

From: Allen, Meredith
Sent: 2/18/2014 2:45:33 PM
To: Borak, Mary Jo (maryjo.borak@cpuc.ca.gov); 'Sterkel, Merideth "Molly"' (MeridethMolly.Sterkel@cpuc.ca.gov)
Cc:
Bcc:
Subject: Re: Response to CEQA Question

Molly,

Here is the final version. It includes the cite, revisions to 57C discussion and includes information on ministerial permits.

I will pass along the feedback. The team will appreciate. David led the effort with help from Jo Lynn and folks in environmental.

Meredith

Any time PG&E (or any other IOU) constructs a pipeline project that requires a discretionary approval from a governmental agency, that agency must comply with CEQA before reaching a decision to approve or reject the project. Discretionary approvals that may apply to IOU pipeline projects include permits under state environmental protection laws (e.g., CDFW incidental take permits (“ITP”) under Cal. Fish and Game Code section 2081, CDFW Lake and Streambed Alteration Agreements (“LSAA”) under Fish and Game Code section 1600, or water quality certifications from Regional Water Quality Control Boards under Clean Water Act section 401), or grants of land rights from governmental agencies (e.g., leases from California State Lands Commission allowing installation of pipelines within state submerged lands, or easements over land owned by local governments). When a pipeline project requires any such discretionary governmental approval, CEQA applies. Depending on the lead agency’s initial assessment of the potential environmental effects of the proposed project, the agency might prepare an EIR, MND, or conclude that the project fits within one or more of CEQA’s statutory or categorical exemptions.

PG&E has had several major gas pipeline projects that went through CEQA review over the last several years, with the California State Lands Commission (CSLC) or another state agency as CEQA lead agency. For example, Line 57C near Stockton (MND, CSLC, State Clearinghouse #2006022145, approved on 4/17/06), Line 108 (EIR, CLSC No. 737, FEIR approved on 3/25/08), Line 406/407, a 40 mile project in Yolo, Sutter, and Placer Counties (EIR, CSLC, State Clearinghouse #2007062091), Line 131 (MND, Central Valley Regional Water Quality Control Board, State Clearinghouse #2008042014, approved on 6/12/08). In addition, PG&E is currently in the process of obtaining discretionary permits for proposed upgrades to Line 109, with San Mateo County as CEQA lead, and Line 101, with the City and County of SF as CEQA lead. PG&E has also constructed numerous recent pipeline projects that required discretionary governmental approvals, but where the lead agency concluded that one or more exemptions from CEQA applied. For example, CDFW has granted ITPs for several hydrotest projects in reliance on CEQA’s statutory exemption for projects necessary to prevent or mitigate the effects of an emergency, and entered into LSAs for numerous smaller pipeline projects under CEQA’s categorically exemption under CEQA’s “existing facilities” exemption.

That said, much of PG&E’s gas pipeline work does not trigger any discretionary governmental approvals. As with any project, PG&E evaluates its proposed pipeline projects based on their design, location, construction methods, and environmental setting to identify all required permits and land rights. Much of PG&E’s pipeline infrastructure is located in urban areas within existing franchise or private easements, such that no new land rights are required from governmental agencies, and away from environmental resources, such that environmental permits are not required. For example, in 2012, PG&E relocated Line 132 through Colma and South San

Francisco without obtaining any discretionary permits, as the project was located entirely within existing franchise areas and did not involve any take of endangered species or any other activities that would trigger environmental permit requirements. In the absence of a required discretionary governmental approval, CEQA does not apply. (Pub. Res. Code § 21080; see also CEQA Guidelines §§ 15002(i), 15040.)

The CPUC does not require project-specific siting permits for gas pipeline projects constructed within an IOU's existing service territory. Under Public Utilities Code section 1001, no CPCN is required "for an extension within or to territory already served by [a gas corporation], necessary in the ordinary course of its business." Instead, under GO 112-E, IOUs are required to file with the Commission a report of proposed installation 30 days prior to construction. While the filing of GO 112-E proposed installation reports does not generally result in discretionary Commission action, the Commission has explained that it "would take appropriate measures if the proposed installation report indicated that construction would not proceed in accordance with the GO." (D.07-01-014 at 6-7 (granting PG&E's motion for summary judgment in Line 57C complaint case).)

As with IOU electric projects, gas pipeline projects do not require local discretionary land use approvals, such as conditional use permits, because the CPUC has exclusive jurisdiction over the design, siting, and location of IOU facilities. The Commission's preemption of local authority flows from the state Constitution, and the courts have specifically found preemption in the context of pipeline projects. (See *Southern Cal. Gas Co. v. City of Vernon* (1995) 41 Cal.App.4th 209.) As the appellate court opinion *San Diego Gas & Electric Co. v. City of Carlsbad* (1998) 64 Cal.App.4th 785 makes clear, the Commission's authority fully occupies the field and preempts local regulation even where, as in the case of gas pipelines, the Commission has chosen not to require project-specific discretionary permits. The Commission's Legal Division has endorsed this view in several letters to local governments (an example is attached).

