

Decision \_\_\_\_\_

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

Application of Pacific Gas and Electric Company (U 39 M) for Authorization Under Public Utilities Code Section 851 to Consent to Crossings of Pacific Gas and Electric Company Exclusive Easements by High Winds, LLC.

Application 02-10-005  
(Filed October 7, 2002)

**DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE SECTION 851 OF TWO CROSSINGS OF PACIFIC GAS AND ELECTRIC GAS COMPANY EXCLUSIVE EASEMENTS BY HIGH WINDS, LLC**

**1. Summary**

This decision grants the unopposed application<sup>1</sup> of Pacific Gas and Electric Company (PG&E) for Commission authorization under Public Utilities Code § 851<sup>2</sup> to consent to two crossings of a certain PG&E exclusive easements by High Winds, LLC (High Winds). High Winds needs to cross the PG&E exclusive easement in order to construct and operate the High Winds Project, a wind-generating project located in southeastern Solano County.

Our decision on this matter is expedited to assist High Winds in meeting its construction schedule, so that it may retain federal tax credits for the project.

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<sup>1</sup> In response to a motion for an expedited schedule by PG&E, the assigned Administrative Law Judge (ALJ) shortened the protest period for this application by ruling dated October 17, 2002. No protests were filed.

<sup>2</sup> All statutory references are to the Public Utilities Code unless otherwise referenced.

## 2. Background

### A. The Project

High Winds proposes to construct and operate a wind-generating project with approximately 150 megawatts (MW) of generating capacity in the Collinsville-Montezuma Hills Wind Resource Area in southeastern Solano County (the project). The purpose of the project is to meet regional energy needs in an efficient and environmentally sound manner by harnessing the renewable wind resources in this area to generate approximately 450 gigawatt hours of electricity annually from approximately 150 MW capacity. The project will also promote the long-term economic viability of agricultural uses in the Montezuma hills, including grazing and farming.<sup>3</sup>

The electricity generated by the project will connect to the existing PG&E Vaca-Dixon-Peabody-Contra Costa 230 kilovolt (kV) transmission lines that traverse the area. At the proposed new High Winds substation, the 35 kV power produced by the wind turbine generators will be transformed to 230 kV for interconnection to the PG&E line.

The project will be located on 6,000 acres of land owned by six private property owners. These property owners have already agreed to lease the property and to grant certain easements to High Winds. PG&E also has an exclusive easement over the property for its 500 kV transmission line.

High Winds has requested PG&E's consent to an underground crossing of PG&E's exclusive easement by High Winds' electric and communication

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<sup>3</sup> The land surrounding the project facilities will remain available to the owners for use for agriculture, sheep grazing and residences.

facilities. High Winds has also asked PG&E to agree to High Winds' use of an existing road that crosses PG&E's exclusive easement for ingress and egress.

**B. The Proposed Agreement Between  
PG&E and High Winds**

Under the agreement, High Winds may construct, install, replace, remove, maintain, and use six 35 kV electric circuits, including three direct-buried lines of cable and an associated data and communication line, in a rectangular trench that is approximately 200 feet wide and at least three feet below the surface of the ground, within the PG&E exclusive easement (the underground crossing area).<sup>4</sup> High Winds will use these facilities for the transmission of electric power and related electronic and control signals.

The agreement also permits High Winds to use an existing road that crosses PG&E's exclusive easement (the road area) for vehicular access, ingress and egress to and from High Winds' facilities.

High Winds may not use the exclusive easement area for any other purpose without PG&E's consent and, when required, Commission authorization.

PG&E shall approve the plans and specifications for the project before High Winds begins construction. High Winds shall designate the location of its underground cables with markers set on the ground and shall not fence or enclose its underground facilities unless PG&E requests the installation of a temporary fence during construction.

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<sup>4</sup> The underground crossing area shall be located between PG&E kV Towers No. 20/87 and No. 20/88. The northern edge of the rectangular area shall be located 115 feet south of the centerline of PG&E 230 kV Tower No. 119/130.

PG&E has reserved the right to use its exclusive easement as necessary and appropriate to serve its patrons, consumers, and the public. High Winds must coordinate with PG&E to minimize interference with PG&E's use of its exclusive easement, may not use the underground crossing area or the road area in a way that endangers human health and safety, PG&E facilities, or the environment, and may not create a nuisance. If PG&E believes that High Winds' activities are creating a danger, PG&E may order High Winds to stop these activities until appropriate protective measures are taken.

