

**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 for the Northeast San Jose Transmission) A. 99-09-029
Reinforcement Project) (Filed September 9, 1999)
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**RESPONSE OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR ON
THE APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY
FOR REHEARING OF DECISION NO. 01-05-059**

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In accordance with CPUC rule 86.2, the California Independent System Operator Corporation ("CA ISO") respectfully submits this response to the application of Pacific Gas and Electric Company ("PG&E") for rehearing of Decision No. 01-05-059 (D. 01-05-059). The CA ISO agrees with PG&E that D. 01-05-059 fails to accurately reflect the appropriate respective roles of the CA ISO and the California Public Utilities Commission ("CPUC") with regards to transmission planning and transmission siting in the wake of restructuring of the electric industry. Accordingly, CA ISO joins in PG&E's application for rehearing on this issue. As to the appropriate respective roles of the CA ISO and the CPUC, D. 01-05-059 errs as a matter of law, public policy and fact.

The CA ISO also requests oral argument regarding this issue, pursuant to CPUC Rule 86.4. Because this case involves the first application for a Certificate of Public Convenience and Necessity ("CPCN") since the passage of AB 1890 which provided for restructuring of the electric industry and creation of the CA ISO, the respective roles of

the CA ISO and the CPUC with regards to transmission planning and transmission siting in the wake of restructuring of the electric industry is an issue of first impression with significant precedential impact. Thus, the issue clearly falls within the criteria for oral argument set forth in CPUC Rule 86.3. See CPUC Rule 86.3(a)(iv).

There is extensive ongoing work on transmission planning and siting underway. The CPUC's pronouncements regarding the respective roles of the CA ISO and the CPUC with regards to transmission planning and siting could significantly impact the attitude and participation by Market Participants in CA ISO planning processes and CPUC proceedings. In particular, a failure by the CPUC to grant due deference to CA ISO determinations regarding need would have significant adverse impacts on the CA ISO planning process as Market Participants recognize the possibility of forum shopping, and a possibility is created for inconsistent results. For example, Market Participants may decide to forego participation in CA ISO planning processes if they conclude that issues will be relitigated before the CPUC in any event; Market Participants will seek to undermine CA ISO determinations before the CPUC if they disagree with CA ISO determinations; and diligent CA ISO efforts to require public utilities to undertake long needed upgrades to their respective transmission systems could be undermined as well. Moreover, if the CA ISO and the CPUC reach inconsistent conclusions with regards to particular transmission projects, their likelihood to move forward will be severely compromised.¹

¹ If the CPUC fails to grant a CPCN for a project that the CA ISO determines is needed, a utility would be limited in its ability to begin construction under state law. If the CA ISO determines that a project granted a CPCN by the CPUC is not needed, financing for the project could be compromised as the CA ISO could oppose inclusion of the costs of the project in transmission rates before the Federal Energy Regulatory Commission.

The CA ISO concurs with PG&E that D. 01-05-059 errs as a matter of law with regards to the respective roles of the CPUC and the CA ISO in the context of transmission planning and siting, in the wake of electric industry restructuring. See Application of PG&E for Rehearing of Decision No. 01-05-059 at 4-10. In addition, the posture of D. 01-05-059 with regards to CA ISO determinations of need for a transmission project are contrary to public policy and the factual record in the case.

The CA ISO documented the legal, policy and factual errors that persist in D. 01-05-059 in its April 23 Comments on the Draft Decision of ALJ Thomas ("April 23 Comments"). In the April 23 Comments, the CA ISO explained that the CPUC should give due deference to CA ISO determinations of need pursuant to state and federal law.

Ignoring the CA ISO's comments, D. 01-05-059 provides:

while we appreciate the time and effort the ISO expended in evaluating this project, we view that body's approval as non-binding on us under the particular circumstances of this case. If we had evidence before us contradicting PG&E's claims of necessity -- which we do not -- we might reach a different conclusion from that reached by the ISO. While we agree with the ISO that it has the responsibility to ensure the reliability of the state's electrical system (Pub. Util. Code § 345), we believe that ensuring reliability and deciding that a particular transmission project should be built are two separate issues. Nonetheless, in this case we concur with the ISO that the project is needed to meet expected future increases in Silicon Valley's electricity demands.

