BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company) (U 39 E) for a Certificate of Public Convenience and) Necessity Authorizing the Construction of the Tri) Valley 2002 Capacity Increase Project) _____)	A. 99-11-025 (Filed November 22, 1999)

COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR ON THE PROPOSED DECISION OF ALJ COOKE MAILED JULY 24, 2001

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In accordance with CPUC rules 77.2, 77.3 and 77.4, the California Independent System Operator (CA ISO) respectfully submits these comments on the Proposed Decision of ALJ Cooke mailed July 24, 2001 (Proposed Decision) in the above captioned case. Pursuant to Public Utilities Code § 1001, et. seq. Pacific Gas and Electric Company (PG&E) seeks from the California Public Utilities Commission (CPUC) a certificate of public convenience and necessity (CPCN) to construct transmission facilities in the Tri Valley area (Pleasanton, Livermore, Dublin). The CA ISO agrees with the Proposed Decision that additional facilities are necessary in the cities of Dublin and Pleasanton. In fact, these facilities are urgently needed. The Proposed Decision errs, however, in failing to approve a new substation in North Livermore. Further, the Proposed Decision errs in suggesting that timing issues should be given little weight by the CPUC in selecting routes and substation sites. Finally, the Proposed Decision errs in failing to afford due defence to the CA ISO's decision on the need for the North Livermore substation. The CA ISO urges the CPUC to correct these errors in its final decision.

I. THE PROPOSED DECISION ERRS IN REJECTING PG&E'S APPLICATION FOR A CPCN WITH REGARDS TO A NORTH LIVERMORE SUBSTATION.

The Proposed Decision errs in rejecting PG&E's CPCN application with regards to a substation in North Livermore. There was general consensus during the hearings that the Tri-Valley Project is critically needed to ensure continued reliable service to consumers in the Tri Valley area. The Project is required to prevent overloading of critical facilities in the Tri Valley area under both normal and emergency conditions by 2002 and to return the grid in the area to the more reliable networked configuration for which it was designed. Exh. 802 (Greenleaf and Green) at 9. No party opposed the North Livermore substation. In fact, the City of Livermore, which in its opening brief questioned the need for the North Livermore substation, indicated in its reply brief that it "agrees with PG&E that the proposed North Livermore substation is needed in the Project's timeframe and should be approved." Reply Brief of the City of Livermore at 3.

Notwithstanding the general agreement that all aspects of Phase 1 of the Tri Valley Project should be built, the Proposed Decision fails to approve a substation in North Livermore. The Proposed Decision bases this determination on suggestions that the area to be served by the North Livermore substation could be served from Las Positas substation, and that load is unlikely to materialize in the North Livermore area because of the passage of Measure D.

As the CA ISO testified, the North Livermore substation is needed if load projected in North Livermore materializes. Tr. (Green) 11 Vol. at 1144. Each component of the Tri Valley Project was designed to address projected needs in particular sub-areas within the Tri Valley area. Tr. (Pearson) 5 Vol. at 311-12. It is not appropriate to look at overall load

projection numbers in the area and to assume that any load increases can be served equally reliably from any point. See Tr. (Pearson) 5 Vol. at 312.

The Proposed Decision provides no cite to the record for the proposition that projected load in North Livermore can be served reliably throughout the planning period from Las Positas substation. Instead the record indicates that substation transformer bank capacity at the Las Positas substation will be exhausted this year. Exh. 1 at 24. Further, the record shows that the Las Positas substation is connected to the Contra Costa/Newark, Circuit No. 1, whereas the Tri Valley Project substations would be connected to Contra Costa/Newark, Circuit No. 2. Tr. (Bingtan) 5 Vol. at 269-70. While there is no discussion of the reason for this choice in the record, it stands to reason that the choice was made taking into account projected loadings on each circuit (and this is in fact the case). Moreover, as PG&E witness Bingtan indicated, even after the Tri Valley Project is built, there is no ability to shift power from the planned facilities in the Tri Valley Area to the Las Positas substation at the 230 kV level. Tr. (Bingtan) 5 Vol. at 269-70. The interconnections between the Pleasanton, Livermore and Las Positas areas are at the 60 kV level where facilities are at capacity. Tr. (Bingtan) 5 Vol. at 271. Thus, there is no basis in the record to support the conclusion that service from Las Positas substation is an adequate substitute for the North Livermore substation.

In addition, there is no evidence in the record that Measure D will affect load forecast to the point of making the North Livermore substation unnecessary. To the contrary, PG&E testified emphatically that Measure D does not affect the need for the North Livermore substation, which is based in large part on approved or under construction projects. Exh. 1 at 18-19.

