

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND
ELECTRIC COMPANY, a California
Corporation, for a Permit To Construct the
Atlantic-Del Mar Reinforcement Project
Pursuant to General Order 131-D.

(U 39 E)

Application 01-07-004
(Filed July 9, 2001)

**ASSIGNED COMMISSIONER'S RULING
ESTABLISHING CATEGORY AND PROVIDING SCOPING MEMO
IN COMPLIANCE WITH ARTICLE 2.5, SENATE BILL 960
RULES AND PROCEDURES**

Pursuant to Rules 6(a)(3) and 6.3 of the Commission's Rules of Practice and Procedure,¹ this ruling sets forth the procedural schedule, assigns the principal hearing officer, and addresses the scope of the proceeding following a prehearing conference (PHC) held on October 25, 2001 and additional environmental review of the proposed project. This ruling is appealable only as to category of this proceeding under the procedures in Rule 6.4. In delineating the scope of this proceeding, I have considered the application, the protest and letters submitted, as well as discussion at the PHC, replies to the protest and letters, exhibits and supplemental information submitted at the PHC, materials filed after the PHC, and the draft and revised Mitigated Negative Declaration (MND).

¹ All references to Rules are to the Commission's Rules of Practice and Procedure found in Title 20 of the California Code of Regulations.

Background

By this application, Pacific Gas and Electric Company (PG&E) seeks a permit to construct additional transmission capacity in the Rocklin and Roseville area. The Atlantic-Del Mar Reinforcement Project would result in the construction of approximately 4.1 miles of new single circuit 60 kilovolt (kV) electric power line, installation of a new circuit breaker at Atlantic Substation and a new switch at Del Mar Substation. The project is located approximately 15 miles northeast of Sacramento. In conjunction with its application, PG&E filed its Proponent's Environmental Assessment. The Commission's Energy Division conducted an independent environmental review of PG&E's proposed project.

The Commission issued a preliminary finding in Resolution ALJ 176-3067, issued on July 12, 2001, that the category for this proceeding is ratesetting and determined that the matter should be set for hearing. The City of Rocklin (Rocklin) filed a protest with the Commission's Docket Office. The Commission has also received several letters from interested residents. The Commission held a PHC on October 25, 2001 in Rocklin.

On October 16, 2001 the Energy Division issued a Draft Mitigated Negative Declaration and Initial Study (DMND/IS) as part of the environmental review process. The environmental review team held an informational meeting in Rocklin on October 25, 2001, to help the communities in the proposed project vicinity to understand the project and the findings of the Draft Initial Study and Mitigated Negative Declaration. Comments on the DMND/IS were due by November 16, 2001.

On October 15, 2002, the Energy Division issued its Revised Mitigated Negative Declaration and Initial Study (RMND/IS) incorporating changes made as

a result of comments.² Undergrounding along a portion of PG&E's proposed project route is incorporated as a mitigation measure. PG&E has accepted the mitigation measures incorporated into the RMND/IS and therefore the project PG&E is now proposing is the initial project, as modified by the mitigation measures set forth in the RMND/IS.

Scoping Memo

This purpose of this proceeding is to determine whether or not PG&E should be granted a permit to construct the Atlantic-Del Mar Transmission Reinforcement Project. As we consider what issues are properly within the scope of this determination, some history of the permit to construct application process is in order.

Prior to the adoption of General Order (GO) 131-D, utilities were not required to submit applications for the construction of transmission projects of less than 200 kVs. The Commission conducted no environmental review of projects less than 200 kV. Those opposed to construction of a project under 200 kV could file a complaint with this Commission. Decision (D.) 94-06-014 concluded that the complaint procedure was inadequate to ensure proper environmental review of projects between 50 and 200 kV and adopted the permit to construct requirements, as set forth in GO 131-D. The Commission retained the complaint procedure for project less than 50 kV.

