

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



**FILED**

12-06-12

04:59 PM

In The Matter of the Application of SAN DIEGO GAS  
& ELECTRIC COMPANY (U 902 E) for a Permit to  
Construct Electrical Facilities: Cleveland National Forest  
Power Line Replacement Projects

Application 12-10-009

**REPLY OF APPLICANT SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E)  
TO PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES**

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December 6, 2012

#273364

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**I. INTRODUCTION**

Pursuant to General Order (GO) 131-D and Rule 2.6(e) of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules), San Diego Gas & Electric Company (SDG&E) hereby replies to the Protest of the Division of Ratepayer Advocates (DRA) to SDG&E's Application for a Permit to Construct (PTC) the Cleveland National Forest (CNF) Power Line Replacement Projects (Proposed Projects).

**II. BACKGROUND**

Investor-owned utilities are required to obtain a PTC from the Commission for construction of certain electric power line facilities which are designed for immediate or eventual operation at any voltage between 50 kilovolt (kV) and 200 kV, as set forth in the Commission's G.O. 131-D.

On October 17, 2012, SDG&E filed the above captioned application pursuant to the Commission's GO 131-D for a PTC (Application). A Preliminary Plan of Development (POD),<sup>1</sup> which addresses each of the CEQA factors for the Proposed Project, was submitted with the

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<sup>1</sup> Typically an application for a PTC would be accompanied by a Proponent's Environmental Assessment (PEA). However, this Application relies on the POD, which has been prepared in connection with a related federal action as PEA-equivalent information to satisfy the requirements under GO 131-D and Rule 2.4 of the Commission's Rules of Practice and Procedure.

Application. The Proposed Action as described in the Application and POD includes reconstruction and fire hardening along 5 existing 69 kV power lines and 6 existing 12 kV distribution lines as well as the relocation and undergrounding of certain portions of electric lines within the CNF. In accordance with GO 131-D, Section XI.A, SDG&E noticed the filing of the Application by advertisement, posting on-site and off-site where the project would be located, and direct mail to specified public agencies, legislative bodies, and property owners located within 300 feet of the Proposed Project.

On November 26, 2012, DRA filed a protest (Protest) to SDG&E's Application. The notice of the filing of the application first appeared in the Commission's Daily Calendar on Friday, October 19, 2012.<sup>2</sup> No other protests or responses were filed within 30 days of the last date for mailing or publishing the notice of the filing of the Application, nor were any late protests or responses filed.<sup>3</sup> The last day for filing a protest or response was November 26, 2012.<sup>4</sup> Pursuant to Rule 2.6(e) of the Commission's Rules, SDG&E hereby replies to DRA's protest within the prescribed time frame.<sup>5</sup>

### III. SUMMARY

DRA recommends that the Commission not approve *ex parte* the Application for a purported lack of information regarding various rate and spending issues, all of which relate to the need for and cost of the Proposed Projects.<sup>6</sup> DRA recommends instead that the Commission hold hearings to develop a full and complete record of the facts and the law regarding the need

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<sup>2</sup> Rule 2.6(a) of the Commission's Rules.

<sup>3</sup> GO 131-D, Section XII.

<sup>4</sup> Rule 2.6(a) of the Commission's Rules, and GO 131-D, Section XII.

<sup>5</sup> If the 10 day reply deadline falls on a weekend or holiday then the deadline is the first business day after that date.

<sup>6</sup> DRA Protest at p. 7.

for the CNF Projects.<sup>7</sup> DRA's Protest is misplaced in the context of a PTC proceeding and must be overruled because:

- DRA **does not dispute** that the Project is subject to the PTC authorization process set forth in the Commission's GO 131-D.
- DRA's Protest complains only that SDG&E's PTC Application purportedly lacks information that **is not required** under GO 131-D or the Commission's Decisions implementing the PTC provisions therein.
- The Commission's streamlined PTC review procedure for under-200-kV electric power line projects **does not involve** review of the "need" for or the "economic cost" of a proposed facility.
- The construction of electric distribution line facilities under 50 kV **does not require** the issuance of a permit by this Commission under GO 131-D.

In Decision (D.) 94-06-014 adopting GO 131-D, the Commission established the streamlined review mechanism for power lines and substations– the PTC application process – that, unlike the already-existing Certificate of Public Convenience and Necessity ("CPCN") permitting requirements for transmission lines over 200 kV, focuses solely on environmental review rather than project need and cost. Because the permit to construct is meant strictly for environmental review, an "economic" or "needs" review is not appropriate.<sup>8</sup>

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<sup>7</sup> DRA Protest at pp. 1-2; *see also* pp. 3, 5, 6 and 7.