Finally, as the CA ISO argued on brief, prudency weighs in favor of approving the North Livermore substation. If the projected load materializes, the substation will be needed. Unless the substation has been already permitted by the CPUC, it will be difficult to place the facility in service quickly to meet growing loads. In contrast, PG&E testified that it will only proceed with construction of a component approved by the CPUC if, at the time, the component is needed. Tr. (Pearson) 5 Vol. at 308.

In sum, the Proposed Decision errs in concluding, contrary to the record in the case, that the North Livermore substation can be dispensed with, due to load growth limiting measures or the ability to serve additional load growth from the Las Positas substation. Instead, the record and prudency support permitting of the North Livermore substation. The CA ISO urges the CPUC to do so in its final decision.

II. GIVEN THE CRITICAL NEED FOR THE TRI VALLEY PROJECT, TIMING ISSUES MUST BE CONSIDERED BY THE CPUC IN MAKING A FINAL DETERMINATION ON ROUTES AND SUBSTATION SITES.

The Proposed Decision contends that the CPUC should give little consideration to timing issues in selecting routes and substation sites, and adopts the environmentally preferred alternatives for the facilities proposed in Vineyard and Dublin. The Vineyard alternative involves significant undergrounding, while the Dublin alternative is aggressively resisted by a number of critical parties. The CA ISO has not taken a position on the appropriate routes or substation sites for the facilities comprising the Tri Valley Project. Selection of routes and substation sites requires balancing environmental, social and aesthetic impacts with the costs of available alternatives. The CA ISO recognizes that the task of undertaking this balancing rests with the CPUC.

In this case, however, timing of the project is absolutely critical. The record in the case indicates that the grid in the Tri Valley area has been close to capacity for close to ten years, Tr. (Pearson) 5 Vol. at 288, that overloads are projected in 2002 even under normal conditions, Exh. 802 (Greenleaf and Green) at 9-10, and that to address system limitations, the grid in Tri Valley is currently operated in a less reliable radial configuration, id.. In these circumstances, there is no room for in-service date delays without a significant risk of involuntarily load curtailment in the Tri Valley area.

The CA ISO disagrees with the view in the Proposed Decision that these timing issues should be given little weight in determining the appropriate route and substation site because the critical need for the Project was caused by dilatory action by PG&E. See Proposed Decision at 57-8 ("We will consider timing in assessing the various alternative routes, but this factor will not be a primary driver in our decision regarding the routes we select"). Whether or not PG&E is at fault for failure to build the project ten years ago is immaterial. It is end-use customers in the Tri Valley area that will be harmed if electric service reliability deteriorates, and this impact must be considered by the CPUC in making its final selection of line routes and substation sites. Thus, in balancing issues associated with selection of lines route and substation sites, the CPUC must take into account potential timing delays and associated reliability impacts of routes that require substantial undergrounding or that are aggressively resisted. Further, the CA ISO urges the CPUC to avoid permitting delays such as those that are arising in the context of the application for a CPCN for the Northeast San Jose Project.

In sum, in determining routes and substation sites the CPUC should take into account the fact that the Tri Valley Project is critically necessary by summer 2002 to maintain reliable electric service to end use customers in the Tri Valley area.

III. THE PROPOSED DECISION ERRS IN FAILING TO AFFORD DUE DEFERENCE TO CA ISO DETERMINATIONS OF NEED.

The CA ISO has responsibility for grid reliability and transmission planning under state and federal law. The Proposed Decision errs in failing to adequately account for CA ISO responsibilities and in determining, contrary to the CA ISO, that the North Livermore substation is not needed. In a number of pleadings before the CPUC, the CA ISO has set forth its analysis of the respective responsibilities of the CA ISO and the CPUC in the development of the transmission system which includes due deference by the CPUC to CA ISO determinations of need. The CA ISO summarizes this analysis here once again.

A. The CPUC should give due deference to determinations of need by the CA ISO as a matter of law.

The CA ISO has responsibility for transmission planning under both California and federal law. Under California law, the CPUC retains responsibility for siting. California rules of statutory interpretation provide that specific statutory provisions must be read in the context of the full statutory framework, in a manner that is workable and reasonable and that avoids absurd results. If the rules of statutory construction are applied to the relevant statutory provisions, the only fair conclusion that can be drawn is that the CPUC should give due consideration to CA ISO determinations that new transmission facilities are needed.

AB 1890 transferred responsibility for ensuring grid reliability from the state's investor owned utilities and the CPUC to the CA ISO, and created the Electricity Oversight

Board to ensure that state interests are protected notwithstanding the transfer. 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 "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. 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.

Further, 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 §§ 330(k), 345, 346. CA ISO coordination of transmission planning was a prerequisite of FERC's recognition of the CA ISO as an Independent System Operator, see 77 FERC 61,204, pp 61,834-36 (November 26, 1996); 80 FERC ¶ 61,128, pp 61,416-35 (July 30, 1997). 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.[1]

The CA ISO recognizes, however, that AB 1890 did not revise state law as to transmission facility siting as set forth in Public Utilities Code § 1001, et seq. Public Utilities Code § 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". Thus, 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.