Finally, in addition to any discretionary environmental permits that might be required depending on the scope and setting of the project, pipeline projects in public rights of way must obtain any applicable local ministerial permits (e.g., encroachment permits). Ministerial permits are exempt from CEQA. (Pub. Res. Code § 21080(b)(1); CEQA Guidelines § 15268.)

-----Original Message-----

From: Sterkel, Merideth "Molly" [<mailto:MeridethMolly.Sterkel@cpuc.ca.gov>]

Sent: Tuesday, February 18, 2014 1:53 PM

To: Allen, Meredith; Borak, Mary Jo

Subject: RE: Response to CEQA Question

Very helpful. I will get back to you with questions. Kudos to whoever put this together for you!

Molly Tirpak Sterkel

California Public Utilities Commission, Energy Division Program Manager, Infrastructure Planning and Permitting Branch

T: 415-703-1873, E: mts@cpuc.ca.gov

-----Original Message-----

From: Allen, Meredith [<mailto:MEAe@pge.com>]

Sent: Friday, February 14, 2014 6:30 PM

To: Sterkel, Merideth "Molly"; Borak, Mary Jo

Subject: Response to CEQA Question

Molly,

Here is the response to the questions that you sent yesterday. It is not completely finalized (for example, it still needs another cite), but wanted to provide it to you today and will send final version early next week. I'm sorry that I couldn't reply to the email that you sent. I'm out of the office and couldn't make it work with forwarding the attachment.

Please let me know if you have questions or need additional information.

Have a great weekend.

Meredith

Any time PG&E (or any other IOU) constructs a pipeline project that requires a discretionary approval from a governmental agency, that agency must comply with CEQA before reaching a decision to approve or reject the project. Discretionary approvals that may apply to IOU pipeline projects include permits under state environmental protection laws (e.g., CDFW incidental take permits ("ITP") under Cal. Fish and Game Code section 2081, CDFW Lake and Streambed Alteration Agreements ("LSAA") under Fish and Game Code section 1600, or water quality certifications from Regional Water Quality Control Boards under Clean Water Act section 401), or grants of land rights from governmental agencies (e.g., leases from California State Lands Commission allowing installation of pipelines within state submerged lands, or easements over land owned by local governments). When a pipeline project requires any such discretionary governmental approval, CEQA applies. Depending on the lead agency's initial assessment of the potential environmental effects of the proposed project, the agency might prepare an EIR, MND, or conclude that the project fits within one or more of CEQA's statutory or categorical exemptions.

PG&E has had several major gas pipeline projects that went through CEQA review over the last several years, with the California State Lands Commission or another state agency as CEQA lead agency. For example, Line 57C near Stockton (need cite), Line 108 (CSLC EIR No. 737, FEIR approved on 3/25/08), Line 406/407, a 40 mile project in Yolo, Sutter, and Placer Counties (EIR, State Clearinghouse #2007062091), Line 131 (MND, Central Valley Regional Water Quality Control Board, State Clearinghouse #2008042014, approved on 6/12/08). In addition, PG&E is currently in the process of obtaining discretionary permits for proposed upgrades to Line 109 (with Santa Mateo County as CEQA lead) and Line 101, with the City and County of SF as CEQA lead). PG&E has also constructed numerous recent pipeline projects that required discretionary governmental approvals, but where the lead agency concluded one or more exemptions from CEQA applied. For example, CDFW has granted ITPs for several hydrotest projects in reliance on CEQA's statutory exemption for projects necessary to prevent or mitigate the effects of an emergency, and entered into LSAAs for numerous smaller pipeline projects under CEQA's categorically exemption under CEQA's "existing facilities" exemption.

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The CPUC does not require project-specific siting permits for gas pipeline projects constructed within an IOU's existing service territory. This is because, under Public Utilities Code section 1001, no CPCN is required "for an extension within or to territory already served by [a gas corporation], necessary in the ordinary course of its

business." Under GO 112-E, IOUs are required to file with the Commission a report of proposed construction within 30 days of construction, but that does not trigger any discretionary Commission action.

Finally, as with IOU electric projects, gas pipeline projects do not require local discretionary land use approvals, such as conditional use permits, because the CPUC has exclusive jurisdiction over the design, siting, and location of IOU facilities. The Commission's preemption of local authority flows from the state Constitution, and the courts have specifically found preemption in the context of pipeline projects. (See *Southern Cal. Gas Co. v. City of Vernon* (1995) 41 Cal.App.4th 209.) As the appellate court opinion *San Diego Gas & Electric Co. v. City of Carlsbad* (1998) 64 Cal.App.4th 785 makes clear, the Commission's authority fully occupies the field and preempts local regulation even where, as in the case of gas pipelines, the Commission has chosen not to "actively regulate." The Commission's Legal Division has endorsed this view in several letters to local governments (an example is attached), as did the Commission itself in rejecting a local reclamation district's complaint concerning PG&E's Line 57C project.

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