<sup>8</sup> Decision No. 94-06-014, 1994 Cal. PUC LEXIS 453 at \*2.

#### IV. REPLY

A. GO 131-D Does Not Require Detailed Analysis of the Need or Cost of Projects Requiring a Permit to Construct.

DRA's Protest does not dispute that SDG&E's Application for the Project is properly brought under the PTC procedure in GO 131-D. Thus, the key question raised by DRA's objections is what level of information about need and cost the Commission requires in a PTC application. Here, too, the present question does not raise any legal dispute arising under the GO 131-D PTC application process. As specifically pointed out by the Commission in D.94-06-014, the PTC is meant strictly for environmental review, not economic or "needs" review.<sup>9</sup>

Under GO 131-D, SDG&E is not required to address these issues in its PTC Application, which is intended only to allow environmental review.<sup>10</sup> The issues raised by DRA do not relate to environmental concerns, but rather attempt to raise out-of-scope questions, about the need for and cost of the equipment and facilities included in SDG&E's PTC Application for the Projects, by claiming that "the Commission needs to hold hearings and develop a full and complete record of the facts and the law regarding the need for the CNF Projects".<sup>11</sup> The Commission's streamlined PTC procedure, however, does not require a "detailed analysis of purpose and necessity [or] a detailed estimate of cost" of the Project.<sup>12</sup> As DRA properly recognized in its December 2010 protest and failed attempt to convert Southern California Edison Company's (SCE) Red Bluff Substation PTC into a CPCN, "the PTC procedure would prevent DRA and the Commission from reviewing the reasonableness of and justification for the Red Bluff Project

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at \*32-\*33.

<sup>11</sup> DRA Protest at p. 7.

<sup>12</sup> GO 131-D, Section IX.B.1.f.

costs of \$217 million or more”.<sup>13</sup> Simply put, the reasonableness of and justification of project costs are not at issue in a PTC proceeding.

For transmission line projects above 200 kV requiring a CPCN pursuant to California Public Utilities Code Sections 1001-1005.5 and GO 131-D, the application must include, inter alia: “A statement of facts and reasons why the public convenience and necessity require the construction and operation of the proposed transmission facilities” and “A detailed statement of the estimated cost of the proposed facilities.”<sup>14</sup> By contrast, GO 131-D expressly provides that “an application for a permit to construct need not include either a detailed analysis of purpose and necessity [or] a detailed estimate of cost and economic analysis.”<sup>15</sup>

*B. DRA’s Concern with a Purported Lack of Information on Need and Cost of the Proposed Power Line Projects is Inconsistent with the Commission’s Rules and Process.*

In 1988, DRA met with utility representatives to develop a draft proposal for reviewing under-200-kV power lines. The draft proposal was mailed to local, state, and federal agencies concerned with power line permit problems.

In 1989, the Commission Advisory and Compliance Division (CACD) conducted workshops with local agencies to discuss DRA’s draft proposal. After workshops were held in five cities in California during April and May 1989, CACD prepared a proposal for revisions to the then existing GO 131-C. On December 12, 1989, the administrative law judge (ALJ) issued the CACD proposal to the regulated electric utilities and the local, state, and federal agencies concerned with power line permit problems, for their review and comment.

Comments were submitted by DRA, California Energy Commission staff (CEC), Pacific Gas and Electric Company (PG&E), SCE, SDG&E, Northern California Power Agency (NCPA),

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<sup>13</sup> .” DRA Red Bluff Protest at 4 (emphasis added), A.10-11-012, <http://docs.cpuc.ca.gov/efile/P/128588.pdf> .

<sup>14</sup> GO 131-D, Section III.A; *see also* Section IX.A.1.c-d.

<sup>15</sup> *Id.*, Section III.B; *see also* Section IX.B.1.f (emphasis added).

County of Santa Barbara (Santa Barbara), City of Moorpark, Chevron U.S.A. Inc., California Building Industry Association (CBIA), and Claremont University Center. Reply comments were also filed by DRA, CEC, PG&E, SCE, SDG&E, NCPA, City of Lompoc (Lompoc), CBIA, Barkovich and Yap, and Arne Hamala.

D.94-06-014 summarizes the Position of DRA as follows:

DRA believes that amending the regulatory mechanism governing the construction of power lines between 50 kV and 200 kV is an effective way to protect environmental resources, eliminate case-by-case resolution of environmental mitigation responsibilities, and clarify jurisdictional confusion.

