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Decision 99-08-023 August 5, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

FORMAL FILE COPY

Application of Pacific Gas & Electric Company for a Permit to Construct an Electric Substation, the Nortech Substation, and Associated Power Lines, Known as the North San Jose Capacity Project.

Application 98-06-001
(Filed June 1, 1998)

**ORDER ADOPTING A MITIGATED NEGATIVE DECLARATION AND
GRANTING A PERMIT TO CONSTRUCT**

Summary

In this application, Pacific Gas and Electric Company (PG&E) seeks authority to construct a substation and related transmission facilities in the North San Jose area. The substation is needed to meet anticipated customer-driven peak electrical load growth by at least the summer of 2000 and to prevent potential outages. In this Order, we adopt the Final Mitigated Negative Declaration prepared for this proposed project, as modified by staff-proposed mitigation measures, and grant the Permit to Construct.

Project Description

PG&E has applied for a Permit to Construct (PTC) the North San Jose Capacity Project, which consists of the Nortech Substation, a 115kV-21 kiloVolt (kV) substation, and associated Trimble-Nortech and Kifer-Nortech 115kV power lines, in San Jose and Santa Clara, Santa Clara County, California. PG&E proposes the project to meet the load growth expected to occur in north San Jose

and to ensure that PG&E can provide an adequate and reliable supply of electric power in the future. PG&E projects that its ability to accommodate the expected growth in the northern portion of San Jose will be exceeded by the summer of 1999.

At full build-out, the Nortech Substation would have three 115kV- 21kV transformer banks and associated high voltage circuit breakers, switches, bus structures and power poles. Only two banks of transformers at the Nortech Substation would be installed in 1999; the third would be installed when required by electric load growth. The proposed Nortech Substation site is located immediately north of State Route (SR) 237 and east of North First Street in the northern portion of the City of San Jose. The proposed substation would include high voltage circuit breakers, disconnect and bypass switches, a 115kV bus structure, two 115kV pull-off/dead-end structures and two 115kV power line poles, a 100-foot-tall steel lattice microwave tower with two microwave dishes and a 30-foot by 20-foot by 3-foot vertical wall concrete Spill Prevention Countermeasure and Control (SPCC) pond.

The two new 115kV power lines would provide power to the new substation from the existing Kifer Receiving Station in Santa Clara and from the existing Trimble Substation in San Jose. One new 115kV circuit breaker would be installed at each existing facility to feed the two new power lines. The Kifer-Nortech line would be a 115kV single-circuit line built on steel poles 60-90 feet in height, and would generally run north-south along Lafayette Street in Santa Clara. The power line would require 11 new poles at new locations and approximately 57 new poles replacing existing poles. The Trimble-Nortech line would be a 115kV double-circuit line constructed on steel poles, 80-95 feet in

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height, and would generally run north-south along Zanker Road in San Jose. The power line would require 19 new poles and 16 new poles that would replace existing poles.

Background And Discussion

PG&E formally filed this application for a Permit to Construct a distribution substation and associated 115 kilovolt power lines, pursuant to the Commission's GO (GO) 131-D, on June 1, 1998. GO 131-D requires an applicant to provide notice to the public of its proposed project. PG&E published a notice of its proposed project in local newspapers, posted the notice along the proposed transmission line routes, and notified local public agencies and all property owners within 300 feet of the proposed location. No formal protests or comments were filed in response to the application. Under the California Environmental Quality Act (CEQA) and the Permit Streamlining Act, the Lead Agency for the purposes of environmental review of a proposed project must complete its review and issue a decision within one year of the date that the application is deemed complete.

PG&E submitted its Proponents Environmental Assessment (PEA), a required component of the application under Rule 17.1 of the Commission's Rules of Practice and Procedure, with its application after the staff consultation required by CEQA. After reviewing the initial application, the Energy Division environmental review staff identified certain deficiencies in the PEA that PG&E subsequently corrected while the staff's review was under way. Having satisfied its review requirements and performed its initial analysis over a two-and-a-half month period, the staff deemed the application complete on August 17, 1998.

Thus the Commission must issue a decision on this application no later than August 16, 1999.

