

ALJ/BDP/sid

Decision 98-10-010 October 8, 1998

Mailed 10/8/98

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation, for a
Permit to Construct the Vasona Substation
Pursuant to General Order 131-D. (U 39 E)

Application 97-04-043
(Filed April 18, 1997)

Charles R. Lewis, IV, Attorney at Law, for
Pacific Gas and Electric Company.
Patrick J. Power, Attorney at Law, for
Boccardo Corporation, Vasona Properties.

INTERIM OPINION

Summary

Pacific Gas and Electric Company (PG&E) is granted a Permit to Construct (permit) an electric substation to be known as the Vasona Substation located in the vicinity of Winchester Boulevard and Lark Avenue in the Town of Los Gatos (Town). The permit is granted subject to PG&E undertaking certain mitigation measures as set forth in this decision. Also, PG&E will work with the Town to resolve any issues related to landscaping and visual effects of the substation.

The Commission concludes that undergrounding the existing Metcalf-Monta Vista 230 kV transmission line in the vicinity of the proposed substation is outside the scope of the substation project, and should be undertaken as part of PG&E's ongoing undergrounding program.

Procedural Summary

On April 18, 1997, pursuant to the Commission's Rules of Practice and Procedure and section IX.B of General Order (GO) 131-D, PG&E filed its application for a permit.

On September 8, 1997, the Commission staff published a Draft Mitigated Negative Declaration for public review, in compliance with the California Environmental Quality Act (CEQA).

On December 9, 1997, PG&E issued its Vasona Substation Feasibility Study that examined 16 alternative sites for the proposed substation.

On January 6, 1998, a prehearing conference was held to address procedural matters and establish a schedule for evidentiary hearing on PG&E's application.

On March 23, 1998, the Commission held a public participation hearing in the Town to receive comments from residents on the proposed substation.

On April 13, 1998, Commissioner Bilas stayed the evidentiary hearing and directed the parties, in consultation with the Mayor of the Town, to appoint a facilitator to flesh out residents' concerns regarding the proposed substation. The facilitator, James L. Creighton, held an organizational meeting at which a committee was formed to discuss mitigation measures at the Winchester/Lark site, and the feasibility of the 16 alternative sites. Eight public meetings were held over the 60-day time limit set for the facilitation process. The facilitator's report was issued on July 20, 1998.

On August 13, 1998, a prehearing conference was held. The general consensus was that there was no alternative site available that was superior to the Winchester/Lark site. Since further litigation could jeopardize the availability of adequate electric power to the Town to meet its 1999 summer load, the parties agreed that the Commission should grant PG&E a permit to

immediately commence construction at the Winchester/Lark site, subject to certain additional mitigation measures which PG&E agreed to undertake. The parties also agreed that the legality and propriety of requiring PG&E to underground the existing Metcalf-Monta Vista 230 kV transmission line in the area surrounding the proposed Vasona Substation should be reserved for a separate phase of this proceeding.

On August 28, 1998, the parties filed a Joint Stipulation memorializing the agreement reached at the August 13, 1998 prehearing conference and this phase of the proceeding was submitted for decision.

Environmental Matters

In its application, PG&E included a Proponents' Environmental Assessment (PEA).¹ The Commission's Energy Division (staff) employed the services of Environmental Science Associates (ESA), an independent environmental consultant to assist staff with its environmental review for this project. An Initial Study was prepared that identified potentially significant impacts in the areas of water, air quality, noise, public services and visual/aesthetics. However, each of the identified impacts can be mitigated to avoid the impact or reduce it to a less than significant level by mitigation measures, which PG&E has agreed to comply with and incorporate as part of the project. These mitigation measures and monitoring requirements are set forth in the Mitigated Negative Declaration.

¹ Rule 17.1 of the Commission's Rules requires the proponent of any project to submit with its application for such project an environmental assessment which is referred to as Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on any impacts of the project which may be of concern and to prepare the Commission's initial study to determine whether the project would need a Negative Declaration or an Environmental Impact Report (EIR).

In compliance with CEQA and Rule 17.1(f), on September 8, 1997, the staff issued for public comment its Draft Mitigated Negative Declaration and Draft Initial Study, and provided notice of its availability. Extensive comment letters were received on these documents. Staff has reviewed and considered each comment in its environmental review and addressed them in the attachment to the Mitigated Negative Declaration. Based on staff's environmental review, it concluded that PG&E's proposed substation will not have significant effects on the environment. Staff's conclusion is based on the assumption that PG&E will carry out the specific mitigation measures outlined in the Mitigated Negative Declaration.

