

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

Order Instituting Investigation Into Implementation of Assembly Bill 970 Regarding the Identification of Electric Transmission and Distribution Constraints, Actions to Resolve Those Constraints, and Related Matters Affecting the Reliability of Electric Supply.

Investigation 00-11-001

Conditional Application of PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Los Banos-Gates 500 kV Transmission Project.

Application 01-04-012

**ASSIGNED COMMISSIONER RULING CONSOLIDATING APPLICATION 01-04-012 WITH INVESTIGATION 00-11-001 AND DENYING GAS AND ELECTRIC COMPANY'S MOTION TO WITHDRAW**

**Summary**

This ruling addresses the Pacific Gas and Electric Company (PG&E) motion to withdraw Application (A.) 01-04-012, and additional proceedings related to the Los Banos-Gates 500 kilovolt (kV) Transmission Project (also known as the Path 15 expansion project).

## **Procedural Background**

On November 6, 2001, PG&E filed a “Notice of Withdrawal” of A.01-04-012. The Commission’s Docket Office accepted the filing as a “Motion to Withdraw.”<sup>1</sup> The Office of Ratepayer Advocates (ORA) and the California Independent System Operator (ISO) filed responses to the motion to withdraw on November 13, 2001. The Western Area Power Administration (Western) submitted comments on the same day.<sup>2</sup> PG&E filed a reply on November 15, 2001 and concurrently stated that it was withdrawing its opening testimony served on September 25, 2001. In the meantime, ORA served its opening testimony on November 8, 2001, and the ISO served rebuttal testimony on November 15, 2001. On November 16, 2001, the Commission cancelled the evidentiary hearings previously scheduled to begin on November 26, 2001.

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<sup>1</sup> PG&E argues that it has the right to unilaterally withdraw its application, citing 43 CPUC 2d 639, 1992 Cal. PUC LEXIS 340 (April 8, 1992) as the decision which establishes its ability to withdraw as a matter of right. The cited decision clarified that when a matter has been submitted, termination of the case is clearly a matter of discretion on the part of the Commission. However, that decision specifically concluded that “[w]e need not speculate on the possible circumstances which would cause us to regard dismissal or withdrawal as no longer a matter of right.” (1992 Cal. PUC LEXIS 340, \*3.) Therefore PG&E’s reliance on this case is misplaced. In addition, PG&E’s own actions in recent cases belie its arguments that it is a matter of right to withdraw in the event that a case has not been submitted. (See, for example, D.01-10-052, which granted PG&E’s motion to withdraw A.00-10-031 despite the fact that the case had not been submitted.)

<sup>2</sup> Western is not a party to this proceeding and does not seek to intervene by submitting these comments. Western was previously granted information only status in the proceeding.

## **Memorandum of Understanding**

Western is leading federal efforts to “explore relieving transmission constraints on Path 15.” (Western Comments, November 13, 2001, p. 2.) Through this process, various public and private entities have executed a Memorandum of Understanding (MOU) to participate in a Path 15 expansion project. Western identifies PG&E, PG&E National Energy Group, Kinder Morgan, Transmission Agency of Northern California (TANC), Trans-Elect, Williams Energy Marketing and Trading Company, and Western as the project participants.<sup>3</sup> The MOU provides a very general discussion of the planned expansion project but leaves to future agreements the definition of parties’ shares of the project costs and benefits, as well as specific roles and responsibilities. Such agreements are to be executed no later than 90 days after the MOU was executed (*i.e.*, by January 14, 2002).

## **Motion and Positions**

In its motion, PG&E argues that its application for a Certificate of Public Convenience and Necessity (CPCN) should be withdrawn for several reasons. Because the MOU presents a lower cost alternative to it constructing a wholly owned PG&E project, PG&E states that it will not build the project anticipated in A.01-04-012. Therefore, it argues that the application should be withdrawn. PG&E asserts that if it were to construct the Path 15 upgrades alone, the cost of designing, permitting, and constructing such upgrades ultimately would be

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<sup>3</sup> PG&E filed a copy of the October 16, 2001 MOU with its November 6, 2001 motion. However, the filed document is signed only by PG&E and identifies additional project participants beyond those identified by Western in its November 13, 2001 comments. Efforts by the Administrative Law Judge assigned to A.01-04-012 to obtain a signed copy was unsuccessful.

borne only by customers of the investor-owned utilities. PG&E asserts that under the MOU project, those costs will be spread over a larger number of customers, including customers of the participants in TANC and Western, reducing ratepayer costs. (PG&E Reply, pp. 12-13.) PG&E believes pursuing both state and federal action on this project will result in duplicative costs.

