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Decision 91-08-030 August 7, 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.
(U 39 G)

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

ORIGINAL

OPINIONSummary

In this proceeding, Pacific Gas and Electric Company (PG&E) requested a certificate of public convenience and necessity (CPCN) to expand its transmission pipeline from Malin, Oregon, to Kern River Station, California (Expansion Project). The CPCN was granted, subject to conditions, by Decision (D.) 90-12-119. Among the conditions were measures necessary to mitigate the negative environmental impacts of the Expansion Project. They are listed in Appendix B to D.90-12-119, "Summary of Mitigation Measures for the Pacific Gas Transmission Company (PGT)/PG&E Natural Gas Pipeline Project in California." PG&E's acceptance of the CPCN is conditioned upon the compliance of PG&E with all of the terms and conditions of Appendix B. (D.90-12-119, Ordering Paragraph 4.)

This decision adopts limited changes to the original Appendix B to D.90-12-119, "Summary of Mitigation Measures for the PGT/PG&E Natural Gas Pipeline Project in California." These changes are being made pursuant to consultation with the California Department of Fish and Game (DFG) over the DFG Biological Opinion. Another change extends the protection of acorn-bearing oaks to oak woodland habitat. At the same time, ministerial changes to the text are authorized to make Appendix B internally consistent. The Commission Advisory and Compliance Division (CACD) is authorized to

conform the Mitigation Monitoring, Compliance, and Reporting Plan (Mitigation Plan) for the PGT/PG&E Natural Gas Pipeline Project in California with the adopted mitigation measures.

Background

On June 11, 1991, Commissioner John B. Ohanian served an Assigned Commissioner's Ruling on the parties to provide notice of the Commission's intent to make these changes to Original Appendix B. A copy of Appendix B, revised to show the proposed changes in highlighted and lined-out text, and a proposed form of this decision were attached to the Assigned Commissioner's Ruling. That version of Appendix B is labelled with a revision date of June 5, 1991 and will be referred to as "Revised Appendix B". Parties were granted 20 days to comment on the proposed changes and order. A 20-day response period was chosen to enable the Commission to act expeditiously to put the recommended environmental safeguards in place.

The only comments received on the Proposed Decision were filed by PG&E on July 2, 1991. They are discussed below, in the context of the individual mitigation measures.

This decision adopts Revised Appendix B, with the exception of Mitigation Measures 57 through 60 and Mitigation Measure 121b, which are discussed below.

A. Changes to Appendix B

1. DFG

The DFG is a trustee agency under California Environmental Quality Act (CEQA). In that capacity, it provided the Commission with a Biological Opinion recommending measures to avoid jeopardy to state-listed rare, threatened, or endangered species. DFG transmitted its Biological Opinion on December 21, 1990 in an attempt to coordinate its process with the CPCN process. We recognize that the responsibility of DFG is an ongoing one. DFG and its federal counterpart, the U.S. Fish and Wildlife Service (USFWS), may identify impacts on vegetation and wildlife on the

basis of information obtained in the course of site-specific surveys required by the Mitigation Monitoring Program.

Mitigation Measure 38 requires PG&E to commit to an agreement with DFG to implement mitigation measures that reduce impacts on vegetation and wildlife to less than significant levels. It has been revised to include compliance with DFG's Biological Opinion as one of the objectives of PG&E's Agreement with DFG. We interpret Mitigation Measure 38, as revised, to require PG&E to carry out the activities that DFG or USFWS specify in the future to reduce impacts to acceptable levels. No further changes to Revised Appendix B shall be needed to enforce this responsibility to address DFG or USFWS concerns.

2. Ministerial Changes to Ensure Consistency

Because the Biological Opinion was received just prior to issuance of D.90-12-119, Appendix B did not contain all of DFG's recommendations. Ordering Paragraph 5 of D.90-12-119 states that in case of differences between the two, the measure that provides greater environmental protection shall apply. At this time, we can make Appendix B more accurately reflect our decision by revising it to include the DFG recommended mitigation measures and clarifications to those measures.

Mitigation measures that are no longer relevant were listed in Original Appendix B. This refers to measures proposed for alternatives that were not adopted in D.90-12-119. These have been deleted from Revised Appendix B. The mitigation measures have also been amended to include a notification of construction activity that had appeared in the final Environmental Impact Report (EIR) but was inadvertently omitted from Original Appendix B.

