ASSIGNED COMMISSIONER’S RULING ORDERING APPLICANT TO FILE AMENDED APPLICATION AND DIRECTING CAPTION MODIFICATION

Summary

Southern California Edison (SCE) filed an Application for a project Permit to Construct (PTC) a proposed set of electrical facilities. The Public Advocates Office (Cal Advocates) protested SCE’s Application by asserting that pursuant to the Commission’s General Order (GO) 131-D, the proposed project requires an application for a Certificate of Public Convenience and Necessity (CPCN) rather than an application for a PTC. Prior to conducting an effective Prehearing (PHC) Conference, it is necessary to determine the threshold issue as to whether GO 131-D entitles SCE to file an application for a PTC or whether SCE must file an application for a CPCN. It is ruled that due to the nature of the proposed project equipment, SCE improperly filed its Application as a PTC, and must instead file an Amended Application seeking a CPCN in accordance with all applicable Commission Rules. Pursuant to this, it is further ruled that the Docket Office is directed to change the caption of the proceeding to reflect the to-be-filed Amended Application as seeking a Certificate of Public Convenience and Necessity (instead of a Permit to Construct). Once SCE files an Amended Application for a CPCN, a PHC will be conducted.
1. Application Proposal

SCE requests the Commission’s approval to construct a set of electrical facility elements that it refers to as the Eldorado-Lugo-Mohave Series Capacitor Project (Project). The Application reads in part as follows:

The Proposed Project consists of the following major components:

1. Construct two new 500 kiloVolts (kV) mid-line series capacitors (i.e., the proposed Newberry Springs Series Capacitor and Ludlow Series Capacitor) and associated equipment.

2. Relocate, replace, or modify existing transmission, subtransmission, and distribution facilities at approximately 12 locations along the Eldorado-Lugo, Eldorado-Mohave, and Lugo-Mohave 500 kV Transmission Lines to address 14 potential overhead clearance discrepancies.

3. Perform minor grading at two discrepancy locations along the Lugo-Mohave 500 kV Transmission Line.

4. Extend or reroute approximately 2 miles of overhead and approximately 700 feet of underground 12 kV distribution circuits to provide station light and power to the proposed Newberry Springs Series Capacitor and Ludlow Series Capacitor (the distribution poles are supporting the overhead telecommunication facilities on the same route).

5. Install distribution facilities to provide station light and power to three proposed fiber optic repeater sites.


7. Modify the ground wire peak of existing suspension towers used as splice locations for the OPGW work; some
of these towers would also require minor modifications to the steel in the tower body.

8. Install approximately 2 miles of overhead and approximately 500 feet of underground telecommunications facilities to connect the proposed Newberry Springs Series Capacitor and Ludlow Series Capacitor to SCE’s existing system as one communication path (the telecommunications facilities would share the same poles with overhead distribution).

9. Install approximately 2 miles of underground telecommunications facilities to connect the proposed Newberry Springs Series Capacitor and Ludlow Series Capacitor to SCE’s existing system as a second communication path.

10. Install underground telecommunications facilities from existing transmission structures to three fiber optic repeater sites—Barstow, Kelbaker, and Lanfair—within the Lugo-Mohave 500 kV Transmission Line ROW [Right Of Way].

11. Install approximately 1,000 feet of underground telecommunications facilities within the existing Lugo, Mohave, and Eldorado Substations.

12. Perform modifications within the existing Lugo Substation on the existing series capacitors and install new terminating equipment; remove two existing TSPs [Tubular Steel Poles] within the substation and install two new TSPs within the substation on the Eldorado and Mohave 500 kV Transmission Lines.

13. Perform modifications within the existing Eldorado Substation on the existing series capacitors and upgrade the terminal equipment on the Lugo 500 kV Transmission Line.

14. Replace existing series capacitors on the Lugo 500 kV Transmission Line, and install new terminal equipment on the Eldorado and Lugo 500 kV Transmission Lines at the existing Mohave Substation.
SCE estimated the project would cost $225M.

2. Authority for Project

SCE acknowledges that the Project must be approved by the Commission, and that Commission rules for such approval are found in GO 131-D, adopted in 1994. For the issues discussed here, the critical GO 131-D language has remained unchanged. GO 131-D is relatively straightforward in identifying the qualifications and conditions for a project to require a PTC or for a project to require a CPCN.

