

**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)
_____)

**COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION ON THE AUGUST 8 DRAFT OPINION STAYING DECISION
01-05-059**

August 10, 2001

Jeanne M. Solé, Regulatory Counsel
Roger Smith, Senior Regulatory Counsel
California Independent System Operator
151 Blue Ravine Road
Folsom California 95630
Telephone: (916) 351-4400
Facsimile: (916) 608-7296

**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)
_____)

**COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION ON THE AUGUST 8 DRAFT OPINION STAYING DECISION
01-05-059**

In accordance with CPUC rule 77.7, the California Independent System Operator Corporation (CA ISO) submits these comments on the August 8, draft Opinion staying Decision No. 01-05-059 (draft Opinion). The draft Opinion could result in further delays in the Northeast San Jose Project in-service date and an opportunity to re-litigate issues that were amply addressed in evidentiary hearings last fall. The CA ISO supports the California Public Utilities Commission's (CPUC) decision to postpone a vote on the draft Opinion and is pleased that the draft Opinion issued August 2 was revised to give parties the opportunity to comment on the draft Opinion. Particularly in light of comments by Administrative Law Judge (ALJ) Thomas during the prehearing conference held on August 7, 2001, the CA ISO does not believe the draft Opinion is needed for any purpose.

The CA ISO offers these comments now because they relate also to a ruling on the scope of evidentiary hearings scheduled on this matter for September 4-7; a ruling

that ALJ Thomas indicated will be issued next week. The CA ISO comments below as to the draft Opinion apply also with regard to the ruling on scope to the extent such ruling provides that the evidentiary hearings will include a review of project need. The CA ISO may file supplemental comments by August 20, 2001 if it has additional relevant information to share with the CPUC at that time.

Pacific Gas and Electric Company (PG&E) has indicated that due to permitting uncertainty, it has delayed activity on the Northeast San Jose Project and that consequently a summer 2002 in-service date is no longer feasible. The CA ISO is concerned that if it is adopted as written, the draft Opinion could result in a delay of the in-service date for the Northeast San Jose Project beyond summer 2003. This would place at risk reliable electric service to end-use customers in the Northeast San Jose area. As the CA ISO testified during the evidentiary hearings held last fall, in accordance with CA ISO Planning Criteria, the Northeast San Jose project is actually needed now. Exh. 600 (ISO witnesses Greenleaf and Green) at 9.

The CA ISO is particularly concerned about the language in the draft Opinion that could be interpreted by some to mean that all issues litigated during the proceeding could be reopened for litigation, including need. As noted earlier, this prospect was reiterated by ALJ Thomas during the August 7 prehearing conference, where she suggested that need might be included in the issues to be addressed in hearings scheduled for early September.

The draft Opinion provides no justification for a full scale relitigation of a broad range of issues, including project need. The problem the draft Opinion purports to address is a need for further information on the costs of the alternative selected in D.01-

05-059. Nonetheless, the draft Opinion cites an unsupported statement by the Office of Ratepayer Advocates (ORA) that the Metcalf Energy Center may change the need for the project and states on page 6 that in addition to presenting concrete evidence on costs, parties "should also advocate specific Commission action if they claim the Commission should alter any of its conclusions in D.01-05-059."

Parties could interpret this language as an invitation to re-litigate all issues, including project need. The CA ISO believes that such an invitation is inappropriate and unfair to the parties that in good faith invested substantial resources to litigating the issues at the appropriate time and forum - the evidentiary hearings held last fall. For example, ORA could easily have raised the issue of the impact of the Metcalf Energy Center during the hearings. The same analysis applies as to new project configurations and route alternatives that were not presented or reviewed during the prior evidentiary hearings or in the Final Environmental Impact Report.

Further and more importantly, the CA ISO is concerned that if a large number of contentious issues, including need, are to be tried completely anew, there is a high likelihood that the further proceedings could delay the Northeast San Jose Project beyond summer 2003. The CA ISO appreciates ALJ Thomas' statements at the August 7 prehearing conference that she understands the need for an expeditious process and is committed to minimizing delays. Unfortunately, the CA ISO does not believe that an expeditious process is possible if the door is opened to re-litigate a large number of complex issues. For example, if parties are allowed to introduce new testimony on need, complex issues regarding load projections, new generation projections, and impacts on Reliability Must Run requirements will likely be implicated that require time to address

responsibly. Similarly, a review of new routes and project configurations, as proposed by ORA during the August 7 prehearing conference, would require significant time to assess their feasibility, likely costs and impacts on factors required to be assessed under California Public Utilities Code section 1001, et. seq. and CEQA impacts. All issues regarding need and project alternatives were litigated in the hearings last fall and were decided in D. 01-05-059. To permit parties to raise these issues again is contrary to appropriate administrative process.