D. 01-05-059 at 20. D. 01-05-059 dismisses the CA ISO's contention that the CPUC should afford due deference to CA ISO determinations of need on the grounds that:

We believe the Draft Decision strikes an adequate balance between deferring to the ISO's need determination and acknowledging the aspects of the project the ISO did not analyze. Moreover, the Draft Decision reaches the same conclusion as did the ISO. Thus, we do not change the Draft Decision in response to the ISO's comments.

D. 01-05-059 at 81.

The CA ISO appreciates that the CPUC concurred with the CA ISO's determination that the Northeast San Jose Project is needed, hence avoiding the anomalous result of inconsistent determination between the CPUC and the CA ISO with regards to the need for a transmission project. Nonetheless, the CA ISO disagrees that the Draft Decision strikes an adequate balance between deferring to the ISO's need determination and acknowledging the aspects of the project that the ISO did not analyze. This is because D. 01-05-059 fails to acknowledge the changes in law in the wake of electric industry restructuring that provide for due deference to CA ISO determinations of need by the CPUC.

The CA ISO's analysis of the provisions of state and federal law that provide for due deference by the CPUC of CA ISO decisions regarding need are set forth in detail in the CA ISO's Opening Brief and in the April 23, 2001 Comments. The CA ISO incorporates by reference herein its April 23, 2001 Comments. In summary, the Comments explain:

- As stated in D. 01-05-059, "[t]he ISO has responsibility to ensure the reliability of the State's electrical system pursuant to Public Utility Code § 345." D. 01-05.059 at 86.
- In fact, AB 1890 unambiguously and explicitly transferred responsibility for ensuring grid reliability from the state's investor owned utilities and the CPUC to the CA ISO. See Public Utilities Code §§ 334, 345.
- Transmission planning is an integral part of assuring transmission grid reliability. Without adequate facilities it is not possible to "ensure efficient use and reliable operation of the transmission grid." Moreover, Public Utilities Code § 345 explicitly

notes that the ISO must ensure compliance with planning criteria as well as operating reserve criteria, making it clear that the ISO has responsibility to provide for transmission planning.

- In addition, AB 1890 required the CA ISO to make appropriate filings with the Federal Energy Regulatory Commission ("FERC") to "request confirmation of the relevant provisions of this chapter and seek the authority needed to give the Independent System Operator the ability to secure generating and transmission resources necessary to guarantee achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council." Public Utilities Code § 346. Consistent with this directive, the CA ISO filed a comprehensive tariff at FERC that provided for the creation of a transmission planning function led and coordinated by the CA ISO. The extensive tariff section related to transmission planning also specified the manner and conditions under which the CA ISO would expand the transmission system. This section is necessary to give the CA ISO the ability to secure "the transmission resources necessary to guarantee achievement of planning ... criteria", in accordance with Public Utilities Code § 346.
- It was a clear objective of the California legislature in passing AB 1890 that the CA ISO be accepted as an Independent System Operator by the FERC. See e.g. Public Utilities Code §§ 345, 330(k), 346. CA ISO coordination of transmission planning was a prerequisite of FERC's recognition of the CA ISO as an Independent System Operator. See e.g. 77 FERC 61,204, pp 61,834-36 (November 26, 1996). FERC noted that California's restructuring legislation, AB 1890, also contemplated such a

role for the ISO. *Id.* Moreover, in its July 30, 1997, “Order Providing Guidance and Establishing Procedures” 80 FERC ¶ 61,128, pp 61,416-35, FERC approved the CA ISO’s proposed transmission planning and expansion process. These factors are further evidence of the clear intent on the part of the California legislature to transfer responsibility for transmission planning to the CA ISO.

