at this time. That portion runs from Yreka to a point north of where the proposed project ends, as described more fully below. The portion of the line we approve here is not controversial, is not currently in dispute among the parties, and presents no routing options or challenges. We are able to approve this portion (which we will call the "Northern Portion" of the line) without evidentiary hearings, as there are no material facts in dispute.

Ordinarily, we would approve a project of this size in a single decision. However, PacifiCorp has requested, and we hereby grant, permission to

accelerate the decision on the Northern Portion so that it may commence construction there before the winter 2006-07 rains begin. The remaining portion of the proposed project (the "Southern Portion") was the subject of evidentiary hearings on October 5-6, 2006, and will require further, and more detailed, consideration. We will address that portion in a separate decision after the evidentiary hearings and briefing by the parties.

II. The Application

A. First Project

1. Generally

On December 13, 2005, PacifiCorp filed an Application seeking a permit to construct (PTC)[1] additional transmission capacity between Yreka and Weed, California. In this initial application, PacifiCorp proposed upgrading its existing Line 1 from 69 kV to 115 kV for 17 miles between the Yreka substation and the Weed substation.[2] PacifiCorp also proposed adding approximately 1.6 miles of new 115 kV transmission line, and modifying three existing substations.[3] (We call this project, which PacifiCorp calls the Yreka/Weed Transmission Upgrade Project, the "First Project." It consists of the Northern Portion plus the Southern

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[1] The Commission's General Order (GO) 131-D requires utilities to seek a PTC if the project is designed to operate between 50 kV and 200 kV.

[2] Note for clarification that there are two substations involved in this application – the Weed substation, and the Weed Junction substation.

[3] The Assigned Commissioner allowed PacifiCorp to proceed with two of the three proposed substation upgrades (the upgrades to the Yreka substation and the Weed Junction substation) by ruling dated June 5, 2006, on the ground they were exempt from CEQA review under GO 131-D. We ratify the Assigned Commissioner's June 5, 2006 ruling with regard to these substations. *Assigned Commissioner's Ruling Regarding Piecemealing and Substations,* June 5, 2006.

Portion.) On January 6, 2006, PacifiCorp filed a declaration attesting that it had given notice of the First Project to affected homeowners and other state agencies listed in GO 131-D.

PacifiCorp explains in its application that the First Project is needed because of load growth in the Mount Shasta and Weed areas of about 2.5% per year, which has led to overloading on the line during summer and winter peak periods. As a result, explains PacifiCorp, thermal line overload has been a common occurrence and schedule curtailment occurred over the two-year period before PacifiCorp filed the application.

Without the First Project, PacifiCorp claims, load shedding to distribution customers and curtailment of contracted scheduled flow will be necessary to avoid an overload condition. As a result, it claims, local area reliability is at risk of service outages.[4]

2. Definition – First Project/Northern Portion

This decision only allows PacifiCorp to construct the First Project/Northern Portion. That portion begins at the Yreka substation, pole 15/23, and continues southward for approximately 17 miles (as reflected in PacifiCorp's PEA, Figure 2-4 Project Maps, page 1 of 7 through page 7 of 7 (PEA Maps)), ending at pole 15/44 (as shown on PEA Maps, page 7 of 7),[5] which is just northwest of the area in controversy.[6] Because they are in controversy, this

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[4] Application at 2.

[5] For clarity, we attach PEA Maps, page 1 of 7 (where the First Project/Northern Portion begins), and PEA Maps, page 7 of 7 (where the First Project/Northern Portion ends) as Appendix A to this decision.

[6] If PacifiCorp renumbers the poles, the original numbering in Appendix A shall govern where it is and is not allowed to construct under this decision.

approval does not allow any construction south of pole 15/44, including any construction on property owned by any of the Homeowners who protested the application.

3. Definition – First Project/Southern Portion

The First Project/Southern Portion is all of the First Project south of pole 15/44, including any proposed construction between pole 8/45 and the Weed Junction substation, between pole 10/47 and the Weed Junction substation, or south of pole 19/45.[7] All of this construction is in dispute and subject to hearings. Therefore, PacifiCorp may not commence this construction, or pre-construction work, until we render a decision on the First Project/Southern Portion.