The draft Opinion purports to address the need for additional evidence on the costs of the alternative selected by the CPUC in D. 01-05-059. The CA ISO has not taken a position on the environmental, social and aesthetic factors that must be weighed by the CPUC in selecting a route or on whether benefits from these factors justify higher costs. Similarly, the CA ISO does not take a position on the exact process by which this determination can be made by the CPUC most expeditiously, given its selection of a route other than that selected by PG&E. But whatever process is used it should be narrowly tailored to address the specific problem confronted by the CPUC as expeditiously as possible.

In fact, ALJ Thomas indicated at the August 7 prehearing conference that additional evidentiary hearings could be held on the costs for the alternative selected by the CPUC, without the need for a CPUC Opinion staying D. 01-05-059. Moreover, ORA indicated at the prehearing conference that it does not consider that it has much value to add regarding the question of costs for the alternative selected by the CPUC. In these circumstances, the draft Opinion is not required to accomplish the objective of developing an adequate record for the costs of the alternative selected by the CPUC.

Some of the open ended language in the draft Opinion regarding re-litigation of need was based on an unsupported statement in ORA comments indicating that in light of new information the Northeast San Jose Project might no longer be necessary. As noted earlier, the in-service date for the Northeast San Jose Project has already been delayed a year to summer 2003. The CA ISO is reviewing system conditions in light of new information and has concluded that there is no justification for delaying the Project beyond 2003.

ORA suggests that changes in the load forecast and the addition of new generation may have eliminated or significantly deferred the need for the Northeast San Jose Project. The CA ISO is aware that changes in the economy may impact some of the load growth that was projected in the Northeast San Jose area. While the CA ISO has not yet received or reviewed utility load forecasts that incorporate the effects of changes in the past year, the CA ISO has reviewed information on actual loads in the Southern Bay Area during the past two summers. Based on this information, it appears that the area was at risk for overloads following various kinds single contingencies during peak periods during summer 2000. The area has remained at risk for overloads following contingencies involving a single transmission line or transformer bank outage coupled with a single peaking generator off line in San Jose during June and July 2001. These circumstances constitute violations of CA ISO Grid Planning Criteria. Moreover, the CA ISO notes that there is as yet no information on peak loads in August 2001, which could be higher than loads in June and July if temperatures rise. Thus, even if loads in summer 2002 and 2003 are the same as those in 2000 and 2001, without the Northeast San Jose

Project, the transmission system in the Northeast San Jose area does not meet the CA ISO Grid Planning Criteria.

On the other hand, loads in the Northeast San Jose area this summer in particular have undoubtedly been affected by low temperatures and stellar conservation efforts on the part of the citizens and businesses in the area. At the August 7 prehearing conference PG&E indicated that it will take sixteen months to build the Northeast San Jose Project. During this time period loads could rebound quickly. Given the lead time needed for permitting and building a transmission project such as the Northeast San Jose Project, it is not possible to defer building a project until there is absolute certainty that anticipated loads will materialize without severely compromising reliability. The CA ISO will use utmost efforts to maintain reliable service to the Northeast San Jose area with or without the Project. Nonetheless, without the Northeast San Jose Project, it becomes increasingly likely that contingencies will occur which will require the CA ISO to drop load in Northeast San Jose to maintain reliability, or even that load curtailment may be required under normal system conditions with all transmission facilities in service if the factors currently depressing load growth change.

Similarly, the CA ISO is currently assessing the impact of proposed generation on the transmission system in the Northeast San Jose area. While the studies have not been completed, it appears that generating units located south of downtown San Jose, such as Metcalf and Moss Landing, are unlikely to defer need for the Northeast San Jose Project. These generators would increase South to North flows on already heavily loaded transmission lines in South San Jose and thus may in fact exacerbate the need for the Project. Generating units located close to Northeast San Jose loads could defer the need

for the Northeast San Jose Project if they are in fact built in a timely manner. Before a conclusion that the Project can be deferred can be made, it is necessary to assess the effect of particular generation projects on the transmission system and the likelihood that the projects will indeed be constructed and in-service by 2002-3.

