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Mailed 5/17/2001

Decision 01-05-059 May 14, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC COMPANY For a Certificate of Public Convenience and Necessity Authorizing The Construction of the Northeast San Jose Transmission Reinforcement Project.	Application 99-09-029 (Filed September 9, 1999)

O P I N I O N

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I. Summary

This decision grants the application of Pacific Gas and Electric Company (PG&E) for a certificate of public convenience and necessity (CPCN) to build a new 7.3 mile 230 kilovolt (kV) double-circuit transmission line, upgrade certain other transmission facilities, and construct a transmission / distribution substation to serve the Northeast San Jose area. The facilities we approve will be constructed in the cities of Fremont, Milpitas, San Jose and in an incorporated area of Santa Clara County.

We believe PG&E has demonstrated the need for the project to maintain the reliability of its electric system. Demand in the Silicon Valley area is projected to exceed supply as early as 2002. Without this project, PG&E may be forced to curtail load or take other drastic steps to meet demand. Thus, the project is clearly necessary.

We choose the environmentally superior route, as set forth in the Final Environmental Impact Report (FEIR) prepared for the Commission.[1] We reject

[1] As we discuss below, that route would begin by following the I-880-A Alternative at a tap to the existing PG&E Newark-Metcalf 230 kV transmission line. It would then follow the west side of I-880 along the edge of a business park and along the eastern edge of the soon-to-be-created Pacific Commons Preserve for about 0.75 mile, where a single angle structure would be located in the Preserve. From the angle point located in the Preserve, the route would then turn southwest, following the northwestern edge of the parking lots behind the industrial buildings on Northport Loop West. At Cushing Parkway, the route would transition underground at a pair of transition structures and turn east following the Northern Underground Alternative route along Cushing Parkway and then south on Fremont Boulevard. At the point where the existing 115 kV power line corridor crosses Fremont Boulevard (in the Bayside Business Park), the environmentally superior route would follow the Underground Through Business Park Alternative to the south through the parking lots and loading areas of industrial buildings in the business park area. At the south end of the business park, the route would transition to overhead lines by the use of two transition structures, then continue

Footnote continued on next page

the routes PG&E and other parties propose, although some of the route we adopt overlaps with portions of the proposed routes. However, each of the routes we reject poses greater harm to the environment than the route we select today. Much of the transmission line will be located near significant wildlife areas populated primarily by birds, including endangered, threatened and other special concern species, as well as burrowing owls and tiger salamanders. Both the Don Edwards San Francisco Bay National Wildlife Refuge (Wildlife Refuge), and lands to be dedicated to the Refuge in the future, are located in the vicinity of the Project. Significant riparian[2] land, including the riparian corridor next to the Coyote Creek, is also located near, or in some cases, along, the project route. The San Francisco Bay Trail, a trail that ultimately will encircle the Bay, is also located near (and occasionally under) the proposed transmission line path.

Several of the routes or route segments PG&E and other parties propose would have significant adverse biological, visual and geologic impacts on these sensitive environmental resources. For this reason, we give great deference to the findings in the EIR documents that have carefully and extensively studied the proposed routes in adopting the environmentally superior route.

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overhead following the proposed project route through the Fremont Airport property to Dixon Landing Road. At this point the McCarthy Boulevard Alternative would be used, and the route would cross Coyote Creek to McCarthy Boulevard and follow the west side of McCarthy Boulevard for about one-half mile. Immediately south of the Milpitas Sewer Lift facility, the route crosses Coyote Creek to the west, re-joining the proposed route and following the west side of Coyote Creek, through the Santa Clara/San Jose Water Pollution Control Plant, to the proposed substation site.

[2] Riparian habitat relates to or is located on the bank of a natural watercourse (such as a river) or sometimes of a lake or a tidewater.

As to the substation, the FEIR concludes that the two possible substation locations are of equal environmental impact. For reasons we explain below, we adopt PG&E's proposed substation location, and reject the alternate – and adjacent – location proposed by intervenor US Dataport, Inc. (US Dataport).

Finally, we direct PG&E to prepare updated, and detailed, cost estimates for the route and substation location we have selected. The estimates presented during the hearing of this application were sorely lacking in detail, as several intervenors pointed out. Moreover, PG&E has submitted no cost information for the transmission line route we select in this decision, although its cost estimates may cover parts of the route. Fairness requires that ratepayers – who will bear most if not all of the cost of installing the transmission facilities – know as closely as possible what the project will cost.

II. Background

A. The Project

PG&E seeks a CPCN for a 230 kV double-circuit transmission line to be located on the east shore of San Francisco Bay, commencing in Fremont and travelling approximately 7.3 miles southward to a transmission / distribution substation situated on private property east of the Alviso area of San Jose. Most of the project consists of a continuous transmission line heading south from a spot east of PG&E's existing Newark substation and ending at the new substation to be built on property known as Los Esteros. However, one short segment of approximately 1.4 miles, known as the Trimble-Montague section, is separate from and south of the project. PG&E proposes to add facilities connecting both new segments, but does not anticipate more than nominal construction to add such connections.

The project as proposed by PG&E – and adopted for the most part in this decision[3] - consists of the following specific components:

1. A new 24 acre combined transmission and distribution substation ("Los Esteros substation") and new 21 kV connections, with three transformers to be installed initially and a fourth transformer, distribution facility and distribution circuits installed later, if needed;[4]
2. A 7.3 mile 230 kV double-circuit transmission line from the existing Newark substation to the Los Esteros substation;[5]
3. A modification of the existing Newark substation to accommodate the 230 kV transmission line;[6]
4. A connection of the new Los Esteros substation to the 115 kV system, via the Los Esteros to Kifer 115 kV circuit, the Los Esteros to Trimble 115 kV circuit, the Los Esteros to Montague 115 kV circuit, and the Agnews 115 kV tap circuit; and
5. The replacement of a segment of the existing Newark to Trimble single circuit 115 kV wood pole line located along Trimble Road and Montague Expressway with a 1.4 mile double circuit steel pole line to complete a 115 kV circuit between the Los Esteros substation and the existing Montague substation.

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[3] Where the route we adopt differs from PG&E's proposal, we indicate the differences in footnotes.

[4] We discuss the costs of the proposed distribution facilities in Sections III (B) and (C) below.

[5] We adopt a route that commences just east of the Newark substation.

[6] Since the route we adopt does not commence at the Newark substation, but rather east of it, we do not approve this modification.

B. Procedural History

PG&E first sought authorization for this project in a prior application, which the Commission dismissed without prejudice in 1999[7] due to problems with the proposed routing.[8] PG&E then filed the present application seeking approval of a proposed route depicted in Appendix A to this decision. PG&E continued to propose this route through the August and September 2000 evidentiary hearings. However, for the first time during its closing arguments in September 2000, it changed slightly its preferred route to a route it calls the "Modified I-880-A/Proposed Route" alternative. According to PG&E, it supports the change because its prior proposed route has potential permitting problems with the Wildlife Refuge. Its revised proposed route is reflected in Appendix B to this decision.

Several parties intervened in the proceeding and participated actively during the evidentiary hearings and subsequent briefing. These parties are: the Commission's Office of Ratepayer Advocates (ORA), US Dataport, the City of Fremont (Fremont), the City of San Jose (San Jose), ProLogis Limited Partnership and ProLogis Trust (ProLogis), Aglet Consumer Alliance (Aglet), and the California Independent System Operator (ISO or CA ISO).[9] Other groups and

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[7] Decision (D.) 99-05-020.

[8] Specifically, PG&E's proposed route crossed the Wildlife Refuge, which raised concerns with Refuge management. PG&E thus requested that the Commission approve two potential routes, one on and one off Refuge property. When the Commission determined it could not do so, PG&E filed, and the Commission approved, a motion dismissing the first application without prejudice.

[9] We do not list the City of Santa Clara/Silicon Valley Power, which settled out of the case early into the hearings. We dismiss them as a party from this proceeding.

individuals commented on the Draft, Supplemental and Final EIRs, as described fully in the FEIR.[10]

Evidentiary hearings took place on August 21-25 and September 5-8, 2000. The parties were allowed to file post-hearing briefs.

C. Project Need and Cost

PG&E alleges the project is needed to ensure electric reliability in the South San Francisco Bay Area. The ISO agrees. The ISO conducted its own review of the project as part of a "grid planning process" it initiated after the passage of Assembly Bill (AB) 1890.[11] Because this was the first transmission project the ISO reviewed after the passage of AB 1890, its procedures were in a state of flux and the review somewhat *ad hoc*. Ultimately, at a January 2000 meeting of ISO's governing board, the ISO voted to approve the project on the ground the project was urgently needed to provide reliable electric service to the Silicon Valley.

The ISO concedes it did not conduct a detailed assessment of the environmental, social or aesthetic impacts of the project and, hence, did not undertake a detailed consideration of the appropriate transmission line route or substation site. Likewise, the ISO does not purport to have conducted a detailed

[10] Individuals and organizations that sought "party" status, but did not participate actively in the hearings or briefing, have been redesignated as having "information only" status on the formal service list for this proceeding. Many of these individuals and organizations participated actively in the California Environmental Quality Act (CEQA) process by filing comments on various EIR drafts, and we consider their comments in adopting the environmentally superior route for the transmission line.

[11] Stats. 1996, Ch. 854.

review of PG&E's cost estimates. Finally, in its review, the ISO concluded that all alternatives considered in the EIR, except for the "No-Project" alternative, are adequate to maintain reliability.

As we discuss more fully below, only ORA challenges whether the project is needed, and even then does so only half-heartedly:

> PG&E's load forecast is consistent with the increasing perception that the Bay Area, and especially San Jose, requires additional local transmission, distribution, and/or generation facilities, in light of this summer's brownouts and price spikes. Given these circumstances, ORA expects that the CPUC will approve this application, notwithstanding the absence of information on the cost-effectiveness of the project.[12]

However, ORA (as well as Aglet and ProLogis) also seeks imposition of a cost cap on the project, contending that PG&E's cost estimates are far too general. ORA asserts that PG&E ratepayers should not bear costs approaching $100 million without some check on PG&E's expenditures. ORA also seeks a Commission order prohibiting PG&E from exceeding the cost cap or requesting an increase in the cap. ORA claims the Commission has jurisdiction to impose such a cap pursuant to Cal. Pub. Util. Code § 1005.5, which provides:

> Whenever the commission issues to an electrical . . . corporation a certificate authorizing the new construction of any addition to or extension of the corporation's plant estimated to cost greater than fifty million dollars ($50,000,000), *the commission shall specify in the certificate a maximum cost determined to be reasonable and prudent for the facility*.[13]

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[12] *Opening Brief of the Office of Ratepayer Advocates,* filed October 11, 2000 (ORA Opening Brief), at 2.

[13] Emphasis added.

PG&E challenges this Commission's jurisdiction to impose a cost cap, claiming that AB 1890 preempts the CPCN cost cap provision.

Several parties also assail PG&E's cost figures on the ground they underestimate land / right-of-way costs, and thus overestimate the cost of placing the lines underground. These parties prefer undergrounding of the lines principally for aesthetic reasons.

Finally, both ORA and Aglet challenge PG&E's methodology for calculating project costs. PG&E derived its costs by adding together costs of labor, materials and land for the project. In contrast, ORA and Aglet seek a "cost effectiveness" analysis, performed "from the perspective of the ratepayers."[14] Such an analysis would include a "sensitivity study," and consideration of the "value of service to customers" – the latter a consideration of the "negative present value to customers . . . if new transmission facilities are not built. . . ."[15]

D. Environmental Review

With its application, PG&E supplied a Proponents' Environmental Assessment (PEA). The Commission, as Lead Agency, then retained outside consultants to conduct environmental review of the proposed project pursuant to the CEQA, and to examine alternatives, including the "No-Project" alternative. The Commission's Energy Division oversaw the consultants' work.

As noted in Section II (E) below, the Commission staff held public scoping meetings in January 2000. The Commission issued its Draft EIR (DEIR) in

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[14] *See* ORA Opening Brief at 9; *Opening Brief of Aglet Consumer Alliance*, filed October 11, 2000 (Aglet Opening Brief), at 7.

[15] Aglet Opening Brief at 7.

June 2000. The then-assigned Administrative Law Judge (ALJ)[16] presided over public participation hearings in July 2000. Due to comments received on the DEIR, and changed conditions along the route (*e.g.*, other construction rendering prior routes infeasible), the Commission issued the Supplemental DEIR (SDEIR) in October 2000, and established a 45 day comment period. Finally, in February 2001, the Commission issued its Final EIR (FEIR).[17] The FEIR considered each timely comment letter in reaching its conclusions. The FEIR found the alternative set forth in Appendix C to this decision to be environmentally superior to all others considered. In some cases, components of PG&E's proposed project are considered to be environmentally superior, and in other cases the alternatives are environmentally superior to PG&E's proposed project.

The principal concerns the EIR found with the "environmentally inferior" routes related to biological, geologic, recreation/land use, and visual impacts. Key among these impacts were bird mortality (from striking lines); risk of liquefaction and lateral spreading; reduction of recreational experiences; and adverse effects on views in the area. We describe these impacts more fully in Sections III (D) and (E) below.

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[16] Since the public hearings, the proceeding has been reassigned from ALJ Andrea Biren to ALJ Sarah R. Thomas.

[17] We do not reproduce the FEIR in its entirety in this decision. However, the FEIR is available on the Commission's website at http://www.cpuc.ca.gov. Those not already provided the FEIR may obtain hard copies of the FEIR by contacting Brad Wetstone, CPUC Energy Division, at (415) 703-2826.

E. Public Notice of Proceeding

The Commission provided for wide dissemination of and public input on the DEIR and SDEIR.[18] These documents were available on the Commission's website, in public libraries, and at the Wildlife Refuge. The Commission oversaw mailing of notices of the availability of the environmental documents to all owners and tenants of property located within 300 feet of the proposed and alternative project sites. Notices of both the DEIR and SDEIR were mailed to County Clerks' offices, and newspaper advertisements announced all public meetings.

The Commission's Energy Division held two public scoping meetings in January 2000, and the assigned ALJ presided over two public hearings held in July 2000. The Commission's Energy Division also held two Informational Meetings on the DEIR in July 2000. PG&E was required to publish and post notice about, and arrange for print and electronic media coverage of and public service announcements regarding, the July 2000 public hearings.

F. Scope of Proceeding

In February 2000, the assigned Commissioner found the following issues to be within the scope of this proceeding:

1. Need for the project (Pub. Util. Code § 1001), including consideration of the decision by the ISO that the project is needed to maintain system reliability;
2. The appropriate deference to be given the ISO's determination of project need;

[18] As noted above, the original DEIR was supplemented in October 2000 with a SDEIR; the public was allowed to comment on both documents.

3. Consideration of the following factors contained in Pub. Util. Code § 1002:
    a) Community values;
    b) Recreational and park areas;
    c) Historical and aesthetic values; and
    d) Influence on the environment;
4. Consideration of whether, pursuant to the Commission's General Order (GO) 131-D, the project promotes the safety, health, comfort, and convenience of the public;
5. The cost effectiveness and necessary size of the project vis-à-vis other alternatives such as new generation or transmission facilities upgrades;
6. The advisability and amount of a cap on project cost;
7. The merits of alternative routes, including route segments located underground;
8. Impacts of electric and magnetic fields (EMF) on certain high tech businesses located near the proposed route in Fremont, and effects of mitigation on these EMFs;
9. Alternative substation locations.[19]
10. The relevance of a proposed Calpine Corporation (Calpine) generation plant on a parcel of property contiguous to the Los Esteros site in order to determine whether it is equitable for PG&E ratepayers to shoulder all the costs of this construction; and
11. Whether the project has cumulative and/or growth-inducing impacts.[20]

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[19] One such proposed alternative raised by the City of Santa Clara/Silicon Valley Power (SC/SVP) later dropped out of the case when SC/SVP settled with PG&E.