DRA also believes that the proposed revisions to GO 131-C are particularly responsive to several parties' comments at the public workshops. Those comments concerned the need for the utilities to provide adequate public notice before construction begins on under-200-kV power lines and to assure that the determination of what constitutes potentially significant environmental impacts is not left solely to the sponsoring utility.

DRA points out that under the proposed revisions to GO 131-C, potentially significant environmental impacts that may be associated with under-200-kV power lines can be identified and mitigated through the Commission's environmental review process. Because the environmental review is somewhat accelerated, DRA believes that the utilities will be able to continue to serve their customers in an efficient manner.

DRA notes that the proposed revision to GO 131-C essentially lowers the cutoff for regulatory review from 200 kV to 50 kV and introduces a "permit to construct" determination by the Commission. According to DRA, a limit of 50 kV is consistent with that used by the major utilities, and is the most appropriate cutoff point between utility power lines that serve transmission functions and those that serve distribution functions.<sup>16</sup>

Based in part on the above comments submitted by DRA, on June 8, 1994, the Commission issued D.94-06-014 adopting General Order (GO) 131-D, effective July 8, 1994,

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<sup>16</sup> 1994 Cal. PUC LEXIS 453 at \*17-\*18.

which expanded the previous rules to cover the construction of electric power line and substation facilities designed to operate between 50 and 200 kilovolts (kV).<sup>17</sup>

The Commission adopted GO 131-D to explicitly expand its “previous rules to cover the construction of electric power line and substation facilities designed to operate between 50 and 200 kilovolts.”<sup>18</sup> In so doing, the Commission balanced the need for environmental review with the “obligations of the utilities to serve their customers in a timely and efficient manner.”<sup>19</sup> The Commission explained: “The process we adopt for lines between 50 kV and 200 kV differs from the review that results in the issuance of a [CPCN] for lines over 200 kV. The process will result in a "permit to construct" and our review focuses solely on environmental concerns, unlike the CPCN process which considers the need for and economic cost of a proposed facility.”<sup>20</sup>

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<sup>17</sup> The Commission explained its considerations in adopting the PTC procedure as follows:

As we have discussed, the new rules for power line facilities between 50 and 200 kV and substations designed to operate over 50 kV should: (1) ensure that such power lines and substations are constructed in compliance with CEQA; (2) provide affected parties with an opportunity to be heard by the Commission; and (3) not seriously impair a utility's ability to provide timely service to its customers.

The CPCN permit procedure currently required for all transmission lines over 200 kV is unsuited for under-200-kV power lines and substations for several reasons: a large number of power lines and substations are built or upgraded each year, generally to meet distribution needs, and must be completed in a short time; under-200-kV power lines cover short distances compared to over-200-kV transmission lines, and substations involve relatively compact parcels of land; and, under-200-kV power lines use single poles and short-span lines, and do not present unique engineering or construction problems. Accordingly, under-200-kV projects pose little economic risk to ratepayers, and thus, absent the potential for environmental impacts and related CEQA obligations, would not otherwise trigger Commission pre-construction review.

CACD, in conjunction with other parties to this proceeding, developed a "permit-to-construct" [\*33] procedure for power lines designed to operate between 50 and 200 kV. The permit to construct is meant strictly for environmental review, not economic or "needs" review.

As compared with the procedures for a CPCN currently required for over-200-kV transmission lines, the permit-to-construct procedure is more streamlined, since it does not address the need for and economic cost of a proposed facility.

1994 Cal. PUC LEXIS 453 at \*31-\*33 (emphasis added).

<sup>18</sup> Decision No. 94-06-014, 1994 Cal. PUC LEXIS 453 at 1.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* (emphasis added).

Furthermore, the Commission has repeatedly and recently confirmed this limitation on the scope of the PTC application review.<sup>21</sup>

In sum, in accordance with the record developing GO 131-D itself, the Commission Decision adopting it, and all subsequent Commission precedent, SDG&E's PTC Application need not address in further detail the need for or cost of the Project, as requested by DRA.

C. *DRA's Concern with the Burden Purportedly Caused by Cost of the Proposed Distribution Line Facilities is Misplaced*

DRA complains that the reconstruction of six 12 kV distribution line facilities would burden the ratepayers because the costs are not recoverable under FERC.<sup>22</sup>

DRA mistakenly conflates the scope of the Application to the Commission for a PTC with the scope of the pending proceeding before the United States Forest Service (USFS) requesting a Master Special Use Permit to allow SDG&E to rebuild and continue to operate and maintain existing electric facilities located within the CNF. The fact that SDG&E must obtain authorization from USFS to rebuild and continue to operate and maintain 12kV facilities within the CNF does not mean that CPUC authorization is required for the six 12kV distribution line facilities.

