

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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In the Matter of the Application of SAN DIEGO)
GAS & ELECTRIC COMPANY (U902 E) for a) Application 09-08-003
Permit to Construct Electrical Facilities with) (Filed August 10, 2009)
Voltages between 50 kV and 200 kV and New)
Substations with High Side Voltages Exceeding)
50 kV: The East County Substation Project)
_____)

OPENING BRIEF OF BACKCOUNTRY AGAINST DUMPS

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I. INTRODUCTION

On February 18, 2011, Administrative Law Judge Hallie Yacknin held the first prehearing conference (“PHC”) in the matter of Application 09-08-003, the Application of San Diego Gas and Electric Company (“SDG&E”) for a Permit to Construct Electrical Facilities with Voltages between 50 kV and 200 kV and New Substations with High Side Voltages Exceeding 50 kV: The East County Substation Project (the “ECO Substation Project”). At the hearing, Judge Yacknin requested briefing on whether the ECO Substation Project requires a Certificate of Public Convenience and Necessity (“CPCN”) or just a Permit to Construct (“PTC”), for which SDG&E has already applied. Specifically, Judge Yacknin requested briefing on the following two issues:

- (1) Whether the proposed 3,065-foot 500 kilovolt (“kV”) feeder line from the East County Substation requires SDG&E to apply for a CPCN for the project (PHC Transcript at 40: 3-8, 15-20);¹ and
- (2) Whether “the [California Environmental Quality Act (“CEQA”)] project definition determine[s] the need for a CPCN.” PHC Transcript at 40: 27 to 41: 1.

Pursuant to Judge Yacknin’s directions and in accordance with Rule 13.11 of the California Public Utilities Commission (“CPUC”) Rules of Practice and Procedure, Protestant and Party Backcountry Against Dumps (“BAD”) hereby responds in order to the two issues raised.

II. DISCUSSION

A. The ECO Substation Project Requires a CPCN

Because the ECO Substation Project would involve the construction and operation of a 3,065-foot 500 kV feeder line (PHC Transcript at 3: 27) it requires a CPCN. Under CPUC

¹ The PHC Transcript is cited using the following format: PHC Transcript at [page number]: [line number].

General Order (“G.O.”) 131-D, CPCNs are required for *all* “major electric transmission line facilities which are designed for immediate or eventual operation at 200 kV or more.” G.O. 131-D § III(A). The word “major” is not explicitly defined. Instead, it appears to be used merely to distinguish those 200 kV-plus transmission line facilities that require CPCNs from the parenthetically listed exceptions, i.e.:

the replacement of existing power line facilities or supporting structures with equivalent facilities or structures, the minor relocation of existing power line facilities, the conversion of existing overhead lines to underground, or the placing of new or additional conductors, insulators, or their accessories on or replacement of supporting structures already built.

G.O. 131-D § III(A).² Contrary to SDG&E’s assertions at the PHC, nowhere in G.O. 131-D is there a blanket exception for substation feeder lines.³ PHC Transcript at 27: 27-28 to 28: 1-3.

Here, the ECO Substation Project would involve the construction and operation of a 3,065-foot 500 kV feeder line connecting the ECO Substation to the 500 kV Southwest Powerlink transmission line. PHC Transcript at 3:27. The feeder line does not fall within any of the exceptions to the CPCN requirement for 200 kV-plus transmission line facilities, as it would be a *new* line and *not* a replacement or relocation of an *existing* line. And as mentioned, there is no blanket exception to the CPCN requirement for feeder lines. Furthermore, even if the 2,000-

² The “minor relocation of existing power line facilities” is further defined in the context of PTC applications as the “relocation of existing power line facilities up to 2,000 feet in length.” G.O. 131-D § III(B)(1)(c).

³ Oftentimes, substation feeder lines are lower-voltage distribution lines that require only a PTC to construct. G.O. 131-D § III(B). However, when as here the feeder lines are “designed to operate at or above 200 kilovolts (kV)” they require a CPCN. *Id.* at 1. And when feeder lines require a CPCN, the associated substation(s) are considered as part of the feeder line facilities, not the other way around as SDG&E would have it. G.O. 131-D § IX(A)(1)(a) (transmission line facilities of 200 kV and over include “proposed transmission equipment; such as . . . substations, switchyards, etc.”).

foot cutoff for the minor *relocation* exception to the *PTC* requirement applied in the *CPCN* context to the construction of *new* transmission lines, which it does not, the ECO Substation Project's 3,065-foot feeder line would far exceed the cutoff and make the exception inapplicable. Therefore the 3,065-foot feeder line and its associated facilities, including everything comprising the ECO Substation Project, require a CPCN. G.O. 131-D §§ III(A), IX(A)(1)(a) .