B. Second Project

On April 27, 2006, in response to a question from the Commission's Energy Division, PacifiCorp informed the Commission that it planned an additional project in the vicinity of the project in the application. PacifiCorp stated that it planned to upgrade the Weed substation from 69 kV to 115 kV, and to "restore the second transmission feed to the Weed Substation by looping in Line 1 over the mile long section that is being abandoned on the south end of our first project." (We call this additional project the "Second Project.")

In response to this new information, the Assigned Commissioner issued a ruling on June 5, 2006 finding that under CEQA, the Commission is required to analyze the Second Project along with the First Project so as to avoid piecemealing of projects. The ruling required PacifiCorp to give notice to

[7] All pole references are contained in PEA Maps, page 7 of 7 (Appendix A to this decision).

homeowners and other state agencies of the Second Project. In a declaration filed on August 7, 2006, PacifiCorp indicated it had given the required notice.

This decision does not approve or deny the Second Project, because PacifiCorp has not yet submitted a formal application for that project. When it submits the application, it shall cite this decision, and the Final Mitigated Negative Declaration we approve herein, so that the Commission in passing on the Second Project, if any, is aware of the work that has already been done to evaluate the environmental impact of the Second Project. We will not hold this application open pending submission of a request for approval of the Second Project. Rather, PacifiCorp should submit a new application when/if it is ready to begin constructing the Second Project.

III. Protests

Several homeowners (Homeowners) along the Southern Portion of the First Project filed protests.[8] The City of Weed also filed a protest,[9] but later withdrew it.[10]

The Homeowners protest aspects of the First Project not addressed in this decision because they are located in the Southern Portion of the proposed project. In particular, they object to creation of a new transmission corridor across

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[8] *Don and Judy Mackintosh's Protest to PacifiCorp Application to Construct a New Transmission Line,* filed Dec. 30, 2005; *Chris and Shelly Pappas' Protest to PacifiCorp Application to Construct a New Transmission Line,* filed Jan. 12, 2006; and *Leonard and Barbara Luiz's Protest to PacifiCorp Application to Construct a New Transmission Line,* filed Jan. 17, 2006.

[9] *City of Weed's Protest to PacifiCorp Application to Construct a New Transmission Line*, filed Jan. 24, 2006.

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

pastureland adjacent to or on their properties. They propose an alternate route for the relatively short stretch of transmission line that PacifiCorp proposes on or near their property on several grounds, including environmental impact, need and cost. The assigned Administrative Law Judge has also directed several questions to PacifiCorp regarding the appropriateness of an alternate route on engineering, cost and need grounds.

Each of the issues raised by the Homeowners is the subject of an October 5-6, 2006 hearing, and will be addressed in a subsequent decision. This decision approves only that stretch of the First Project (the Northern Portion) about which the parties have no current dispute.

IV. Motion to Accelerate Procedural Schedule

On August 10, 2006, PacifiCorp filed a *Motion to Accelerate Procedural Schedule (Motion)* seeking a proposed decision on the First Project/Northern Portion before November 30, 2006, the date set for decision in the Scoping Memo. PacifiCorp explained that it needs to complete the First Project in its entirety by June 1, 2007 in order to prevent potential system overloads. It stated that it must begin construction in October 2006 in order to ensure completion of the First Project before next year's heavy load season.

In argument of the motion PacifiCorp made clear that it was not seeking an accelerated decision on the controversial portion of the line: "The decision that PacifiCorp is suggesting the Commission should defer, if necessary, is the selection among route options that the final MND determines are acceptable…." *Motion* at 12. The area where route options are at issue is in the Southern Portion, where the Homeowners live.

