BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Conditional Application of PACIFIC GAS AND ELECTRIC COMPANY (U 39 E) for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Los Banos-Gates 500 kV Transmission Project	**Application No.** **A.01-04-012**

PACIFIC GAS AND ELECTRIC COMPANY'S NOTICE OF WITHDRAWAL OF CONDITIONAL APPLICATION NO. A.01-04-012

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Applicant Pacific Gas and Electric Company ("PG&E"), pursuant to Section 1001 *et seq.* of the California Public Utilities Code, Rules 2-8, 15, 16, 17.1, 17.3 and 18 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure (California Code of Regulations, Title 20), California Public Utilities Commission General Order 131-D ("GO 131-D"), and PG&E's Conditional Application for a Certificate of Public Convenience and Necessity ("CPCN") Authorizing the Construction of the Los Banos-Gates 500 kV Transmission Project (the "Project") (Application No. A.01-04-012) (the "Conditional Application") at 1 n.1, files the following Notice of Withdrawal of Conditional Application No. A.01-04-012 ("Notice of Withdrawal").

I.

INTRODUCTION

Applicant PG&E hereby informs the Commission of an important new development that obviates the need for PG&E's Conditional Application. Various public and private parties, including PG&E, have entered a Memorandum of Understanding ("MOU") for a project (the "WAPA Project") to finance and co-own a transmission upgrade of Path 15. The WAPA Project not only addresses the Commission's concern to increase Path 15's transmission capacity, but provides all California residents with the benefits of upgraded transmission lines without imposing all of the associated costs solely on the customers of the investor-owned utilities. In light of these changed circumstances, it is now in the public interest for PG&E to withdraw its Conditional Application and pursue the Path 15 transmission upgrade through the WAPA Project.

PG&E will play a key role in this joint effort to ensure that the Assigned Commissioner's objectives in directing PG&E to file the Conditional Application will continue to be met. The MOU participants have committed to an aggressive schedule for completing contractual arrangements, defining the necessary scope of work and completing the transmission upgrades by an estimated in-service date of summer 2004. At this point,

because the MOU will result in the timely completion of the same project under consideration in this proceeding, but with the costs spread across a much larger number of customers as a result of other participants' willingness to fund much of the project, PG&E believes that the MOU represents the best solution for upgrading Path 15. Accordingly, and to avoid needlessly increasing ratepayer costs by continuing with a duplicative process that is no longer necessary,[1] PG&E hereby submits this Notice of Withdrawal of its Conditional Application.[2]

II.

PROCEDURAL AND FACTUAL BACKGROUND

A. In Response To The Assigned Commissioner's Ruling, PG&E Filed A Conditional Application For A CPCN For The Project.

On March 29, 2001, the Commission ordered PG&E to file an application for a CPCN for the Project within fourteen days. *See* Assigned Commissioner's Ruling in

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1 PG&E's participation in the WAPA Project will be limited to construction of the necessary substation modifications and 230 kV reconductoring work. MOU at 6. Because neither of these activities requires either a CPCN or a Permit to Construct ("PTC") under G.O. 131-D, the authority sought in the Conditional Application is no longer necessary. *See* G.O. 131-D, Section III.B (PTCs only required for work at existing substations that results in "an increase in substation land area beyond the existing utility-owned property or an increase in the voltage rating of the substation above 50 kV"); III.A. (CPCNs not required for "the replacement of existing power line facilities or supporting structures with equivalent facilities or structures" or "the placing of new or additional conductors, insulators, or their accessories on or replacement of supporting structures already built").

2 PG&E reserves all legal rights to challenge the decisions or statutes under which it has made this filing, and nothing in this filing constitutes a waiver of such rights. Also, PG&E reserves any additional legal rights to challenge the requirement to make this filing by reason of its status as a debtor under Chapter 11 of the Bankruptcy Code, and nothing in this filing constitutes a waiver of such rights. In addition, on September 20, 2001, PG&E filed its proposed plan of reorganization with the Bankruptcy Court pursuant to Chapter 11 of the Bankruptcy Code. PG&E reserves all rights to withdraw, amend or revise its filings before the Commission and other agencies to implement the authorizations or requirements of the order or orders of the Bankruptcy Court confirming PG&E's plan of reorganization.