[20] The foregoing description of the scope is derived from the text of the February 28, 2000 *Assigned Commissioner's Ruling Establishing Category and Providing Scoping Memo.* The order contained in the same document stated the issues slightly differently, as follows:

Footnote continued on next page

As the hearings progressed, it became apparent that the key issues in dispute were the following:

A. Project need

B. Cost justification / effectiveness

C. Jurisdiction over costs

D. Routing of transmission lines

E. Substation locations

F. EMF issues

G. Property value issues

We discuss each of these issues in order.

III. Discussion

A. Project Need

1. Summary

We find the project is needed to meet projected demand for electricity in the northeast San Jose area. PG&E's forecasts of load in 2001 and beyond are uncontroverted. While we do not agree with the ISO that we should defer

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- appropriate incorporation of ISO and Electricity Oversight Board (EOB) reviews and determinations, under the "pipeline projects" procedure;
- the need for the project in the proposed form and in alternative forms;
- the conformity with community and aesthetic values, including business ventures and landscaping;
- the impact on recreational and park areas, as well as other environmental and biological impacts;
- the impact on safety, health, comfort and convenience, including electric and magnetic fields, quality of power; and growth-inducement;
- the jurisdiction of the Commission to impose a cost-cap / or allocate costs, and if jurisdiction is found, the need for such a cap or allocation; and
- the cumulative effect of all impacts.

entirely to its judgment on need, we agree with the ISO's need determination in this case.

2. Parties' Positions on Project Need

Four parties took a position on the need for the project: ORA, Aglet, the ISO and PG&E. We discuss each party's position, and then discuss our decision on the issue of need.

a) ORA's Position on Project Need

As noted previously, ORA is the only party urging rejection of the application on the ground PG&E has failed to establish the need for the project. While ORA anticipates a less than enthusiastic reception for its position in light of California's current energy crisis,[21] of which we take official notice, its position is based on several points:

- That load forecasts[22] are not the sole determinant of project need, if there are other, more cost effective means of meeting load, such as demand side management (conservation) or alternative generation.
- That ISO is not the sole arbiter of project need, since it did not consider the factors in Cal.

[21] "While this Commission might find it difficult currently to reject PG&E's application given the absence of any other possible 'solutions' to the load growth problem in the South Bay, future CPCN applications may not occur in the midst of an unprecedented economic boom and widely reported power outages." ORA Opening Brief at 7.

[22] ORA did not have the budget to verify PG&E's load forecasts, so it accepted them for purposes of this proceeding. Nonetheless, it contends mere forecasts are insufficient to document project need without consideration of alternative means of meeting load demand. *Id.*

Pub. Util. Code § 1002[23] or independently[24] verify PG&E's load forecasts in reaching its conclusion that the project is needed to assure future reliability of the electrical system.[25]

b) Aglet's Position on Project Need

While Aglet "agrees that additional capacity is needed in the San Jose area," it claims PG&E has not "justified the need for the specific transmission facilities and routes that it recommends."[26] Aglet challenges:

- The accuracy of PG&E's load forecasts, because they are based solely on historical load information and engineering knowledge of the loads in the area, and did not consider the effect of market prices on customer demand,[27]

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[23] These factors include consideration of a project's impact on community values, recreation and park areas, historical and aesthetic values, and the environment. Cal. Pub. Util. Code § 1002.

[24] ORA also points out that the ISO witness who reviewed PG&E's project, Irina Green, was previously employed by PG&E preparing submittals to the ISO *for the same project. See* Transcript, Volume 5 at 321-22 (ISO / Green). Ms. Green joined the ISO in October 1999, after this application was filed in September 1999. *Id.* at 320. (All references to the hearing transcript in this decision use the format: TR Vol. _ at __:__ for Transcript, Volume 5 at 321:1-5.)

[25] ORA Opening Brief at 8, citing Hearing Exhibit (Exh.) 601 at 5: "All the ISO did was 'review the general reasonableness of the load forecast provided by PG&E,'" and the ISO notes that it 'does not currently undertake a detailed analysis of the load forecasts used by transmission owners as the basis for their annual five-year transmission plans.'"

[26] Aglet Opening Brief at 2.

[27] *Id.*

- Whether PG&E acted reasonably in planning to meet new load as far into the future as 2008,[28] and
- ISO's determination of need given that it "performed no independent analysis of project costs" and that "ISO's transmission planning process is closely coordinated with PG&E's own efforts."[29]

c) ISO's Position on Project Need

The ISO contends:

- The project is needed to maintain system reliability. The ISO claims that "[w]hile operating procedures are available to help meet peak loads in 2001, such procedures would be insufficient to maintain system reliability by peak periods in and beyond 2002,"[30] and
- The Commission should give due consideration to ISO's review and approval of the project.

The ISO describes in detail the review it gave the project commencing in October 1998 and culminating in the ISO governing board's approval of the project in January 2000. It notes that "[t]he focus of the CA ISO's review was related to the appropriate electrical configuration and components required to maintain the reliability of the electric grid."[31]

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[28] *Id.* at 3.

[29] *Id.* at 4.

[30] *Id.* at 9, citing Exh. 600 at 9.

[31] *Opening Brief of the California Independent System Operator,* filed October 11, 2000 (ISO Opening Brief), at 8.

The ISO reviewed three transmission alternatives, including PG&E's proposal, as well as a generation alternative. It selected PG&E's proposal because the transmission alternatives "provide[d] less transmission capacity, . . . require[d] the construction of additional lines . . . [and] distribution substation facilities, and [were] more expensive."[32] The generation alternative "was determined to be inappropriate because to fill the need significant generating capacity would be required."[33]

However,

> the CA ISO does not . . . take a position on the best specific route for the proposed transmission line or precisely the best site for the substation. Moreover, the CA ISO acknowledges that while the . . . project is the best *electrical* alternative to meet system needs, *the CPUC may determine that a less desirable alternative is justified in light of its substantial environmental, social and aesthetic benefits. . . .*[34] [I]f the CPUC concludes that an increase in costs and decrease in system benefits is justified from an environmental, social or aesthetic stand point, the CA ISO does not object to the CPUC issuing a CPCN to one of the alternatives set forth in the DEIR, or further alternatives that merely change the transmission line route or substation site."[35]

By the same token, claims the ISO, it has jurisdiction to make certain electrical system reliability determinations pursuant to AB 1890 and Pub. Util. Code § 345, which provides that the ISO has the responsibility to "ensure efficient use and reliable operation of the transmission grid . . . ."

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[32] *Id.* at 11, citing Exh. 600 at 10:22-24.

[33] ISO Opening Brief at 11, citing Exh. 600 at 11.

[34] ISO Opening Brief at 12 (emphasis added).

[35] *Id.* at 12-13, citing TR Vol. 5, at 330.

According to the ISO, its planning process is a public one, with information about planned projects posted on the ISO website and a public comment process. Thus, the ISO claims, it conducted its review of the proposed project openly and if it had no objection to the project, this is not for lack of a public process.

d) PG&E's Position on Project Need

PG&E cites several reasons why the project is needed:

- Its load forecasts are accurate and up-to-date and conclusively demonstrate project need. PG&E's current load in the project area is 2,395 megawatts (MW). PG&E forecasts that by 2002 there will be a shortfall of at least 44 MW. "Unless remedied, that shortfall will continue to increase, further eroding system reliability and resulting in rolling blackouts and other measures that could drastically impact the area's high-tech economy. . . ."[36]
- The ISO agrees that the project is needed by 2001 or sooner in order to maintain adequate system reliability in the north San Jose area, and the Commission should defer to the ISO's determination: "The ISO's determinations of need for a reliability-driven transmission project should be accorded substantial deference because, under both state statute and Federal Energy Regulatory Commission (FERC) tariff, the ISO has responsibility over questions of need related to maintaining system reliability."[37]

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[36] *Pacific Gas and Electric Company's Opening Brief,* filed October 12, 2000 (PG&E Opening Brief), at 5, citing Exh. 600 at 9.

[37] PG&E Opening Brief at 7.

- The proposed electrical configuration meets the ISO's reliability criteria.

3. Discussion of Project Need

We believe there is an adequate record support that the project is needed pursuant to Pub. Util. Code § 1001, which gives the Commission authority to approve or disapprove the project based on whether it serves the public convenience and necessity. While we agree with ORA that PG&E's cost estimates are inadequate – a problem we order PG&E to remedy – no party has provided evidence to challenge PG&E's load forecasts.

PG&E's load forecasts[38] establish that the load in the area PG&E proposes to serve with this project will grow to 2,415 MW – an amount that exceeds current capacity – by summer 2002. Current capacity is 2,336 MW.[39] Based on historical figures, PG&E projects that demand for electricity in the northeast San Jose region will grow by 100 MW / year through 2002, and by 70 MW / year thereafter.[40] It will take PG&E some time to build the project. There are no other projects in the pipeline to meet the load demand in this area. In view of the long lead-time it takes to bring new infrastructure online, and the uncontroverted projections of load growth, we find the project is needed.

We do not believe under the circumstances of this project, however, that we should defer entirely to the decision of the ISO that the project is needed. ISO concedes it did not independently analyze PG&E's load forecasts or cost projections. The ISO process in place at the time of the ISO review and approval

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[38] The most recent forecast is Exh. 9; *see also* Exh. 5, Ch. II (discussion of load forecasts).

[39] *Id.*

[40] Exh. 5, Ch. II, at II-4.

of the project was new and untested; indeed, this is the first transmission line CPCN we have granted since the passage of AB 1890.

We are also troubled that the "lead engineer" on the project for PG&E, at least for part of the time the project was under consideration, became ISO's lead reviewer for the project after leaving PG&E. While no conflict of interest policy of ISO appears to prohibit such activity, it should, in our view. Further, we have an independent statutory duty (Pub. Util. Code § 1001) to ensure that projects of this magnitude are necessary. The ratepayers likely will bear most of the cost of the project. Before requiring ratepayers to bear such costs, we must determine that the costs are reasonable.

Thus, while we appreciate the time and effort the ISO expended in evaluating this project, we view that body's approval as non-binding on us under the particular circumstances of this case. If we had evidence before us contradicting PG&E's claims of necessity – which we do not – we might reach a different conclusion from that reached by the ISO. While we agree with ISO that it has the responsibility to ensure the reliability of the state's electrical system (Pub. Util. Code § 345), we believe that ensuring reliability and deciding that a particular transmission project should be built are two separate issues. Nonetheless, in this case, we concur with the ISO that the project is needed to meet expected future increases in Silicon Valley's electricity demands.

B. Cost Justification/Effectiveness

1. Summary

Because we do not believe PG&E's cost estimates are adequate, we order PG&E to perform a detailed cost estimate of the route we select in this decision no later than 30 days from date of mailing of this decision. Other parties will have an opportunity to comment on PG&E's proposal within 15 days of its filing.

We will use the estimate – and the comments on it – to set a cost cap for the project route we select in accordance with Pub. Util. Code § 1005.5(a).[41] This decision will become effective after we use PG&E's cost submission and parties' comments on it to set a cost cap and make any other needed changes to this decision.

2. Parties' Positions on Cost Justification/Effectiveness

Five parties take a position on whether the project is cost justified or effective: ORA, Aglet, ProLogis, the ISO and PG&E. Additional parties challenge PG&E's cost estimates for its proposed route and alternative routes identified in the Commission's DEIR.[42]

a) ORA's Position on Cost Justification/Effectiveness

ORA asserts that the project is not cost effective because it fails to consider alternatives to a new transmission line such as alternative generation sources or upgrades to existing transmission lines. Furthermore, it understandably questions the appropriateness of requiring ratepayers to fund a project accompanied by the scant cost showing PG&E has provided. We order PG&E to remedy that situation in a revised, detailed cost estimate.

While it agrees that we need not do so in this proceeding, ORA asks that future CPCN applications include estimates that include a "current [Net Present Value] NPV calculation from the perspectives of both the applicant utility and its ratepayers."[43] We will consider ORA's request in future applications.

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[41] *See* text accompanying n.13.

[42] Because the environmentally superior route we adopt in this decision differs somewhat from what is in the DEIR, PG&E has never analyzed the cost of the route chosen here.

[43] ORA Opening Brief at 11.

ORA seeks imposition of a cost cap pursuant to Pub. Util. Code § 1005.5(a) in order to protect the ratepayers from cost escalation as the project progresses. It asks pursuant to Pub. Util. Code § 1005(b) that we require PG&E to return to the Commission for an increase in the cost cap, and that we make explicit that we will only increase the cap if we find public convenience and necessity warrant the increase.

ORA asserts that we have ample jurisdiction to control the costs of the project under our authority to grant CPCNs. While PG&E contends AB 1890 stripped us of this authority and dedicated it entirely to the FERC, ORA points out that Pub. Util. Code § 1001 et seq. remains on the books, and did not change our authority over project costs.

Finally, ORA asks us to specify in the CPCN that PG&E may not request recovery from the FERC of an amount greater than that specified in the CPCN. ORA asks that our order provide that PG&E will be in violation of its CPCN if it seeks FERC approval for recovery in transmission rates of an amount higher than the cost cap.[44]

b) Aglet's Position on Cost Justification/Effectiveness

Aglet has several challenges to the adequacy of PG&E's cost justification for the project:

- PG&E looks at cost effectiveness only from the utility's perspective, without taking into consideration "costs and benefits from the perspective of society as a whole, target customers and non-participating ratepayers."[45]

[44] *Id.* at 2.

[45] Aglet Opening Brief at 5.

- PG&E's cost analysis is based on stale data, leaves out important costs, has only a 25-50% degree of accuracy according to PG&E witnesses, understates land values in rejecting undergrounding options, is not accompanied by a "sensitivity study," fails to calculate the "value of service to customers, and fails "to quantify the costs and benefits of various project alternatives from the perspective of property values, visual impacts, or social and environmental issues.[46]
- PG&E proposes to have the ratepayers pay for portions of the substation and land surrounding it that will benefit future generators in the substation's vicinity, rather than ratepayers in the area.

Further, Aglet contends the Commission has jurisdiction over the costs of the project pursuant to Pub. Util. Code § 1005.5. It seeks a cost cap in order to mitigate the risk to ratepayers of runaway spending on the project. It also seeks better cost data for the project.[47]

c) ProLogis' Position on Cost Justification/Effectiveness

ProLogis challenges the adequacy of PG&E's cost justification for its preferred route. Since ProLogis advocates that the transmission line be undergrounded where the line crosses ProLogis' Fremont property – the Bayside Business Park located east of the Wildlife Refuge – it disputes PG&E's determination that undergrounding is more expensive than overhead construction. The land values - which ProLogis believes PG&E has

[46] *Id.* at 6-8.

[47] *Id.* at 9.

underestimated for the overhead routing options - cause the overhead and underground alternatives to be roughly equivalent in cost.