GO 131-D reads in relevant part as follows:

SECTION III. NEED FOR COMMISSION AUTHORIZATION

A. Certificate of Public Convenience and Necessity (CPCN)
No electric public utility shall begin construction in this state of any... major electric transmission line facilities which are designed for immediate or eventual operation at 200 kV or more (except for 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) without this Commission's having first found that said 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.

B. Permit to Construct
No electric public utility shall begin construction in this state of any electric power line facilities or substations which are designed for immediate or eventual operation at any voltage between 50 kV or 200 kV or new or upgraded substations with high side voltage exceeding 50 kV without this Commission's having first authorized the construction of said facilities by
issuance of a permit to construct in accordance with the provisions of Sections IX.B, X, and XI.B of this General Order. An upgraded substation is one in which there is 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. Activities which increase the voltage of a substation to the voltage for which the substation has been previously rated are deemed to be substation modification projects and not substation upgrade projects.

In sum, GO 131-D states that if work on a power line and its adjunct facilities (not a term of art, but merely a descriptor) operates at a voltage of between 50 kV and 200 kV, then only a PTC is required. It also states that if the power-line and its adjunct facilities operate at a voltage of 200 kV or greater, then a CPCN is required for the project work, unless the work falls into one of the category of items identified in GO 131-D as an exception to the CPCN requirement. The one caveat to this `above v. below 200 kV’ rule is for a “new or upgraded substation with a high side voltage exceeding 50 kV.”

Here, it is clear that the power line at issue is 500 kV, and so on its face the project would require a CPCN unless the proposed work all falls under one or another of the categorical exceptions. Answering this question may require a review of the GO 131-D language to determine whether the exceptions list is

1 This language is unclear as to whether the rule allowing an application for (only) a PTC is intended to include new or upgraded substations above 200 kV (as opposed to substations exceeding 50 kV but still below 200 kV), but this question ultimately need not be considered here. It is also difficult to parse the intent of this Subsection’s further language stating that an application for (only) a PTC is needed for an upgraded substation when it is “one in which there is 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.” It may mean that the substation is only subject to a PTC (as opposed to a CPCN) if, after the proposed work, it would then have an increase in its voltage rating to above 50 kV (presuming that it was previously rated below 50 kV). Alternatively, it may mean that the substation is only subject to a PTC (as opposed to a CPCN) if, after the proposed work, the substation receives a voltage rating increase of at least 50 kV. Again, this question ultimately need not be considered here.
exclusive or exemplary. It may also require determining whether the exceptions list is subject to interpretation, or subject to analogizing from certain equipment types to other equipment types, or whether other language found in GO 131-D comes into play in considering the intent behind identifying items found in the exceptions list, or whether the Commission has set forth other analyses that are to be brought to bear upon the analysis required here.

SCE essentially argues that, employing reasonable construction of GO 131-D’s terms and analyzing the project work, the project work is essentially that type of work identified in the categorical exceptions, or sufficiently similar so as to be considered within the category of exceptions, and thus enabling an application for a PTC. Cal-Advocates, on the other hand, disputes that the project work should be considered as analogizable to one or another of the categorical exceptions, and therefore contends the project should require an application for a CPCN.

It is this question -- whether the project work is either literally a CPCN exception or sufficiently similar so as to be seen as a CPCN exception -- that must be answered. If the Application appropriately falls within GO 131-D Section III B., then SCE may proceed in seeking a PTC. If the Application more appropriately falls within GO 131-D Section III A., then SCE must modify its Application and refile it to seek a CPCN.

3. SCE Arguments for Applying the PTC Standard

SCE provided an analysis of the project work.² It essentially rehashes the description of the work as found in the Application, and observes that GO 131-D

² SCE opened its briefing by describing the benefits of the Project. Given that SCE is arguing for approval of a PTC and not a CPCN, this description is, presumably, informational only, and otherwise irrelevant.
does not expressly discuss all the equipment at issue in the Project. In brief, SCE contends that the Project work only requires a PTC for these reasons: 1) Its equipment is arguably “physically similar” to that identified in the GO 131-D as requiring only a PTC; 2) The work as whole is not “major” and therefore falls under the GO 131-D CPCN categorical exceptions list; and 3) A prior Commission Decision acted to demonstrate that the Commission has determined that certain individual Project components are not considered major.