High Winds' use of the underground crossing area and the road area must be compatible with the applicable Commission General Orders (G.O.s) and decisions and other legal requirements.<sup>5</sup> High Winds may not drill, bore or excavate within thirty feet of PG&E underground facilities, such as gas pipelines, valves, regulators, or electrical conduits. High Winds must maintain the underground crossing area and the road area in good condition and maintain the security of its facilities.

High Winds has had an opportunity to evaluate the condition of the exclusive easement and has entered into this agreement at its own risk, without any warranty by PG&E. High Winds acknowledges that potential environmental

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<sup>5</sup> For example, High Winds may not conduct activities that would place PG&E gas or electric facilities in violation of G.O. 95 (overhead electric), G.O. 112 (gas), G.O. 128 (underground electric) or other applicable requirements. High Winds also may not erect, handle, or operate tools, machinery, equipment or material closer to PG&E's high-voltage conductors than the minimum clearances stated in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety and in no event closer than 10 feet to any energized electric conductors or appliances.

hazards, including hazardous substances and “EMFs,”<sup>6</sup> may exist in, on, or under the exclusive easement. High Winds has agreed to take reasonable precautions to protect its employees, contractors, consultants, agents and invitees from the risk of harm caused by potential environmental hazards.

In addition, High Winds has agreed to indemnify, defend, and hold PG&E harmless from any claims or liability which arise from or are connected with High Winds’ occupancy or use of the exclusive easement, except for claims which result from PG&E’s sole negligence or intentional misconduct. This indemnification applies to all claims arising out of or connected with the release or discharge of hazardous substances related to High Winds’ activities and its use of the exclusive easement. In order to further protect PG&E from liability, High Winds must carry a specified level of insurance coverage, which names PG&E as an additional insured, during the term of the agreement.<sup>7</sup>

PG&E may require High Winds to relocate its facilities, if necessary in PG&E’s commercially reasonable judgment, for PG&E’s future use of its exclusive easement. Upon receiving 60 days advance notice from PG&E, High Winds must move its facilities to another location approved by PG&E.

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<sup>6</sup> “EMFs” include electric fields, magnetic fields, electromagnetic fields, electromagnetic radiation, power frequency fields, and extremely low frequency fields, however designated, and whether emitted by electric transmission lines, other distribution equipment, or otherwise.

<sup>7</sup> This insurance must include commercial general liability insurance, which names PG&E in the amount of \$10 million per occurrence, with additional coverage for defense costs; pollution insurance in the amount of \$1 million for each occurrence for bodily injury and property damage; business auto insurance; and workers compensation and employer’s liability insurance. Under some circumstances, High Winds may self-insure for some or all of these obligations.

This agreement will terminate if High Winds abandons its facilities or under any other conditions stated in High Winds' lease and easement agreements with the property owners. High Winds is deemed to have abandoned its facilities after two years of continued non-use, or four years if the continuous period of non-use results from circumstances beyond High Winds' control.

PG&E retains discretion to determine whether any other persons or the public may occupy or use the exclusive easement.

High Winds may not assign its interests under this agreement without PG&E's prior written consent.

### **C. Environmental Review**

The California Environmental Quality Act (CEQA, Public Resources Code Section 21000, *et. seq.*), applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities." (Title 14 of the California Code Regulations, hereinafter CEQA Guidelines, Section 15002).

Since the proposed project is subject to CEQA and the Commission must issue a discretionary decision without which the project cannot proceed (*i.e.*, the Commission must act on the Section 851 Application), this Commission must act as either a Lead or a Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines Section 15051 (b)).

Here, Solano County (County) performed the environmental analysis under CEQA as the Lead Agency for the project. The Commission is a Responsible Agency for this proposed project under CEQA. CEQA requires that

the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project (CEQA guidelines 15050(b)). The specific activities which must be conducted by a Responsible Agency are contained in CEQA Guidelines Section 15096.

In September 2002, the County issued a Notice of Determination to adopt a final Environmental Impact Report (EIR) and a Statement of Overriding Considerations, and submitted the document to the State Clearinghouse (SCH # [2001082112](#)).

Where an EIR is adopted, the Responsible Agency must make findings for each significant impact as required by Section 15091, and where necessary, shall make findings pursuant to Section 15093, (which is required when a Statement of Overriding Considerations is issued).

The Final EIR identified a number of potentially significant environmental effects (or impacts) that the project will cause. Some of these effects will be fully avoided through the adoption of feasible mitigation measures. Other effects can be substantially lessened, but not fully avoided, and therefore remain significant and unavoidable.