D.94-06-014 states that under the permit to construct process "our review focuses solely on environmental concerns, unlike the CPCN [Certificate of Public

² The Revised MND is identified as Exhibit 5 and will be received into evidence on the date of this ruling. At the PHC the administrative law judge (ALJ) reserved Exhibit 2 for the Final MND.

Convenience and Necessity] process which considers the need for and economic cost of a proposed facility.” (55 CPUC 2d 87, 92.) GO 131-D, Section IX.B.1.f echoes this language by stating that “an application for a permit to construct need not include either a detailed analysis of purpose and necessity, [or] a detailed estimate of cost and economic analysis...”

GO 131-D makes clear that if the Commission’s initial study finds that there will not be a significant adverse impact on the environment, a negative declaration will be prepared. If the initial study identifies potentially significant adverse impacts, but the utility revises its proposed project to avoid those effects, then a MND is the proper environmental document to prepare. It is only if the initial study identifies potentially significant adverse impacts on the environment that cannot be mitigated that an environmental impact report will be prepared and alternatives considered. In assessing potential impacts, the California Environmental Quality Act (CEQA) Guidelines instruct us to evaluate impacts compared to the existing environment, not against future use or development of the property, even if existing land-use designations allow for development.

As part of our decision on this project, we must determine whether the environmental document prepared by the Energy Division should be certified. Certification consists of two steps. First, the Commission must conclude that the document has been completed in compliance with CEQA, and second, the Commission must have reviewed and considered the environmental document prior to approving the project. Additionally, the lead agency must find that the environmental document reflects its independent judgment (Pub. Res. Code § 21082.1(c)(3).) The decision on this application will address these issues.

The environmental review process has concluded that no Environmental Impact Report is required, therefore, we will not explore alternatives. Thus, the primary question we must decide is whether or not to approve the project

(including mitigation measures) or reject the project. GO 131-D does not provide us with leeway to adopt an alternative that has not been explored as part of the environmental review process.

The primary issues raised by the parties relate to visual and safety impacts of PG&E's proposed project, prior to mitigation measures adopted as part of the RMND/IS. In order to decide whether to grant the permit to construct we will balance the influence on the environment with non-environmental impacts of the project on the community so these types of issues are within the scope of this proceeding.

However, the purpose of GO 131-D, and the fact that the Atlantic-Del Mar project requires only a permit to construct, limits the issues before us. Although several parties expressed interest in presenting evidence regarding the cost differences of various alternatives, including the cost of undergrounding the proposed project, the economics of this project are not within the scope of the Commission's decision on whether to grant a permit to construct. (GO 131-D, Section IX.B.1.f.) Therefore, we will not take evidence or consider cost issues in deciding whether to grant a permit to construct. Likewise, the need for the project outside of the scope of this proceeding.

Need for Hearings and Ex Parte Rules

Resolution ALJ-176-3067, issued on July 12, 2001, made a preliminary ruling that hearings are necessary. Parties disagreed about the need for evidentiary hearings in this case. PG&E requested that its application be resolved without hearings. Although it did not request hearings in its protest, at the PHC, Rocklin asserted that Section XIV.B of GO 131-D requires that the Commission hold a hearing if the utility and local agencies cannot resolve differences regarding land-use matters. Because the adoption of mitigation measures in the RMND/IS resolve

the bulk of the visual and safety issues raised in the protests and at the PHC, I rule that no hearings are required. I will place a decision before the Commission to change the hearing designation. Consistent with Rule 6.6, once the Commission has approved the change in hearing designation, ex parte communications will be permitted consistent with Rule 7(e). Until such decision has been adopted, ex parte communications are permitted only if consistent with the requirements set forth in Rule 7(c), and are subject to the reporting requirements set forth in Rule 7.1.