Investigation No. 00-11-001 ("Ruling"). Although PG&E had serious concerns about the timing, appropriateness, and validity of that Ruling, as well as whether PG&E was the entity best suited to fund, build, and operate the Project, PG&E complied with the Ruling and filed a Conditional Application for a CPCN for the Project on April 13, 2001. PG&E did so to expedite full consideration by all parties of the need for and cost-effectiveness of this potential upgrade to Path 15, and who can best build and permit the project.

The Conditional Application was conditioned upon (1) a California Independent System Operator ("ISO") determination that the Project is needed and cost effective; (2) PG&E management approval of construction of the Project; and (3) Bankruptcy Court approval of the expenditures needed to construct the Project. PG&E stated in the Conditional Application that, "[s]hould PG&E management approve the Project at some future date, PG&E will promptly inform the CPUC that it is unconditionally seeking a CPCN for the Project as described herein." Conditional Application at 1 n 1. None of the stated conditions have been satisfied as of the date of this Notice of Withdrawal, and PG&E has never informed the Commission that it was requesting a CPCN for the Project described in the Conditional Application.

The Conditional Application contained several major elements that provided the Commission with all the information necessary to commence its California Environmental Quality Act ("CEQA") and administrative processes, including (1) a description of an electrical Plan of Service, (2) a discussion of potential Project need based on a preliminary ISO analysis, and (3) a Proponent's Environmental Assessment ("PEA") based on the Los Banos-Gates Transmission Project portion of the 1988 Environmental Impact Statement/Environmental Impact Report for the California-Oregon Transmission Project.

B. Since Filing The Conditional Application, PG&E Has Submitted Opening Testimony And Worked Cooperatively With State And Federal Agencies To Complete Environmental Studies.

In the July 13, 2001 Assigned Commissioner's Ruling and Scoping Memo ("Scoping Memo"), later amended by the September 7, 2001 Administrative Law Judge's Ruling Granting Motion for Extension of Time With Modifications, the Commission required PG&E and the ISO to file opening testimony on September 25, 2001. The ISO has submitted testimony regarding the need for the Project. PG&E's opening testimony contained the following: (1) identification of two alternatives for an electrical Plan of Service to implement the Project, and a recommendation that Alternative 2 be adopted for any approved Project; (2) detailed cost estimates for electrical Alternatives 1 and 2, with the Los Banos-Gates 500 kV transmission line portion of the Project constructed along either of two alternative routes (the "Western Corridor Alternative" and the "Eastern Corridor Alternative"), including an explanation of the methodology, assumptions and information upon which the cost estimates are based; (3) a discussion of the available information regarding community values, recreational and park areas, and historical and aesthetic values relevant to the selection of route for the proposed Project; and (4) a discussion of PG&E's intent to comply with the Commission's EMF Decision.

In addition, in an effort to accommodate the Commission's desire to expedite a Path 15 upgrade, whether constructed by PG&E or other parties, since filing the Conditional Application, PG&E has competed extensive evaluations of biological conditions along the proposed Path 15 transmission line route. In April 2001, PG&E completed special-status wildlife and plant field surveys of the 1000-foot corridor located along the proposed transmission line route. Thereafter, PG&E performed a focused, protocol-level survey for the endangered blunt-nosed leopard lizard at all proposed construction sites and transmission line pull sites. Because PG&E also has identified proposed tower locations and proposed access road routes, PG&E botanists and biologists have performed site-specific surveys of each

proposed tower location and access road route in an effort to identify any potential biological resource conflicts with the proposed tower locations or access road routes.

Moreover, PG&E prepared and filed an application for right-of-way for the proposed transmission line to cross federal lands administered by the U.S. Bureau of Land Management, and an application for a perpetual license to cross federal lands administered by the U.S. Bureau of Reclamation. To support these federal permit applications, PG&E botanists and biologists prepared a Biological Assessment for the Path 15 project in compliance with Section 7 of the federal Endangered Species Act of 1973. Further, PG&E cultural resources specialists have been working with other stakeholders to develop a Programmatic Agreement for the Path 15 Project in compliance with Section 106 of the National Historic Preservation Act of 1966.