The CA ISO's responsibilities in the wake of AB 1890 and the CPUC's continued responsibilities in the context of transmission siting under Public Utilities Code § 1001, et seq, are easily harmonized as required under California rules of statutory construction. See Maricela C. v. Superior Court, 66 Cal.App.4th 1138; 1143-4, 78 Cal.Rptr.2d 488, 491 (Ct. App. 1998)("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."). 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

[1] 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.

of the CA ISO, that need has been found by the CA ISO in the context of the CA ISO's coordinated planning process. Any other interpretation renders the transmission planning work undertaken by the CA ISO in accordance with its responsibilities under AB 1890 and federal law superfluous and ineffective, contrary to California rules of statutory interpretation.

In sum, in accordance with state and federal law, the CPUC should give due consideration in this proceeding to the determination by the CA ISO that the North Livermore substation is needed.

B. Public policy requires that in CPCN proceedings, the CPUC give due deference to determinations that a project is needed made by the CA ISO.

Public policy requires the CA ISO and the CPUC to develop a sensible approach to transmission planning & expansion and to cooperate to promote an efficient and expeditious process for the approval of necessary transmission projects, while assuring that key public policy issues are adequately vetted and considered, and to minimize the duplication of effort and the likelihood of inconsistent results, while respecting the statutory responsibility of each entity. See Exh. 809 (Greenleaf and Green) at 6-7.

This can be accomplished by a framework whereby:

1) the CA ISO determines the need for transmission upgrades, and the electrical components and configuration that provide the best reliability benefits in relation to cost to meet identified needs;

2) the CA ISO does not assess the best route or substation sites for a project and does not undertake a detailed examination of environmental, social or aesthetic impacts since these issues will be assessed by the CPUC in the context of CPCN proceedings and the attendant review under CEQA;

3) the CA ISO cooperates with CPUC CEQA staff to ensure that feasible alternatives are identified in the context of the CEQA process and in order to be prepared to testify as to the

reliability of alternatives in the context of CPCN proceedings;

4) the CA ISO participates in CPCN proceedings assisting the utilities to document before the CPUC the CA ISO planning process that resulted in a determination of need and the conclusions of that process;

5) cost estimates are refined before the CPUC taking into account precise route and substation site alternatives;

6) the CPUC issues CPCN's, affording due regard to the determinations of need of the CA ISO and considering the full record before it as to environmental, social and aesthetic impacts and the costs of the reliable alternatives. Exh. 809 at 6-7

This framework provides a cooperative approach that allows each entity to undertake the work within its area of expertise, in accordance with its statutory responsibilities and without a duplication of efforts.

In contrast, a failure on the part of the CPUC to accord proper weight to the transmission planning work of the CA ISO 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 established public policy.

The Proposed Decision affords little consideration to the determination of the CA ISO that all aspects of Phase 1 of the Tri Valley Project are needed. The Proposed Decision states in relevant part:

> Because we have not approved construction of the proposed North Livermore substation and attendant transmission lines, we clearly did not defer entirely to the decision of the ISO that the project is needed. ISO concedes it did not independently

> analyze PG&E's load forecast or cost projections. Given the record developed in this case, we simply reach a different conclusion on the need for the proposed North Livermore substation.
>
> Further, we have an independent statutory duty (Pub. Util. Code § 1001) to ensure that projects of this magnitude are necessary. 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. Here we reached a different conclusion from that reached by the ISO, because of the evidence before us. While we agree with ISO that it has responsibility to ensure the reliability of the state's electric system (Pub. Util. Code § 345), we believe that ensuring reliability and deciding that a particular transmission project should be built are two separate issues. In this case, we concur with the ISO that a portion of the proposed project is needed to meet expected future increases in the Tri-Valley's electricity demands.
>
> Proposed Decision at 56.

This discussion is inconsistent with the legal and public policy analysis laid out above, and contrary to the record in the case. It is impossible for the CA ISO to ensure grid reliability sensibly, (as the Proposed Decision acknowledges the CA ISO must) if the CPUC fails to permit transmission projects that the CA ISO has determined are needed to maintain reliability. The CPUC's failure to give due consideration to CA ISO determinations, in effect eliminates the most important mechanism by which the CA ISO can provide for transmission grid reliability, requiring utilities to build needed transmission upgrades. If the CPUC fails to permit needed upgrades, the CA ISO is left relying on many small transmission upgrades, that do not require CPUC approval, or the hope that sufficient new generation will develop to prevent reliability degradation. The result is perpetuation of a sub-optimal transmission system, and the need for reliability must run contracts to prevent the exercise of locational market power by generating units in critical areas. These results are contrary to the recent recognition by key policy makers in California that the transmission system must be upgraded, as evidenced by the passage of AB 970.