While the Mackintoshes (one of the Homeowners) opposed PacifiCorp's *Motion*, they did so only as to the Southern Portion where they pose a different route. We are not expediting that portion of the First Project, and therefore grant

PacifiCorp's *Motion* to the extent it seeks a decision before November 30, 2006 on the First Project/Northern Portion.[11]

V. Environmental Matters

A. Proponent's Environmental Assessment

With its application, PacifiCorp filed a Proponent's Environmental Assessment (PEA), as required by Commission rule. In it, PacifiCorp details its construction methods and the possible environmental impacts of the First Project. The PEA concludes that all potentially significant impacts of the First Project can be avoided or mitigated to a less than significant level.

B. Commission's Mitigated Negative Declaration

The Commission conducted an independent review of the potential environmental impacts of the project pursuant to CEQA.[12] On September 1, 2006, it released a Draft Initial Study/Mitigated Negative Declaration (DMND) regarding the First and Second Projects for public review and comment. (As noted above, because of the Assigned Commissioner's Ruling that separate CEQA review of the First and Second Projects would constitute impermissible piecemealing, we evaluated both projects together. We approve only the Northern Portion of the First Project in this decision, however.)

The DMND identified the potential effects on the environment from the construction and operation of the First Project in order to evaluate the environmental significance of these effects. The DMND is based on information presented in PacifiCorp's PEA, site inspection by the Commission's

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[11] In all other respects, we deny PacifiCorp's *Motion.*

[12] Public Resources Code § 21000 *et seq.*, California Code of Regulations, Title 14 CEQA Guidelines, §§ 15002 & 15063.

environmental team, and independent environmental analysis by the Commission's environmental consultants, ESA.

The DMND found that there might be temporary and permanent environmental impacts in the following areas, but concluded that all such impacts could be mitigated so that the impact on the environment could be less than significant: Aesthetics; Agricultural Resources; Air Quality; Biological Resources; Cultural Resources; Hazards and Hazardous Materials; Hydrology and Water Quality; Land Use, Plans and Policies; Noise; Public Services; Transportation and Traffic; and Utilities and Services.[13]

Aesthetics – the DMND found the project could affect views.

Agricultural Resources – the DMND found the project could cause the temporary removal of prime farmland.

Air Quality – the DMND found there would be a temporary impact due to construction activity.

Biological Resources – the DMND found that construction activities could potentially impact habitat elements such as dens and burrows and transient wildlife; impact special status plant species; spread noxious or invasive weeds; disturb nesting birds (including Swainson's hawk and the greater sandhill crane); affect Chinook, steelhead and possibly Coho salmon in spawning areas; disturb bald eagles; result in loss of habitat within the mule deer winter range; pose a collision or electrocution risk to birds (particularly larger species such as greater sandhill cranes and raptors); and impact existing wetlands.

Cultural Resources – the DMND found that project construction could result in disturbance of unknown cultural resources.

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[13] The DMND found no impact or less than significant impact in the following areas: Geology, Soils, and Seismicity; Mineral Resources; Population and Housing; and Recreation.

Hazards and Hazardous Materials – the DMND found that construction of the project would require the use of certain fuels, oils, solvents and other chemical products that in large quantities could be hazardous; or could release previously unidentified hazardous materials.

Hydrology and Water Quality – the DMND found that the proposed project could impact water quality by exacerbating erosion, and impact local drainage or the course of a given stream.

Land Use, Plans and Policies – the DMND found the project could conflict with constraints in the Siskiyou County General Plan relating to Surface Hydrology, Deer Wintering Areas, Woodland Productivity and Erosion.

Noise – the DMND found that project construction could generate adverse noise levels.

Public Services – the DMND found that project construction could temporarily increase the demand and response time for fire protection and police services.

Transportation and Traffic – the DMND found that project construction could adversely affect traffic and transportation conditions.

Utilities and Services – the DMND found that the project could inadvertently contact underground utility facilities, leading to short term outages.

After release of the DMND, the Commission took comments for a period of 30 days. Five parties submitted timely written comments, and eight parties gave verbal comments at a public meeting on September 20, 2006. Written comments were from the California Department of Transportation, the County of Siskiyou, PacificCorp, Don and Judy Mackintosh, and Leonard and Barbara

Luiz.[14] None of the comments alter the conclusion in the DMND that all potentially significant environmental impacts can be mitigated to a less than significant level with appropriate mitigation measures.