B. The CEQA Project Description Determines the Scope of and Informs the Need for CPCN Review

Under CEQA, the project to be analyzed includes “the whole of the action.” 14 Cal. Code Regs. (“CEQA Guidelines”) § 15378(a). The term “project” is interpreted broadly because it “ensures that the requirements of CEQA cannot be avoided by chopping up proposed projects into bite-size pieces which, when taken individually, may have no significant adverse effect on the environment.” *Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1223 (quoting *Plan for Arcadia, Inc. v. City Council of Arcadia* (1974) 42 Cal.App.3d 712, 726 (internal quotation and citation omitted)). For similar reasons, transmission line projects must be broadly defined for CPCN purposes.

The purpose of requiring a CPCN is to ensure that the proposed “facilities are necessary to promote the safety, health, comfort, and convenience of the public, and that they are required by the public convenience and necessity.” G.O. 131-D § III(A). Just as it is impossible to determine the environmental impacts of a transmission line project when its various feeder lines, substations, source lines and generation facilities are ignored or considered separately, it is likewise impossible to assess whether the project is required by the public convenience and necessity if it is considered in a vacuum. The CPUC recognized this fact in requiring a broad

project description in CPCN applications, “including [a detailed description of] the proposed transmission line route and alternative routes, if any; proposed transmission line equipment; such as . . . substations, switchyards, etc.; and a proposed schedule for certification, construction and operation of the facilities.” G.O. 131-D § IX(A)(1)(a). The components of transmission facility projects taken together thus determine the need for and scope of CPCN review.

Here, as discussed, a CPCN is required for the ECO Substation Project. However, for CPCN purposes the project cannot be defined as narrowly as it is in SDG&E’s PTC application. Rather, it should be defined as the CPUC and the Bureau of Land Management define the project in their Draft Environmental Impact Report/Environmental Impact Statement (“DEIR”) to include the Energia Sierra Juarez Gen-Tie Line Project (“ESJ Project) and the Tule Wind Project. As the CPUC acknowledges, the ESJ and Tule Wind projects are so closely connected to the ECO Substation Project as to be part of the “whole of the action.” DEIR at ES-2. Indeed, SDG&E’s primary claim for why the ECO Substation Project is needed is “to interconnect proposed renewable wind energy generation in southeastern San Diego County and Mexico,” including the Tule Wind Project and the wind projects in the La Rumorosa area of Mexico whose electrical output would be transmitted via the ESJ Project. Application 09-08-003 at 1. It would thus be impossible to evaluate whether the ECO Substation Project is required by the public convenience and necessity without also assessing the need for and alternatives to the ESJ and Tule Wind projects. *Cf. Tuolumne County Citizens for Responsible Growth*, 155 Cal.App.4th at 1223. All three projects must be considered together.

III. CONCLUSION

For the foregoing reasons, the CPUC should require a Certificate of Public Convenience

and Necessity for the ECO Substation Project. The CPUC should also hold that the scope of the CPCN for the ECO Substation Project extends to the ESJ and Tule Wind projects.

Dated: February 28, 2011

Respectfully submitted,

/s/ Stephan C. Volker
STEPHAN C. VOLKER
Attorney for Party BACKCOUNTRY AGAINST
DUMPS

CERTIFICATE OF SERVICE

I hereby certify that I have on this 28th day of February, 2011, served a copy of the

OPENING BRIEF OF BACKCOUNTRY AGAINST DUMPS

on each party named in the official service list for Application 09-08-003 by electronic service, and by U.S. mail for those parties who have not provided an electronic mail address.

A copy was also sent via United States Postal Service to Administrative Law Judge Hallie Yacknin.

Executed this 28th day of February, 2011 at Oakland, California.

/s/ Yuri Miyagawa
Yuri Miyagawa

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