In addition, the Proposed Decision errs by basing its conclusion that the CPUC can ignore the CA ISO's determination of need for the North Livermore substation because the

CA ISO did "not independently analyze PG&E's load forecast or cost projections." Proposed Decision at 56. The Proposed Decision does not reject the North Livermore substation based on costs; thus, the level of CA ISO review of costs is irrelevant. As to load forecasts, the record is clear that "PG&E's load forecast was reviewed by the CA ISO, compared against historic data, and found to be reasonable." Tr. (Green) 11 Vol. at 1138.

In sum, the Proposed Decision errs as a matter of law, policy and fact in failing to afford due deference to the CA ISO's determination that all portions of Phase 1 of the Tri Valley Project are needed.

IV. CONCLUSION

The CA ISO respectfully urges the CPUC to approve all portions of Phase 1 of the Tri Valley project in its final decision. CA ISO recommended changes to the findings of fact, conclusions of law and order are set forth in Attachment A.

Respectfully submitted this 13th[nd] of August, 2001 by:

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ATTACHMENT A
CA ISO PROPOSED CHANGES TO FINDING OF FACT CONCLUSIONS OF LAW AND ORDER

Findings of Fact

1. The project elements in Pleasanton ~~and~~, Dublin and North Livermore are needed to maintain reliability of the electric transmission system in the Tri Valley area.

2. ~~Measure D limits growth in the vicinity of PG&E's proposed North Livermore substation.~~ The ISO determined that all project elements in Pleasanton, Dublin and North Livermore are needed to maintain reliability of the electric transmission system in the Tri Valley area in an extensive and public process.

3. ~~Growth in the Livermore/Las Positas DPA is primarily occurring more than four miles from the location of PG&E's proposed North Livermore substation.~~ The ISO reviewed PG&E's load forecast, compared it against historic data, and found it to be reasonable.

4. ~~The demand forecasts and planned development in the Livermore area do not support the need for a substation in North Livermore.~~ The ISO did not consider in detail the environmental, social or aesthetic impacts of alternative transmission lines routes or substation sites.

~~5. The ISO deferred to PG&E's assertions in many cases rather than testing PG&E's conclusions.~~

. . . .

7. ~~Without the development associated with the North Livermore Specific Plan, there is not a need for additional capacity in North Livermore at this time~~.

8. The environmentally superior build routes meet the ISO's electrical and reliability criteria.

. . . .

10. The environmentally superior transmission line routes we select, S2A/S2, ~~and~~ D1, and L(?), in their entirety, pose less harm to the environment than do the alternate routes proposed by PG&E and other part.

. . . .

18. The ISO did not assess in detail ~~analyze~~ the costs of PG&E's proposed route or any other route.

. . . .

27. The FEIR identifies the S2A/S2 and S2A/S2/S5, ~~and~~ D1 and P3 as environmentally superior build alternatives to PG&E's proposed project.

Conclusions of Law

4. The ISO has responsibility to ensure the reliability of the State's electrical system pursuant to Pub. Util. Code § 345. Accordingly, the Commission should afford due deference to findings of need regarding transmission projects by the ISO. ~~However, ensuring reliability and deciding that a particular transmission project should be built are two separate issues.~~

. . . .

10. The approval of the application, as provided herein, should be conditioned upon construction according to the environmentally superior routes S2A/S2, ~~and~~ D1, and L(?) and the completion of the mitigation measures identified in the FEIR and Appendix C and D hereto. The mitigation measures are feasible and will minimize or avoid significant environmental impacts. Those mitigation measures should be adopted and made conditions of project approval.

. . . .

12. After considering and weighing the values of the community, benefits to parks and recreational areas, the impacts on cultural and historic resources, and the environmental impacts caused by the project, we conclude that the CPCN for the S2A/S2, ~~and~~ D1 and L(?) alternatives should be approved.

ORDER

3. A Certificate of Public Convenience and Necessity is granted to PG&E to construct a new substation in North Livermore and a 230 kV double circuit transmission line from the new North Livermore substation to the Contra Costa-Newark transmission line.

4.~~3.~~ PG&E shall, as a condition of approval, build the project in accordance with the environmentally superior route identified as S2A/S2, ~~and~~ D1 and L(?) and described in Section 6 to this decision. In addition, PG&E shall comply with all mitigation measures specified in Appendix C and D attached hereto, and removal of the existing 60 kV line between Tesla-Newark and Vineyard Substation, as directed by the Commission's Executive Director or his designee(s). PG&E shall work with the Commission's Energy Division to create more detailed maps for use in construction and mitigation monitoring of the selected route to supplement those provided in Appendix A to this decision.

5.~~4.~~ PG&E's project costs shall be capped at ~~$97,964,265~~ [cost of all elements of the project, including the selected alternative in North Livermore] for the project authorized.