Therefore, on October 17, 2006, the Commission issued its FMND, containing responses to all comments received on the DMND. We admit the FMND into evidence in the record of this proceeding as Exhibit 1 as of the date of its issuance. The FMND is available on the Commission's website at http://www.yreka-weed.com/fmnd_toc.shtml.

A Mitigation Monitoring, Reporting and Compliance Program (MMRCP) has been prepared to ensure that the mitigation measures are property implemented. MMRCP describes specific actions required to implement each mitigation measure, including information on the timing of implementation and monitoring requirements. As a condition of the approval to construct the Northern Portion of the First Project that we grant in this decision, PacifiCorp shall agree in writing to implementation of all recommended mitigation measures.

Consistent with CEQA's requirements, we find that the Initial Study, the DMND and the FMND together provide a detailed and competent informational document and reflect the independent judgment and analysis of the Commission. Accordingly, we adopt the FMND including the MMRCP prepared for this project.

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[14] The comment letters and the Commission's response are contained in the FMND, which is available on the Commission's web site.

VI. Conclusion

Based on the application, the Initial Study, the DMND and the FMND and the mitigation measures identified therein and incorporated into the project, the Commission finds that the First Project/Northern Portion will not have a significant effect on the environment, is necessary for reliability purposes and should be approved.

VII. Comments on Proposed Decision

Under Rule 14.6(c)(9), the Commission may reduce time for comment on a proposed decision where public necessity so requires. The Commission may also reduce the comment period where all parties so stipulate pursuant to Rule 14.6(b). In this case, counsel for PacifiCorp and the Mackintoshes (one Homeowner) have so stipulated. The pro per Homeowners have not responded to the stipulation request. Thus, we must reduce the comment period based on public necessity. We agree that the First Project/Northern Portion is necessary, and are persuaded that in order to finish that project before the high demand period next summer, PacifiCorp must begin construction shortly. We therefore find that public necessity warrants a reduction in the comment period. Comments will be due on or before October 13, 2006, and no reply comments will be allowed.

PacifiCorp and the Mackintoshes filed comments. No reply comments were permitted, as the time for comments was reduced on the ground of public necessity.

PacifiCorp urges no changes to the Proposed Decision. The Mackintoshes 1) ask that the Commission require an Environmental Impact Report rather than an MND; 2) state that the record was left open to receive additional evidence and thus that it is premature to certify the MND; 3) state that public necessity does not necessitate a reduction of time for comments on the Proposed Decision; and

4) urge other, miscellaneous changes to the language of the Proposed Decision. We address each argument in turn.

A. Environmental Impact Report vs. Mitigated Negative Declaration

We do not believe that certifying the Mitigated Negative Declaration is improper under the narrow circumstances presented here. We are only approving the Northern Portion of the route, north of the area in dispute among the parties. The MND does not analyze that Northern Portion separately from the rest of the proposed route, so it is essential to certify the MND to allow construction to begin on that portion. However, we are aware that hearings on the disputed portions of the route occurred October 5-6, 2006, and that the Commission will be issuing a subsequent decision on that portion. That decision may necessitate additional analysis of environmental impact along the portions of the route not addressed here.

None of the Mackintoshes' argument relates to the Northern Portion of the route. Indeed, in their comments, they concede that there "are no issues currently in dispute" as to the Northern Portion.[15] Thus, we believe we may certify the MND without ruling out further consideration of routing and other issues when we take up whether and how PacifiCorp may take action with regard to the Southern Portion.

B. Whether Record Was Held Open, and Effect of Such Action

During the hearing regarding the Southern Portion, the Mackintoshes filed a motion asking to submit additional evidence into the record. That evidence

[15] Mackintosh comments at 6 (Appendix A).

would consist of soil data related to the Southern Portion of the route. The Administrative Law Judge did not rule on that motion, but ordered the parties to meet and confer first, and then, if necessary, to schedule a hearing.