Importantly, DRA's mistaken position simply restates DRA's contention that the Commission must develop a record of the need for the Projects.

In D.94-06-014 the Commission explicitly decided to exempt lines under 50 kV from active regulation because they did "not want to unnecessarily hinder the utilities' ability to

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<sup>21</sup> See, e.g., D. 10-06-014 at 5-6, 2010 Cal. PUC LEXIS 201 at \*7 ("GO 131-D does not require PTC applications for electric power lines to include an analysis of purpose and necessity, an estimate of cost and an economic analysis, a schedule or an in-depth description of construction methods beyond that required for CEQA compliance."); D. 10-09-025 at 8, 2010 Cal. PUC LEXIS 373 at \*11 (same); D. 09-07-040 at 9, 2009 Cal. PUC LEXIS 374 at \*11 (same); D. 08-02-004 at 4, 2008 Cal. PUC LEXIS 49 at \*4 (same).

<sup>22</sup> DRA Protest at pp. 3-4.

modify their systems to meet the needs of the customers they serve.”<sup>23</sup> In doing so, the Commission acknowledged “[t]he utilities make hundreds of modifications to their power lines and distribution systems every year, and not all of these projects require regulatory oversight. Therefore, we will refrain from imposing active regulation in all areas within our jurisdiction, and we will endeavor to ensure that there is a legitimate and substantial need for the requirements we adopt in this area.”<sup>24</sup>

As stated above, the Commission does not require a detailed need analysis in a PTC application and, in any event, GO 131-D, Section III.C specifically states the Commission’s intent that “[t]he construction of electric distribution (under 50 kV) line facilities... does not

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<sup>23</sup> 1994 Cal. PUC LEXIS 453 at \*24.

<sup>24</sup> The Commission further explained its reasoning as follows:

After weighing the considerations described in the preceding section, we decide [\*25] to continue to exempt lines under 50 kV from our active regulation. No CPCN or permit is required from this Commission for construction or modification of these lines.

The 50-kV limit is the cutoff point between lines serving transmission functions (50 kV and over) and those serving distribution functions (under 50 kV). And there are several reasons why the requirements for 50- to 200-kV power lines should not apply to under-50-kV distribution lines:

1. Distribution lines are almost always located on public and private rights of way as needed to supply all qualifying requests for electric service. In most cases, only one route is possible and only one type of construction is feasible.
2. At this time, there are no significant problems or concerns in the construction of these distribution facilities that would justify the extent of regulation set forth in GO 131-D for 50- to 200-kV power lines.
3. Distribution line extensions number into the thousands every year. Meeting GO 131-D requirements would add a large administrative burden and excessive cost for all parties involved.
4. Service requests have short lead times, generally only a few weeks. Delaying construction [\*26] of the needed distribution facilities would cause major inconvenience and financial loss to those awaiting service.

*Id.* at \*25-\*26.

require the issuance of a CPCN or permit by this Commission nor discretionary permits or approvals by local governments.”<sup>25</sup>

## V. CONCLUSION

As demonstrated above, DRA’s arguments lack merit and are contrary to facts, reasonable assumptions, Rules and sound policy. SDG&E’s Application and POD adequately include all of the items required for conducting the Commission’s environmental review for the Proposed Projects. DRA’s identified costs issues go beyond the Commission’s PTC requirements, as set forth by D.94-06-014 adopting GO 131-D, and *assuming arguendo* they have any merit, such assertions are more appropriately set aside for the Commission’s independent consideration of a project’s costs and economic analysis for CEQA compliance, and the determination of whether there are potentially feasible mitigation measures or project alternatives that will lessen the environmental impacts. For the reasons stated above, SDG&E respectfully request that DRA’s Protest be dismissed in its entirety.

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<sup>25</sup> GO 131-D, Section II., which provides the purpose of GO 131-D as follows:

The Commission has adopted these revisions to this General Order to be responsive  
To:

- the requirements of the California Environmental Quality Act (CEQA) (Public Resources (Pub. Res.) Code § 21000 et seq.);
- the need for public notice and the opportunity for affected parties to be heard by the Commission
- the obligations of the utilities to serve their customers in a timely and efficient manner; and
- the need to replace the present complaint treatment of under-200-kV projects with a new streamlined review mechanism.

Respectfully submitted and dated this 6<sup>th</sup> day of December 2012 at San Diego, California.

By: /s/ Allen K. Trial  
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