Certain activities designed to protect specific plant communities were proposed to be deleted from Mitigation Measures 57, 58, 59, and 60 in Revised Appendix B. PG&E states that its ongoing discussions with DFG and USFWS indicate that the changes proposed to Mitigation Measures 57 and 58 may be premature.

Mitigation Measures 59 and 60 were to be changed to conform them with revised Mitigation Measures 57 and 58. We should not foreclose mitigation that may be required by the trustee agencies. Therefore, the changes to Mitigation Measures 57 through 60 shown in Revised Appendix B will not be made; highlighted language will not be added and lined-out language will not be deleted.

Mitigation Measure 123 requires PG&E to avoid damaging acorn producing oaks along the construction right of way in the range of the wild turkey because the oak acorn is an important component of the wild turkey diet. Since the purpose of this measure is to preserve acorn-bearing oaks as a food source, the mitigation practices should not be linked to the current range of the wild turkey. We should require the applicant to compensate for removal of oaks by replacement planting where the pipeline traverses oak woodland habitat in general. This will be accomplished by adding Mitigation Measures 121b and 121c to Revised Appendix B.

PG&E recommends two minor changes to proposed Mitigation Measure No. 121b, "Replacement Planting of Oaks," to achieve a higher survival rate. PG&E's recommendations are well taken. As adopted, Mitigation Measure 121b will require PG&E to plant five acorns (not necessarily germinated) per replacement planting after the first fall rain and will require irrigation only if extreme drought conditions persist, in order to produce stronger trees that are better able to adapt to environmental conditions. ¹

¹ Thus, we amend Revised Appendix B, page B-70, so that the last sentence states: "One replacement planting (with 5 acorns - not necessarily germinated - per replacement planting) shall be conducted for each inch of basal diameter of removed or damaged oaks. The phrase "irrigated for the first three growing seasons" on page B-71 shall be replaced with "irrigated for the first three growing seasons if extreme drought conditions experienced during 1988, 1989, and 1990 persist."

The standard of success for PG&E's oak woodland replacement efforts has been specified in Mitigation Measure 121c. It is expected that PG&E will use techniques required under actual field conditions to achieve the required replacement rate, even if the method is not explicitly required by Appendix B.

Finally, the format of Revised Appendix B has been changed from that of Original Appendix B for purposes of internal consistency and clarification.

The Commission may find it necessary to revise the mitigation measures in the future. In that case, a Commission order will specify revisions to Appendix B. However, the Commission will not cause Appendix B to be republished with each revision. Interested parties will be responsible for maintaining a current copy of Appendix B.

B. The Mitigation Program

The Commission's goal in adopting the Mitigation Program "is to ensure that the mitigation measures outlined in this EIR and subsequently identified by further studies to be conducted after finalization of construction plans are fully implemented." (D.90-12-199, Appendix C, "Mitigation Program.") One of the components of the Mitigation Program is the detailed and project specific Mitigation Plan.

CACD has produced the Mitigation Plan to instruct PG&E what is needed to comply with each of the mitigation measures adopted by the Commission. We have directed CACD to enforce the Mitigation Program and Mitigation Plan consistent with the relevant Commission decisions. (D.91-06-028.) CACD staff is charged with maintaining the Mitigation Plan so that it conforms with CACD's interpretation of the mitigation measures. Requirements of the Mitigation Plan may appear stricter, require more work, and involve resources not initially identified in the mitigation measures included in Appendix B of D.90-12-119 because the Mitigation Plan is specific to actual observed field conditions.

PG&E notes that the Proposed Decision requires CACD to maintain the Mitigation Plan in conformance with CACD's interpretation of the mitigation measures, among other things. PG&E suggests that CACD should have the authority to make ministerial changes to the mitigation measures, such as extensions of time for filing reports or other documents.

Rule 43 of the Commission's Rules of Practice and Procedure authorizes utilities to make requests for extension of time to comply with decisions or orders by letter to the Executive Director. The letter is to indicate that a copy has been sent to all parties. PG&E may seek extensions of time to comply with the mitigation requirements of D.90-12-119 through this process.