The Commission therefore makes the following findings:

**1.) Findings**

The Final EIR recommends mitigation measures designed to reduce the significance of the impacts to aesthetics, air quality and biological resources. However, the EIR concludes that these mitigation measures are insufficient to reduce the impacts to a less than significant level and therefore the project will

cause significant and unavoidable adverse impacts to Aesthetics (Impact AES-3), Air Quality (Impact AIR-1), and Biological Resources (Impact BIO-7).

The Final EIR concludes that significant and potentially significant environmental impacts that could be mitigated to a less than significant level occur in the areas of Aesthetics (Impacts AES-5 and 6), Biological Resources (Impacts BIO-1, 3, 5, and 6), Communications Interference (Impact COM-1), Cultural Resources (Impacts CUL-1, 2, and 3), Geology, Soils, Mineral Resources, and Seismicity (Impacts GEO-1, 2, 3, and 4), Hazards and Hazardous Materials (Impacts HAZ-1, 2, 3, and 4), Hydrology and Water Quality (Impacts-1, 2, and 4), Land Use and Planning (Impact LUP-1), Noise (Impacts NOI-1, 2, and 4), Public Service and Utilities (Impact PUB-1), and Transportation (Impacts TRA-2 and 3).

The Final EIR concludes that all other potential environmental impacts of the project are less than significant, and that no additional mitigation measures are necessary.

With regards to Aesthetics, Biological Resources, Communications Interference, Cultural Resources, Geology, Soils, Mineral Resources, and Seismicity, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, Public Service and Utilities, and Transportation, the Commission finds that the project impacts can be reduced to less than significant levels with the implementation of the adopted mitigation measures.

With regards to Aesthetics, Air Quality, and Biological Resources, the Commission finds that there are a number of significant and unavoidable impacts. However, there are a number of overriding considerations that justify our approval of the project.

## **2.) Statement of Overriding Considerations**

The Commission has determined, pursuant to Section 15093 of the State of California CEQA Guidelines, that the benefits of the project outweigh the adverse impacts and that the project should be approved. The Commission specifically finds that there are specific social, economic and other reasons for approving this project, and that there is substantial evidence in the record to determine that the benefits of the project outweigh the adverse impacts and that the project should be approved. Pursuant to this finding, the Commission is adopting and certifies this Statement of Overriding Considerations.

The specific social, economic and other reasons for approving this project, which override the unavoidable construction-related noise and air quality impacts identified in the findings, are as follows:

1. The project is consistent with Solano County Land Use and Circulation Element of the General Plan pertaining to the use of agricultural lands, the Wind Turbine Siting Plan and EIR, and the Solano County Zoning regulations; and
2. The project promotes the long-term economic viability of agricultural uses in the Montezuma Hills, including grazing and dry land farming; and
3. The project meets regional electrical energy needs in an efficient and environmentally sound manner, as provided in the energy element of the Solano County General Plan; and
4. The project provides long-term environmental benefits through the generation of electricity in a manner that does not generate air pollutant emissions; and
5. The project incorporates feasible mitigation measures to ensure that the environmental impacts are minimized to a reasonable and practicable level.

We have reviewed and considered the Final EIR and the Resolution adopted by the County and find that these documents are adequate for our decision-making purposes under CEQA. We find that the County reasonably concluded that the proposed project eliminates and/or reduces the potential impacts of the project to a less than significant level; and for those that cannot be reduced to less than significant or are unavoidable, the County has adequately illustrated the overriding considerations.

#### **D. Ratemaking Considerations**

Since PG&E will not charge High Winds any fee for the two crossings of the exclusive easement area, we need not address ratemaking issues here.

### **3. Discussion**

Section 851 provides that no public utility “shall . . . encumber the whole or any part of . . . property necessary or useful in the performance of its duties to the public, . . . without first having secured from the Commission an order authorizing it to do so.” Since High Winds’ crossings of the exclusive easement would be encumbrances on PG&E property, we apply Section 851 in considering this application.<sup>8</sup>

The primary question for the Commission in § 851 proceedings is whether the proposed transaction is adverse to the public interest. In reviewing a § 851 application, the Commission may “take such action, as a condition to the transfer, as the public interest may require.”<sup>9</sup> The public interest is served when

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<sup>8</sup> Decision (D.) 01-08-069.

<sup>9</sup> D.3320, 10 CRRC 56, 63.

the utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers.<sup>10</sup>

We find that PG&E's consent to High Winds' two crossings of the exclusive easement will serve the public interest. The two proposed crossings will not interfere with PG&E's use of the exclusive easement or with service to PG&E customers, and will be utilized in a manner consistent with Commission and legal requirements. PG&E is adequately protected from liability based on High Winds' use of the underground crossing area and the road area under the agreement. PG&E's consent to these two crossings will also serve the public interest by enabling High Winds to construct and operate a wind-generating project that will produce electric energy in an environmentally sound economical manner.