ProLogis illustrates its point by citing to the testimony of Fremont's witness, who stated that Fremont land values have risen from approximately $5-9/square foot five years ago, to $25-35/square foot two years ago, to $43/square foot most recently.[48] Because PG&E prepared the cost estimate for its preferred route almost two years ago, the land value figure is understated. ProLogis claims based on PG&E testimony that land values are the most significant cost factor differentiating underground and overhead construction.[49]

PG&E's estimate is that its preferred route would cost $77.3 million – a figure it later revised to $83.5 million to reflect a modification in its preferred route.[50] According to ProLogis, if one assumes, as PG&E's witness conceded, only a 25-50% margin of accuracy for PG&E's estimate,[51] then the $77.3 million figure might be under- or overstated by as much as 50%:

> If that figure [$77.3 million] were 50 percent too low, the total cost would end up being $115.95 million – higher than the cost for the [Interstate]-880-B Alternative, [the alternative ProLogis prefers because it is not on Bayside Business Park property].[52] On the other hand, PG&E has estimated that the

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[48] *Initial Brief of ProLogis Limited Partnership-I and ProLogis Trust* (ProLogis Opening Brief), at 5 n.6, citing TR Vol. 6, at 572 (Fremont/David Millican).

[49] *Id.* at 5, citing TR Vol. 4, at 203 & Vol. 6, at 499 (PG&E/Tom Marki).

[50] As noted above, PG&E changed its preferred route during closing argument from the route in Appendix A to the one in Appendix B to this decision. PG&E's counsel stated that its new preferred alternative would cost $83.5 million – 8 percent more than the initial proposed route estimate of $77.3 million. TR Vol. 12, at 1247 (PG&E/Zischke).

[51] ProLogis Opening Brief at 5-6, citing TR Vol. 6, at 498, 508, 555.

[52] The FEIR contains detail of each of the cited alternatives. A summary from the FEIR appears as Appendix C to this decision.

> total cost of the I-880-B Alternative would be $104 million. If that figure were 50 percent too high, then the total cost for the I-880-B Alternative would be only $52 million – substantially lower than PG&E's estimated cost for its preferred route.[53]

ProLogis also criticizes the "dramatic variations over time in PG&E's estimates for land values."[54] PG&E's 1996 estimate of $34 million for land acquisition was later revised to $24 million (for land *and* construction) and then to $9.5 million for land.[55] ProLogis calculates this change in land value calculations on a percentage basis:

> PG&E initially estimated that just the right-of-way acquisition costs for its preferred route would be an amount that is 61 percent higher than its current estimates both for right-of-way acquisition *and* construction, and more than 350 percent higher than its current estimates for right-of-way acquisition expenses only.[56]

ProLogis attacks PG&E's land acquisition figures in yet another way. It examines the $9.5 million figure from Exh. 18, which is PG&E's latest land acquisition estimate for its preferred route, and calculates how that figure breaks down when compared to the square footage needed for rights-of-way. Based on that calculation, ProLogis finds that PG&E's figures assume land prices of only $9/square foot just for the two miles of the project in the Bayside Business Park.[57] Because the project covers more territory than just two miles – indeed, covers 5.3

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[53] ProLogis Opening Brief at 6.

[54] *Id.* at 7.

[55] *Id.* at 8, citing TR Vol. 6, at 501-02, 507, 509; Exh. 1 at 21-24, Table 21-2; & Exh. 18.

[56] ProLogis Opening Brief at 8.

[57] *Id.* at 9.

additional miles – the $9/square foot figure is actually too high, according to ProLogis.

Finally, ProLogis points out, PG&E has offered San Jose amounts ranging from $26.28/square foot to $45.21/square foot for portions of the preferred route located in San Jose. While there is no evidence that San Jose land values are equal to those in Fremont, ProLogis also notes that PG&E "has stated that land values [within the southern portion of PG&E's preferred route] . . . 'are considerably less than the land value in Bayside Business Park' [in Fremont]."[58] Thus, however one views land costs, according to ProLogis, PG&E's values skew the cost comparisons between overhead construction and ProLogis' preference, underground construction.

d) ISO's Position on Cost Justification/Effectiveness

The ISO exhorts the Commission not to use the lack of adequate cost justification for the project to deny a CPCN outright given that the project is necessary to assure reliability:

> [T]he CA ISO believes cost effectiveness analysis must focus on determining which of the alternatives discussed in testimony and hearings and addressed by the DEIR have been demonstrated to maintain reliability and most appropriately balance cost versus environmental, social and aesthetic factors.[59]

The ISO witnesses acknowledged during the hearing that all of the alternate routes evaluated in the DEIR meet the ISO's reliability criteria, and that it is up to this Commission to weigh the environmental, social and aesthetic factors:

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[58] *Id.*, citing TR Vol. 9, at 946, 977-80 & Exh. 401.

[59] ISO Opening Brief at 17.

> Q. So would the ISO be satisfied with this proceeding if the commission approved the CPCN, not necessarily for the specific route that is be proposed by PG&E, but one of the alternate routes that do meet the criteria?
>
> A. (By Mr. Greenleaf) Generally the answer is yes we don't consider -- do you have anything to add, Irina?
>
> A. (By Ms. Green) It's for CPCN to see that these benefits are justified by higher cost, but if the alternative satisfies the reliability requirements then we support it.
>
> MR. BROMSON: I have nothing further.
>
> ALJ THOMAS: Thank you, Mr. Bromson. Let me ask you a follow-up question on that. To your knowledge is there any routing alternative, and you might want to take a look at the maps behind me, Exhibits 1000 and 1001, that in your opinion don't [sic] meet ISO criteria?
>
> WITNESS GREEN: In these alternatives -- according to the alternatives which were included in DEIR they all do, but the alternative is a little bit different with electrical connections, but it still satisfies reliability requirements.[60]

Thus, the ISO expressed no routing preference except to note that its mandate in evaluating PG&E's proposal was to approve the route that "provides maximum reliability benefits for minimum cost." However, "the CA ISO acknowledges . . . that environmental, social and aesthetic factors can justify an alternative other than the one selected by the CA ISO." And the ISO did not "conduct a detailed review of [the utility's] cost estimates for alternatives. . . ."[61]

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[60] TR Vol. 5, at 329:25-330:20.

[61] ISO Opening Brief at 18, citing TR Vol. 5, at 355 & Exh. 601 at 3, 5.

e) Other Intervenors' Positions on Cost Justification/Effectiveness

Other parties make similar arguments about cost. They emphasize that whether a route is "cost effective" depends on more than whether it is the least expensive route available. The Commission must also weigh other factors, such as environmental impacts and effects on adjacent property owners.[62] Others take issue with PG&E's cost figures, especially those related to land values.[63]

f) PG&E's Position on Cost Justification/Effectiveness

Somewhat inexplicably in view of its witness' admission that its cost estimates are only 25-50% accurate, PG&E vigorously defends its existing cost estimates. It provides the following cost estimates for each potential alternate route:

PG&E Cost Estimate	**Route**[64]
$77.3 million	PG&E's original preferred route
$83.5 million[65]	PG&E's new preferred route (Modified I-880-A/Proposed Route)
$84.6 million	I-880-A route
$85.1 million	Westerly Alternative
$87.4 million	Underground Through Business Park route
$103 million	Northern Receiving Station route[66]

[62] *Opening Brief of the City of Fremont* (Fremont Opening Brief), at 3-4.

[63] *Id.* at 7-9; *Opening Brief of the City of San Jose and Redevelopment Agency of the City of San Jose* (San Jose Opening Brief), at 3.

[64] All of these routes are depicted in Appendix D to this decision.

[65] We are uncertain where in the evidentiary record this figure appears.

[66] This route is no longer relevant, as it was advocated only by Santa Clara, which has since settled out of this proceeding. Moreover, the FEIR rejects this route for environmental reasons, and the ISO rejected it for failing to assure electric reliability.

$104 million	I-880-B route

Because PG&E's figures show its new preferred route to be the least expensive (at $83.5 million), it advocates that we adopt that route. (We discuss our route choice in more detail later in this decision.)

PG&E also opposes ORA's proposal of a "hard" cost cap. ORA's proposal would have the Commission revoke PG&E's CPCN for this project if PG&E sought recovery through FERC-approved transmission rates of any costs in excess of the CPUC's cost cap. PG&E claims a hard cost cap contradicts Pub. Util. Code § 1005.5(b), which allows a utility to apply for an increase in the cost cap after commencing a project. Moreover, because the cost cap provision in § 1005.5(a) contemplates that the cap be based on "an estimate of the anticipated construction cost," PG&E claims the legislature intended for caps to be flexible to accommodate cost changes that develop as projects proceed.

3. Discussion of Cost Justification /Effectiveness

Because we do not believe PG&E's cost estimates are adequate, we order PG&E to perform and file by Advice Letter a detailed cost estimate of the environmentally superior route we select in this decision no later than 30 days from date of mailing of this decision.[67] Other parties will have an opportunity to comment on PG&E's proposal within 15 days of its filing. We will use the

[67] PG&E should file and serve all work papers for its new cost estimate at the same time it files the estimate.

estimate – and the comments on it – to set a cost cap for the project route we select in accordance with Pub. Util. Code § 1005.5(a).

We believe 30 days is adequate time for PG&E to submit this estimate since it has known for some time that a decision on this application was forthcoming. Moreover, in view of the chorus of voices challenging the current estimates, both during the hearing and, most pointedly, in closing argument, PG&E should have anticipated an order along these lines was coming. Finally, since PG&E and the ISO agree that the need for this project is dire, we expect PG&E has the incentive to devote significant resources to developing a detailed, accurate estimate in the next 30 days.

Nor should the estimate PG&E submits be summarily deemed confidential. While PG&E may be able to make a showing that some of its individual figures constitute trade secrets, PG&E shall furnish for the public record as much of the estimate as is possible. If certain portions are deemed confidential, PG&E shall accompany them with a motion for leave to file those portions under seal. The motion shall state with particularity why particular cost components are not already in the public domain or otherwise deserve confidential treatment.

The Superior Courts of California recently adopted a rule governing motions to file documents under seal that we find instructive here. That rule, which took effect on January 1, 2001, provides that when a party seeks confidential status, it bears the burden of proving the following elements with regard to each document it wishes to file under seal:

Section 243.1(d) *Express findings required to seal records.*

> The court may order that a record be filed under seal only if it expressly finds that:

(1) There exists an overriding interest that overcomes the right of public access to the record;

(2) The overriding interest supports sealing the record;

(3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;

(4) The proposed sealing is narrowly tailored; and

(5) No less restrictive means exist to achieve the overriding interest.[68]

We do not wish to delay commencement of the engineering and other pre-construction activity necessary to the project for preparation of this cost estimate. Thus, PG&E may commence any preparatory work on the project – without commencing actual construction – during the period it is preparing its cost estimate, and the Commission is considering that estimate and comments on it for purposes of setting a cost cap for the project.

Because we are requiring a revised estimate, we do not repeat in any detail the arguments of the parties regarding the inadequacy of the current estimate. Suffice it to say that there is *no* estimate in the record for the route we have chosen, and that the estimates for other routes, including PG&E's preferred route, are marked in their lack of detail. Indeed, PG&E's counsel conceded in closing argument that the current cost estimates are "admittedly preliminary."[69]

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[68] Cal. Rules of Court, Rule 243.1(d). These rules are available on the Internet at http://www.courtinfo.ca.gov/rules/amendments/jan2001.pdf. While these rules are not expressly applicable to this Commission, they reflect a common-sense approach to the determination of whether records should be filed under seal. PG&E may argue other factors warranting confidentiality if it desires, but it should also focus on the foregoing list.

[69] TR Vol. 12, at 1248:11-13 (PG&E/Michael Zischke).

Several parties credibly attack the land values PG&E included in the cost estimates it did furnish. The general criticism is that PG&E vastly underestimated the costs it would incur for right-of-way interests in land beneath the overhead portion of the route. These parties argue that when accurate land values are taken into account, the cost of undergrounding significant portions of the route is roughly equal to, if not below, that of installing overhead facilities.

When PG&E installs lines underground, it generally does so in public rights-of-way such as city streets. PG&E and other utilities are not required to pay for such public rights-of-way because Pub. Util. Code § 6001 *et seq.* provides them with a "franchise" right to use such property at no cost. In exchange for this right, PG&E must serve all customers desiring to purchase electricity. Because the intervenors have raised serious concerns about the adequacy of PG&E's cost estimates – especially those related to land values – we have no option but to require PG&E to revise them. It is unfair to saddle ratepayers with an unknown level of expense in the way PG&E proposes.

PG&E's land values shall be supported with *current*, expert appraisals, projected into the future if the land acquisitions will occur in the future. Pursuant to Pub. Util. Code § 1005.5(a), PG&E's cost estimate shall consist of:

> An estimate of the anticipated construction cost [for the project], taking into consideration the design of the project, the expected duration of construction, an estimate of the effects of economic inflation, and any known engineering difficulties associated with the project.

We will also require PG&E to provide a second update to its cost figures, as PG&E's counsel proposed at closing argument, to show "final, detailed engineering design-based construction estimates for the routing alternative

ultimately selected by the CPUC."[70] So that PG&E is not delayed in commencing the project while it is preparing these estimates, we will impose a cost cap reflecting the cost estimates we are requiring PG&E to submit within 30 days, and the comments on those cost estimates by other parties. This decision will not take effect until we set the cost cap and make any other necessary changes to this decision based on those submissions.

If the "final, detailed engineering design-based construction estimates for the routing alternative ultimately selected by the CPUC" that PG&E submits is materially (*i.e.*, one percent or more) lower than the estimate upon which we base our cost cap, PG&E shall submit with the estimate an explanation of why we should not revise the cost cap downward to reflect the new estimate. If the final estimate exceeds the cost cap, then PG&E is free to exercise its rights to seek an increase in the cost cap pursuant to Pub. Util. Code § 1005.5(b). However, the cost cap will not automatically adjust upward even if the final, detailed costs exceed the cost cap.

C. Jurisdiction Over Costs

1. Summary

We have jurisdiction to cap the project costs pursuant to Pub. Util. Code § 1005.5.

2. PG&E's Position on Jurisdiction Over Costs

PG&E claims this Commission has no jurisdiction to set a cost cap for the project, or that if we do set a cap, it should be based on "final, detailed

[70] *See* PG&E Opening Brief at 14; TR Vol. 12 at 1248:14-15.

engineering design-based construction estimates for the routing alternative ultimately selected by the CPUC."[71]

PG&E's jurisdictional argument is based on AB 1890. It claims that when the Commission lost jurisdiction over transmission rates and jurisdiction transferred to the FERC, we lost the ability to impose cost caps. Thus, PG&E asserts, "FERC's authority over this question [the amount of transmission project costs that may be recovered through rates] completely occupies the field, preempting all state regulation that intrudes even indirectly into this sphere.[72] PG&E's argument is not based on the language of AB 1890 or the CPCN statutes. Rather, PG&E contends the following:

> In 1985, when these cost cap provisions were enacted, the CPUC had jurisdiction over distribution *and* transmission rates. By enacting AB 1890, however, the legislature made clear its intent to limit the CPUC's ratemaking jurisdiction to distribution rates, rendering the imposition of section 1005.5's cost capping and rate adjusting mechanisms irrelevant to transmission projects for which CPUC no longer bears ratemaking responsibility. In the cost separation proceeding, the CPUC implemented AB 1890 by unbundling transmission rates. *See* D.97-08-056, 74 CPUC 2d 1 (Dec. 2, 1997). Specifically with respect to this Project, the CPUC found in the 1999 General Rate Case proceeding that the Project was a transmission project, and on that basis removed it from PG&E's funding request. As the CPUC concluded there, "[the Project] is a transmission project, and all costs will be recovered through FERC." D.99-06-002, 1999 Cal. PUC LEXIS 423 (June 3, 1999). While the ORA is

[71] PG&E Opening Brief at 14.

