

L/ltg \*\*\*

Decision 91-06-028 JUNE 5, 1991

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 )  
to Construct and Operate an )  
Expansion of its Existing Natural )  
Gas Pipeline System. )

**ORIGINAL**  
Application 89-04-033  
(Filed April 14, 1989)

(U 39 G)

ORDER MODIFYING DECISION 90-12-119  
AND DENYING REHEARING

Applications for rehearing of Decision (D.) 90-12-119 have been filed by Altamont Gas Transmission Company (Altamont), Amoco Canada Petroleum Company, Ltd. (Amoco), Kern River Gas Transmission Company (Kern River), the Attorney General of California, Daniel E. Lundgren, and TURN. We stayed D.90-12-119 on April 24, 1991. We have reviewed each and every allegation of error raised by these applications and are of the view that sufficient grounds for rehearing have not been shown. We therefore deny rehearing and remove the stay of D.90-12-119. However, we will modify the decision in several respects as discussed below. This decision supercedes any inconsistent holdings in D.90-12-119.

The petitions for rehearing filed by Altamont, Amoco, Kern River and TURN include rate design issues in addition to the other allegations of legal error. We discuss the rate design issues in a separate order resolving the Division of Ratepayer Advocates petition for modification.

As a preliminary matter, the Attorney General did not participate in the underlying proceeding and has failed to demonstrate its standing to apply for rehearing before the Commission. However, the Attorney General's arguments are substantially similar to those of other parties on rehearing, and it is therefore unnecessary for us to rule on the issue of the Attorney General's standing.

I. Need for the Expansion Project

Amoco, Altamont, Kern River, and TURN contend that we failed to make specific enough findings of need to lawfully grant a certificate of public convenience and necessity (CPCN) under Public Utilities Code section 1001. We are persuaded that more specific findings should be made, but conclude that adequate evidence exists to support the findings necessary to comply with section 1001. In this order, we are modifying the decision to add the additional finding of particularized need for the Pacific Gas and Electric Co. (PG&E) Expansion Project within the gas pipeline market, and to better explain the basis for this finding.

We have relied on the record and decision in the pipeline OII (D.90-02-016) as a basis for our conclusion regarding the need for additional pipeline capacity generally. In addition, the pipeline OII has provided certain criteria which a gas pipeline proposal should meet in order to gain our support. We have concluded that the Expansion satisfies the OII criteria.

In addition to the evidence of the need for additional capacity generally and the Expansion's satisfaction of the OII criteria, we require evidence of particular need for the Expansion Project, before we issue a CPCN. However, consistent with the policy we previously adopted to recognize and reflect evidence of market demand in our CPCN decisions, the evidence of need which we have considered in this proceeding may naturally be more limited than we have considered in other CPCN decisions. Given the demonstrated need for additional gas pipeline capacity generally, further inquiry as to the need for the Expansion Project in particular need only extend to determining whether sufficient market demand for the Expansion Project exists.

This type of evidence of need is consistent with the market approach the Commission previously adopted as policy in the OII, as well as with the ALJ ruling of March 6, 1990 which directed this proceeding. As that ruling states, "Many of the

issues traditionally reviewed in a certificate proceeding would be mooted by a convincing showing of market demand for transportation regardless of the transportation rate or the commodity rate." (March 6, 1990 ALJ Ruling, at 4.) Furthermore, our finding of need based on market demand is fundamentally consistent with both Public Utilities Code section 1001 and with the policy of the California legislature recently articulated in Public Utilities Code section 1002.5. Section 1002.5 effective January 1, 1991, requires the Commission to consider the need for "sufficient and competitively priced natural gas supplies" in considering proposals for additional natural gas pipeline capacity, and to issue a CPCN expeditiously when it is in the state's best interest to do so.

We conclude that PG&E has demonstrated adequate market demand for the Expansion Project, which is evidenced by shipper support in the form of precedent agreements. The fact that a subsequent FERC order, Pacific Gas Transmission Co. (1991) 54 FERC ¶61,035, has effectively vacated those precedent agreements and required a new open season does not undercut the showing that there is a significant market demand for the particular product offered by the Expansion Project. Based on PG&E's showing of market demand, we find that the public convenience and necessity require the construction of the Expansion Project.

Despite our finding of need, it will not necessarily remain reasonable in all circumstances for PG&E to construct the Expansion Project. A CPCN under Public Utilities Code section 1001 is best viewed as a license to proceed unless other circumstances render it unreasonable to do so. Projects are often certificated and not executed. Although PG&E has made a convincing showing of market demand, it remains PG&E's responsibility to ensure that the capacity on the pipeline is sufficiently subscribed to warrant its construction.