CACD will interpret mitigation measures as it refines the Mitigation Plan, a task which will require CACD to set deadlines for specific tasks. Because the measures themselves are so specific, the interpretation of mitigation measures is a ministerial task. On the other hand, a change in the quantity or quality of mitigation required which may appear to be "ministerial" may in fact lead to qualitatively different environmental results. Moreover, PG&E has not suggested any standard for differentiating a ministerial change from a non-ministerial change. Since the only concern raised by PG&E in its comments on the Proposed Decision can be resolved by recourse to Rule 43, there is no need to authorize CACD to make "ministerial changes" to the mitigation measures.

PG&E also wishes the Commission to state that the organization chart which appears in Figure 1 of Appendix B is for illustrative purposes only. The chart is appropriately specific, given the need to illustrate the primacy of the CACD's monitoring responsibility. Thus, no change to the chart's status will be made.

This order adopts the previously circulated Revised Appendix B which, as published, incorporated the above-described amendments to the Original Appendix B. We retain Mitigation

Measures 57 through 60 as published in the Original Appendix B and incorporate these mitigation measures in their original form in Revised Appendix B. We make the above-described modifications to proposed Mitigation Measure 121b and adopt it in its modified form. CACD will revise the Mitigation Plan, with a corresponding revision date of June 5, 1991, to conform with the Revised Appendix B adopted by this decision.

Findings of Fact

1. The mitigation measures adopted by D.90-12-119 and listed in Original Appendix B should be revised to accomplish the following:

- a. Carry out recommendations based on information contained in the DFG Biological Opinion dated December 21, 1990 and subsequently provided by DFG to CACD.
- b. Delete mitigation measures relevant only to alternate routes that were rejected by D.90-12-119.
- c. Include public notice as suggested in the final EIR as mitigation for risks to public safety.
- d. Include oak woodland habitat under "Mitigation Measures for Less-Than-Significant Impacts - Vegetation" as Mitigation Measures 121b and 121c.
- e. Incorporate format and language changes to make Appendix B internally consistent and to reflect the foregoing revisions.

2. The changes to Mitigation Measures 57, 58, 59, and 60 proposed in the June 5, 1991 version of Appendix B are premature and should not be made.

3. The oak woodland replacement requirement set forth as Mitigation Measure 121b in Revised Appendix B should be amended to require PG&E to use 5 acorns (not necessarily rooted) per replacement planting and to require the plantings to be irrigated

for the first three growing seasons if extreme drought conditions, as experienced in 1988, 1989, and 1990, persist.

4. The changes to the mitigation measures do not constitute significant new information or substantially amend the Expansion Project.

5. The revised mitigation measures should be made effective as soon as possible to ensure that the DFG's recommendations are observed throughout the Expansion Project's planning and construction process.

6. The CACD staff is responsible for interpreting and enforcing the mitigation measures shown in Appendix B and as revised by the Commission.

7. The CACD staff is charged with maintaining the Mitigation Plan so that it conforms with the CACD's interpretation of the mitigation measures adopted by the Commission and the relevant Commission decisions.

Conclusions of Law

1. Appendix B, revised June 5, 1991 and amended by this order, should be adopted.

2. None of the revisions to the mitigation measures constitutes significant new information triggering the need for public review prior to adoption of the revisions.

3. The CEQA does not require the changes to the mitigation measures to be circulated for public review and comment prior to adoption.

O R D E R

IT IS ORDERED that:

1. Appendix B to D.90-12-119, with a revision date of June 5, 1991 and amended by this order, shall be adopted as the Summary of Mitigation Measures for the Pacific Gas Transmission Company (PGT)/Pacific Gas and Electric Company (PG&E) Natural Gas Pipeline Project in California.

2. The Commission's Advisory and Compliance Division (CACD) shall amend the Mitigation Monitoring, Compliance, and Reporting Plan to conform with the adopted Appendix B.

3. PG&E must conform its Expansion Project construction activities to Appendix B to D.90-12-119, revised June 5, 1991 and amended by this order and to the "Mitigation Monitoring, Compliance, and Reporting Plan for the PGT/PG&E Natural Gas Pipeline Project in California" as revised by CACD to carry out the mitigation measures adopted by the Commission and other relevant Commission decisions.

This order is effective today.

Dated August 7, 1991, at San Francisco, California.

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

Commissioner Daniel Wm. Fessler,
being necessarily absent, did
not participate.

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


NEAL J. SHULMAN, Executive Director