Having considered the information in the Mitigated Negative Declaration, and the comments and the responses to comments, we find that the revisions in the project plans agreed to by PG&E will avoid the significant effects of the proposed substation, or mitigate them to a point where clearly no significant effects on the environment will occur. We also find there is no substantial evidence in light of the record as a whole that the proposed substation, as revised by the mitigation measures contained in the Mitigated Negative Declaration, may have a significant impact on the environment. Accordingly, we adopt the Mitigated Negative Declaration for the Vasona Substation to be located at the Winchester/Lark site (Exhibit No. 6).

The Joint Stipulation

Vasona Properties/Boccardo Corporation (Boccardo) owns the property immediately adjacent to the proposed substation. Boccardo participated in the facilitation process. Boccardo presently is the only other party in this proceeding.

Following the completion of the facilitation process (Exhibit No. 5), PG&E and Boccardo entered into a Joint Stipulation regarding the issuance of an interim decision in this matter (Appendix A to this decision). Pursuant to the terms of

the Stipulation, the parties request that PG&E be authorized to construct the substation at the Winchester/Lark site, subject to certain mitigation measures. These measures are additional to the measures agreed to by PG&E for purposes of the Mitigated Negative Declaration.

PG&E and Boccardo request that Rules 51.1, 51.4 and 77.1 and the 30-day period of Public Utilities Code § 311(d) be waived. Rule 51.1 requires a noticed settlement conference. Rule 51.4 requires a 30-day comment period. Rule 77.1 requires a proposed decision. Section 311(d) requires a 30-day waiting period.

We agree that since the Joint Stipulation is signed by the only two parties in this proceeding and time is of the essence to commence construction, good cause is shown for the waiver of the requirements for a noticed settlement conference, comment period, a 20-day comment period for the proposed decision, and a waiting period. However, due to the public interest in this proceeding, there should be a 10-day comment period on the administrative law judge's proposed decision. And a copy of the administrative law judge's proposed decision should be provided to the Town.

The Evidentiary Record

Since the parties are in agreement that evidentiary hearing is not necessary on the issue of location of the substation at the Winchester/Lark site, and for purposes of approving the Mitigated Negative Declaration and Joint Stipulation offered by the parties, we will receive as part of the official record in this proceeding, the following:

Exhibit No. 1 -

Application of PG&E, including
Proponent's Environmental
Assessment

Exhibit No. 2 -

Draft Mitigated Negative Declaration
published by staff on September 8, 1997

Exhibit No. 3 -	Initial Study, Permit to Construct the PG&E Vasona Substation, prepared by Environmental Science Associates
Exhibit No. 4 -	Vasona Substation Feasibility Study, prepared by PG&E, dated December 9, 1997
Exhibit No. 5 -	Summary of the Facilitated Process, prepared by James L. Creighton
Exhibit No. 6 -	Final Negative Declaration and Initial Study

As the record in this proceeding shows, there was considerable public discussion by the residents and the Town regarding the location for the proposed substation (Exhibit No. 5). PG&E submitted a report on 16 alternative sites. These alternative sites were thoroughly examined at the eight weekly public meetings held by the facilitator. No alternative superior to the proposed Winchester/Lark site was agreed upon.

Furthermore, there is no dispute that a new substation is required to meet the Town's electric load requirements for the summer of 1999. Accordingly, we will approve PG&E's application to construct the proposed Vasona substation subject to PG&E undertaking the mitigation measures called for in the Mitigated Negative Declaration, and Joint Stipulation.

While the parties to the Joint Stipulation agree that PG&E should begin immediate construction of the proposed Vasona Substation at the Winchester/Lark site, subject to PG&E undertaking the additional mitigation measures set forth in paragraph 3 of the Joint Stipulation, no agreement was reached by the parties on two issues: (1) mitigation for the visual effects of the

substation, as required by the Town's architectural review procedures; and (2) requiring PG&E to underground a portion of the existing Metcalf-Monta Vista 230 kV transmission line in the vicinity of the substation.²

First, regarding the exterior landscaping and architectural features of the substation, we expect PG&E to work with the Town of Los Gatos. However, if the Town and PG&E are unable to reach agreement, and completion of this substation is jeopardized, the Commission would resolve any outstanding issues since the Commission will continue to maintain jurisdiction over the construction of this substation. Hopefully, it will not be necessary for the Commission to get involved, and this issue can be settled at the local level.