## II. CEQA Project Objectives and Feasibility of Alternatives

Altamont, Kern River, and the Attorney General contend that our discussion of alternatives to the Expansion Project in the Environmental portion of the decision fails to comply with the requirements of the California Environmental Quality Act (CEQA). We are modifying the Environmental portion of the decision to define more specifically the Expansion Project's objectives, and to better explain our reasons for concluding that the alternatives are infeasible.

As discussed fully in the body of the decision, the two objectives of the Expansion Project which are described in the FEIR are to provide a major fraction of the near-term and the longer term need for additional firm supply of natural gas in California. Although not explicitly stated in the FEIR, the Expansion Project has a number of other objectives which are intrinsically connected with the proposal. The additional objectives include the Commission's as well as PG&E's objectives, and have been well established during the course of this proceeding. They include: 1) expanding the PG&E natural gas pipeline system and achieving the resulting benefits to PG&E shippers and ratepayers, 2) increasing California's access to gas reserves in Canada, 3) increasing the capacity for gas deliveries to Northern California, 4) constructing a pipeline subject to state regulation, and 5) otherwise meeting the market demand met by the Expansion Project.

Limiting our consideration to the broad objectives announced in the FEIR artificially constrains our decision. If the broader objectives were indeed the only objectives of the Expansion Project the alternative pipeline proposals would be truly interchangeable. This is not the case, however. The Expansion Project is a unique product within the gas pipeline market, and can achieve a set of objectives achieved by no other pipeline proposal.

Unfortunately, the more specific objectives of the Expansion Project are not explicitly defined in the "Purpose and Need For Proposed Project" section of the FEIR, as would have been ideal. In fact, that section states that adoption of PG&E's project specific objectives would limit the range of alternatives the CPUC needs to consider. We do not believe that is the case, particularly since the narrower objectives may properly be considered in addition to, rather than instead of, the broader objectives of the project. In conjunction with this decision recertifying the FEIR, we will issue an addendum deleting paragraph 4, on page 1-3 of the FEIR. That paragraph is both inaccurate and immaterial to the FEIR.

The public was not, however, prejudiced in any manner by our omission. The public was at all times apprised of the basic objectives of the Expansion Project, including that the Expansion would expand the PG&E system, bring gas from Canada through Northern California, and would be subject to state regulation. In fact, all this information is contained in the project description section of the FEIR. (FEIR, at 1-1 to 1-5.) Furthermore, as it stands, the FEIR examines all reasonable alternatives which could achieve the narrower and broader objectives of the Expansion. Therefore, our failure to explicitly define the narrower objectives in the "Purpose and Need" section did not alter the substantive analysis in the EIR.

Because the public involved in the CEQA process was at all times apprised of the more specific objectives of the Expansion Project, neither fairness nor CEQA requires circulation of the additional objectives in a supplement. CEQA seeks to avoid unnecessary delay in approving projects (see Pub. Resources Code § 21100.2) and does not require a supplement to be circulated to correct a procedural irregularity which has no substantive effect on the EIR.

In our determination of the feasibility of the alternative pipeline proposals we necessarily consider the totality of the objectives which can be met by the Expansion

Project. We find that none of the alternative pipeline proposals can feasibly attain the specific objectives of the Expansion Project. In particular, no other pipeline will expand the PG&E system, an intrinsic objective of the Expansion Project. No alternative, other than Altamont, can bring gas supplies from Canada. Altamont, however, satisfies none of the other specific objectives of the Expansion Project, and cannot meet the near-term need for firm supply. No alternative pipeline has the potential for gas deliveries in Northern California. Furthermore, no alternative pipeline fills the market demand met by the Expansion Project because of the unique nature of the Expansion as a competitor in the gas pipeline market. For example, the Expansion is the only state regulated pipeline alternative, as well as the pipeline with the greatest potential to avoid uneconomic bypass of local distribution companies (LDCs).

Because the specific objectives of the Expansion Project discussed above, are an essential part of PG&E's proposal, and they cannot be achieved by any alternative pipeline, we find that the alternative pipelines evaluated in the FEIR are infeasible alternatives to the Expansion Project for CEQA purposes.