#### **4. Conclusion**

For all of the foregoing reasons, we grant the application of PG&E pursuant to § 851, effective immediately.

#### **5. Final Categorization and Waiver of Review Period**

Based on our review of this application, we conclude that there is no need to alter the preliminary determinations as to categorization and that hearings are not required, which were made in Resolution ALJ 176-3098 (October 24, 2002). Moreover, since this proceeding is uncontested and we grant the relief granted, pursuant to § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

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<sup>10</sup> D.00-07-010 at p. 6.

## **6. Assignment of Proceeding**

Geoffrey Brown is the Assigned Commissioner and Myra Prestidge is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. Our consideration of this application is expedited based on representations that High Winds must obtain authorization for two crossings of PG&E's exclusive easement as quickly as possible in order to meet its construction schedule and retain federal tax credits for the project.

2. High Winds has requested an underground crossing of PG&E's exclusive easement for the installation, operation, and maintenance of facilities for the transmission of electric power and related electronic and control signals and an additional crossing of an existing road for ingress and egress.

3. The two crossings requested by High Winds will not interfere with PG&E's use of its exclusive easement or with service to PG&E's customers, and will be utilized in a manner consistent with Commission and legal requirements.

4. The County is the Lead Agency for the proposed project under CEQA.

5. The County prepared an EIR for this project, which recommends mitigation measures designed to reduce the significance of the impacts to aesthetics, air quality and biological resources. However, EIR concludes that these mitigation measures are insufficient to reduce the impacts to a less than significant level and therefore the project will cause significant and unavoidable adverse impacts to Aesthetics, Air Quality, and Biological Resources.

6. The Final EIR concludes that significant and potentially significant environmental impacts that could be mitigated to a less than significant level occur in the areas of Aesthetics, Biological Resources, Communications

Interference, Cultural Resources, Geology, Soils, Mineral Resources, and Seismicity, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Noise, Public Service and Utilities, and Transportation.

7. The Final EIR concludes that all other potential environmental impacts of the project are less than significant, and that no additional mitigation measures are necessary.

8. On September 19, 2002, the County certified the Final EIR, issued a Statement of Overriding Considerations, and adopted applicable mitigation measures.

9. The Commission is a Responsible Agency for the proposed project under CEQA.

10. Order Section 15093 of the CEQA Guidelines, there is substantial evidence in the record to determine that the benefits of the project outweigh the adverse impacts and that the project should be approved. Statement of Overriding Considerations. Pursuant to this Finding, the Commission is adopting a Statement of Overriding Considerations.

11. PG&E will not charge a fee to High Winds for the two crossings.

12. The two crossings of PG&E's exclusive easement area will enable High Winds to construct and operate a wind-generating project, which will produce electrical energy in an environmentally sound and economical manner.

### **Conclusions of Law**

1. Consistent with § 851, PG&E's consent to two crossings of its exclusive easement by High Winds in the underground easement area and the road area will serve the public interest and should be authorized.

2. The Final EIR and the Statement of Overriding Considerations adopted by the County are adequate for the Commission's decision-making purposes as a Responsible Agency under CEQA.

3. The Commission has considered the Final EIR in its decision-making process in accordance with the CEQA Guidelines Sections 15090 and 15092.

4. Pursuant to Section 15092 of the CEQA Guidelines, the Commission should adopt the mitigation measures identified in the Final EIR.

5. Pursuant to Section 15093 of the CEQA Guidelines, there is substantial evidence in the record to determine that the benefits of the project outweigh the adverse impacts and that the project should be approved pursuant to the Statement of Overriding Considerations, adopted by the Commission.

## **O R D E R**

### **IT IS ORDERED** that:

1. Pacific Gas and Electric Company (PG&E) is authorized to consent to two crossings of its exclusive easement, as described in the application, by High Winds, LLC (High Winds), so that High Winds may construct, operate, and maintain underground facilities for a wind-generating project in the Collinsville-Montezuma Hills Wind Resource Area in southeastern Solano County and may utilize an existing road that crosses PG&E's exclusive easement for ingress and egress.

2. PG&E shall file a legal description and a map of both crossings of PG&E's exclusive easement within 60 days of this order.

3. This order shall take effect immediately so that High Winds may adhere to its construction schedule and retain federal tax credits for the project.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.