Moreover, it is likely that without transmission upgrades, the CA ISO would have to rely on generating units in Northeast San Jose to maintain local reliability, and that such units would have to be made subject to Reliability Must Run agreements. Also, the CA ISO considers that whether or not the Northeast San Jose Project is built may in itself affect whether or not new generation materializes in the San Jose area. The insufficient transmission capacity in the area that would result without the Northeast San Jose Project could discourage much needed generation from proceeding with construction in the area. Before a conclusion can be made that new generation projects should be allowed to defer the Northeast San Jose Project these issues and effects would have to be assessed.

Given this information, the CA ISO considers that it is unwise to delay progress on the Northeast San Jose Project and to jeopardize a 2003 in-service date.

In sum, the CA ISO does not believe that the draft Opinion is necessary. Further, the CA ISO has significant concerns about certain language in the draft Opinion that could lead to re-litigation of project need and other issues resolved in D. 01-05-059. If the draft Opinion is issued at all, the CA ISO respectfully urges the CPUC to revise and clarify the draft Opinion to ensure that any further proceedings are narrowly focussed on addressing the outstanding cost issues in an expeditious manner. The CA ISO provides suggested edits to the draft Opinion to accomplish this objective in Attachment A.

Respectfully submitted this 10th of August, 2001 by:

Jeanne M. Solé
Regulatory Counsel
California Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
(916) 608-7144

ATTACHMENT A

OPINION STAYING DECISION 01-05-059

SUMMARY

This decision stays Commission Decision (D.) 01-05-059 pending further proceedings on the cost of the project we approved therein. In D.01-05-059, we granted the application of Pacific Gas and Electric Company (PG&E) for a certificate of public convenience and necessity (CPCN) to build a new 7.3 mile 230 kilovolt (kV) transmission line, upgrade certain other transmission facilities, and construct a transmission/distribution substation to serve the Northeast San Jose area. Because the transmission line route we approved differed from that PG&E proposed, we ordered PG&E to submit updated cost information for the version of the project we selected, and took comments on the new cost information.

Those comments, as well as the cost information itself, make clear that further proceedings on the cost of the project are required. The new cost estimate exceeds by more than \$100 million the original estimate PG&E furnished for the project. While PG&E's cost estimates for the original route, and variations on it, were in the \$77 million - \$104 million range,¹ the new estimate is \$182 million. The route PG&E supported at the

¹ PG&E presented the following cost estimates for various route configurations:

PG&E Cost Estimate	Route
\$77.3 million	PG&E's original preferred route
\$83.5 million	PG&E's new preferred route (Modified I-880-A/Proposed Route)

time we issued D.01-05-059 was estimated at \$83.5 million.² As the commenters point out,³ many of the costs are unexplained, and the sheer magnitude of the cost increases dictates that we take further evidence on the new information.

We note that the Office of Ratepayer Advocates (ORA) at one time sought, and was denied, leave to hire a consultant to review PG&E's original cost information on the ground the project costs would exceed \$100 million.⁴ At the time, the estimates were well below that figure. Because they now exceed \$100 million, ORA may, at its discretion, hire a consultant at PG&E's expense to review PG&E's new cost information pursuant to Pub. Util. Code § 631.⁵ Indeed, at the time the assigned

\$84.6 million	I-880-A route
\$85.1 million	Westerly Alternative
\$87.4 million	Underground Through Business Park route
\$103 million	Northern Receiving Station route
\$104 million	I-880-B route

D.01-05-059, *mimeo.*, at 28-29.

² *Id.* at 24 n.50.

³ D.01-05-059 granted intervenors the right to comment on the new cost information within 15 days of its submission.

⁴ *Assigned Commissioner's Ruling on Motion of the Office Of Ratepayer Advocates for Reimbursement Pursuant to Public Utilities Code Section 631 and Ruling Directing PG&E to Amend its Application*, dated Jan. 4, 2000.