As an additional matter, we are aware that the objectives of the Expansion Project have taken on a greater procedural significance due to the environmental rankings of the Expansion and the pipeline alternatives within the EIR. Despite their quantitative accuracy, we believe that these rankings are an artificial view of the environmental merits of the project, and a poor basis for determining which of the projects should be built. Because of our interpretation of CEQA's constraints, only the in-state effects of a largely in-state pipeline, the Expansion, were compared with the in-state effects of primarily out-of-state pipelines. The resulting rankings may well be misleading. In addition, the majority of significant effects are common to all alternatives. In this respect, there is not a

great degree of difference between the pipelines. The quantitative comparison of the remaining effects cannot capture the qualitative differences of these effects. Although the alternatives were ranked accurately given these constraints, from the information contained in the DEIR and FEIR it does not appear that the alternative interstate pipelines are substantially environmentally superior to the Expansion Project.

To some extent, the feasibility requirements in CEQA may require us to weigh the particular objectives of the project which cannot be met by the alternatives, against the environmental benefits of alternatives which do not achieve those objectives. (See CEQA Guidelines § 15091; County of Del Mar v. City of San Diego (1982) 133 Cal.App.3d 401, 417.) Because no alternative interstate pipeline is greatly environmentally superior to the Expansion Project, the possible environmental benefits of the alternative pipelines are accorded little weight in our cost-benefit analysis. Therefore, we find that the benefits of the specific objectives of the Expansion Project outweigh the unsubstantial environmental costs of the Expansion relative to the alternative pipelines. We reiterate our finding that the alternative pipelines are infeasible based on this balancing.

### III. Overriding Considerations

Kern River, Altamont, and the Attorney General argue that the statement of overriding considerations fails to satisfy the CEQA requirements. We concede that we neglected to apply the overriding considerations to each significant environmental effect, as CEQA mandates. We will modify the decision to rectify this technical defect as specified in the ordering paragraphs. We believe that the overriding consideration discussion is otherwise sufficient, but the following discussion clarifies and amends our findings.

The primary benefit of the Expansion Project which we find outweighs the eight unavoidable adverse environmental effects of the project (D.90-12-119, p.145), is that it will provide needed additional firm pipeline capacity for the transportation of natural gas to California. The importance of this additional capacity is well documented in this proceeding, as well as in the Pipeline OII. In addition, the California Legislature enacted Public Utilities Code section 1002.5 recognizing the need for sufficient natural gas capacity in California.

Another related benefit of the Expansion Project which outweighs its environmental effects is that its participation in the natural gas pipeline market facilitates the development of gas-on-gas competition, bringing the resultant benefits of reliability of supply, and lower gas prices for California consumers. The Commission's interest in the benefits that flow from increased gas competition is also well documented.

We find that the need for additional natural gas pipeline capacity in California, and the need for gas-on-gas competition, outweigh each of the unavoidable adverse environmental effects of the Expansion Project. We therefore find that the Expansion Project should be approved, despite the unavoidable environmental effects.

#### IV. Recirculation

We are unconvinced by Altamont's assertion that additions to the FEIR which were added after the draft was circulated require the Commission to recirculate the FEIR. Specifically Altamont contends that the results of additional vegetation and wildlife surveys, and pipeline reroutes selected as a result of negotiations with the California Department of Fish and Game (DFG) constitute "significant new information" which requires recirculation.



All impacts contained in the FEIR are either contained in the DEIR, similar to information contained in the draft, or a result of mitigation measures which do not require repeat circulation. Therefore, CEQA does not require that we recirculate the chapters containing the new additions. Despite the fact, however, that we are not required to recirculate the new information, we will circulate the affected chapters, Chapters 3 and 4 of the FEIR, to give any affected parties an opportunity for input beyond that which is required by CEQA. These parties will have an opportunity to comment on any mitigation measures which they believe should be added or modified. After these comments are received we may choose to modify the decision and the mitigation plan accordingly. We will not delay the project, however, during this period of circulation which is in excess of the CEQA requirements.

V. Mitigation Monitoring

Kern River alleges that D.90-12-119 erroneously fails to adopt a mitigation monitoring program as required by Public Resources Code section 21081.6. We disagree with Kern River's assertion. Kern River is confused as to what constitutes the "Mitigation Monitoring Program" versus the "Mitigation Monitoring Plan". (See D.90-12-119, Ordering Paragraph (O.P.) 6.) This distinction merits clarification.