[72] *Id.* at 15, citing 16 U.S.C. § 824 *et seq.*, *Pub. Util. Common v. FERC*, 900 F.2d 269, 274 (D.C. Cir. 1990); *Florida Power & Light Co.*, 40 FERC P61, 045 (1987); *Calif. Power Exchange Corp.*, 85 FERC P61, 263 (1998).

> charged with protecting the interests of consumers who pay CPUC-jurisdictional rates, the CPUC has no jurisdiction over transmission rates, and may not legally attempt to "cap" or otherwise prejudice FERC's ratemaking decisions.

3. Discussion of Jurisdiction Over Costs

The Commission has jurisdiction pursuant to Pub. Util. Code § 1005.5 to cap the project's costs. While we do not yet have reliable cost figures for the route we select, we will use PG&E's revised cost figures - and parties' input on those figures - to set the cap. We do not agree that the Legislature stripped this Commission of all authority under Pub. Util. Code § 1001 *et seq*. when it promulgated AB 1890. Thus, while the FERC ultimately will decide how much of the costs for this project PG&E may recoup in transmission rates, we believe our cost cap has bearing on the amount PG&E may seek from the FERC.

D. Routing of Transmission Lines

1. Summary

PG&E's proposed project includes two separate electric power lines: a 230 kV double-circuit transmission line connecting PG&E's existing Newark substation to a planned new 230 kV substation at Los Esteros in unincorporated Santa Clara County, and a 115 kV power line upgrade in the City of San Jose.[73] As illustrated in Appendix D to this decision, the FEIR determined that the "environmentally superior" transmission line route for the 230 kV project is a combination of the following alternatives: I-880-A, Northern Underground, Underground Through Business Park, McCarthy Boulevard Alternative, and

[73] *See* Appendices A and B to this decision for PG&E's proposed routes and substation location.

portions of PG&E's proposed route.[74] For the 115 kV portion of the project, the FEIR identified PG&E's proposed route as environmentally superior. We address these project components in the following sections.

2. No Project Alternative

As required by CEQA Guidelines (15126.6(e)), the DEIR and FEIR also evaluated the No Project Alternative and its potential impacts. The No Project Alternative was defined in the DEIR (Section B.7) in two ways: (1) what would occur if no action were taken by PG&E in response to the project need, and (2) the reasonably foreseeable actions that PG&E would take in the absence of project approval. The result of the first course of action would be that overloads of the electric transmission system would occur, first in the summer of 2001 and more severely in 2002. These overloads would result in the interruption of electric service to the San Jose area.[75] No environmental analysis was conducted for these events because it was considered unlikely that PG&E could allow these events to occur given the documented need for the project.

The second course of action, reasonably foreseeable actions that PG&E would take, was defined to the extent possible (given the speculative nature of this task) in the DEIR, and impacts were assessed. It was assumed that PG&E would reconductor existing 115 kV power lines throughout the area south of the Newark substation, and within the Cities of San Jose, Santa Clara, and Milpitas. Reconductoring and other equipment upgrades were assumed to occur in the National Wildlife Refuge (through which several existing 115 kV lines pass). Impact analysis was completed in the DEIR for each environmental discipline

[74] We define each of these alternatives below.

[75] *See* Section III A above for a discussion of project need.

and DEIR Table D.3-7 presented a summary comparison of the No Project Alternative with the proposed project and the environmentally superior alternative. In several issue areas (air quality, biological resources, land use, public safety and health), the construction or operational impacts of the actions required for the No Project Alternative were considered to be equivalent to or potentially greater than those for the proposed project or alternatives. In other issue areas (cultural resources, geology and soils, hydrology, noise, transportation/traffic, visual resources), the impacts of the No Project Alternative were estimated to be less than those of the proposed project. Overall, the No Project Alternative was found to have potentially greater impacts than the proposed project or other alternatives for two major reasons (1) under the No Project Alternative there would be a greater likelihood that impacts would occur in the National Wildlife Refuge, and (2) local jurisdictions' planning policies require provision of adequate services and utilities to the businesses and residents within those jurisdictions.

The following sections address the components of the proposed project and alternatives, other than the No Project Alternative.

3. 230 kV Transmission Line

a) Proposed Route

PG&E's proposed 230 kV double-circuit transmission line route is 7.3 miles long, beginning at the existing PG&E Newark substation and ending at the proposed Los Esteros substation. The northernmost 0.5 miles of the proposed route would leave the Newark substation by crossing Auto Mall Parkway to the south, pass adjacent to an industrial park, and then pass through the Pacific

Commons Preserve[76] for 0.8 miles. The next 1.0-mile of the route would then cross salt ponds owned by Cargill Salt Company, and then for 1.4 miles follow the western edge of the Bayside Business Park (between the parking lots and the waterbird mitigation ponds). South of the business park, the route would cross the Fremont Airport property (0.7 miles, now under development for additional business park uses) and then cross Coyote Creek and the Santa Clara Valley Water District's mitigation area (0.3 miles). The southernmost 2.1 miles of the route would be in the San Jose/Santa Clara Water Pollution Control Plant, adjacent to the western levee of Coyote Creek.

b) Alternatives

The DEIR, SDEIR and FEIR considered nine alternative routes for the 230 kV transmission line component of the project. These alternative routes are illustrated in Appendix D to this decision and described in the following paragraphs. Two alternatives comprise complete route alternatives. Of the remaining seven alternatives, four are in the Northern and Central Areas of the project (entirely within the City of Fremont, from the Newark substation to the south end of the Bayside Business Park) and three are in the Southern Area (from the Fremont Airport property to the proposed new substation).

The following sections first address PG&E's proposed route and the alternatives encompassing the entire transmission line route, followed by discussion of the Northern and Central Areas of the 230 kV transmission line

[76] The Pacific Commons Preserve soon will become incorporated into the Wildlife Refuge. Catellus Corporation created the Preserve as environmental mitigation for its own development of property in the area.

route, the Southern Area of the 230 kV transmission line, and then the 115kV components of the project and the substation.

c) Proposed Route and Complete Route Alternatives

(1) Proposed Transmission Line Route

PG&E's proposed route, as described above, would be located at the western margin of development along the eastern San Francisco Bay. The DEIR identified the following significant and unmitigable impacts for this route: potential for bird collision with the new transmission lines, recreation impacts on regional trails, inconsistency with policies of the Bay Conservation and Development Commission, and visual impacts in the area of the salt pond crossing. The FEIR proposes mitigation (Mitigation Measure B-9) to require line marking in an attempt to reduce the risk of bird collision to the extent feasible, and to require studies to evaluate the effectiveness of this installation. However, the bird collision impact is still considered to be unmitigable because no site-specific studies are available to determine the effectiveness of line marking in preventing bird collisions in this area.

(2) Complete Route Alternatives

Two alternatives examined in the DEIR, the Westerly Route Alternative and the Westerly Upgrade Alternative, would replace the entire route of PG&E's proposed 230 kV line. The two alternatives would follow similar alignments, but would consist of different configurations of transmission towers. Both routes would be the same as the proposed route for the northernmost 2.2 miles. From that point southward, the Westerly and Westerly Upgrade Alternatives would follow an existing 115 kV transmission line corridor (currently occupied by two double-circuit 115 kV lines) through the salt ponds north of Coyote Creek (west of the Bayside Business Park), pass through a portion of the Wildlife Refuge, and

then cross the salt ponds south of Coyote Creek and the western edge of the Newby Island landfill. The Westerly Route Alternative would continue south past the Zanker Road Landfill, and then follow Zanker Road to the proposed Los Esteros substation site. The Westerly Upgrade Alternative would consist of two parallel double-circuit 230 kV lines that would replace existing 115 kV lines, one of which follows the same route as the Westerly Route Alternative, and the second would pass through San Jose and Santa Clara, ending at the Northern Receiving Station substation.

The DEIR found these two alternatives to be inferior to the proposed route and the other alternatives examined because of the impacts resulting from their routing through the open space/salt pond areas. The DEIR identified significant and unmitigable impacts for bird collision (because the routes would be located in very high bird use areas), construction impacts on the hydrology of tidal channel and Coyote Creek levees, recreation impacts on regional trails, and inconsistency with policies of the Bay Conservation and Development Commission.

d) Northern and Central Area Alternatives

The EIR (including the Draft, Supplemental Draft, and Final EIRs) evaluated four 230 kV transmission line alternatives in the Northern and Central Area (from the Newark substation to Milepost 4.1 at the south end of the Bayside Business Park), as follows:

- Northern Underground Alternative
- I-880-A Alternative
- I-880-B Alternative
- Underground Through Business Park Alternative

We summarize each of these alternatives below.

The Draft, Supplemental Draft and Final EIR's considered these alternatives for their potential to reduce the significant impacts of PG&E's proposed project in the Northern and Central Areas (*i.e.*, bird collision, visual resources, recreation, and land use policy conflicts).

(1) Northern Underground Alternative

The SDEIR evaluated this underground route as a means to reduce the visual impacts of overhead routes in the Northern Area of the project. The Northern Underground Alternative would replace the northernmost 2.7 miles of the proposed project. Rather than starting at the Newark substation, this alternative would start about a mile east of the substation at a tap off PG&E's existing Newark-Metcalf 230 kV transmission line near the point where Auto Mall Parkway crosses Interstate-880. At this point, "a transition structure"[77] would be constructed to take the conductors from the existing Newark-Metcalf 230 kV line and allow them to be installed underground (requiring two parallel trenches to accommodate the double-circuit 230 kV bundled conductors). As illustrated in Appendix D to this decision, the route would follow the southeast side of the Catellus property line to Christy Avenue, then turn east and continue to the edge of the I-880 Freeway, following the freeway southward to the edge of the Alameda County flood control channel. The route would then turn into the back of the parking lot at the north end of Northport Loop, and follow Northport Loop East south to Cushing Parkway. Turning east along Cushing Parkway and then south on Fremont Boulevard, the route would join the Underground

[77] A transition structure transfers overhead transmission lines underground. It somewhat resembles a transmission tower.

Through Business Park Alternative (discussed below) at the point where existing 115 kV transmission lines cross Fremont Boulevard in the Bayside Business Park.

The SDEIR found that the Northern Underground Alternative would have significant and unmitigable geologic impacts in the northernmost portion of the route in and around the Pacific Commons Preserve. Such impacts are attributable to the likely presence of high groundwater and the potential for transmission line damage from lateral spreading of unconsolidated sediments in an earthquake.

By the same token, the FEIR included a portion of the Northern Underground Alternative (starting on Cushing Parkway and continuing south along Fremont Boulevard) in the environmentally superior alternative. The FEIR identified this segment as environmentally superior because it would eliminate the overhead crossing of the salt ponds (and the associated significant bird collision and visual impacts) that would be required with the proposed route, the I-880-A Alternative, and the Underground Through Business Park Alternative.

(2) I-880-A Alternative

The DEIR and SDEIR analyzed the I-880-A alternative for its potential to minimize impacts on the Pacific Commons Preserve in Fremont. As with the Northern Underground Alternative, this route would replace only the northernmost 2.7 miles of PG&E's proposed route. The alternative would then follow the west side of I-880 along the edge of a business park and along the eastern edge of the Pacific Commons Preserve for about 0.75 mile, where a single angle structure would be located in the Preserve. From the angle point located in the Preserve, the alternative route would then turn southwest, following the northwestern edge of the parking lots behind the industrial buildings on Northport Loop West. If connecting to the I-880-B Alternative or the Northern

Underground Alternative, the route would turn east on Cushing Parkway. If connecting to the proposed route or the Underground Through Business Park Alternative, the route would continue south through the salt ponds. At Milepost 2.7, this alternative would re-connect with the proposed route.

The I-880-A Alternative would have its most significant impacts at its crossing of the salt ponds south of Cushing Parkway where both visual and bird collision impacts would be significant and unavoidable. However, if this alternative is combined with the I-880-B or the Northern Underground Alternative, these impacts would not occur because the route would not cross the salt ponds.

In its comments on the DEIR and in closing argument, PG&E suggested a Modified I-880-A Alternative (illustrated in Appendix B to this decision) to align the transmission line crossing of the salt ponds with an existing transmission corridor. The SDEIR analyzed this modification and found that it would not provide substantial environmental advantages over the original I-880-A Alternative. A second modification of the I-880-A Alternative was defined in Mitigation Measure V-3 (as defined in SDEIR Section C.4.3 and illustrated in Appendix B to this decision); this route would reduce the visual impact of the salt pond crossing but would not eliminate the significant impact.

The FEIR recommended the I-880-A Alternative (in combination with a portion of the Northern Underground Alternative, described above) as a component of the environmentally superior route because this section would minimize the impacts to the Pacific Commons Preserve by following its extreme eastern edge (adjacent to the I-880 Freeway). It would also eliminate any crossing of salt ponds, thereby eliminating any significant bird collision or visual impacts.

(3) I-880-B Alternative and Modified I-880-B Alternative

This set of alternatives would replace the northernmost 4.3 miles of PG&E's proposed route. The DEIR's I-880-B Alternative route was modified in the SDEIR to accommodate land use changes that had occurred in the intervening period. Due to the land use changes, the Modified I-880-B Alternative is the only route that could now potentially be approved, and as a result, it is this route that is described herein. The alignment for this alternative is the same as the I-880-A Alternative from the northern connection to the Newark-Metcalf 230 kV transmission line southward to Cushing Parkway. At Cushing Parkway, the line would turn east, along the south side of the road, turning south along the West Side of Fremont Boulevard and east and then south along Landing Parkway (which becomes the I-880 frontage road). About 1000 feet north of Warren Avenue, Landing Parkway turns west and the transmission line route would follow Lakeview Boulevard. At the south end of Lakeview Boulevard, the route would turn west, crossing above the existing 115 kV transmission line corridor, and re-joining the proposed route just south of the Bayside Business Park.

No significant unavoidable impacts were identified for the Modified I-880-B Alternative, and the FEIR found this alternative to be environmentally superior compared to PG&E's proposed route. However, when compared to the Underground Through Business Park Alternative, the FEIR did not consider the Modified I-880-B Alternative to be the environmentally superior route through the Fremont business park area. The long-term visual and land use impacts from the Modified I-880-B Alternative would be greater than for the Underground Through Business Park Alternative described below. While the FEIR did not

find those impacts to be significant for the I-880-B Alternative, they would still be greater in magnitude than the impacts of the underground route.

(4) Underground Through Business Park Alternative

The Underground Through Business Park Alternative would replace only the portion of PG&E's proposed route that crosses through the Bayside Business Park (Mileposts 1.8 to 4.1). At Milepost 1.8 (where the proposed route enters the salt ponds), this alternative would continue overhead through the salt ponds, following the route of two existing 115 kV transmission lines. At the point where the existing lines enter the Business Park, this alternative would transition to an underground line. The underground lines would be installed along the same right-of-way that is currently occupied by the overhead 115 kV lines. This route passes through the center of the Business Park, adjacent to parking lots and loading docks.

As with PG&E's proposed route, this alternative would have significant and unmitigable impacts in the aboveground segment that crosses the salt ponds (northwest of the Business Park segment). Significant impacts in this area consist of bird collisions with the new overhead lines and visual impacts where the lines cross the salt ponds. This alternative would also create a wide range of adverse (but not significant) short-term impacts associated with construction of the underground line.

The Underground Through Business Park Alternative is a component of the environmentally superior alternative, as illustrated in Appendix C to this decision. While the short-term construction impacts associated with this alternative would be greater than for any overhead route, the FEIR found that the long-term benefits of eliminating the overhead line (*e.g.*, elimination of visual

impacts and any potential for bird collision) outweighed the short-term construction impacts.