⁵ Pub. Util. Code § 631 provides:

[T]he Commission shall require every electrical corporation and every gas corporation proposing to construct or modify any electric plant or gas plant at a cost in excess of one hundred million dollars (\$100,000,000) to reimburse the commission for expenses of such consultants or advisory services as the commission deems necessary for either or both of the following:

- (a) The processing of an application for certification of the plant.
- (b) The processing of an application for approval of any rate increase reflecting the inclusion of the cost of the plant in the rates of the corporation. This subdivision applies to any plant for which the costs

Commissioner denied ORA's request for reimbursement, he stated "If the amended application indicates a cost over \$100 million, ORA may refile for reimbursement under § 631."⁶ To expedite the process, we will not require ORA to refile its request, given that the current cost estimate so clearly exceeds \$100 million.

There are several pending applications for rehearing of D.01-05-059.⁷ This decision does not dispose of or prejudge those applications.

BACKGROUND

PG&E filed its application in September 1999. The Commission evaluated the project for its environmental impact, and also evaluated the need for and costs of the project. In D.01-05-059, the Commission approved the transmission line route that its Environmental Impact Report (EIR) found to be the environmentally superior route, and certified the EIR. It also found there was a need for the project based on projected electricity demands in the Silicon Valley area the project covered. However, because PG&E's cost information was not based on the chosen route, and otherwise was insufficient to set the project's cost cap,⁸ the Commission ordered PG&E to submit updated cost information reflecting the route and substation location the Commission had selected.

of construction or modification are approved for inclusion in the corporation's rates on or after January 1, 1983.

⁶ *Assigned Commissioner's Ruling on Motion of the Office of Ratepayer Advocates for Reimbursement Pursuant to Public Utilities Code Section 631 and Ruling Directing PG&E to Amend its Application*, dated Jan. 4, 2000.

⁷ *Application [of Joseph A. McCarthy et al.] for Rehearing of Decision 01-05-059*, filed June 18, 2001; *Application of Pacific Gas and Electric Company for Rehearing of Decision 01-05-059*, filed June 18, 2001; *Application for Rehearing of Decision 01-05-059 of ProLogis Limited Partnership-I and ProLogis Trust (ProLogis)*, filed June 18, 2001.

⁸ Pub. Util. Code § 1005.5 provides that "whenever the commission issues to an electrical . . . corporation a certificate authorizing the new construction of any addition to or extension of the corporation's plant estimated to cost greater than fifty million dollars (\$50,000,000), the commission shall specify in the certificate a maximum cost determined to be reasonable and prudent for the facility."

PG&E submitted its new information on June 18, 2001.⁹ The cost information revealed substantial cost increases even for portions of the project that were – or should have been – reflected in the original estimates. For example, D.01-05-059 approved PG&E’s choice of substation and 115kV transmission lines. Nonetheless, costs for these aspects of the project reflected substantial increases. While these increases may be explained by simple inflation, they are unexplained in PG&E’s cost submission.

Several commenters pointed out some of the changes in the cost information that require further inquiry. For example, Aglet Consumer Alliance noted in its comments that,

PG&E’s cost estimates are substantially higher for portions of the Project that should not have changed. For example, PG&E’s estimate for “CPCN support” has risen from \$1.2 million . . . to \$5.4 million PG&E’s estimate for “115kV Transmission Line” has risen from \$3.9 million . . . to \$6.6 million. . . .

PG&E’s dramatically higher total cost estimate undermines the purpose of Public Utilities Code § 1005.5, which is to protect ratepayers against the consequences of runaway costs for large scale utility construction projects. . . . Therefore, the Commission should consider convening additional hearings on the new cost estimate, to test PG&E’s numbers thoroughly in light of the finding that PG&E’s original cost showing was inadequate.¹⁰

⁹ *Advice Letter and Supplemental Testimony (Cost Estimate) of Pacific Gas and Electric Company Responding to Ordering Paragraph 4 of Decision 01-05-059*, filed June 18, 2001. PG&E submitted some of its cost information under seal. The assigned Administrative Law Judge instructed PG&E by email to execute confidentiality agreements with the interested parties so that they might have access to the sealed information and comment meaningfully on PG&E’s cost information. Once PG&E afforded such access, the interested parties had 15 days to comment on the cost information.

¹⁰ *Comments of Aglet Consumer Alliance on Cost Estimate*, filed July 16, 2001, at 2.