Categorization and Designation of Principal Hearing Officer

The parties agree with the Commission's preliminary categorization of this proceeding, and I affirm the preliminary categorization of ratesetting. In a ratesetting proceeding, Rule 5(k)(2) defines the presiding officer as the principal hearing officer designated as such by the assigned Commissioner prior to the first hearing in the proceeding. I have designated ALJ Michelle Cooke as the principal hearing officer. The provisions of Pub. Util. Code § 1701.3(a)³ apply.

Schedule

Once the Final MND is issued, I expect that this proceeding will be resolved within six months. Parties will have the opportunity to comment on the draft decision of the ALJ prior to the Commission adopting a final decision.

Filing and Service of Documents

All formally filed documents must be filed in hard copy with the Commission's docket office. In order to ensure timely delivery of documents and conserve resources, we will only require service of subsequent documents to be performed electronically, unless the appearance or state service list member did not

provide an email address. If no email address was provided, service should be made by United States mail. Parties should provide concurrent e-mail service to ALL persons on the service list, including those listed under “Information Only.” Any document that is filed MUST also be served electronically. A copy of the service list for this proceeding is available on the Commission’s web page at http://webpageserver.cpuc.ca.gov/published/service_lists/A0107004_33087.htm.

Other Issues

On February 13, 2002 attorneys for Gensiro Kawamoto, a landowner of several rental properties adjacent to the proposed project in Rocklin, filed a petition to intervene in this proceeding. On February 21, 2002, an article in the San Francisco Chronicle indicated that Kawamoto was attempting to sell the majority of his rental properties in the United States, including those in Rocklin.⁴ On August 21, 2002, the assigned ALJ attempted to determine whether Kawamoto was still the landowner of the property in question by contacting the attorneys on the February 13, 2002 pleading. The filing attorneys stated that they no longer represented Kawamoto, and referred the ALJ to the law firm of Hefner, Stark and Marois. This law firm also no longer represents Kawamoto and the ALJ was referred to the law firm of Alstom, Hunt, Floyd and Ing, in Hawaii. Based on the ALJ’s conversation with attorney Bruce Noborikawa of Alstom, Hunt, Floyd and Ing, the property in Rocklin was sold earlier this year, and the transaction closed on or around May 21, 2002. Therefore, Kawamoto’s petition to intervene is moot, and

³ All section references are to the Public Utilities Code unless otherwise indicated.

⁴ See http://sfgate.com/cgi-bin/article.cgi?file=/chronicle/arc_hive/2002/02/21/MN123520.DTL.

the petition is denied. The Process Office shall remove Kawamoto from the service list.

Therefore, **IT IS RULED** that:

1. The Revised MND is identified as Exhibit 5 and is received into evidence on the date of this ruling.
2. The scope of this proceeding is described above.
3. The schedule of this proceeding is as set forth above in this ruling.
4. This ruling confirms the Commission's preliminary finding in Resolution ALJ 176-3067, issued on July 12, 2001, that the category for this proceeding is ratesetting but finds that hearings are not necessary. This ruling, only as to category, is appealable under the procedures in Rule 6.4.
5. The *ex parte* rules as set forth in Rule 7(c) of the Commission's Rules of Practice and Procedure apply to this proceeding until the Commission confirms the change in hearing designation.
6. Once the Commission has confirmed the change in hearing designation, the *ex parte* rules as set forth in Rule 7(e) of the Commission's Rules of Practice and Procedure apply.
7. Administrative Law Judge Cooke is the principal hearing officer.
8. The official service list is attached to this ruling. Parties should serve all filings as set forth in this Ruling.
9. Gensiro Kawamoto's petition to intervene is moot, and the petition is denied. The Process Office shall remove Kawamoto from the service list.

Dated October 16, 2002, at San Francisco, California.

/s. HENRY M. DUQUE
Henry M. Duque
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by U.S. mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Assigned Commissioner's Ruling Establishing Category and Providing Scoping Memo in Compliance with Article 2.5, SB 960 Rules and Procedures on all parties of record in this proceeding or their attorneys of record.

Dated October 16, 2002, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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Last Update on 09-OCT-2002 by: LIL
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