The claim the Mackintoshes raise about the hearing record on the Southern Portion has nothing to do with whether this decision on the Northern Portion of the route is appropriate. Moreover, the motion is still pending. Therefore, the Mackintoshes' desire to submit additional soil data does not preclude approval of the Northern Portion of the line in this decision.

C. Public Necessity

The Proposed Decision finds that the Northern Portion is necessary, and that construction must begin before the winter 2006 rains for the first project to be completed before summer 2007. The Mackintoshes claim that information submitted during the October 5-6, 2006 hearing on the Southern Portion established that none of the line is needed. However, later in their comments, they urge that we change this Proposed Decision to state that there "are no issues currently in dispute" as to the Northern Portion. Thus, the Mackintoshes do not adequately rebut the Proposed Decision's finding that public necessity requires a reduced comment period.

D. Miscellaneous Wording Changes

Most of the wording changes would have us delay certification of the MND, and we reject those changes. As noted, we are only approving the Northern Portion, and nothing in this decision should be construed to have any impact on the Southern Portion. We do make other minor changes the Mackintoshes urge, as noted in the text of this decision.

VIII. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Sarah R. Thomas is the assigned ALJ in this proceeding.

IX. Categorization and Need for Hearings

This matter was preliminarily categorized as ratesetting and there is no need to alter this categorization. While the Commission initially categorized this application as a proceeding requiring hearings, the lack of objection to the First Project/Northern Portion rendered hearings on that portion unnecessary, so none were held. Hearings are necessary on the First Project/Southern Portion.

Findings of Fact

1. The First Project/Northern Portion is necessary to meet growth and reliability needs in the Yreka to Weed areas.

2. The FMND identified no significant environmental effects of the First Project/Northern Portion that could not be avoided or reduced to less than significant levels by mitigation measures.

3. The Commission has considered the FMND in determining to approve the project.

4. Evidentiary hearings are not required on the First Project/Northern Portion.

Conclusions of Law

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

2. The First Project/Northern Portion should be approved, subject to the Mitigation Monitoring, Reporting and Compliance Program included in the FMND.

3. Because of the need for timely action, today's decision should be made effective immediately.

INTERIM ORDER

IT IS ORDERED that:

1. The Final Mitigated Negative Declaration (FMND) is identified as Exhibit 1 and is received into evidence on the date it was issued by the Commission.

2. The FMND related to the application in this proceeding is adopted pursuant to the requirements of the California Environmental Quality Act (CEQA).

3. The Mitigation Monitoring, Reporting and Compliance Program (MMRCP) included in the FMND is adopted.

4. PacifiCorp is authorized to construct the power lines and associated substation modifications identified and described in this decision as the First Project/Northern Portion, subject to PacifiCorp's written agreement to abide by the mitigation measures described in the FMND and MMRCP to avoid or mitigate the reasonably foreseeable adverse environmental effects of the project.

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

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

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

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

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

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

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

11. The Executive Director shall file a Notice of Determination for the project as required by the CEQA and the regulations promulgated pursuant thereto.

12. This is a final determination that evidentiary hearings are not required for the First Project/Northern Portion. Evidentiary hearings are required for the First Project/Southern Portion, as described in this decision.

13. Nothing in this decision, the Mitigated Negative Declaration, or prior rulings in this proceeding should be construed as approval for PacifiCorp to construct the First Project/Southern Portion, as described in this decision.

14. Should PacifiCorp opt to construct the Second Project, as described in this decision, it shall file a new application and Proponent's Environmental Assessment. It shall cite this decision, and the FMND we approve herein, so that the Commission in passing on the Second Project, if any, is aware of the work that has already been done to evaluate the environmental impact of the Second Project.

15. We ratify the ruling of the Assigned Commissioner requiring the First and Second Projects to be evaluated together under CEQA, and allowing PacifiCorp

to modify the Yreka and Weed substations without CEQA review because they are exempt under GO 131-D.

This order is effective today.

Dated October 19, 2006, at Fresno, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

Commissioner Dian M. Grueneich, being necessarily absent, did not participate.

D0610047 Attachment to Interim Opinion Granting Application In Part