- Finally, given the FERC directive mentioned above, that the CA ISO must coordinate transmission planning, and subsequent FERC determinations approving the transmission planning section of the CA ISO's tariff, see e.g. 81 FERC ¶ 61,122, pp 61,459 (October 30, 1997); 80 FERC ¶ 61,128, pp 61,430-35 (July 30, 1997), the CA ISO has planning responsibilities under federal as well as state law.
- Since state and federal law are in accord as to CA ISO responsibility for transmission planning it is unnecessary to discuss federal preemption issues.²
- Under California law, the CPUC retains responsibility for siting. AB 1890 did not revise state law as to transmission facility siting as set forth in Public Utilities Code section 1001, et seq. Public Utilities Code section 1001 provides that no electrical corporation shall begin construction of a line "without having first obtained from the [California Public Utilities Commission] a certificate that the present or future public convenience and necessity require or will require such construction".
- Given that subsequent to electric industry restructuring, under state law, the CA ISO has responsibility for grid reliability and transmission planning and the CPUC has responsibility for transmission siting, it is necessary to interpret the respective

² If state and federal law were in conflict as to CA ISO responsibility for transmission planning, which they are not, federal preemption issues requiring further analysis would arise.

responsibilities of the CA ISO and the CPUC in a manner that harmonizes the various applicable statutory provisions.

- Rules of statutory construction in California are well established:

Statutory interpretation requires a three-step process. First a court should examine the actual language of the statute, giving the words their ordinary, everyday meaning. (Citation omitted.) If the meaning is without ambiguity, doubt, or uncertainty, then the language controls and there is nothing to 'interpret' or 'construe' (Citation omitted.) If the meaning of the words is not clear, a court must take the second step and refer to the legislative history. (Citation omitted.) The final step, which is to apply reason, practicality, and common sense to the language at hand, should only be taken when the first two steps have failed to reveal clear meaning. If possible, the words should be interpreted to make them workable and reasonable, in accord with common sense and justice and to avoid an absurd result. (Citation omitted.) The parts of a statute must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.

Maricela C. v. Superior Court, 66 Cal.App.4th 1138; 1143-4, 78 Cal.Rptr.2d 488, 491 (Ct. App. 1998); see also People v. Hannah, 73 Cal.App.4th 270, 273-4, 86 Cal.Rptr.2d 395, 396-7 (Ct. App. 1999).

- Applying these rules to the instant case supports the conclusion that, as a matter of state law, the CPUC should, in CPCN proceedings, give due deference to CA ISO determinations that transmission facilities are needed. In accordance with Public Utilities Code section 1001, et. seq., a CPCN issued by the CPUC is clearly still a prerequisite for construction of certain transmission projects. In CPUC CPCN proceedings, utilities must still show need, as well as address other factors that must be considered by the CPUC under CEQA and Public Utilities Code § 1002. However, to give effect to the CA ISO's transmission planning responsibilities, the method by which utilities are to demonstrate need in the context of CPCN proceedings should now be to

demonstrate, with the assistance of the CA ISO, that need has been found by the CA ISO in the context of the CA ISO's coordinated planning process.

- In contrast, the approach of D. 01-05-059 leads to illogical results. First, the CA ISO cannot fulfill its responsibility to maintain transmission grid reliability if its determinations of need for new facilities are given no weight by the CPUC. Without CPUC authorization for the construction of necessary projects, transmission grid reliability will degrade notwithstanding best efforts to the contrary by the CA ISO. Second, the activities of the CA ISO to identify necessary transmission enhancements, which are necessary to maintain grid reliability and consistent with state and federal law, are rendered superfluous if they are given no weight by the CPUC.

In light of this analysis, the CA ISO concurs with PG&E that D. 01-05-059 errs in stating in the conclusions of law that "ensuring reliability and deciding that a particular transmission project should be built are two separate issues". D. 01-05-059 at 86. This conclusion is nonsensical. The CA ISO cannot maintain reliability if the projects necessary to do so are rejected by the CPUC on the basis that they are not needed. Thus, to harmonize the respective responsibilities of the CA ISO and the CPUC with regards to new transmission projects, as is required by California rules of statutory construction, a more coordinated approach is required between the two entities, with each affording the other due deference as to the tasks clearly within its purview.

The CA ISO has in this case and other CPCN cases deferred to the CPUC with regards to its assessments related to environmental, social and aesthetic issues related to siting, and has even recognized a legitimate role on the part of the Office of Ratepayer

Advocates and the CPUC with regards to refinements of cost estimates that arise in the context of developing specific routes and impact mitigation approaches. In accordance with California law on statutory interpretation, the CPUC must afford the CA ISO similar deference with regards to its determinations of need.