The Energy Division staff released an Initial Study and Draft Mitigated Negative Declaration (MND) for public comment on September 16, 1998. Comments on the draft MND were due on October 16, 1998. Four commenters submitted letters: the California Department of Fish and Game, the Santa Clara Valley Transportation Authority, Sony Electronics, and Eddie and Lavelle Souza. The issues addressed by the commenters are discussed in the CEQA section of this Decision. Although CEQA does not require a Lead Agency to respond to comments on a draft MND, in accordance with current Energy Division policy, the staff responded to all comments received and released them as a part of the Final Mitigated Negative Declaration on April 27, 1999.

On October 6, 1998, during the comment period, the presiding Administrative Law Judge (ALJ) and assigned Commissioner Henry Duque held a Prehearing Conference at the San Jose offices of one of the commenters to provide an opportunity for the public to submit comments and concerns regarding the proposed project. The Energy Division environmental review staff and their consultants were in attendance and participated in responding to commenters' questions and concerns. A representative of Sony Corporation was the only commenter, largely reiterating their written comments, and there were no requests for an evidentiary hearing. A transcript of the Prehearing Conference was included in the Final MND by the Energy Division staff.

Pursuant to Commission GO 131-D, an application for a PTC must include a description of the applicant's plans to take low- or no-cost steps to reduce Electro-Magnetic Frequency (EMF) exposure resulting from the proposed project.

PG&E did not include this information in its initial application, but subsequently provided it in a supplement to its application filed on April 29, 1999. Although EMF exposure was not considered in the context of impacts in the MND, both the Draft and Final MNDs provided discussions for informational purposes of EMF exposure with respect to the proposed project, pending the results of further study and research being conducted jointly by the California Department of Health Services and the Commission on the potential health impacts of EMF.

CEQA

Pursuant to CEQA, in order for a Lead Agency to make a discretionary decision of approval for a project for which no exemptions from CEQA apply, the Agency must first undertake an Initial Study to determine whether there are any significant or potentially significant environmental impacts that might result from the project as proposed, including any applicant-proposed mitigation measures. Should the Agency staff find that, during the course of the Initial Study, the proposed project might result in potentially significant impacts, the staff may then develop additional mitigation measures designed to reduce the identified potentially significant impacts to, at a minimum, less-than-significant impacts. Should these additional Agency-proposed mitigation measures prove acceptable to the applicant, CEQA provides for the Initial Study to be circulated for public comment with a Mitigated Negative Declaration and for the entire package of final mitigation measures to be made a condition of project approval. These mitigation measures must also be monitored for applicant compliance by the Lead Agency, and a Mitigation Monitoring Compliance and Reporting Program must be contained in the Final MND. In the event that the Initial Study reveals that the impacts of the proposed project are either not mitigable to less-

than-significant levels or that the Agency-proposed mitigation measures are not acceptable to the applicant, CEQA provides that a Notice of Preparation be issued and an Environmental Impact Report prepared.

In the instant case, PG&E's proposed project did not qualify for an exemption from CEQA because it could not be seen with certainty that the proposed project would not have a significant impact on the environment. Therefore, an Initial Study was undertaken to determine which impacts would remain potentially significant despite PG&E's proposed mitigation measures. The staff determined through the Initial Study process that environmental impacts would remain potentially significant in three areas: Biological Resources; Water; and Noise. Staff determined that each of the identified potential impacts could be mitigated to avoid the impact entirely or to reduce it to a less-than-significant level by additional staff-proposed mitigation measures. PG&E agreed to incorporate and implement these mitigation measures as a part of their proposed project, and the Energy Division staff therefore issued the Draft Initial Study and MND for public comment.

Although not required by CEQA, all comments received were responded to, including comments received after the comment period had closed. Additionally, the presiding ALJ and the Assigned Commissioner held a Prehearing Conference on October 6, 1998, in San Jose to provide an additional opportunity for those with an interest in the environmental impacts of the project to attend and comment on the appropriate degree of inquiry encompassed in the environmental review. In both the written comments received from the four commenters and comments at the Prehearing Conference, there were no requests

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for either evidentiary hearings or for the preparation of an Environmental Impact Report.