(5) Environmentally Superior Transmission Line Route: Northern and Central Areas

The environmentally superior route in the Northern and Central Areas of the project would begin at a connection to the existing Tesla-Newark transmission line rather than at the Newark substation. The FEIR determined that a combination of three alternatives, the I-880-A, Northern Underground, and Underground Through Business Park Alternatives, is environmentally superior to PG&E's proposed project route. This route, illustrated in Appendix C to this decision, eliminates all of the significant and unmitigable impacts of PG&E's proposed route. There would be no salt pond crossings (resulting in the reduction of the bird collision potential, and visual and recreation impacts associated with the routes crossing the salt ponds). Moreover, the environmentally superior route minimizes the impacts on the recently-created Pacific Commons Preserve. However, due to the 2.8 miles of underground transmission line required (out of 4.1 miles total for this segment), construction would be much more time consuming and would result in greater short-term impacts compared to the proposed route.

Nonetheless, this combination of alternatives is the environmentally superior route through the Northern and Central Areas of the project because it would eliminate all of the significant impacts associated with the proposed route and the other alternatives.

e) Southern Area Alternatives

The EIR (including the Draft, Supplemental Draft, and Final EIRs) evaluated three alternatives to PG&E's proposed route in the Southern Area of the project (starting at Milepost 4.1 south of the business parks in Fremont):

- McCarthy Boulevard Alternative
- Southern Underground Alternative
- Overhead Variation of Southern Underground Alternative

The EIR considered these alternatives in an attempt to mitigate the potential bird collision impact of the proposed transmission line, which would cross from the east to the west side of Coyote Creek in this segment. The proposed route in the Southern Area passes through several areas of high bird use: the Santa Clara Valley Water District's mitigation ponds just south of Dixon Landing Road, the Water Pollution Control Plant (WPCP) ponds west of Coyote Creek, and the riparian corridor along Coyote Creek itself. Appendix D illustrates the alternatives in the Southern Area.

(1) McCarthy Boulevard Alternative

The McCarthy Boulevard Alternative was considered in the SDEIR and would replace the portions of the proposed route between Mileposts 4.7 and 5.6 with an overhead transmission line route east of Coyote Creek, thereby avoiding crossing over the Santa Clara Valley Water District's Coyote Creek Flood Protection Facility, which is heavily used by migratory waterbirds. The McCarthy Boulevard Alternative would be located primarily within the City of Milpitas, following the west side of recently constructed McCarthy Boulevard adjacent to the Milpitas Sewer Lift facility. The line would cross to the west side of Coyote Creek from a location adjacent to the Milpitas Sewer Lift facility, where minimal riparian vegetation exists.

The McCarthy Boulevard Alternative would have significant and unavoidable impacts in two areas: biological resources (potential for bird collision) and land use (inconsistency with the City of Milpitas Open Space/Conservation Policy). However, this alternative would eliminate the

proposed route's transmission line crossing of a much more sensitive bird use area at the flood protection ponds, where the magnitude of the significant and unmitigable impact would be substantially more severe. Given the reduction in the severity of the biological impacts, this alternative is recommended as a component of the environmentally superior transmission line route.

(2) Southern Underground Alternative

The Southern Underground Alternative, evaluated in the SDEIR, would replace PG&E's proposed route from Milepost 4.1 (at the north end of the Fremont Airport property) to the proposed Los Esteros substation. Geologic conditions (the presence of unconsolidated Bay mud soils and high groundwater) at the Dixon Landing Road/Coyote Creek area would make underground construction difficult (or perhaps impossible) in that area. As a result, this primarily-underground alternative would include an overhead segment at this creek crossing. The alignment of the Southern Underground Alternative would follow McCarthy Boulevard south of Dixon Landing Road, to a point east of Milepost 6.7 where the route would turn west towards the proposed substation. The southern crossing of Coyote Creek could be either overhead or underground: the FEIR evaluated four possible crossing locations.

The only significant and unmitigable impacts identified for the Southern Underground Alternative were the geologic impacts. This area has unconsolidated and highly saturated soils with a very high potential for liquefaction to occur during an earthquake. The area also presents a high potential for expansive and soft soils to cause differential settling of the underground duct banks. Because of the relatively high likelihood of seismic activity in this area, these impacts are considered to have the potential to reduce

the reliability of the line. For that reason, the Southern Underground Alternative was determined not to be superior to PG&E's proposed project.

(3) Overhead Variation of Southern Underground Alternative

This overhead variation of the Southern Underground Alternative would follow the same route as the Southern Underground Alternative (along McCarthy Boulevard in Milpitas). However, the transmission line would be located entirely aboveground to avoid the geologic impacts associated with the underground route. Along with analysis of this alternative, the FEIR evaluated four locations at which the transmission line could make an overhead crossing of Coyote Creek in order to connect to the new Los Esteros substation.

The Overhead Variation of the Southern Underground Alternative would have significant and unmitigable impacts on biological resources as well as in land use and recreation. With respect to biological resources, the bird collision risk would be less than that for PG&E's proposed route because bird use east of Coyote Creek is substantially less than west of the creek. However, the impact would remain significant for the Overhead Variation as well as for the proposed route. This alternative would also degrade the quality of the recreational experience for users of the Bay Trail. Such trail users, walking on the eastern levee of Coyote Creek, would experience adverse visual impacts and corona noise from the transmission line, particularly where it would cross the creek. Finally, as with the McCarthy Boulevard Alternative, this alternative would have significant impacts on land use because of its inconsistency with the City of Milpitas Open Space/Conservation Policy.

The FEIR identified significant and unavoidable impacts related to bird collision for both the proposed route and the Overhead Variation. PG&E's

proposed route is located in an area with higher risk for bird collision (because it is west of Coyote Creek where bird use is higher). As a result, the magnitude of that impact could be more severe for the proposed route than for the Overhead Variation. However, there are no significant recreation or land use impacts associated with this portion of PG&E's proposed route. The land use and recreation impacts that would result from the Overhead Variation of the Southern Underground were found in the EIR to be significant and unavoidable. These impacts are long-term (*i.e.*, present through the life of the project) and there is no mitigation available.

Biological resources impacts are significant for both the proposed route segment and this alternative. The Overhead Variation also has significant land use and recreation impacts which do not occur along the proposed route segment. Therefore, PG&E's proposed route (with the McCarthy Boulevard Alternative) is considered to be environmentally superior to the Overhead Variation of the Southern Underground Alternative.

(4) Environmentally Superior Alternative in Southern Area

The FEIR concludes that the environmentally superior alternative in the Southern Area is the proposed route between Mileposts 4.1 and 4.7, the McCarthy Boulevard Alternative (which replaces the proposed route between Milepost 4.7 and 5.6), and the proposed route between Milepost 5.6 and the substation. The FEIR selects this route because it provides the best compromise related to the Southern Area environmental impacts. It avoids an overhead transmission line crossing west of the very high bird use areas southwest of Dixon Landing Road; avoids the unstable geologic conditions that would be encountered with undergrounding; and minimizes recreation and land use impacts on the Bay Trail and the developing area of Milpitas' McCarthy Ranch

by crossing back to the west side of Coyote Creek for the southernmost 1.5 miles of the route.

4. 115 kV Power Line Upgrade

The 115 kV component of the proposed project is required in order to allow the installation of a double-circuit 115 kV power line between the proposed Los Esteros substation and the existing Montague substation. The current line provides only a single circuit, and the construction of the proposed 230 kV substation will necessitate the completion of the second circuit.

a) Proposed 115 kV Trimble-Montague Upgrade

The 115 kV portion of the proposed project would require replacement of an existing single-circuit wood pole line with a taller double-circuit tubular pole tower line along a 1.5-mile segment of Trimble Road and Montague Expressway in the City of San Jose. This segment would terminate at the existing Montague substation.

The DEIR did not identify any significant unmitigable impacts for the proposed 115 kV project component. Construction impacts (*e.g.*, noise, air emissions, short-term traffic disruption) would occur at tower locations. Long-term impacts (*e.g.*, visual impacts and corona noise) would be similar to those of the existing line.

b) Alternatives to 115 kV Proposed Project

The DEIR evaluated two alternatives to PG&E's proposed Trimble-Montague 115 kV Upgrade (see Appendix D to this decision):

- Barber Lane Alternative
- Underground Trimble-Montague Alternative

(1) Barber Lane Alternative

This alternative is approximately 2.9-miles long (nearly twice as long as the proposed 115 kV route segment) and would directly connect PG&E's proposed Los Esteros substation with the Montague substation. The route would pass primarily through the City of Milpitas.

The Barber Lane Alternative would have no significant unmitigable impacts. However, it would require a crossing of Coyote Creek in a wider location than the proposed 115 kV route, thereby increasing the potential for bird collision and hydrologic impacts to the creek. The additional length of this route increases the amount of construction disturbance to adjacent land uses and extends the visual impact across a larger area. It would also result in the installation of a power line in an area where no lines currently exist.

The DEIR and FEIR found this route to be inferior to PG&E's proposed 115 kV route because it would be nearly twice as long and because it does not use an existing power line corridor. The Barber Lane Alternative would also have greater impacts at its Coyote Creek crossing. The proposed route would cross Coyote Creek where it is very narrow and immediately adjacent to a heavily traveled roadway.

(2) Underground Trimble-Montague Alternative

This alternative would follow the same route as the proposed project, but be located underground (adjacent to Trimble Road and Montague Expressway in the City of San Jose) rather than overhead.

The DEIR did not identify any significant unmitigable impacts for this alternative. However, the underground construction would result in more severe construction impacts (*i.e.*, noise, dust, traffic disturbance) than an overhead route.

(3) Environmentally Superior 115 kV Project Component

The EIR determined that neither the Barber Lane nor the Underground Trimble-Montague Alternatives would create significant impacts; however, the magnitude of the impacts for both alternatives would be greater than those of PG&E's proposed route. The DEIR concludes that PG&E's proposed Trimble-Montague 115 kV Upgrade is environmentally superior because it follows an existing highly developed corridor, is much shorter than the Barber Lane Alternative, and would involve considerably less construction disturbance than the underground alternative.

E. Substation Locations

The 230 kV substation would be the southern terminus of the proposed 230 kV transmission line, providing for distribution of electricity into a network of 115 kV power lines that feed distribution substations in San Jose, Santa Clara and Milpitas. As illustrated in Appendix D to this decision, the FEIR concluded that both PG&E's proposed Los Esteros substation and the US Dataport Alternative are environmentally superior to the other alternatives, and are comparable to each other in their level of impact.

1. Proposed Substation

PG&E's proposed Los Esteros substation would be located on a 24-acre parcel currently used for agricultural production (greenhouses). The site is immediately south of the Santa Clara/San Jose Water Pollution Control Plant, and adjacent to City of San Jose land that is maintained in agricultural status and used for disposal of treated water. After the substation is built, four 115 kV power lines will connect this 230 kV substation to 115 kV substations in San Jose, Santa Clara and Milpitas.

The DEIR found one significant impact at this site: the loss of Prime Farmland and the removal of associated agricultural soils from productive use. Impacts in other environmental disciplines were found to be less than significant: the site has no adjacent residences or businesses, no significant biological or cultural resources, and no sensitive geologic or hydrologic conditions.

2. Alternative Substation Sites

The DEIR and SDEIR evaluated three alternatives to the proposed Los Esteros substation:

- Zanker Road Substation Alternative
- Northern Receiving Station Substation Alternative
- US Dataport Substation Alternative.

a) Zanker Road Substation Alternative

This alternative site is located one mile south of PG&E's proposed Los Esteros substation site and would require use of land owned by the Santa Clara Valley Transportation District.

There are no significant unmitigable impacts associated with constructing a substation on this site. The DEIR identified the following less–than-significant impacts: traffic and visual impacts associated with the Highway 237 crossing, potential contamination due to the site's previous land use as a bus maintenance facility, and the presence of nearby sensitive land uses (mobile home park and occupied office buildings).

While the Zanker Road Substation Alternative would eliminate the significant impact associated with the loss of agricultural soils, the DEIR determined that this site is inferior to PG&E's proposed substation site because of the greater impacts on adjacent land uses, greater length of the transmission line, and greater magnitude of visual and traffic impacts.

b) Northern Receiving Station Alternative

This alternative would be located adjacent to Lafayette Road and would require 4 more miles of transmission line than the proposed transmission line route to the Los Esteros substation. Existing transmission towers (currently holding 115 kV lines) would carry new 230 kV conductors to the substation site, which would be co-located with a 115 kV substation approved (but not yet built) by the City of Santa Clara.[78]

The Northern Receiving Station Alternative would have no significant unmitigable impacts; unlike the proposed and US Dataport substation sites, its construction would not result in the elimination of agricultural lands. However, this route would have more severe (though still less than significant) impacts in most other environmental disciplines. For example, it would require transmission line construction across the Guadalupe River (with potential wetlands impacts), and construction of both the 230 kV transmission line and substation adjacent to existing residences and businesses. This alternative would also have greater traffic impacts than the proposed substation or the US Dataport proposal because the transmission line to the Northern Receiving Station would have to cross Highway 237, North First Street, and Los Esteros Road. While these impacts would be more severe than those associated with the proposed project, all of these impacts would be less than significant with implementation of mitigation measures defined in the Biological Resources and Transportation / Traffic sections of the DEIR.

[78] One of the parties proposing this alternative, The City of Santa Clara / Silicon Valley Power, settled out of the case as hearings began. Nonetheless, the DEIR evaluated the Northern Receiving Station Alternative in an attempt to settle on an environmentally preferred substation location.

The DEIR concluded that the Northern Receiving Station Substation Alternative is inferior to the proposed site because of (1) the extent of construction impacts resulting from the additional length of the transmission line; (2) the associated long-term impacts of the line itself (*i.e.*, visual and biological resources); and (3) the presence of residential areas along the transmission line route and next to the substation site which would be affected by short-term construction disturbance and long-term visual and noise impacts.

c) US Dataport Alternative

The US Dataport Alternative site is located immediately northwest of PG&E's proposed substation site on land owned by the City of San Jose. This city-owned site was suggested for consideration as an alternative site because of the proposed development of the greenhouse property by US Dataport for an Internet server farm.

As is the case with PG&E's proposed substation site, use of the US Dataport site would result in the loss of agricultural land, a significant unmitigable impact. Other impacts, all found to be less than significant and comparable in magnitude to those of the proposed substation site, relate to cultural resources, land uses and the loss of publicly dedicated land, degraded recreational experience, and visual impacts from a spur of the Bay Trail.

The PG&E substation and the US Dataport sites would have similar cultural, biological, visual, and recreational impacts. Therefore, the US Dataport Alternative site and the proposed substation site are equally environmentally superior.

d) Environmentally Superior Substation Site

The FEIR determined that both PG&E's proposed substation site and the US Dataport site are environmentally superior to the Zanker Road and Northern

Receiving Station Alternative. Thus, the factors necessary to a choice between PG&E's and US Dataport's proposed substation are not environmental in nature. Rather, they relate to feasibility concerns. PG&E asserts that it cannot acquire the US Dataport substation site because the City of San Jose has not agreed to terms of a sale. Without a land sale deal, PG&E would be forced to institute condemnation proceedings against San Jose, a daunting prospect according to PG&E.

PG&E's proposed substation site, by contrast, is on private land. While PG&E does not have a contract to purchase this land either, it claims it has a better chance of winning a condemnation case against a private party than against the City of San Jose.

US Dataport vigorously opposes PG&E's proposed site since it is located in the middle of US Dataport's planned Internet server farm campus. US Dataport has a deal with Calpine, a power generator planning to build a cogeneration power plant next to US Dataport, to purchase the land. Calpine holds an option on the land and apparently is willing to sell space to US Dataport but not to PG&E.