Other commenters claim PG&E's revised land costs are still too *low* to accurately reflect market conditions.¹¹ ORA states that conditions have changed since PG&E first submitted its cost estimates, mandating further consideration of the need for the project:

~~ORA is concerned that new cost [sic] of this project is vastly more expensive than the cost that the Commission considered in arriving at D.01-05-059. Yet the benefits of this project have not apparently increased. In addition, circumstances have changed since the Commission's consideration of the need for this project, most notably, the city of San Jose's reversal of its opposition to, and now support for, the Metcalf Energy Center that will provide similar benefits to this transmission project at no direct cost to ratepayers. Construction of the Metcalf Energy Center will reduce the incremental value of PG&E's proposed project.¹²~~

DISCUSSION

The magnitude of the cost increases requires further proceedings to test PG&E's new estimates. The new costs are unexplained in many places, and as the commenters pointed out, reflect increases in aspects of the project that did not change. Therefore, the assigned ALJ will issue a ruling scheduling hearings on the new cost information, and requesting briefing and other submissions on the specifics of that information. The hearings will occur expeditiously so to avoid undue delay of the project.

It may be that scrutiny of the new cost information leads us to select a different route among the routes that were presented during evidentiary hearings last fall. We do not decide that issue at this time, but wish to

¹¹ *Comments of [ProLogis] Regarding Pacific Gas and Electric Company's Supplemental Cost Estimates*, filed July 16, 2001, at 1; *Comments of Calpine C*Power on the Cost-Estimate of Pacific Gas and Electric Company*, filed July 16, 2001.

¹² *Comments of the Office of Ratepayer Advocates on Pacific Gas and Electric Company's Supplemental Testimony*, filed July 16, 2001, at 4.

make clear that it is a possibility to be considered at the hearings. We expect parties challenging the costs to present concrete and affirmative evidence that the costs are inaccurate. ~~They should also advocate specific Commission action if they claim the Commission should alter any of its conclusions in D.01-05-059.~~ We do not intend the hearings to address the environmental impacts of any of the alternatives discussed in the EIR, however, and parties should refrain from attempting to relitigate those issues. In addition, parties should refrain from attempting to propose additional routes or alternatives from those considered during the hearings last fall.

COMMENTS ON DRAFT DECISION OF THE ALJ

Section 311(g)(1) of the Public Utilities Code provides that this decision must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Pursuant to Pub. Util. Code § 311(g)(2) and § 311(g)(3), and Commission Rule 81(h), we reduce the 30-day period for comment on this draft decision due to an unforeseen emergency situation and to public necessity. The magnitude of PG&E's cost changes were not known to the Commission until PG&E submitted its cost information on June 18, 2001. The commenters did not make their concerns known until July 16, 2001, and PG&E will not submit its reply to those comments until July 25, 2001. Moreover, the record of the need for the new facilities reflects that the current transmission capacity will be insufficient to meet demand as early as summer 2002, and it will take PG&E some time to build the project. For all of these reasons, and the reasons set forth elsewhere in this decision, a stay is justified in the public interest with the shortened period for comments. Comments shall be

served by noon Pacific Time on August 20, 2001, but may be filed at any time up until 5:00 p.m. that day. No reply comments will be allowed.

Findings of Fact

1. PG&E's original cost estimates for various project alternatives ranged from approximately \$77 million - \$104 million. The alternative PG&E advocated at the time we rendered D.01-05-059 was \$83.5 million.
2. PG&E's cost estimate for the project alternative the Commission selected exceeds \$182 million.
3. PG&E's cost estimates for aspects of the project that did not change from PG&E's original request showed material increases not adequately explained by PG&E's filings. These increases are unexplained.
4. There are several other aspects of PG&E's cost information that require further scrutiny and clarification.

Conclusions of Law

1. The Commission has authority to cap project costs pursuant to Pub. Util. Code § 1005.5.
2. The public interest requires further examination of the nature of PG&E's cost estimates.

O R D E R

IT IS ORDERED that:

1. Commission Decision 01-05-059 is stayed pending further proceedings on the cost of the project approved therein.
2. Pursuant to Pub. Util. Code § 631, the Commission's Office of Ratepayer Advocates may, at its discretion, hire a consultant to review Pacific Gas and Electric Company's (PG&E) new cost information and seek reimbursement from PG&E for the cost of the consultant.

This order is effective today.

Dated _____, at San Francisco, California.