PG&E has shared information developed in support of these efforts with the Commission's Energy Division staff, and otherwise assisted the Commission in its ongoing process under CEQA. The Commission published a Draft Supplemental Environmental Impact Report ("Draft SEIR") for the Project in early October 2001, less than six months after PG&E filed its Conditional Application and PEA. PG&E applauds the Commission for the speed with which it produced this document, and for the comprehensiveness of the analysis set forth therein. PG&E expects that the Draft SEIR, the preparation of which has been funded by PG&E, will serve as the basis for the WAPA Project's compliance with CEQA. Consistent with the MOU, PG&E expects to receive an interest in the WAPA Project commensurate with its costs incurred for this and other work conducted in support of the CPCN that will be useful for the WAPA Project, and this additional incremental capacity will be made available to the ISO-controlled grid for the benefit of California consumers of electricity.

C. The Federal Government Directed The Western Area Power Administration To Determine Whether Outside Parties Are Interested In Helping Finance And Co-Own Upgrades To Path 15, Leading To A Memorandum Of Understanding Among Public And Private Parties.

The National Energy Policy Report, announced on May 17, 2001, recommended that the President direct Secretary of Energy Spencer Abraham (the "Secretary") to authorize the Western Area Power Administration ("WAPA") to explore relieving the constraints on Path 15 through transmission expansion.

On May 28, 2001, the Secretary directed the Administrator of WAPA to complete its planning to relieve Path 15 constraints, and determine whether outside parties were interested in helping finance and co-own the necessary system additions, including transmission lines. On June 13, 2001, WAPA issued a Federal Register notice seeking statements of interest from outside parties to help finance and co-own a transmission upgrade of Path 15. *See* 66 Fed. Reg. 114 (June 13, 2001).

On October 18, 2001, the Secretary announced the MOU among various public and private parties governing the financing and co-ownership of the necessary Path 15 system additions (the "WAPA Project"). The participants include the following: PG&E; Kinder Morgan Power Company; Transmission Agency of Northern California; Trans-Elect; WAPA, Sierra Nevada Region Marketing Function; PG&E National Energy Group; and Williams Energy Marketing and Trading Company (the "Participants"). *See* Memorandum of Understanding, Path 15 Project (October 16, 2001) ("MOU") at 2. The MOU entered into by PG&E and the other Participants represents their intent to participate in the WAPA Project and their commitment to jointly develop additional contractual documents that will address responsibilities, financial contributions, ownership rights, and operational details of the WAPA Project. MOU at 2.

Like the Project discussed in the Conditional Application, the WAPA Project is expected to consist of: constructing a new 84-mile, 500 kV transmission line between

PG&E's Los Banos and Gates substations in Central California; terminal work at both substations; and certain 230 kV system upgrades. MOU at 1. The estimated cost of the WAPA Project is approximately $300 million, with an estimated in-service date of summer 2004. *Id.* The WAPA Project, again like the Conditional Application Project, is expected to have an incremental rating of 1,500 megawatts (MW) in the South-to-North direction, creating a Path 15 combined system rating of 5400 MW. MOU at 4.

While the final ownership percentages will be set forth in future agreements, PG&E is a key participant in the WAPA Project. PG&E will construct the necessary modifications at its existing Los Banos and Gates 500 kV substations and the 230 kV reconductoring work, expected to cost approximately $63 to $87 million, and will receive a commensurate percentage of the capacity on the new 500 kV line to devote to the ISO-controlled grid. MOU at 6. Moreover, PG&E expects to receive an additional interest in the WAPA Project commensurate with its other costs incurred, including costs associated with the engineering and environmental work performed to date and the costs necessary to fund preparation of the Commission's Draft SEIR. MOU at 6.

To ensure the WAPA Project agreements are completed in an expeditious manner, the Participants set an aggressive schedule to define the WAPA Project and the work to be done at each facility within ninety (90) days of the execution of the MOU. MOU at 6. Perhaps most importantly, "[t]he incremental transmission capability made available by this Project shall be utilized in a manner consistent with FERC regulations. All unused Project transmission capacity shall be made available in a timely manner on a non-discriminatory basis, consistent with FERC regulations. Transmission rates charged will be just and reasonable, consistent with the public interest, or established under existing law." MOU at 5.

III.