Second, regarding undergrounding the existing Metcalf-Monta Vista 230 kV transmission line in the vicinity of the substation, we note that PG&E is not proposing any modifications to the transmission line as part of this project. Therefore, we conclude that such undergrounding is outside the scope of any CEQA mitigation measures prescribed by the Mitigated Negative Declaration for this project. It is well settled that mitigation measures prescribed as part of a Mitigated Negative Declaration must address only impacts caused by the project in question. Accordingly, where the public benefit is unrelated to the impact of the project itself, we will not require PG&E (and the general body of ratepayers) to provide at its expense such a public benefit, however worthwhile. (See *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, 834-837. See also,

² In 1959, PG&E constructed the Metcalf-Monta Vista Transmission Line from PG&E's Metcalf Substation in south San Jose to the Monta Vista Substation in Cupertino. This line bisects the site of the proposed Vasona Substation. Because the transmission line presently passes through the site, no new extension is required to connect the Vasona Substation to PG&E's transmission system. Two underground 12 kV distribution circuits will connect the substation to the existing electric distribution system.

Surfside Colony, Ltd. v. California Coastal Commission (4th Dist. 1991) 226 Cal.App.3d 1260, 1267-1269 277 Cal.Rptr. 371. Therefore, we place the parties on notice that such undergrounding may not be undertaken at ratepayer expense, except possibly as part of PG&E's ongoing undergrounding program.

However, we appreciate that undergrounding of transmission lines is a long-term goal of the Town. Therefore, under the specific facts and circumstances of this case, and the terms of the Joint Stipulation, we will allow this proceeding to remain open for 60 days³ from the effective date of this decision for the parties, in conjunction with the Town, to address this matter in the context of PG&E's Rule 20 - Replacement of Overhead With Underground Electric Facilities.

Comments on Proposed Decision

The administrative law judge's proposed decision was issued for comments on October 8, 1998. Comments were jointly filed by PG&E and Boccardo. We have reviewed the comments and made changes to the proposed decision where appropriate.

Findings of Fact

1. There is need for an electric substation to be constructed to meet the Town's 1999 summer load.
2. The staff's Mitigated Negative Declaration on the proposed substation to be located at the Winchester/Lark site concludes that the identified impacts of

³ While this proceeding was filed prior to January 1, 1998, as set forth in Senate Bill (SB) 960 (Stats. 1996, ch. 856), it is the intent of the Legislature that the Commission establish reasonable time periods for the resolution of all proceedings. SB 960, section 1, requires that adjudicatory proceedings be resolved within 12 months or less and all other proceedings be resolved within 18 months or less. It is the intent of the Commission that these goals be met even for non-SB 960 proceedings. Also, see Rule 6.

the substation can be mitigated to avoid the impact or reduced to a less than significant level by mitigation measures, which PG&E has agreed to comply with and incorporate as part of the project.

3. PG&E submitted a report on 16 alternative sites other than its proposed Winchester/Lark site.

4. No site superior to the proposed Winchester/Lark site has been identified.

5. The parties to this proceeding have offered a Joint Stipulation requesting that the Commission grant PG&E authority to begin immediate construction of the proposed substation at the Winchester/Lark site.

6. The parties request that the issue of undergrounding the existing Metcalf-Monta Vista 230 kV transmission line in the area surrounding the proposed Vasona Substation be addressed in a separate phase of this proceeding.

7. To expedite the issuance of the Commission's decision, the parties request that since the Joint Stipulation is signed by the only two parties in this proceeding, the Commission waive the requirements of Rules 51.1, 51.4, 77.1 and § 311(d).

Conclusions of Law

1. PG&E's request for a permit to construct the proposed Vasona substation should be granted subject to PG&E including in the project the mitigation measures specified in the Mitigated Negative Declaration and the additional mitigation measures agreed to by PG&E in the Joint Stipulation.

2. The Mitigated Negative Declaration should be adopted.

3. The Joint Stipulation is reasonable in light of the whole record, is consistent with prior Commission decisions, and is in the public interest.

4. The motion for adoption of the Joint Stipulation should be granted with the understanding that undergrounding the existing Metcalf-Monta Vista 230 kV transmission line will be addressed as set forth in this decision.

5. The parties' request to waive the requirements of Rules 51.1, 51.4, 77.1 and § 311(d) should be granted since time is of the essence and construction needs to be commenced without delay. However, due to the public interest in this proceeding, there should be a 10-day period for comments to be filed on the administrative law judge's proposed decision.