The comments received on this application were exclusive to the Draft MND. The California Department of Fish and Game expressed concerns regarding burrowing owl habitat and special status plant species. The Santa Clara Valley Transportation Authority expressed concerns regarding possible impacts on a potential wetlands mitigation area, land use and easement issues, and commercial concerns regarding future development of property. Both the Sony Corporation and Eddie and Lavelle Souza expressed concerns regarding aesthetics, EMF, and property values.

Although acknowledging that alternative alignments to the proposed project route, including undergrounding, could be significantly more expensive, technically infeasible, and potentially result in greater environmental impacts, one commenter in particular, and two others to a lesser degree, expressed an interest in including alternative alignments within the environmental review process. In Section IV of PG&E's application and Sections 15 and 19 of PG&E's PEA, the company presents its process for considering alternative sites for the project. As explained by one of PG&E's representatives, Mr. Lewis, during the October 6, 1998, Prehearing Conference, PG&E initially began with approximately 40 alternative sites, narrowed the options to approximately 17 sites, then selected three sites as candidates that would meet PG&E's stated project objectives. These sites were then the subject of consultations between PG&E and local public agencies to determine the preferred proposed project site.

We note here that this application for a Permit to Construct is subject to the requirements of Commission GO 131-D and Rule 17.1 of the Commission's Rules

of Practice and Procedure. We also note that Section b.3 of Rule 17.1; Section IX.B.1.c of GO 131-D; and Section V.3 and V.13.b, Appendix B, of Decision (D.) 89905 all require the applicant to explore alternatives to the proposed project in developing the application for the proposed project. These Commission requirements were adopted specifically within our practices and procedures for implementing CEQA. Property values and EMF do not fall within the established purview of CEQA environmental review. However, investor owned utilities must comply with this Commission's EMF policies regarding no cost and low cost steps to reduce EMF levels.

Based on the comments and responses thereto, we are satisfied that the specific concerns of the California Department of Fish and Game and the general concerns of the Santa Clara Valley Transportation Authority have been largely addressed. The remaining concern expressed by the Sony Corporation and the Souzas regarding aesthetics is perhaps the most difficult and subjective element present within the CEQA environmental review process. The aesthetic element is extremely difficult to objectively balance against competing environmental factors, such as the additional impacts to other environmental resources resulting from the mitigation or avoidance of aesthetic impacts. Consistent with CEQA guidelines, we reviewed the project's impact on aesthetics, including scenic highways, potential demonstrable aesthetic effect, and creation of light or glare. The project was found to have less than significant aesthetic impacts.

We are charged with independently reviewing the results of the environmental review and balancing those conclusions and determinations against the other factors such as cost-effectiveness, reliability, service quality, and

numerous other factors affecting the public interest, to the extent that they resent themselves in cases before the Commission.

Electric and Magnetic Field Reduction Measures

Pursuant to Section X.A of GO 131-D, an application for a Permit to Construct must include a description of the measures that the utility has taken or proposes to take to reduce the potential exposure to Electro-Magnetic Fields generated by the proposed facilities. These measures must be in compliance with prior Commission orders. In D.93-11-013, the Commission concluded that when constructing new projects, a utility should implement, at a minimum, all no-cost steps it can to reduce any resulting changes to EMF exposure. PG&E did not include this information in its initial application, but subsequently provided it in a supplement to its application filed on April 29, 1999.

Permit to Construct

The proposed project, as modified by the staff-proposed mitigation measures, will not have a significant impact on the environment. The Final Mitigated Negative Declaration prepared for PG&E's North San Jose Capacity Project was prepared, processed and completed in compliance with CEQA.

Furthermore, we find that this application has been prepared, filed and processed in accordance with our Rules of Practice and Procedure and GO 131-D for a Permit to Construct. PG&E followed the required procedures for public notification and preparation of the PEA, including an analysis and presentation of alternatives to the proposed project.

We will grant the Permit to Construct for Pacific Gas and Electric's North San Jose Capacity Project.

