

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of The Utility Reform Network
and the City of Oxnard for Rehearing of
Resolution E-4392 Regarding
Interconnection Facilities for McGrath Gas
Turbine Peaker Proposed for Oxnard,
California.

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Application No. 11-02-____
(Filed February 14, 2011)

**APPLICATION OF THE UTILITY REFORM NETWORK
AND THE CITY OF OXNARD
FOR REHEARING OF RESOLUTION E-4392**

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THE CITY OF OXNARD
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In accordance with Section 1731 of the Public Utilities Code and Article 16 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure, The Utility Reform Network (TURN) and the City of Oxnard (Oxnard) seek rehearing and reconsideration of Resolution E-4392, issued on January 14, 2011. Pursuant to Rule 16.3, TURN and Oxnard request oral argument on this application for rehearing.

I. Introduction

In its Advice Letters 2517-E and 2517-E-A, Southern California Edison Company (SCE) sought to establish that its proposal to construct interconnection facilities for an “approved but not yet constructed SCE McGrath gas turbine peaker generating facility” in Oxnard is exempt from the Commission’s requirement to file for an application requesting authority to construct.¹ TURN and Oxnard filed a protest to the advice letters on the grounds that the Commission has never approved this specific generation facility at the proposed Oxnard location, and the California Coastal Commission’s (CCC or Coastal Commission) report addressed a local reliability need that the California Public Utilities Commission has never considered. TURN and Oxnard also included two sentences that called for the Commission to direct SCE to hold off on further development associated with this peaker plant unless and until the utility obtained the various permits necessary to construct the plant.

Resolution E-4392 found that SCE’s amended advice letter complies with General Order (G.O.) 131-D, and “denies the protests submitted to the Commission because the

¹ Advice Letter 2517-E-A, p. 3.

facts claimed in the protest do not support a finding that ... SCE incorrectly applied for an exemption pursuant to Section III of GO 131-D.”² But the Resolution acknowledges that the interconnection facilities that are the subject of SCE’s advice letter are inextricably tied to the peaker plant that SCE seeks to build in Oxnard:

The Commission understands that the sole purpose of the McGrath Substation is to facilitate an SCE proposed peak load period generation plant to be located in the immediate vicinity.³

Despite this recognition, the Resolution never directly addresses the core arguments of the TURN/Oxnard protest to Advice Letter 2517-E-A, that is, that permission to build the substation and other interconnection facilities must follow consideration and approval of the generation plant itself.⁴ Instead, the Resolution merely repeats SCE’s assertion that the generation plant is “approved but not yet constructed.”⁵ And the only finding related to the TURN and Oxnard protest inaccurately characterizes the Protest as only seeking to condition approval of the advice letter on SCE’s obtaining the necessary permits to construct and operate the plant.⁶

The Commission must grant rehearing of Resolution E-4392 for a number of reasons. First, as TURN and Oxnard explained in the protest of Advice Letter 2517-E-A, the Commission has never issued a ruling that addresses the specific need for SCE’s proposed peaker plant in the proposed location. The Resolution appears to concede that without the generation plant there is no need for the interconnection facilities. It commits

² Resolution E-4392, p. 1.

³ *Id.*

⁴ “[The Commission] should instead direct SCE to not pursue any further efforts on the McGrath Substation unless and until the CPUC votes out a decision determining whether there is a need for the McGrath peaker under current conditions.” TURN-Oxnard Protest of A.L. 2517-E-A (December 20, 2010), p. 4.

⁵ Resolution E-4392, p. 2.

⁶ *Id.*, Finding and Conclusion 6.

factual error in analyzing the SCE advice letter as if the Commission has approved the generation plant as proposed by SCE.⁷ Similarly, the reliance on the Coastal Commission's review of whether the proposed plant would be consistent with the local coastal plan fails to recognize that the California Coastal Commission's analysis focused on meeting local reliability needs within very restricted options. As TURN and Oxnard explained in the protest, "[t]he CPUC has never considered, much less addressed, any such 'local reliability needs' for SCE, nor has it limited options for addressing 'local reliability needs' to those that can be built on utility-owned parcels."⁸

In addition, the Commission must grant rehearing because of the inadequacy of the discussion of the adopted outcomes in the Resolution. The text, associated findings, conclusions, and ordering paragraphs merely state that Energy Division concluded that the proposed facilities meet the criteria for an exemption from the permit to construct requirements, but do not provide the rationale for the findings. A reviewing court would have no basis for understanding why the Energy Division reached this conclusion.

II. Resolution E-4392 Errs In Treating The Proposed McGrath Peaker Generation Plant As "Approved."

The second sentence of Resolution E-4392 very plainly states the linkage between the interconnection facilities that are the subject of SCE's Advice Letter and the peaker

⁷ The Commission should note that in R.09-10-032 (the resource adequacy rulemaking), the Revised Scoping Memo of the Assigned Commissioner and Administrative Law Judge issued February 3, 2011 (p. 5), describes the "need" issue TURN and Oxnard sought to raise in that proceeding to be "significant and does not appear to have a clear procedural venue at this time." TURN and Oxnard submit that this description is inconsistent with any assertion that the Commission had already addressed this need issue in a prior ruling or decision.