6. Undergrounding the existing Metcalf-Monta Vista 230 kV transmission line in the vicinity of the substation is outside the scope of any CEQA mitigation measures prescribed by the Mitigated Negative Declaration since the transmission line is not part of the CEQA project.

7. Undergrounding the existing Metcalf-Monta Vista 230 kV transmission line in the vicinity of the substation should be addressed pursuant to PG&E Rule 20 - Replacement of Overhead with Underground Electric Facilities.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to begin immediate construction of the Vasona Substation at the Winchester/Lark site in accordance with the plans submitted with PG&E's Application No. 97-04-043 and Amendment thereto.

2. The Mitigated Negative Declaration (Exhibit No. 6), is adopted.

3. The Joint Stipulation, attached as Appendix A to this decision, is adopted with the understanding that undergrounding the existing Metcalf-Monta Vista 230 kV transmission line will be addressed as set forth in this decision.

4. PG&E shall include in the project the mitigation measures it agreed to in the Mitigated Negative Declaration.

5. PG&E shall include in the project the additional mitigation measures it agreed to in the Joint Stipulation.

6. Concerning any mitigation for the visual effects of the Vasona Substation, PG&E shall work with the Town of Los Gatos—through architectural review procedures or otherwise as determined by the Town—to determine what will surround the Vasona Substation (whether it is the existing wall, a new wall, landscaping, a trellis, a facade, or a combination), and how it will be designed to integrate with surrounding uses, provided, however, that the substation design shall not be altered nor the interim construction authorized in Ordering Paragraph 1 above is delayed during the process. The Commission shall maintain jurisdiction over this issue and retain authority to resolve any disputes if a satisfactory solution between PG&E and the Town cannot be reached.

7. This order shall be effective immediately to enable PG&E to commence construction prior to the onset of the 1998 winter rains, so that the substation will be operational to meet the Town's 1999 summer load.

8. This proceeding shall remain open for 60 days from the effective date of this decision to address the issue of undergrounding the existing Metcalf-Monta Vista 230 kV transmission line pursuant to PG&E Rule 20 - Replacement of Overhead with Underground Electric Facilities. Parties shall notify the assigned

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administrative law judge within 60 days if they believe evidentiary hearing on this issue is needed.

This order is effective today.

Dated October 8, 1998, at Laguna Hills, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Application of PACIFIC GAS AND
ELECTRIC COMPANY, a California
corporation, for a Permit to Construct the
Vasona Substation Pursuant to General Order
131-D

A.97-04-043

(U 39 E)

STIPULATION

Pursuant to Rule 51 of the California Public Utilities Commission's ("Commission's") Rules of Practice and Procedure, PACIFIC GAS & ELECTRIC COMPANY ("PG&E") and BOCCARDO CORPORATION, VASONA PROPERTIES ("Boccardo") hereby propose the following Stipulation:

WHEREAS PG&E proposes to construct an electric substation, to be known as the Vasona Substation, located in the Town of Los Gatos, Santa Clara County;

WHEREAS, because the construction of new or upgraded substations is governed by General Order ("G.O.") 131-D, PG&E filed Application No. 97-04-043 on April 18, 1997 to request issuance of a Permit To Construct ("PTC") as prescribed by G.O. 131-D, Section IX.B;

WHEREAS, on September 5, 1997, the Commission issued a Draft Mitigated Negative Declaration (Negative Declaration), which concluded that the proposed Vasona Substation Project "will not have a significant effect on the environment";

WHEREAS, on December 9, 1997, at the direction of Administrative Law Judge Bertram Patrick, PG&E prepared a Feasibility Study to evaluate 16 sites for the location of the new substation, which concluded that the location of the substation at the Winchester/Lark site owned by PG&E and directly under the existing Metcalf-Monte Vista 230 kV transmission line would have the fewest environmental impacts;

1 WHEREAS, through June and July of 1998, at the direction of Commissioner Bilas, a
2 committee made up of representatives of the Town of Los Gatos, various Los Gatos neighborhoods,
3 and PG&E participated in a 60-day facilitation process under Dr. James Creighton, ultimately failing
4 to identify any alternative sites preferable to the Winchester/Lark site, but recommending further
5 study of several specific mitigation measures;