Comments on Draft Alternate

This application was preliminarily categorized as ratesetting, with hearings expected to be necessary (Resolution ALJ-176-2994, June 4, 1998). We now determine that hearings are not necessary in this proceeding. The alternate draft decision of Commissioner Duque in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 (g)(1) and Rule 77.1 of the Rules of Practice and Procedure. Comments were filed by PG&E on July 26. No reply comments were filed.

PG&E seeks to have this order made effective on the date issued rather than 30 days later. We do not adopt this change so that parties who might wish to apply for rehearing can do so before construction begins.

Findings of Fact

1. The Final Mitigated Negative Declaration identified no significant environmental impacts of the project that could not be avoided or reduced to less-than-significant levels by changes to the project that have been accepted by PG&E.
2. PG&E's instant application for a Permit to Construct was prepared, filed and processed in accordance with Commission Rules of Practice and Procedure and GO 131-D.
3. The aesthetic element is extremely difficult to objectively balance against competing environmental factors, such as the additional impacts to other environmental resources resulting from the mitigation or avoidance of aesthetic impacts.

4. The proposed project, as modified by the staff-proposed mitigation measures, will not have a significant impact on the environment.

Conclusions of Law

1. The Final Mitigated Negative Declaration was prepared, processed and completed in compliance with CEQA.

2. PG&E followed the required procedures for public notification and preparation of the PEA, including an analysis and presentation of alternatives to the proposed project.

3. The Final Mitigated Negative Declaration reflects the independent judgment of the Commission and should be adopted.

4. The Permit to Construct should be granted.

IT IS ORDERED that:

1. The Final Mitigated Negative Declaration prepared for the Pacific Gas & Electric Company (PG&E) North San Jose Capacity Project is adopted pursuant to the requirements of the California Environmental Quality Act.

2. The Mitigation Monitoring Program prepared by the Energy Division for the project and included in the Final Mitigated Negative Declaration is approved and the mitigation measures described therein are made conditions of project approval.

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3. The Executive Director of the Commission shall ensure that the Mitigation Monitoring Program is carried out by PG&E. The Executive Director may delegate this responsibility to the Energy Division.

4. PG&E shall reimburse the Commission for any costs incurred in ensuring compliance with the Mitigation Monitoring Program. This requirement is made a condition of project approval.

5. The Energy Division shall lodge the Final Mitigated Negative Declaration and Mitigation Monitoring Program with Central Files as part of the record in this proceeding.

6. The Permit to Construct the North San Jose Capacity Project as proposed and modified herein by the Final Mitigated Negative Declaration is approved and granted.

7. No hearings are necessary in this proceeding and the preliminary determination made in Resolution ALJ 176-3002 shall be so modified.

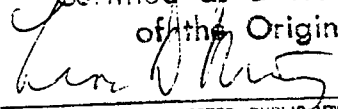
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8. This proceeding is closed.
9. Hearings are not necessary in this proceeding.

This order becomes effective 30 days from today.

Dated August 5, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners

Certified as a True Copy
of the Original

ASST. EXECUTIVE DIRECTOR, PUBLIC UTILITIES COMMISSION,
STATE OF CALIFORNIA

PROOF OF SERVICE BY MAIL

I, Sandra Jackson, declare:

I am over the age of 18 years, not a party to this proceeding, and am employed by the California Public Utilities Commission at 505 Van Ness Avenue, San Francisco, California.

On 8-10-99, I deposited in the mail at San Francisco, California, a copy of:

99-08-023

(DECISION NUMBER OR TYPE OF HEARING)

8-5-99

(DATE OF HEARING)

A. 98-06-001

(APPLICATION/CASE/OII/OIR NUMBER)

in a sealed envelope, with postage prepaid, addressed to the last know address of each of the addressees in the attached list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 8-10-99, at San Francisco, California.

Sandra Jackson

*Signature
9/92

Item 7
8/5/99

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DECISION: 99-08-023
MAIL DATE: 8-10-99

Copy of "ORDER REJECTING THE MITIGATED NEGATIVE DECLARATION"
and order mailed to the following.

SEE ATTACHED LIST FOR APPEARANCES, STATE SERVICE

Count 10

8/5/99
lil

***** SERVICE LIST *****

Last updated on 20-JUL-1999 by: LIL
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