

ORIGINAL

Decision No. 91968 JUL 2 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 SOUTHERN CALIFORNIA EDISON COMPANY )  
 and PACIFIC GAS AND ELECTRIC COMPANY )  
 for a Certificate that present and )  
 future public convenience and )  
 necessity require or will require )  
 the participation by Applicants and )  
 others in the construction and )  
 operation of six new coal-fired )  
 steam-electric generating units, to )  
 be known as Units 1, 2, 3, and 4, )  
 at a site in Nevada known as the )  
 Harry Allen Generating Station, and )  
 as Units 1 and 2 at a site in Utah )  
 known as the Warner Valley Generating )  
 Station, together with other )  
 appurtenances to be used in connection )  
 with said generating stations. )

Application No. 59308  
(Filed November 30, 1979)

Robert Ohlbach, Charles W. Thissell, and Glenn West, Jr., Attorneys at Law, for Pacific Gas and Electric Company, and William T. Elston, Attorney at Law, for Southern California Edison Company, applicants.  
David Mastbaum, Attorney at Law (Colorado), David Roe, and John Krautkraemer, Attorneys at Law, for The Environmental Defense Fund; William S. Curtiss and Michael R. Sherwood, Attorneys at Law, for Sierra Club Legal Defense Fund; Dian M. Grueneich, Attorney at Law, for The California Energy Commission; and Michel Peter Florio, Attorney at Law, for Toward Utility Rate Normalization; interested parties.  
Philip Scott Weismehl, Attorney at Law, for the Commission staff.

ORDER REVISING ADMINISTRATIVE LAW JUDGE'S RULING

On April 24, 1980 counsel for The California Energy Commission (Energy Commission) stated that it is the Energy

Commission's interpretation that the relevant criteria to be applied in determining the need for the project is the Commission's Biennial Report and that the specific matters in the Biennial Report that will be relevant are the forecasts that the Energy Commission adopted and, secondly, the planning criteria that are specified in the Biennial Report. At that time the Administrative Law Judge informed counsel for the Energy Commission that the document should be presented as evidence as part of the Energy Commission's direct presentation.

On May 1, 1980, counsel for the Energy Commission filed a motion requesting an order clarifying that the Energy Commission's Biennial Report, adopted on December 20, 1979, shall be used to determine the need for the generating facility proposed in this proceeding. On May 2, 1980, the Administrative Law Judge declined to issue the order requested and denied the motion.

On May 12, 1980, counsel for the Energy Commission filed an Emergency Appeal to the Commission from the Administrative Law Judge's ruling. This order is in response to that appeal.

Pursuant to Public Resources Code Section 25309, the Energy Commission must issue a comprehensive energy report every two years. This report is commonly known as the Biennial Report, and the Energy Commission adopted the most recent one (The Energy Commission's Second Biennial Report) on December 20, 1979. A copy of that report has been marked for identification in this proceeding as Exhibit 19. ✓

One of the purposes of the report is to provide a 5- and 12-year forecast of statewide and service area electrical energy demand. (Public Resources Code Section 25309(b).) The demand forecast is to be used in exercising the power plant siting responsibilities of the Energy Commission. Public Resources Code Section 25524 provides that the Energy Commission shall not certify any proposed facility which does not conform with the 12-year forecast developed pursuant to Public Resources Code Section 25309(b). Thus, it is clear that the Energy Commission's 12-year demand forecast serves

as one basis for planning and certification of facilities proposed by the electric utilities.

Another purpose of the report is to provide an assessment of the energy resources available to the state during the forthcoming 12- and 20-year periods. (Public Resources Code Section 25309(h).) However, compliance with the preferred supply policies and planning criteria stated in the report is not a statutory prerequisite for certification of the state facilities by the Energy Commission. Public Resources Code Sections 25323 and 25531(c) prohibit the Energy Commission from mandating a specific supply plan for a utility. As a result, the supply policies and planning criteria recommended in the report are not binding upon the electric utilities or this Commission.

Public Utilities Code Section 1001 requires that a certificate of public convenience and necessity be issued by this Commission before an electric utility may construct a new generating facility wherever situated. (So. Cal. Edison Co. and SDG&E Co. (1977)  
S2 CPUC 775.)

Under Public Resources Code Section 25500 the siting authority of the Energy Commission is limited to sites and related facilities in the State. The proposed facilities are located outside of California and therefore do not come under the siting jurisdiction of the Energy Commission. Since the Biennial Report demand forecast establishes state policy for the siting of new facilities adequate to meet the forecasted demand, this Commission must determine whether the proposed project will be within the most recent Biennial Report demand forecast in the course of the certification proceeding. However, if the capacity of the proposed facility falls within the limits of the Biennial Report demand forecast, all the remaining issues that arise in the course of a certification proceeding, including need for the proposed out-of-state facility, must be adjudicated by this Commission under the authority set forth in Public Utilities Code Section 1001, under General Order No. 131-B, and under the general ratemaking authority set forth in Article 12, Section 6, of the Constitution of the State of California.

The requirements for an application for a certificate of public convenience and necessity are set forth in the Commission's Rules of Practice and Procedure and in General Order No. 131-B. Although the proposed facility is not subject to the provisions of General Order No. 131-B because the facility will be located outside of California, the applicants have provided the information required in General Order No. 131-B in order to make a full disclosure of all aspects of the project which would normally be required by the Commission. This includes extensive cost information, operating data, maps and diagrams of proposed facilities, safety and reliability information, and assessment of the environmental impact of the proposed facility.

In addition, because the California utilities' financial commitment to the project ultimately may have an effect upon rates to be charged to California ratepayers, this Commission must make a thorough evaluation of the economic effects of the project compared to other alternatives. All of these aspects must be addressed in the overall consideration of need for the project, and we must, under our constitutional and legislative mandate, consider them in the light of reasonable alternatives before issuing a certificate of public convenience and necessity.

We do agree with the Energy Commission, however, that it would be wasteful consumption of time in this record to duplicate a matter already decided in the Second Biennial Report process. Therefore, in order to provide guidance to the parties, and possibly to curtail some cross-examination and otherwise expedite our hearing process, we will modify the Administrative Law Judge's ruling in this matter to the extent set forth below.

This modification does not imply that the ruling of the Administrative Law Judge was improper, nor should it be used as a procedural precedent for the future appeals of Administrative Law Judge rulings since we do not ordinarily entertain or pass upon rulings of Administrative Law Judges prior to a decision on the merits of a matter.

IT IS ORDERED that the Commission will be bound in this proceeding by the Energy Commission's Biennial Report, adopted December 20, 1979, as to forecast of electrical load and sales but not as to resource planning or need for the project to meet the forecasted demand.

The effective date of this order is the date hereof.

Dated    JH   2 1980   , at San Francisco, California.

John E. Supor  
President

Verano L. Sturgeon

Michael H. Kimmel

Clair J. Doolittle

Francis W. Jensen  
Commissioners