6 WHEREAS, on August 13, 1998, the current litigation resumed with a regularly-noticed
7 prehearing conference before Judge Patrick at which Patrick Power, attorney for interested party
8 Boccardo Corporation, Vasona Properties ("Boccardo"), and Charles R. Lewis, IV, attorney for
9 PG&E, appeared;

10 WHEREAS PG&E and Boccardo presently are the only parties in this proceeding;

11 WHEREAS, at the hearing, both parties expressed concern that further protracted litigation
12 could jeopardize the provision of adequate, reliable electrical power to customers in the Town of Los
13 Gatos if the Vasona Substation is not constructed before the summer of 1999;

14 It is hereby stipulated and agreed, by and between the parties through their counsel of record,
15 that the following order may be entered:

- 16 1. PG&E is authorized to begin immediate construction of the Vasona Substation at the
17 Winchester/Lark site in accordance with the plans submitted with PG&E's Application
18 No. 97-04-043 and Amendment thereto. However, construction shall be limited to the
19 substation's facilities and equipment as proposed, and the Commission shall maintain
20 jurisdiction over the ongoing PTC Application process. An interim PTC shall be issued
21 accordingly.
- 22 2. Concerning any and all mitigation for the visual effects of the Vasona Substation, PG&E
23 shall work with the Town of Los Gatos—through architectural review procedures or
24 otherwise as determined by the Town—to determine what will surround the Vasona
25 Substation (whether it is the existing wall, a new wall, landscaping, a trellis, a facade, or a
26 combination), and how it will be designed to integrate with surrounding uses, provided,
27 however, that substation design shall not be altered nor the interim construction authorized
28 in paragraph 1 above delayed during the process, and that the Commission shall maintain

jurisdiction over this issue and retain authority to resolve any disputes if a satisfactory solution between PG&E and the Town of Los Gatos cannot be reached.

3. In accordance with the commitments PG&E made during the facilitation process, PG&E agrees to the following mitigation measures:

- PG&E will grade the property in such a way that all water will drain into the Town's storm drains
- PG&E will pay up to \$5,000 for a geotechnical consultant to advise Charter Oaks on the causes of any slope instability on Charter Oaks' property and the actions that need to be taken to ensure stability
- PG&E will reinforce the existing on-site drainage system, which directs all run-off from the site into existing Town storm drains, and ensure that no drainage will leave its site
- PG&E agrees that the geotechnical consultant hired for Charter Oaks will be given the opportunity to evaluate the adequacy of PG&E's proposed drainage system
- PG&E's containment pond design will considerably exceed EPA standards, and will be large enough to hold all oil from both transformers
- PG&E will discuss fire and explosion risk with local fire official, and will make it's insurance experts available to meet with Charter Oaks' insurance company
- PG&E is willing to participate with Charter Oaks and the Fire Department in developing an Emergency Evacuation Plan
- PG&E will design the substation using low-noise transformers, and guarantees that it will conform to the Town of Los Gatos noise standards
- PG&E will construct a masonry wall between Charter Oaks and the site
- The only permanent lighting on the substation site at night will be a light over the doors on the switch gear enclosure, which will be shielded to ensure that no light leaves the site
- All other safety lighting will be illuminated by a switch to be operated only as necessary

• PG&E's alarm system will not be audible

• PG&E will work with local police to develop a security program acceptable to the

Town of Los Gatos

4. PG&E shall retain the right to challenge any condition imposed under the procedures referred to in paragraph 2 above.

5. The legality and propriety of requiring PG&E to underground a portion of the existing Metcalf-Monte Vista 230 kV transmission line or replace existing transmission line towers with monopoles shall be addressed separately in a second phase of this litigation.

6. As an initial step toward resolution of the issues described in paragraph 5 above, PG&E shall assemble all materials available regarding undergrounding of the Metcalf-Monte Vista 230 kV transmission line in the area surrounding the proposed Vasona Substation and provide them to Mr. Power.

7. After Mr. Power has reviewed these materials, he shall notify Judge Patrick concerning the need for further proceedings on the issues described in paragraph 5 above, and may request that a prehearing conference be scheduled.

Pursuant to Rule 51.6, the parties have filed a motion requesting that the administrative law judge waive application of Rules 51.1 and 51.4 to this stipulation.

The parties agree that this stipulation can be signed in counterpart and that facsimile copies can be used as originals.

PATRICK J. POWER

By: Pat J. Power
PATRICK J. POWER

Dated: August 25, 1998

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August 25, 1998

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(END OF APPENDIX A)