There are significant contingencies with the US Dataport proposal, however. US Dataport is a new company with no other facilities in place. It plans a facility that would siphon off at least 130 MW of electricity[79] from the existing, already overstressed, Silcon Valley area power grid. US Dataport does not yet have a permit to construct, and is still involved in its own environmental review process. We take official notice of California's current electricity crisis,

[79] US Dataport will actually use 180 MW of electricity, but will serve 49.9 MW of that load with a cogeneration plant to be built on-site by Calpine.

and the sharp decline of the dot-com economy in recent months. In this climate, it is far from certain that a 180 MW server farm is a prudent use for property in an area suffering the economic effects of a technology decline and greatly curtailed energy resources.

Thus, while PG&E's proposed substation location is certain to be built, the viability of Dataport's proposal is speculative at best. We are concerned as well about the public policy implications of requiring a substation to be moved to accommodate an energy use that will make energy less available for the rest of the businesses and residents of the area. Finally, if we were to choose the US Dataport alternative, we would in all probability be ensuring a condemnation fight between PG&E and the City of San Jose.

The City is thus far unwilling to make a deal with PG&E for the location US Dataport proposes. Indeed, the City's most recent pronouncement of the issue was that there is no agreement between San Jose and PG&E for use of city-owned property for the Los Esteros substation.[80] San Jose also expressed support for PG&E's assertions about the great difficulty of condemning city-owned property. Thus, PG&E's ability to acquire land for the substation is at greater risk if we adopt the US Dataport proposal than if we adopt PG&E's proposal. Therefore, all factors favor PG&E's proposed substation site, and we adopt that site for purposes of this application.

[80] *Reply Brief of the City of San Jose and Redevelopment Agency of the City of San Jose,* filed November 1, 2000, at 3-4.

F. EMF Issues

1. Summary

ProLogis alleges that the Bayside Business Park and its commercial tenants will suffer economic harm if the lines are sited aboveground next to office buildings in the Business Park. Principally, the allegation is that EMFs interfere with computer and other sensitive electronic equipment that many Business Park tenants use. The interference consists generally of jittery computer monitors. ProLogis advocates moving the proposed transmission line to a place other than along the western edge of the Business Park, where it alleges the most interference will occur.

ProLogis' concerns are moot in view of our selection of a route other than the proposed route, to which ProLogis objects, and we need not respond to them in this decision. However, we do address one issue of continuing relevance here. PG&E contended at hearing that it was required to spend four percent[81] of project cost on EMF mitigation regardless of the amount of EMF mitigation it would achieve or the other adverse environmental impact it might cause.

We are concerned with PG&E 's assumption that it has unfettered discretion to decide on how to mitigate EMF effects even if the mitigation itself poses the risk of significant environmental impact. In all cases, the Commission retains jurisdiction to approve PG&E's EMF mitigation plan. PG&E shall submit that plan for the approval of the Commission's Energy Division prior to commencing construction on the project. The plan shall be a detailed description

[81] The Commission established a four percent expenditure benchmark for EMF mitigation in *Potential Health Effects of Electric and Magnetic Fields of Utility Facilities*, D.93-11-013, 52 CPUC 2d 1 (1993) (EMF Mitigation Decision).

of all proposed mitigation, which includes cost and mitigation estimates, and drawings for the route and substation we select in this decision.

2. Parties' Positions on EMF Issues

a) ProLogis' Position on EMF Issues

ProLogis contends that even low level EMFs interfere with the performance of electronic equipment.[82] Because virtually all the commercial tenants of the Bayside Business Park work in the computer industry, they all have computers and, ProLogis contends, run the risk of insurmountable computer problems if the lines are located to the west of the Business Park:

> There are 23 buildings along the west side of Bayside Business Park that abut PG&E's preferred transmission line route. (Ex. 6, Att. E at 3). At least twelve of these buildings are within 100 feet of the proposed alignment. (*Id*.). These buildings will be close enough to PG&E's preferred path that they would receive significant EMF interference if the 230 kV lines are constructed along this path.[83]

ProLogis contends PG&E's expert witness, Michael Silva, conceded that magnetic field levels as low as 5 mG can cause interference with computer equipment. When ProLogis' expert, Dr. Kirby Holte, took measurements of existing mG levels near the Business Park, he found that the existing 115kV transmission lines already produce levels exceeding that amount in several locations within the Park. PG&E's measurements also revealed high mG levels. ProLogis claims that "a distance of over 175 feet would be required before the EMF levels would drop below 5 mG [according to PG&E's measurements.]"[84]

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[82] Magnetic fields are typically expressed in gauss or milligauss (mG) increments.

[83] ProLogis Opening Brief at 30.

[84] *Id.* at 33.

ProLogis also alleges that PG&E's measurements are too low, and that the EMF interference risk is even higher than PG&E's figures reveal.

While conceding there was record evidence that computer software costing $34.95 is available to counteract EMF effects, ProLogis questions the effectiveness of this software:

> Similarly, the software packages that Mr. Herz suggested could be deployed by the business park tenants are not always effective. The mere fact that monitor shields costing $550 and up are being manufactured and purchased demonstrates that the software solution often is not effective. Certainly, no business is going to expend the resources necessary for shields for each monitor in its location if failproof lower-cost software solution were available.[85]

ProLogis likewise resists the suggestion that its commercial tenants move their computer equipment: "[T]here is no record evidence that it would be possible for tenants within Bayside Business Park to relocate their computer monitors to locations where EMF interference would not cause distortion."[86]

ProLogis does not believe PG&E's proposed low- and no-cost mitigation would drop EMF readings to an acceptable level.[87] Much of PG&E's proposed mitigation consists of raising transmission towers by as much as 30 feet. However, ProLogis contends, PG&E has performed no cost, safety or reliability analysis to assess the effects of raising tower heights to this extent. Therefore, ProLogis questions the feasibility of PG&E's proposed EMF mitigation.

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[85] *Id.* at 42 (citations omitted).

[86] *Id.* at 41.

[87] PG&E's proposed mitigation includes cross-phasing circuits and raising transmission tower heights.

ProLogis also believes raising tower heights will have adverse – principally visual - impacts on the environment.

b) Other Intervenors' Positions on EMF Issues

Two other parties address the EMF issue in passing. Aglet believes that "a comprehensive cost effectiveness review of Project alternative routes should consider perceived changes in property value due to EMF exposure."[88] Fremont believes "the EMF issues are best resolved by undergrounding the line."[89]

c) PG&E's Position on EMF Issues

PG&E's EMF analysis focuses on its proposed route, which we reject in this decision. Nonetheless, we summarize the position briefly.

PG&E claims its proposed route – with low- and no-cost mitigation - would have no measurable EMF impacts on any businesses along the route, including those within the Bayside Business Park. PG&E challenges the work of ProLogis' expert, Dr. Holte, as "seriously flawed."[90] It claims Dr. Holte made several errors in calculating the mG levels existing near the Business Park that resulted in EMF impacts that were overstated by as much as 486 percent.

PG&E also questions ProLogis' foundational evidence. It claims the ProLogis management witness, Mr. Scott Lamson, ProLogis' Vice-President and the property manager for Bayside Business Park, could not identify any "sensitive equipment" (other than computers) that existed in the Business Park; could only recall that a "handful" of unspecified tenants had had interference with computer screens; had no written documentation of any tenant complaints

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[88] Aglet Opening Brief at 11.

[89] Fremont Opening Brief at 12.

[90] Aglet Opening Brief at 11.

regarding EMFs; was not sure how many buildings would be near PG&E's proposed route; and was not sure of the Project's adverse financial impacts on ProLogis."[91]

PG&E discusses its proposed EMF mitigation, which it characterizes as changing tower height along its proposed route by 20 feet, or along the I-880-B route approximately 30 feet. However, it acknowledges that its expert's "special mitigation case" to reduce the maximum EMF to 8.22 mG would require raising the eleven poles near the Bayside Business Park . . . another 90 feet total."[92]

PG&E also takes issue with ProLogis' contention that EMFs as low as 5 mG cause interference. PG&E claims a standard of 10 mG, while not implemented at the local, state or federal level, is "an oft-cited threshold for interference."[93] Moreover, PG&E contends, "no magnetic fields greater than 10 mG would reach the interior of even a single building in the Bayside Business Park, and even that level is only at the outer edge of the building."[94] It contends that at "Summer Normal Peak [electric] load, which only occurs 'a few hours a year,' [the highest EMF level shown in the report of its expert Mr. Silva] is just 8.22 mG."[95] Such a level is "of a magnitude encountered by all of us in daily life in many contexts"; to base a decision on EMFs of such low level would "make it virtually impossible to site a transmission line almost anywhere there are computers . . . ."[96]

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91 *Id.* at 33.

92 PG&E Reply Brief at 53.

93 *Id.* at 47.

94 *Id.* at 48.

95 *Id.* at 49 (emphasis omitted).

96 *Id.* at 50.

PG&E also rebuts ProLogis' attacks on its expert's calculations. While Dr. Silva made his calculations prior to PG&E's updated load forecasts, "that fact in no way changes PG&E's EMF analysis or the conclusions therefrom."[97] PG&E states that,

> the [computer screen] jitter that could occur with a 3 to 5 mG field level [– the level ProLogis claims causes interference –] is a barely perceptible shimmering of text consisting of tiny changes in image intensity, which would be at the threshold of perception for some users, but not all.[98]

3. Discussion of EMF Issues

a) Bayside Business Park EMF Issues Mooted

While we do not believe ProLogis proved its case, ProLogis' specific claim is now moot given that we have selected a route that travels underground through the Bayside Business Park.

b) EMF Mitigation

PG&E's interpretation of the Commission's EMF Mitigation Decision creates a dilemma. While PG&E is correct that that decision requires low- and no-cost mitigation pegged at approximately four percent of the cost of the entire project,[99] PG&E seems to suggest that it must spend the entire four percent even if the mitigation produces other environmental problems of its own.

Where, as here, the project cost is estimated in the tens of millions of dollars, mitigation costing four percent of the total could itself run into the

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[97] *Id.* at 51.

[98] *Id.* at 52 (citations omitted).

[99] PG&E Reply Brief at 53, citing D.93-11-013, 1993 Cal. PUC Lexis 844 at *14-15 ("[l]ow cost is in the range of 4 percent of the total cost of a budgeted project"; "[t]he utilities

Footnote continued on next page

millions of dollars. It is not clear to us that this is what the Commission intended when it set the four percent benchmark. The Commission always retains discretion to assess whether the EMF mitigation proposal reduces EMF exposure adequately without also creating other, insurmountable environmental impacts.

It is the Commission, not PG&E, that has ultimate authority to determine the appropriate amount of EMF mitigation in this case. Because mitigation could create more environmental harm than it solves – by creating new, adverse visual and bird strike impacts - PG&E's mitigation plan requires approval of the Commission's Energy Division. The need to mitigate EMFs does not remove our responsibility to consider other environmental impact. Thus, before PG&E begins construction, it shall submit for Commission approval a detailed EMF mitigation plan for the selected route that describes each mitigation element, the cost of such mitigation, and the percentage by which that mitigation will reduce EMF levels.

G. Property Value Issues

1. Summary

ProLogis and Fremont claim that their property values will suffer if the transmission lines are installed near them. We find that the evidence of negative impacts on property values is not credible and reject the property value challenges.

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shall use 4 percent of a total cost of a budgeted project as a benchmark in developing their EMF mitigation guidelines").

2. Parties' Positions on Property Value Issues

a) ProLogis' Position on Property Value issue

ProLogis contends that PG&E's proposed route would negatively impact property values in the Bayside Business Park. ProLogis' case rests on the testimony of its own witness, Mr. Scott Lamson; on a refutation of PG&E's property value analysis prepared by Mr. Dean Chapman; and on contentions about the perceived health risks associated with being located next to transmission lines.

Mr. Lamson testified that many prospective tenants are unwilling to lease space near transmission lines. Mr. Lamson testified that space in a ProLogis building near the existing 115 kV power lines took six months to lease versus the normal one month vacancy period for space in buildings not adjacent to the lines. ProLogis also asserts that for the buildings in Bayside Business Park along the existing 115kV transmission lines, ProLogis receives 10-20 percent less rent than for other buildings in the Business Park.

Mr. Chapman's report found that no adverse impact on property values would result from locating the proposed transmission line near office facilities. Mr. Chapman conducted a paired sales analysis and interviews with commercial tenants to reach his conclusions.[100] ProLogis assails this conclusion for three reasons.

First, ProLogis challenges Mr. Chapman's interviews of Bayside Business Park tenants. From these interviews, Mr. Chapman concluded that existing transmission lines did not affect tenants' perceptions of the desirability of their property. However, ProLogis claims Mr. Chapman interviewed people in the

wrong buildings, asked the wrong questions, and was unconcerned with the seniority of the tenants he interviewed.[101]

Second, ProLogis claims that Mr. Chapman's paired sales analysis is flawed. In that analysis, Mr. Chapman compared the values of commercial properties near power lines with those of buildings not near lines. ProLogis claims Mr. Chapman's comparisons were inapt because he did not know the EMF levels or the load (Amperes) carried by the lines on the properties located near transmission lines. Nor, asserts ProLogis, did Mr. Chapman ascertain whether the comparable buildings he studied were built before or after construction of the lines. ProLogis claims this is important because in this case, the proposed lines would be installed near existing Business Park buildings, making it impossible to build the Business Park to minimize EMF exposure. ProLogis also claims the paired sales analysis may not have paired otherwise comparable properties.

Finally, ProLogis asserts (without citing any evidence) that perceived health risks from EMFs "undoubtedly adversely affect property and rental values."[102]

b) Fremont's Position on Property Value Issues

Fremont supports ProLogis' position on the effects of overhead transmission lines on property values. It also challenges one PG&E assertion about the aesthetics of overhead versus underground construction. PG&E claims underground construction – which requires the placement of "transition

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[100] We discuss Mr. Chapman's report in more detail in Section III (G)(3) below.

[101] ProLogis Opening Brief at 38-40.

[102] *Id.* at 46.

structures" to transfer overhead lines to underground – is more unsightly than overhead construction. Fremont claims this is illogical, since the transition structures resemble one transmission tower, while overhead construction uses multiple towers and thus has greater visual impact.

c) PG&E's Position on Property Value Issues

PG&E relies primarily on Mr. Chapman's analysis to conclude that the proposed transmission lines will not affect property values. It also challenges Mr. Lamson's testimony as unsubstantiated.

PG&E asserts that Mr. Chapman conducted a thorough market study and "paired sales analysis" consistent with standard appraisal methods, and determined that "properties next to power lines appreciate at the same rate as those without power lines. In fact," asserted Mr. Chapman, "a prime example of continued appreciation of a property adjacent to a 115 kV line was found in Bayside Technology Park itself." [103]

Mr. Chapman interviewed employees of at least 17 tenants of Bayside Business Park, none of whom reported any impacts from power lines on their electronic equipment, and many of whom worked in offices located within 20 feet of a 115kV transmission line.

PG&E claims that Mr. Lamson presented no credible evidence whatsoever that EMF impacts, the perception of EMF impacts, or visual impacts from transmission lines had influenced or likely would influence either rental values or the marketability of units at the Bayside Business Park. It claims Mr. Lamson conceded that his "assumption that tenants will be harmed is based solely on the

[103] PG&E Opening Brief at 35-36, citing RT Vol. 10 at 1096:11-15 (PG&E / Chapman).