WITHDRAWAL OF CONDITIONAL APPLICATION

PG&E believes that the MOU entered into among PG&E and other WAPA Project Participants represents the best solution for upgrading Path 15 for the benefit of all California residents. In light of this important new development, PG&E hereby withdraws its Conditional Application from any further consideration by the Commission.

As discussed above, the WAPA Project will be financed and co-owned by various public and private parties. As the Commission is aware, the benefits of a Path 15 upgrade will be shared by all California residents as well as other users of the ISO Grid. If PG&E alone were to construct the Path 15 upgrades, the approximately $320 million cost of designing, permitting, and constructing such upgrades ultimately would be borne only by customers of the investor-owned utilities on the ISO Grid. Under the WAPA Project, those costs will be spread over a larger number of customers, including customers of the participants in the Transmission Agency of Northern California and WAPA, and the customers of various private energy companies, all of whom will benefit from the Path 15 upgrades.

Although all aspects of the WAPA Project are not yet finalized, the MOU has made such a project sufficiently certain that PG&E believes it appropriate to withdraw the Conditional Application now to avoid incurring further significant costs for permitting and certification in connection with the Project set forth in PG&E's Conditional Application. Continuing with the Commission's CEQA and CPCN review processes would require PG&E to continue funding the preparation of the Commission's Environmental Impact Report, continue conducting preliminary engineering and design work for the entire project, continue consulting with federal, state, and local agencies regarding environmental impacts of proposed routes, continue preparing and reviewing testimony and briefs, and otherwise participating in legal proceedings before the Commission, begin negotiating with landowners

for land acquisition, and incurring permitting and environmental compliance and mitigation costs. If PG&E were to continue pursuing the Conditional Application at this time, its customers would pay for costs associated with this proceeding that are unnecessary given that PG&E's participation in the WAPA Project does not require Commission approval under GO 131-D.[3] *See supra* n.1. By instead continuing to perform only work that will be beneficially incurred for the WAPA Project and work necessary to further PG&E's participation in the WAPA Project, PG&E will avoid saddling ratepayers with duplicative costs.

The Participants (including PG&E) have demonstrated their commitment to move forward with the WAPA Project as expeditiously as possible, by entering into the MOU discussed above and agreeing to an aggressive schedule to define the WAPA Project. MOU at 6. PG&E will continue to play a key role in this cooperative effort, and will help ensure that the WAPA Project objectives are met so that all Californians will receive the benefits of Path 15 transmission upgrades by the estimated in-service date of summer 2004. In addition, PG&E may recover the costs of the work it has performed in connection with its Conditional Application, to the extent that its work products are reviewed by the Participants and found to have been beneficially incurred on behalf of the WAPA Project. *Id.*

In sum, by withdrawing its Conditional Application, PG&E will allow the costs of upgrading the Path 15 transmission lines to be borne by all ratepayers who will experience the benefits of such transmission upgrades. In addition, PG&E will preserve its assets for capital improvements where shared funding is not available and minimize ratepayer exposure to duplicative permitting costs. Through its significant involvement in the WAPA Project, PG&E will endeavor to ensure the prompt construction of a Path 15 transmission

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[3] Given that there is now an alternative means of upgrading Path 15 at a lower overall cost to PG&E, and that lowering PG&E's share of project costs would naturally be an objective of the Bankruptcy Court, PG&E would likely need Bankruptcy Court approval to continue with the Conditional Application in the face of the opportunity presented by the WAPA Project. In light of this Notice of Withdrawal, however, this issue is moot.

upgrade, thereby fulfilling the goals of the Assigned Commissioner's Ruling that caused PG&E to file the Conditional Application.

IV.

CONCLUSION

For the reasons set forth above, PG&E withdraws its Conditional Application for a Certificate of Public Convenience and Necessity Authorizing the Construction of the Los Banos-Gates 500 kV Transmission Project.

Under the Memorandum of Understanding entered into among various public and private parties, the Path 15 transmission lines will be upgraded at a reduced cost to PG&E's and other ISO Grid participants' ratepayers. PG&E is proud of its role as a key participant in this collaborative agreement and will continue to work for the benefit of the public to ensure that all Californians will receive the benefits of Path 15 transmission upgrades by the estimated in-service date of summer 2004.

Dated: November 6, 2001

Respectfully Submitted,

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