Appendix C of D.90-12-119 is entitled "Mitigation Monitoring Program" (Program), and consists of guidelines by which the Commission will ensure PG&E's compliance with the required mitigation measures. Our adoption of the Program (O.P. 6), satisfies the requirements of section 21081.6. Contrary to Kern River's assertion, the Program attached as Appendix C is not a "draft", and was never referred to as a "draft" in D.90-12-119.

The "Mitigation Monitoring Plan" (Plan) is referred to within the Program (Appendix C, at p.5), but is not attached to the decision. The Plan is a separate document, which is part of

the Program, containing resource-specific mitigation monitoring measures. Due to the specificity of the Plan, and changes in the mitigation measures, the Plan is subject to revision. D.90-12-119 therefore refers to the Plan, not the Program, as a "draft". The parties' understandable confusion is exacerbated by our mistakenly referring to the Program as the Plan on page 22 of D.90-12-119. We will correct this language.

We are also concerned that our reference to the existing Plan as a "draft" may lead parties to conclude that the existing Plan does not require compliance. This is not the case. The existing Plan is part of the monitoring Program and requires compliance except as specified by Commission decision. The fact that it now requires revision, and as mitigation is undertaken may require further revision, does not invalidate the Plan. CACD must enforce the Program and Plan consistent with the relevant Commission decisions. We will modify D.90-12-119 to remove the label "draft" which may have been misleading.

IT IS ORDERED that:

1. The following sections of the discussion in D.90-12-119 are deleted:

- a. First paragraph, page 3;
- b. Section headed, "4. Definition of Public Convenience and Necessity", last paragraph, page 12, to end of page 16;
- c. Beginning of last paragraph, page 94, to section headed, "B. Compliance with the Commission's OII criteria";
- d. Last paragraph, page 136;
- e. Beginning of the second paragraph, page 137, to the end of the first paragraph, page 138;
- f. Beginning of the second paragraph, page 155, to the end of the first paragraph, page 156;

- g. Beginning of last paragraph, page 158, to section headed "VI. Conclusion", page 159;
  - h. Beginning of last paragraph, page 162, to end of second paragraph, page 163;
  - i. Beginning of last paragraph, page 163, to section headed "Findings of Fact", page 164.
2. The following findings of fact are added to D.90-12-119:
- 215. The specific objectives of the Expansion Project include:
    - 1) expanding the PG&E natural gas pipeline system and achieving the resulting benefits to PG&E shippers and ratepayers, 2) increasing California's access to gas reserves in Canada, 3) increasing the capacity for gas deliveries to Northern California, 4) constructing a pipeline subject to state regulation, and 5) otherwise meeting the market demand met by the Expansion Project.
  - 216. The public was not prejudiced by the fact that the more specific objectives of the project do not appear explicitly in the "Purpose and Need for Proposed Project" section of the FEIR.
  - 217. No alternative pipeline proposal except Altamont, can feasibly achieve any of the specific objectives of the Expansion Project.
  - 218. Although the Altamont pipeline may be able to bring gas supplies from Canada, it cannot feasibly achieve any of the other specific objectives of the Expansion, and cannot meet the near-term need for firm supply.
  - 219. Consideration of the more specific objectives of the Expansion Project does not constrain our analysis of alternatives.

220. No interstate pipeline alternative is greatly environmentally superior to the Expansion Project.
221. The specific objectives of the Expansion Project outweigh any additional environmental costs of the Expansion Project relative to the alternative interstate pipelines.
222. The residual adverse environmental effects of the Expansion Project cannot be avoided by the alternative pipelines because none of the alternative pipelines are feasible as alternatives to the Expansion Project.
223. The benefits of the Expansion Project include that it will increase firm pipeline capacity for the transportation of natural gas in California, and that it will facilitate gas-on-gas competition.
224. D.90-12-119 adopts a "Mitigation Monitoring Program" which is contained in Appendix C to that decision.

3. The following findings of fact in D.90-12-119 should be deleted: 53, 56, 58, 105, 106, 144, 145, 180, 181, 182, 183, 184.

4. The following Conclusions of Law are added to D.90-12-119:

60. Because of the need for additional firm pipeline capacity for the transportation of natural gas in California generally, the Expansion Project's satisfaction of our economic criteria, and the market demand for the Expansion Project specifically, the public convenience and necessity require the construction of the Expansion Project.
61. The pipeline alternatives to the Expansion Project are infeasible for the purposes of CEQA because they cannot feasibly achieve the specific objectives of the project, which include:

1) expanding the PG&E natural gas pipeline system and achieving the resulting benefits to PG&E shippers and ratepayers, 2) increasing California's access to gas reserves in Canada, 3) increasing the capacity for gas deliveries to Northern California, 4) constructing a pipeline subject to state regulation, and 5) otherwise meeting the market demand met by the Expansion Project.