⁸ TURN-Oxnard Protest of A.L. 2517-E-A (December 20, 2010), p. 2.

plant that the utility seeks to build in Oxnard.⁹ If the “sole purpose” of the interconnection facilities is to facilitate a particular peaker plant, and parties protesting the advice letter challenge the requested relief on the basis that the peaker plant lacks appropriate Commission approval, the Resolution needs to address the issue. At the very least, the Resolution must point to the Commission decision that approved SCE’s proposal to build a gas-fired peaker plant in Oxnard. TURN and Oxnard submit that the Resolution did not identify any such decision or ruling because none exists, as the Commission has never addressed SCE’s claim that this particular plant is needed in this particular location to meet a local reliability need. In the absence of such a decision, the analysis under General Order 131-D is largely irrelevant or, at best, premature given that the transmission infrastructure that is the subject of SCE’s advice letter is only necessary if the generation plant is built.

In the past SCE has pointed to the Assigned Commissioner’s Ruling from 2006 (and the resulting resolution establishing memorandum accounts for the costs of the unspecified plants that SCE might build in response to that ruling) as the formal CPUC authorization for the McGrath peaker it wishes to build in Oxnard. The Commission needs to recognize that if it agrees with this characterization, the California Coastal Commission report that Resolution E-4392 relies upon is not a sufficient basis for allowing SCE to proceed without a permit to construct. As TURN and Oxnard explained in the protest, the Coastal Commission report is premised on meeting “local reliability needs” and included criteria that limited options, such as those that could be built on utility-owned parcels. In some cases, the Coastal Commission rejected as not-feasible alternatives that met the

⁹ Resolution E-4392, p. 1.

original criteria set forth in the 2006 ACR.¹⁰ Thus if this Commission is to rely in any way on the report of the California Coastal Commission to establish the need for McGrath peaker plant and, by extension, the interconnection facilities, it would need to acknowledge and address the fact that the Coastal Commission's analysis applied conditions and restrictions that this Commission has never considered, much less endorsed.

III. The “Discussion” Of The Disputed Issues And The Basis For The Outcome Adopted In The Resolution Is Inadequate.

The “discussion” section of Resolution E-4392 consists of four very short paragraphs. The first paragraph states that SCE amended its original advice letter, and as a result the discussion focuses on the applicability of the GO 131-D, Section IIIB(1)(f) exemption to the permit to construct requirements. The second paragraph states that power line facilities and substations are generally subject to “permit to construct” requirements, and describes the exemption under Section IIB(1)(f) where the substation to be constructed has been reviewed pursuant to CEQA.

The third paragraph states that SCE submitted the final “CEQA equivalent document prepared by the CCC pursuant to its certified state regulatory program authority for the McGrath 66 kV Substation Project.” It continues

Energy Division reviewed the CCC's document to ascertain adequacy and compliance with Section III B(f)'s requirements. Energy Division has concluded that the proposed facilities meet the criteria for an exemption from PTC Requirements.¹¹

The discussion errs in referring to the CCC having prepared a document “for the McGrath 66 kV Substation Project.” The CCC reviewed the proposed peaker plant, including the

¹⁰ TURN-Oxnard Protest of A.L. 2517-E-A (December 20, 2010), pp. 2-3.

¹¹ Resolution E-4392, p. 5.

proposed substation and other interconnection facilities. There is nothing in the document that considers the interconnection facilities as distinct from the associated generation plant.

The discussion in the third paragraph is also inadequate in that it merely states that Energy Division conducted review to “ascertain compliance” without ever citing to anything in the CCC’s document that would have been the basis for determining whether compliance with GO 131-D, Section IIIB(1)(f) had been achieved. Similarly, the Resolution merely states that Energy Division concluded that the criteria for an exception have been met, without specifically identifying the criteria that Energy Division applied or the basis upon which it determined that each of those criteria have been met. Such conclusory statements are insufficient to support the outcome proposed in the Resolution.

The fourth and final paragraph of the “discussion” section merely states that the TURN and Oxnard protest “[does] not meet the criteria to require SCE to file a PTC and thus the protests are dismissed for failure to state a valid reason.”¹² Again, the Resolution fails to specifically identify the criteria that Energy Division applied, or the basis for finding the reasons raised in the protest were not “valid.” TURN and Oxnard raised fundamental issues regarding the absence of any Commission decision approving the proposed McGrath peaker plant, and without that plant there is no need for the interconnection facilities that are the subject of the advice letter and Resolution. There could be no more valid reason to require the utility to obtain a permit to construct than the fact that there is otherwise no authorization from the Commission to build these facilities. The Energy Division cannot simply find this reason to not be “valid” and thereby avoid any explanation of the basis for that finding.

¹² *Id.*

In sum, the Commission must grant rehearing because of the inadequacy of the discussion of the adopted outcomes in the Resolution. The text (and associated findings, conclusions and ordering paragraphs) contains conclusory statements without sufficient explanation. A reviewing court would have no basis for understanding why the Energy Division reached this conclusion.

IV. The Commission Should Grant Oral Argument On This Matter.

TURN and Oxnard request that the Commission conduct an oral argument on this application for rehearing. Oral argument will materially assist the Commission in resolving the application because it will permit the Commission to receive direct answers to the fundamental questions underlying the Resolution, questions that the Resolution should have but did not address. The application raises issues of major significance because of the possibility that SCE will construct a peaker plant in Oxnard without the Commission having first addressed the need for such a plant or considered other options for meeting whatever need may exist. Oral argument should be granted because there are legal issues of public importance here, consistent with the third of the four criteria identified in Rule 16.3(a). Even if the Commission determines that the Resolution does not implicate any of the four criteria, it should still exercise its discretion to find oral argument appropriate here.

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V. Conclusion

For the reasons cited herein, TURN and Oxnard respectfully request that the Commission grant rehearing of Resolution E-4392.

Dated: February 14, 2011

Respectfully submitted,

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