Deference to CA ISO determinations of need by the CPUC in the context of CPCN applications is also consistent with public policy and the factual record before the CPUC in this case. Again, the CA ISO's April 23 Comments document why this is the case and are incorporated herein. In summary:

- Given its responsibility to ensure grid reliability and its transmission planning responsibilities under state and federal law, the CA ISO will continue to undertake an extensive and detailed coordinated planning process with participating transmission owners. A failure on the part of the CPUC to accord proper weight to this exercise will have serious adverse consequences. First, the CPUC will in essence have to repeat the work that has already been undertaken by the CA ISO, resulting in an inefficient and redundant use of limited resources. Further, the potential is created for inconsistent results in the different forums, leading to uncertainty and a lack of finality. Resulting delays may only serve to exacerbate the already critical deficiency in transmission infrastructure in the state. Finally, the opportunity is created for forum shopping among affected parties, which also creates inefficiency and uncertainty. These results are contrary to public policy.
- Any concerns about the CA ISO's working procedures and policies should appropriately be referred to its management and governing board, and do not provide

a basis for the CPUC to diminish the work undertaken by the CA ISO in accordance with its statutory and tariff responsibilities.

- The record shows that the Northeast San Jose project was approved in the context of a lengthy and public transmission planning process by the CA ISO. The process extended over a year, Exh. 600 at 7-8; and included power flow, stability and reactive margin analysis, with an emphasis on multiple contingencies. Exh. 602 at 16; see also Tr. 5 Vol. 350, lines 12-17. The process included multiple public meetings during which there was ample opportunity for stakeholders, as well as the CA ISO, to raise concerns about PG&E assumptions and proposed solutions. Exh. 602 at 1-2, 3, 16-17; Tr. 5 Vol. at 323. During the course of the process, the CA ISO conducted what amounts to an independent audit of PG&E's planning work. Tr. 5 Vol. at 32.
- The CA ISO undertook a review of the general accuracy of the load forecasts provided by PG&E. Exh. 601 at 5. In this review the CA ISO compared PG&E's forecast to historical trends, identifying and seeking additional information regarding anomalies. Tr. 5 Vol. at 348.
- Although the CA ISO used costs estimates provided by PG&E in its analysis, it checked the estimates for general soundness. Tr, 5 Vol. at 355. The CA ISO is supportive of further assessment and refinement of costs before the CPUC along with its evaluation of environmental, social and aesthetic factors, and the related consideration of detailed routing alternatives. This approach prevents an unnecessary duplication of efforts: costs are reviewed generally at the CA ISO in the process of determining the best electrical configuration and components to meet an identified need; cost estimates are refined before the CPUC in the context of a review of

detailed routing and siting alternatives, with the active participation of the Office of Ratepayer Advocates which has particular expertise in reviewing detailed cost projections. Refined information on costs should be used by the CPUC in making final determinations as to precise routes and substation sites.

- The CA ISO planning process has been in effect for over 3 years. Stakeholders have had numerous occasions to discuss and work with the CA ISO to refine the planning process.
- There is no evidence in the record that Ms. Green's work analyzing the project at the CA ISO was anything but entirely appropriate and professional. In fact, Ms. Green was assigned to work on the project because her detailed familiarity with the San Jose area and the project permitted her to assess the project with particular competence. See Tr, 5 Vol. at 346, 361.

In sum, the CA ISO supports PG&E's application for rehearing of D. 01-05-059 with regards to the discussion in that decision of the respective roles of the CPUC and the CA ISO as to determinations of need. The CA ISO appreciates that ultimately, in D. 01-05-059, the CPUC concurred with the CA ISO's conclusion that the Northeast San Jose project is needed. However, in diminishing the importance of CA ISO determinations of need, D. 01-05-059 is contrary to state and federal law, public policy and the factual record in the case. Moreover, a failure on the part of the CPUC to reconsider the portions of D. 01-05-059 addressing the respective roles of the CPUC and CA ISO in the context of transmission expansions could adversely impact the CA ISO transmission planning process and applications for CPCNs before the CPUC, delaying much needed transmission system improvements.

Respectfully submitted this 3rd of July, 2001 by:

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