62. Overriding Considerations which justify approving the Expansion Project include the benefits of increasing firm pipeline capacity for the transportation of natural gas in California and facilitating gas-on-gas competition.

63. The benefits of increasing the firm pipeline capacity for the transportation of natural gas in California and facilitating gas-on-gas competition outweigh each of the following unavoidable adverse environmental effects of the Expansion Project:

1. The possibility of pipeline ruptures due to potential seismic and volcanic activity in areas to be traversed by substantial portions of the pipeline and the corresponding threat to health and safety. Because of the risk of extended outages of the proposed pipeline and the existing line to which it would be adjacent, there would also be significant socioeconomic and public health risks associated with the volcanic and seismic risks due to the fact that disruptions in energy services can lead to a variety of adverse social, economic, health, and safety impacts.

2. Depletion of large quantities of natural gas, a high-quality, non-renewable energy resource and the potential for encouraging inefficient and wasteful uses of natural gas.

3. Potential for significant impacts on four endangered, threatened, rare, or

other special-status plant species and their habitat.

4. Potential for loss of prime farmland.
  5. Significant air quality impacts due to carbon monoxide emissions in the South Coast Air Basin.
  6. Potential for significant adverse impacts on lands of cultural importance to Native American communities.
  7. Potential for significant growth-inducing impacts.
  8. Incremental addition of substantial quantities of greenhouse gases (i.e., carbon dioxide and methane).
64. Because the benefits of the Expansion Project outweigh each of the unavoidable environmental effects, the adverse environmental effects are acceptable.
65. Recirculation of the FEIR is not required by CEQA because no "significant new information" is contained in the FEIR, as that term is used in CEQA.
5. The following conclusions of law in D.90-12-119 should be deleted: 36, 38, 39, 40, 41, 55, 56, 57, 58.
6. D.90-12-119 should be modified as follows:
- a) The word "Plan" should be changed to "Program" on line 8, page 22.
  - b) The word "Draft" should be deleted from line 11, page 22.
  - c) The word "Final" should be changed to "Revised" on line 20, page 22.
7. Altamont's March 11, 1991 "Motion for Leave to File Reply" is denied.
8. To the extent any of the discussion, findings or conclusion in D.90-12-119 are inconsistent with this decision they are superceded.

9. The stay of D.90-12-119 is removed.

10. CACD is directed to refile a Notice of Determination with the Office of Planning and Research notifying that office that the project approval is reinstated. CACD is directed to circulate Chapters 3 and 4 of the FEIR to those parties who would be entitled to CEQA notice if circulation was required under CEQA. CACD shall allow parties 45 days to comment on the chapters.

11. The addendum to the FEIR attached as Appendix A is adopted.

12. The FEIR is recertified as amended by this order.

13. Rehearing is denied.

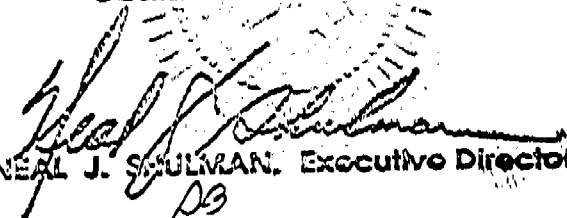
This order becomes effective immediately.

Dated June 5, 1991, at San Francisco, California.

PATRICIA M. ECKERT  
President  
G. MITCHELL WILK  
JOHN B. OHANIAN  
DANIEL Wm. FESSLER  
NORMAN D. SHUMWAY  
Commissioners

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY

15

  
NEAL J. SULMAN, Executive Director  
DS

A.89-04-033

L/lcq

**ADDENDUM TO PGT/PG&E NATURAL GAS PIPELINE  
PROJECT ENVIRONMENTAL IMPACT REPORT**

**California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102**

**Contact: Wade McCartney  
(415) 557-3184**

**June 5, 1991**

**APPENDIX A**



This addendum to the PGT/PG&E Natural Gas Pipeline Project Environmental Impact Report (FEIR) deletes paragraph 4, on page 1-3 of the FEIR. That paragraph is inaccurate and immaterial to the FEIR.

This addendum is issued pursuant to State CEQA Guidelines Section 15164. Because no important new issues or significant effects are raised, the revision does not require the preparation of a subsequent EIR or a supplement to the EIR.