[few] complaints . . . received to date from tenants in the park."[104] Moreover, argues PG&E, on the basis of "a very informal study," Mr. Lamson speculated without support in his testimony that units in the Bayside Business Park closer to existing transmission lines were more difficult to lease, and therefore are less valuable.[105]

3. Discussion of Property Value Issues

We find that the evidence of adverse impacts on the property values in the Bayside Business Park was virtually non-existent. Indeed, ProLogis' only affirmative evidence (as opposed to refutation of Mr. Chapman's study) was the testimony of Mr. Lamson and the unsupported assertion that perceived health risks from transmission lines create lower property values near those lines.

As noted previously, Mr. Lamson's testimony was based on pure surmise most of the time. When asked whether tenants were paying less for Business Park office space near the existing 115kV lines, Mr. Lamson said he did not know the number of tenants affected.[106] At another point Mr. Lamson said that three or four buildings of the 50-55 in the Park "are less attractive due to the visibility of power lines."[107]

However, Mr. Lamson's estimate of the "10-20 percent" rent reduction caused by the presence of power lines was based not on a study but only on the fact that Mr. Lamson "[has] been in the real estate business for 15 years."[108]

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[104] PG&E Opening Brief at 35, citing RT Vol. 4 at 269:2-4 (ProLogis/Lamson).

[105] PG&E Opening Brief at 35, citing RT Vol. 4 at 271, 272:26 (ProLogis/Lamson).

[106] RT Vol. 4 at 271:15-19.

[107] *Id.* at 270:28-271:7, 271:28-272:5.

[108] *Id.* at 273:9-10.

Mr. Chapman tested Mr. Lamson's 10-20 percent rent reduction theory by interviewing Business Park tenants and found that "[a]s demonstrated by actual examples of rents for buildings in Bayside Plaza ([a park owned by ProLogis][109] adjacent to Bayside Business Park) that are next to two prominent power lines, I found no adverse reaction in the form of lower rents for units adjacent to those lines."[110]

Finally, while Mr. Lamson said repeatedly that buildings near power lines take longer to lease, he could only cite one example in which this occurred, and even then said that proximity to the power lines was only "one of the major reasons" the building was not rented sooner.[111]

We need not discuss ProLogis' claims – or PG&E's rebuttal – regarding the precise buildings that will be affected by PG&E's proposed route, since we do not adopt that route. Indeed, the route we adopt is one that ProLogis supported. Within the Bayside Business Park, the environmentally superior route is the "Underground Through Business Park" alternative. With regard to this alternative, ProLogis states:

> [A]ssuming that there is sufficient room to underground the transmission lines in Bayside Business Park, and further assuming that the Commission decides not to issue a CPCN for the I-880-B Alternative (which is clearly the superior

[109] TR Vol. 10 at 1099:7-8.

[110] Exh. 7, Ch. 4, at 31.

[111] RT Vol. 4. at 276:14-277:19, 279:2-7, and 281:1-5. (Mr. Lamson later changed his testimony to state that the power lines were the reason for the delay in renting the building. *Id.* at 277:20-21).

> route), *then the Commission should issue a CPCN for the Underground Through Business Park Alternative.*[112]

Indeed, ProLogis' support for the Underground Through Business Park was even stronger in its Reply Brief, as it abandoned its primary support for the I-880-B route:

> ProLogis now supports the Underground Through Business Park Alternative as the 230kV transmission route for which the Commission should issue a CPCN, so long as the Commission adopts the Supplemental DEIR's recommendation and requires that the underground segment continue through the former Fremont Airport as well.[113]

Rather, we discuss the property value issues generally in this discussion because the evidence demonstrates so conclusively that overhead transmission lines do not adversely affect property values in the hot commercial real estate market of Silicon Valley.

PG&E's witness on property value issues, Mr. Chapman, is a Certified General Real Estate Appraiser who has appraised real estate for 23 years. He has studied the relationship between transmission lines and adjacent property values on numerous occasions.[114] For this proceeding, he "conducted an investigation into possible adverse impacts to property in 'high tech' industrial parks created

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[112] ProLogis Opening Brief at 23 (emphasis added).

[113] ProLogis Reply Brief at 2. ProLogis has an option to buy a portion of the property formerly occupied by the Fremont Airport; hence its concerns about that property. *See* TR Vol. 4 at 284:11-288:4.

[114] Exh. 6, Att. A, at 14.

by the presence of nearby 115kV and 230kV overhead transmission lines . . . ."[115] He studied properties in Fremont, Hayward, Palo Alto, San Carlos, Roseville and Foster City and, with one exception, his investigation "did not produce any examples of diminished property values or rents due to the presence of nearby 115kV or 230kV overhead transmission lines."[116]

Mr. Chapman's technique for conducting the study was a "paired sales analysis," – "a quantitative technique used to identify and measure an adjustment or a single characteristic to the sales prices or rents of comparable properties." He researched information from properties that were both close to and far from transmission lines, and analyzed information from those sets of properties to determine if the presence of the transmission lines caused any diminution of either rent or price.[117] Mr. Chapman studied 20 other properties to reach his conclusion that "no evidence was found to suggest that the effect of EMFs or other non-easement related issues associated with overhead transmission lines have any negative impact on either rents and / or property values in 'high tech' areas."[118]

The one exception Mr. Chapman found – vacant land in Fremont whose asking price was reduced up to 25% due to the presence of transmission lines running across the property – was explained as an "easement related issue." That is, the easement for the lines "encumbered so much of the property that

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[115] Exh. 6, Att. E, at 1. *See also* Exhs. 16 and 17 (comparing real estate appreciation among buildings with and without transmission lines nearby).

[116] *Id.*

[117] *Id.*

[118] *Id.* at 2.

total potential building size was also reduced by 25% (according to the broker [selling the land])."[119] In contrast, Mr. Chapman explained, "the easement necessary for the PG&E proposed route [through] the Bayside Business Park would not require any reduction in the size of existing buildings."[120]

Thus, the evidence supports PG&E's assertion that overhead transmission lines for this project will not hurt property or rental values, and we reject all property value challenges.

IV. Environmental Findings and Statement of Overriding Considerations

As required by CEQA, we cannot approve PG&E's proposed project or an alternative unless we find that the project has been modified to mitigate or avoid each significant effect on the environment; or that specific considerations make the mitigation measures or alternatives identified in the FEIR infeasible; and specific overriding economic, legal, social, technological, or other benefits of the proposed project outweigh the significant effects on the environment. The following discussion addresses (1) mitigation measures recommended in the EIR; (2) significant effects of the proposed project; and (3) alternatives considered.

A. Mitigation Measures Recommended in EIR

The mitigation measures recommended in the EIR for the proposed project and alternatives are presented in Section C of the FEIR (attached as Appendix E). The adoption and implementation of these mitigation measures was assumed in the determination of impact levels in the EIR. Therefore, implementation of these mitigation measures is a condition of the approval of this project.

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[119] *Id.*

[120] *Id.*

In addition to the mitigation measures, additional impact-reduction measures proposed by PG&E in its Proponent's Environmental Assessment were assumed to be implemented as a basis for the impact conclusions in the EIR. These measures, called Applicant Proposed Measures in the EIR (also listed in Appendix E), would reduce impacts in a range of environmental disciplines, and their implementation is monitored by the CPUC as part of its Mitigation Monitoring, Compliance and Reporting Program.

The FEIR includes a Mitigation Monitoring, Compliance, and Reporting Program, which presents the process for monitoring the implementation of the recommended mitigation measures and Applicant Proposed Measures.

B. Significant Effects of the Proposed Project

As described above, all significant impacts resulting from PG&E's proposed project cannot be avoided or eliminated. These impacts are:

- Bird collision with 230 kV transmission line,
- Degradation of recreational experience along regional and subregional trails,
- Degradation of visual quality from installation of 230 kV towers and lines in open space / bay margin areas,
- Inconsistency with BCDC Bay Plan policies regarding scenic views and appearance / design, and
- Loss of Prime Farmland (agricultural soils) at the proposed Los Esteros substation site.

C. Environmentally Superior Alternative

As described above, several alternative projects were considered in the Draft, Supplemental Draft, and Final EIRs. As illustrated in Appendix C to this decision, a combination of these alternatives was found to be environmentally superior to the project proposed by PG&E: the I-880-A, Northern Underground, Underground Through Business Park, and McCarthy Boulevard Alternatives,

along with portions of the proposed route in the Southern Area. The use of these alternatives would offer environmental advantages, as discussed above. Therefore, we select these alternatives for approval. This combination of alternatives eliminates the bird collision impact along most of the transmission line route, and also eliminates the significant visual impact, the recreation impact along regional trails, and the inconsistency with the Bay Conservation and Development Commission Bay Plan.

The environmentally superior alternative would have two significant and unmitigable effects remaining from the proposed project: (1) the potential for bird collision with the new overhead transmission line (Mileposts 4.1 to 6.7, and (2) the conversion of Prime Farmland (agricultural soils) to non-agricultural use at the proposed substation site. In addition, the environmentally superior alternative involves use of the McCarthy Boulevard Alternative, for which the FEIR identifies another significant unavoidable impact: the inconsistency of the McCarthy Boulevard Alternative segment with the City of Milpitas' Open Space/Conservation policy.

By use of this combination of alternatives and implementation of the mitigation measures recommended in the various EIR documents, the significant impacts of the environmentally superior alternative are considered to be mitigated to the extent feasible. The benefits of the transmission line and substation project, provision of increased electric supply, and increased reliability to the Cities of San Jose, Santa Clara and Milpitas, outweigh the potential impacts.

V. Adequacy and Certification of the Final EIR

A. Adequacy of the Final EIR

The FEIR must contain specific information according to the CEQA Guidelines, Sections 15120 through 15132 (CEQA Guidelines).[121] The various elements of the FEIR satisfy these CEQA requirements. The FEIR consists of the DEIR and SDEIR, with revisions in response to comments and other information received. Appendices 2 and 3 of the FEIR contain the comments received on the DEIR and SDEIR; individual responses to these comments appear in Section E of the FEIR.[122]

B. Certification of the Final EIR

The Commission must conclude that the FEIR is in compliance with CEQA before finally approving PG&E's application. The basic purpose is to insure that the environmental document is a comprehensive, accurate, and unbiased tool to be used by the lead agency and other decisionmakers in addressing the merits of the project. The document should embody "an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors."[123] It must be prepared in a clear format and in plain language.[124] It must be analytical rather than encyclopedic, and emphasize alternatives over unnecessary description of

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[121] Cal. Admin. Code §§ 15122-131. The CEQA statute appears at Cal. Pub. Res. Code § 21000 *et seq.*

[122] CEQA Guidelines, § 15132.

[123] *Id.*, § 15142

[124] *Id.*, §§ 15006 (q) and (r), 15120, 15140.

the project.[125] Most importantly, it must be "organized and written on such a manner that [it] will be meaningful and useful to decisionmakers and the public."[126]

We believe that the FEIR meets these tests. It is a comprehensive, detailed, and complete document that clearly discusses the advantages and disadvantages of the environmentally superior route, PG&E's proposed route, and various alternatives. We find that the FEIR is the competent and comprehensive informational tool that CEQA requires it to be. The quality of the information therein is such that we are confident of its accuracy. We have considered that information in reaching that decision.

The Commission should certify the FEIR.

VI. Comments on Draft Decision of the ALJ

A. Introduction

The Draft Decision of ALJ Thomas in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Pub. Util. Code and Rule 77.7 of the Rules of Practice and Procedure. PG&E, ORA, US Dataport, Fremont, San Jose, ProLogis, Aglet and the ISO filed Opening Comments and the same parties (except US Dataport) filed reply comments. Save the Bay, an organization that did not participate in the hearings or earlier briefing, but did comment on the SDEIR, filed a motion for leave to intervene and proposed Reply Comments. Save the Bay agrees with Fremont's conclusion that undergrounding is a better option than overhead lines for the northern part of the transmission line. We deny Save the Bay's motion to intervene for two reasons. First, Save the Bay

[125] *Id.*, §§ 15006, 15141; Pub. Res. Code § 21003(c).

[126] Pub. Res. Code § 21003(b).

commented on the SDEIR and made its views known there, so it is not prejudiced by this denial. Second, Save the Bay's comments are not in the nature of a reply, which "shall be limited to identifying misrepresentations of law, fact or condition of the record contained in the comments of other parties."[127] Save the Bay's comments are supportive of Fremont's comments, and identify no such misrepresentations.

B. Cost Issues

Several parties comment on the costs of the project. PG&E's comments continue to assert the Commission lacks jurisdiction to impose a cost cap; this is simply reargument and is rejected. ORA and Aglet criticize the Draft Decision for allowing PG&E to recalculate its costs. ORA asserts it would be legal error to grant the CPCN without specifying a cost cap in the decision. While we disagree with ORA that the process the Draft Decision adopts fails to comply with the CPCN statute, in an abundance of caution, we will extend the effective date of this decision until after PG&E submits new cost figures, the parties comment upon them, and the Commission amends this decision to add the cost cap.

The Draft Decision provides that PG&E shall submit a detailed cost estimate of the environmentally superior route we select by Advice Letter no later than 30 days from the date the Commission decision is mailed. Other parties may file comments on the cost estimate no later than 15 days from the date PG&E submits the cost estimate.

We will modify this process without materially extending the time PG&E within which might start construction. Commission decisions ordinarily are

[127] Commission Rule 77.5.

effective 30 days after mailing. While we sometimes shorten this period, the 30-day period makes sense here because of the significant construction the project entails. Affected communities should have time between the decision's issuance and its effective date to be placed on notice of the commencement of construction in their areas.

PG&E will submit its new cost figures during the same 30-day period. It would have been unable to commence construction during this period in any event. The parties will comment on PG&E's new cost calculations during the subsequent 15 days. The Commission will then amend this decision to incorporate the cost cap and make any other necessary changes, and the amended decision will be effective immediately.

This approach is consistent with the cost cap provision of Pub. Util. Code § 1005.5(a) without unrealistically requiring us to set a cost cap based on stale data. Indeed, it is the best possible result. If we were to use data PG&E already submitted, it would be problematic because it reflects costs for a route different from the one we select here. The FEIR settling on the environmentally superior route did not issue until after hearings concluded, and in any event, neither PG&E nor anyone else could have been aware of the selected route until the Draft Decision issued. Thus, there must be a way to accommodate the obvious need for cost information reflecting the chosen route without undue delay to the project. We believe we have selected the proper solution.

Nothing in Pub. Util. Code § 1005.5(a) precludes us from issuing the CPCN with an effective date that allows for route specific cost information to be included. Finally, it would be unwise given the state of the cost information in this case and other parties' criticism of it to use cost information from other proposed routes to set a cost cap.