The ISO does not take a position regarding whether the application can or should be withdrawn. Instead, the ISO recommends that the Commission stay further proceedings in A.01-04-012 for a minimum of 90 days. The ISO argues that a stay will allow for execution of the agreements anticipated by the MOU so that parties may avoid additional efforts associated with evidentiary hearings and briefing in the event that such agreements are successfully reached.

ORA opposes allowing PG&E to withdraw its application. ORA argues that PG&E would be an owner in the MOU transmission project and therefore PG&E's involvement requires a CPCN from the Commission. In addition, ORA believes that the Commission is the only venue where a review of the economics of either a standalone PG&E Path 15 project or the MOU project will be reviewed and that we must understand the costs and benefits to ratepayers under either development approach. ORA recommends that PG&E be directed to submit supplemental testimony demonstrating why the MOU approach to the project would result in an improved level of ratepayer benefits compared to a standalone PG&E project.

### **Discussion**

PG&E submitted A.01-04-012 as directed in my March 29, 2001 ruling in Investigation (I.) 00-11-001. PG&E and the ISO served opening testimony on September 25, 2001. PG&E's testimony focused on more fully describing the project and the expected costs to build the project. The ISO testimony addressed

the need for the project, finding the Path 15 expansion to be economic under certain scenarios. In its November 8, 2001 testimony, ORA critiqued the ISO testimony and assumptions. The ISO responded to ORA's critiques in its rebuttal testimony. None of the testimony has been subject to cross-examination at this point in the proceeding.

PG&E has stated that it will not build a standalone Path 15 project. Therefore, pursuing A.01-04-012 is arguably moot. However, PG&E states its intent to participate in the MOU project, which we understand to encompass the same (or a very similar) physical project as proposed in A.01-04-012, with a lesser ownership responsibility for PG&E. In order to understand the impact on PG&E's ratepayers of potential participation in the MOU project, we must have a clearer understanding of the MOU project and its allocation of costs, benefits, and responsibilities and the resulting economic need for the project.

I.00-11-001 provides a logical forum to further explore the issue of project economics and to examine the allocation of benefits among project participants under the MOU development approach or a PG&E stand-alone project. For this reason, I am consolidating A.01-04-012 and I.00-11-001 and denying PG&E's motion to withdraw its application. PG&E is currently a respondent to I.00-11-001 and matters surrounding the economics of transmission projects throughout the state are the subject of the investigation. Parties to A.01-04-012 should be prepared to discuss a schedule for supplemental testimony regarding the allocation of costs and benefits of the federal project at the December 19, 2001 prehearing conference already scheduled in I.00-11-001. Proposals regarding schedule and scope for further exploration of a Path 15 expansion should be included in parties' prehearing conference (PHC) statements due on December 13, 2001. Based on the discussion at the PHC, the assigned

Administrative Law Judge (ALJ) in I.00-11-001 will establish the scope and schedule for further consideration of the Path 15 expansion application, previously served testimony, and supplemental testimony.

**IT IS RULED** that:

1. Application 01-04-012 and Investigation 00-11-001 are consolidated.
2. Pacific Gas and Electric Company's November 6, 2001 Motion to Withdraw is denied.
3. Parties shall include proposals regarding schedule and scope for further exploration of a Path 15 expansion in their prehearing conference statements due December 13, 2001.

Dated November 30, 2001, at San Francisco, California.

/s/ Loretta M. Lynch  
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Loretta M. Lynch  
Assigned Commissioner

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner’s Ruling Consolidating Application 01-04-012 with Investigation 00-11-001 and Denying Pacific Gas and Electric Company’s Motion to Withdraw on all parties of record in this proceeding or their attorneys of record.

Dated November 30, 2001, at San Francisco, California.

/s/ Antonina V. Swansen  
Antonina V. Swansen

**N O T I C E**

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I.00-11-001, A.01-04-012 LYN/avs