C. Substation Issues

US Dataport and San Jose oppose the Draft Decision's selection of PG&E's proposed substation location. US Dataport contends that the chosen location will interfere with its planned Internet server farm in the same vicinity. San Jose contends that contrary to the Draft Decision and PG&E's representation, it has proposed terms for an alternate substation site that should be acceptable to PG&E. PG&E counters that the San Jose's proposal for the alternate substation site, advocated by US Dataport and rejected in the Draft Decision, remains unreasonable. PG&E cites record evidence indicating its preference for the interest in substation sites with San Jose is offering a long-term (55-year) lease. PG&E also assails the other lease terms San Jose is offering as "fundamentally inconsistent with PG&E's obligation to serve. . . .[128]

There is no need for us to decide one way or another whether San Jose is offering PG&E reasonable terms for the rejected substation location. It is sufficient that there is no agreement for the alternate location. This fact supports our decision to reject the alternate substation site, and none of the other extra-record information US Dataport furnishes in its comments changes our view. For example, US Dataport asks us, without record support, to consider that the proposed server farm will actually "reduce the net load" in "consolidating a very large number of data and telecommunications facilities in one large

[128] *Comments of Pacific Gas and Electric Company on Administrative Law Judge Thomas' April 2, 2001 Draft Decision* (PG&E Comments), filed April 24, 2001, at 3.

facility. . . ."[129] Similarly, it asks us to acknowledge that the "current stressed condition of the Silicon Valley power grid will [not] persist into the future. . . ."[130]

At the same time, US Dataport inappropriately asks us to remove from the Draft Decision material of which we may properly take official notice. For example, US Dataport incorrectly claims we may not take official notice of the declining dot-com economy in Silicon Valley; in fact, this is an appropriate subject of official notice.[131]

US Dataport also states that it has "secured the principle (sic) permits required for construction" of the server farm and that the City of San Jose has certified an EIR for its project. While these are proper subjects of official notice,[132] it is nowhere clear from the documents US Dataport attaches that San Jose has granted "principal" permits or that it has chosen the server farm location that

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[129] *Comments of US Dataport, Inc. on Draft Decision of Administrative Law Judge Thomas* (US Dataport Comments), filed April 23, 2001, at 5.

[130] *Id.*

[131] 1 Witkin, *California Evidence,* Judicial Notice § 31 (4th ed. 2000) (noting that "economic facts" such as "depression and declining real estate values," "inflationary spiral" and "rise in cost of living" are clearly subject to notice under Cal. Ev. Code § 452(g) or (h), pertaining to matters of common knowledge within jurisdiction, and matters that are easily ascertained, or § 451(f), pertaining to universally known matters); *O'Meara v. Haiden,* 204 Cal. 354, 367 (1928) (depression and declining real estate values); *Kircher v. Achison, Topeka & Santa Fe Ry. Co.,* 32 Cal. 2d 176, 187 (1948) (inflationary spiral); *Foster v. Pestana,* 77 Cal. App. 2d 886, 891 (1947) (rise in cost of living); *see also* Commission Rule 73 ("Official notice may be taken of such matters as may be judicially noticed by the State of California").

[132] Cal. Ev. Code § 452(c) (official acts of the legislature and states may be noticed); *Agostini v. Strycula,* 231 Cal. App. 2d 804, 806 (1965) (records of local agency properly noticed).

conflicts with the Draft Decision's substation location. (Indeed, the EIR for the US Dataport project reflects less environmental harm from a US Dataport alternate location that accommodates the substation location we have selected than from US Dataport's proposal.)[133]

Thus, US Dataport's comments do not persuade us to change any aspect of the Draft Decision.

D. ISO's Role

The CA ISO criticizes the Draft Decision's analysis of the Commission's determination that the project is needed. The ISO claims the Commission should give greater deference to the ISO's role in determining need for the project. We believe the Draft Decision strikes an adequate balance between deferring to the ISO's need determination and acknowledging the aspects of the project the ISO did not analyze. Moreover, the Draft Decision reaches the same conclusion as did the ISO. Thus, we do not change the Draft Decision in response to the ISO's comments.

E. Undergrounding

Fremont renews its claim that the Commission gives undergrounding options too little consideration: "Fremont is frustrated that undergrounding the line entirely through Fremont has not been achieved. . . ."[134] However, the EIR

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[133] US Dataport Planned Development and Prezoning, DEIR, Vol. I of II, November 2000, Alternate F-1 (excerpt attached hereto as Appendix F); official notice taken pursuant to Cal. Ev. Code § 452(c) and Commission Rule 73. Indeed, we are troubled by US Dataport's insistence that the substation location the Draft Decision selects is "fundamentally inconsistent and incompatible with US Dataport's planned development" in view of the foregoing language from the EIR for its project.

[134] *Comments of the City of Fremont on the Draft Decision of ALJ Thomas* (Fremont Comments), filed April 23, 2001, at 2. Fremont also questions why the environmentally

Footnote continued on next page

did consider routes that were entirely underground. The combination of the Northern Underground Alternative with the Underground Through Business Park alternative would have resulted in an entirely underground route through the City of Fremont, but the Draft Decision selected the route with the lowest potential for environmental impact. Fremont suggested no other underground routes, nor did the Commission locate any other feasible underground alternatives.[135] The EIR adequately considered an all-underground alternative and we see no reason to change the Draft Decision's and FEIR's conclusion rejecting that alternative as environmentally inferior.

ProLogis contends undergrounding should continue further south than the Draft Decision finds. However, PG&E's comments on the SDEIR pointed out that predation impacts can be completely mitigated by means other than undergrounding in the area ProLogis addresses, and the EIR agrees. The EIR now contains stepped up mitigation and a comprehensive approach to preventing bird predation.

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superior route starts at the Newark-Metcalf 230 kV line. *Id.* at 3. The source of power for the project is the Newark Substation, so any alternative must start either at the substation or at the 230 kV line connected to the substation. The tap starts at the line rather than the substation because the westerly route to the west presents significant environmental impact and tap sites further east were eliminated due to density of development in that area.

[135] Fremont also criticizes the EIR for considering and rejecting an underground route with geologic impact; however, the entire area of Fremont and Milpitas along the western side of I-880 has potential for liquefaction and lateral spreading. Within this general area (Fremont, west of I-880), it is not possible to eliminate the potential for these geologic impacts, and no other underground routes were available.

F. Conclusion

The other issues the parties raise either are reargument or fail to persuade us to change the Draft Decision, and are hereby rejected. Likewise, where parties raise concerns that the EIR documents address adequately, we make no changes to the Draft Decision. We make a few additional minor changes to the Draft Decision to reflect the parties' comments.

Findings of Fact

1. The environmentally superior route, as set forth in the FEIR, is the appropriate choice for this project.

2. The environmentally superior transmission line route, in its entirety, poses less harm to the environment than do the alternate routes proposed by PG&E and other parties to this proceeding.

3. The substation location we select (and that PG&E advocates) poses equivalent environmental impacts to the location US Dataport proposes, but with fewer cost, logistical, land acquisition and other barriers than the US Dataport choice.

4. Much of the proposed transmission line will be located near significant wildlife areas populated primarily by birds, including endangered, threatened, and other special concern species.

5. The project is needed to maintain reliability of the electric transmission system in and near the northeast San Jose area south of San Francisco.

6. The environmentally superior route meets the ISO's reliability criteria.

7. We agree with the ISO's determination that the project is needed to meet projected demand for electricity in the northeast San Jose area. We do not, however, defer entirely to the ISO's determination of need. The ISO deferred to PG&E's assertions in many cases rather than testing PG&E's conclusions.

8. PG&E's cost justification for the project is not adequate. New cost information as required with regard to the route we select in this decision.

9. PG&E's estimates of land acquisition costs for overhead vs. underground construction are not reliable and require revision.

10. It is unclear from the hearing record whether overhead and underground construction costs differ because of PG&E's inadequate cost showing, especially related to land acquisition costs.

11. We are not obligated to choose the least costly route if that route causes greater environmental harm than more costly routes.

12. The ISO did not analyze the costs of PG&E's proposed route or any other route.

13. An ISO reviewer for the project worked on the project while employed by PG&E immediately prior to joining ISO staff.

14. There is no substantial evidence that the proposed project will adversely affect property values.

15. The Commission is the lead agency under CEQA with respect to the environmental review of the project and preparation of the FEIR.

16. The Commission has conducted an environmental review of the project pursuant to CEQA.

17. The FEIR consists of the DEIR and SDEIR, revised to incorporate comments received by the Commission from the proponent, agencies, and the public, and the responses to comments.

18. The FEIR has been completed in accordance with CEQA Guidelines, Sections 15120 through 15132.

19. The Commission has reviewed and considered the information in the FEIR before approving the project.

20. The FEIR identifies significant environmental effects of the environmentally superior route that can be mitigated or avoided to the extent that they become not significant. The FEIR describes measures that will reduce or avoid such effects.

21. The mitigation measures identified in the FEIR are reasonable.

22. As lead agency under CEQA, the Commission is required to monitor the implementation of mitigation measures adopted for this project to ensure full compliance with the provisions of the monitoring program.

23. The Mitigation Monitoring, Compliance, and Reporting Plan in Section C of the FEIR conforms to the recommendations of the FEIR for measures required to mitigate or avoid environmental effects of the project that can be reduced or avoided.

24. The Commission will develop a detailed implementation plan for the Mitigation Monitoring, Compliance, and Reporting Plan.

25. The FEIR identifies the route identified as the environmentally superior route, and depicted in Appendix C to this decision, as the environmentally superior alternative to PG&E's proposed route.

26. The FEIR identifies significant environmental effects of the environmentally superior route that cannot be mitigated or avoided, as follows: (a) potential bird collision with the new overhead transmission line between Mileposts 4.1 and 6.7, and (b) the conversion of Prime Farmland to non-agricultural use at the proposed substation site; and (c) inconsistency of the McCarthy Boulevard Alternative segment with the City of Milpitas' Open Space/Conservation policy.

27. For significant effects where no feasible mitigation exists to reduce the environmental effects to less than significant, the specific overriding benefits of

the environmentally superior route outweigh the significant effects on the environment. The benefits of the transmission line and substation project, provision of increased electric supply, and increased reliability to the cities of San Jose, Santa Clara and Milpitas, outweigh the potential environmental impacts.

28. We have considered and approve of the discussion in the FEIR covering parks and recreation, cultural and historic resources, environmental impacts generally, and the public comment and response section, and find that it adequately reflects our consideration of the Section 1002 factors.

Conclusions of Law

1. The Commission has jurisdiction over the proposed project pursuant to Pub. Util. Code § 1001 et seq.

2. The Commission has authority to cap project costs pursuant to Pub. Util. Code § 1005.5.

3. We do not have authority to impose a "hard" cost cap that may never be increased in view of Pub. Util. Code § 1005.5(b)'s provision for increases in the cost cap.

4. The ISO has responsibility to ensure the reliability of the State's electrical system pursuant to Pub. Util. Code § 345. However, ensuring reliability and deciding that a particular transmission project should be built are two separate issues.

5. This Commission's cost cap set pursuant to Pub. Util. Code § 1005.5 has bearing on the amount of cost recovery PG&E may seek from the FERC.

6. The Commission retains authority to approve PG&E's EMF mitigation plan to ensure that it does not create other adverse environmental impacts.

7. Commission approval of PG&E's application is in the public interest.

8. The processing of the DEIR, the SDEIR, and the FEIR, in this proceeding comply with the requirements of CEQA.

9. The contents of the FEIR comply with the requirements of CEQA and represent the Commission's independent judgment.

10. The FEIR should be certified for the project in accordance with CEQA.

11. The approval of the application, as provided herein, should be conditioned upon construction according to the environmentally superior route and the completion of the mitigation measures identified in the FEIR. The mitigation measures set forth in the FEIR are feasible and will minimize or avoid significant environmental impacts. Those mitigation measures should be adopted and made conditions of project approval.

12. After considering and weighing the values of the community, benefits to parks and recreational areas, the impacts on cultural and historic resources, and the environmental impacts caused by the project, we conclude that the CPCN should be approved.

13. Based on the completed record before us, we conclude that the alternatives identified in the FEIR are infeasible, or pose more significant environmental impacts than the environmentally superior route we select in this decision.

O R D E R

IT IS ORDERED that:

1. A Certificate of Public Convenience and Necessity is granted to Pacific Gas and Electric Company (PG&E) to construct an approximately 7.3 mile 230 kV double circuit transmission line from near PG&E's Newark substation in Alameda County to a new substation to be constructed on property known as

Los Esteros; a new 24-acre combined distribution and transmission substation with 21 kV connections, at Los Esteros; a connection of the new Los Esteros substation to the 115 kV system, via the Los Esteros to Kifer 115 kV circuit, the Los Esteros to Trimble 115 kV circuit, the Los Esteros to Montague 115 kV circuit, and the Agnews 115 kV tap circuit; and the replacement of a segment of the existing Newark to Trimble single circuit 115 kV wood pole line located along Trimble Road and Montague Expressway with a 1.4 mile double circuit steel pole line to complete a 115 kV circuit between the Los Esteros substation and the existing Montague substation.

2. The Final Environmental Impact Report (FEIR) is certified as the EIR for the project which is the subject of the application and is certified for use by responsible agencies in considering subsequent approvals for the project, or for portions thereof.

3. PG&E shall, as a condition of approval, build the project in accordance with the environmentally superior route specified in Appendix C to this decision and detailed in Section B.3 of the FEIR. In addition, PG&E shall comply with all mitigation measures specified in Section C of the FEIR (which is reproduced in Appendix E attached hereto) as directed by the Commission's Executive Director or his designee(s). PG&E shall work with the Commissioner's Energy Division to create more detailed maps for use in construction and mitigation monitoring of the selected route to supplement those provided in Appendix C to this decision.

4. PG&E shall perform a detailed cost estimate of the environmentally superior route we select in this decision. It shall complete and file by Advice Letter the estimate no later than 30 days from the date this decision is mailed. No later than 15 days from the date PG&E submits the cost estimate, other

parties to this proceeding may file comments on PG&E's proposed estimate. This order shall become effective once the Commission reviews the cost data and comments thereon and incorporates a cost cap and any other necessary changes into this decision.

5. PG&E's cost estimate provided for in the preceding paragraph shall not be filed under seal unless each aspect of the estimate conforms to California Rule of Court 243.1(d), relating to sealed records.

6. PG&E's land value estimates shall be supported by current, expert appraisals of the actual land it must acquire in accordance with the environmentally superior route. The estimate shall also comply with Pub. Util. Code § 1005.5(a).

7. We will use PG&E's cost estimate, and the comments on it, to set the cost cap for the project. However, if, once PG&E has developed final, detailed engineering design-based construction estimate for the environmentally superior route, this estimate is one percent or more lower than the cost estimate PG&E must submit within 30 days, PG&E shall show cause why we should not lower the Pub. Util. Code § 1005.5 cost cap to reflect the final estimate.

8. PG&E shall, prior to commencing construction, submit a detailed EMF mitigation plan for approval of the Commission's Energy Division. The plan shall describe in detail each mitigation element, the cost of each element, and the percentage by which that mitigation will reduce EMF levels.

9. The Executive Director shall supervise and oversee construction of the project insofar as it relates to monitoring and enforcement of the mitigation conditions described in Appendix E to this decision. 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 Appendix E, the Executive Director shall attribute the acts and omissions of PG&E's employees, contractors, subcontractors, or other agents to PG&E. PG&E shall comply with all orders and directives of the Executive Director concerning implementation of the environmental mitigation measures described in Appendix E.

10. The Executive Director shall not authorize PG&E to commence actual construction until PG&E shall have entered into a cost reimbursement agreement with the Commission for the recovery of the costs of the mitigation monitoring program described in Appendix E hereto, 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 PG&E 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.

11. PG&E'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.

12. PG&E shall file a written notice with the Commission, served on all parties to this proceeding, of its agreement, executed by an officer of PG&E duly authorized (as evidenced by a resolution of its board of directors duly

authenticated by a secretary or assistant secretary of PG&E) to acknowledge PG&E's acceptance of the conditions set forth in Ordering Paragraphs 1 through 11 and 13, inclusive, of this decision. 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.

13. The Executive Director shall file a Notice of Determination for the project as required by the California Environmental Quality Act and the regulations promulgated pursuant thereto.

14. Upon satisfactory completion of the project, a notice of completion shall be filed with the Executive Director by the Energy Division.

15. Application 99-09-029 is closed.

Dated May 14, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

SEE FORMAL FILE FOR APPENDX A-F