SCE’s argument regarding similarity focused on the largest Project element, which is the installation of series capacitors: SCE argued that these are similar to substations, which would require only a PTC. SCE has provided description of the facility, and pictures with descriptions. SCE also described some of the similarity in the ancillary equipment used both with substations and with series capacitors.

SCE’s argument that the work was minor looked at the modification of the towers and the replacement of ground wires. (SCE did not expressly identify and review each of the Project components, but generally grouped some (but not all) of the components in those two groupings.) SCE argued that the minor nature of the work warranted determination that it qualified as a CPCN exception.

SCE argued that the Commission, in Application (A.) 11-10-012 (Red Bluff), established a “test” for determining whether a project was “major.” That test, as alleged by SCE, concerns the specific work and its context in the overall project.

4. Cal Advocates Arguments for Applying the CPCN Standard

Cal Advocates also provides an analysis of the project work. Cal Advocates focuses on the new transmission towers, the 235 miles of new
optical ground wire, and the two new mid-line capacitors and replacement of existing series capacitors.\(^3\) In sum, it contends that a CPCN is required for the following reasons: 1. The Project components are of a type that necessitate a CPCN; 2. The entirety of the Project is not similar to the scope of a project that only requires a PTC; 3. The Commission has previously reviewed other projects of a similar nature, and Cal Advocates found what it considers to be a more analogous project that was deemed to require a CPCN.

Cal Advocates argues that the series capacitors are not functionally equivalent to substations. Cal Advocates offers that other electric utility regulatory entities model series capacitors as transmission line segments, and since this is a 500kV line, the implication is that these components therefore require a CPCN and cannot be considered the functional equivalents of substations.

Cal Advocates also argues that the SCE plan is not “like-for-like” replacement with such components as the optical groundwire. It contends that work such as modification of towers is not mere “relocation,” and therefore comprises a new project and does not qualify under the “replacement of existing power line facilities” or “replacement of supporting structures already built” exemption.

Lastly, Cal Advocates argues that this proceeding is less similar to Red Bluff than it is to A.09-09-022 (Alberhill). In that proceeding, SCE filed an application seeking a PTC, but the Commission directed it to re-file the Application to seek a CPCN. Cal Advocates notes that in Alberhill, the

\(^3\) Cal Advocates also contends that SCE inaccurately estimated the cost of the Project: Cal Advocates estimates the cost is more accurately estimated to be approximately $350-400 million.
Commission observed that “this project involves over-200 kV facilities that are presumed to pose economic risk to ratepayers.” (Id. at 3.)

5. Discussion

GO 131-D Section III.A. states in critical part that the CPCN exceptions are for “replacement… minor relocation… conversion of existing overhead lines to underground… and additional conductors…” For purposes of this Application, SCE essentially presents arguments that the Project work is “physically similar” to those elements found in the PTC category, and that the work was “minor” and therefore qualifies as an exception to the CPCN category. For purposes of its Protest, Cal Advocates essentially presents arguments that the work is not similar to that under the PTC category, and the work fails to qualify under the CPCN categorical exceptions.

It is worthwhile to examine the Commission’s reasons for the CPCN and PTC categories, and the reasons for the CPCN exceptions. Fundamentally, GO 131-D Section II states in pertinent part that the Commission adopts this GO to be responsive to 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.

We can observe, therefore, that GO 131-D was essentially based upon the premise of streamlining under-200 kV projects.

Also, as correctly cited by Cal Advocates, the Commission has explained that projects that involve over-200 kV facilities are presumed to pose economic risk to ratepayers. That concern for economic risk to ratepayers is a cornerstone in the Commission’s founding.
With these statements of Commission intention, an assessment of each proposed element of work can begin. It appears that the work elements can be roughly characterized as falling into one of three buckets: 1) Capacitor-related work; 2) Tower-related work; and, 3) groundwire and telecommunications work. These elements will be re-grouped and assessed in that order.

A. Capacitor-related work:

Under this category are the following project elements:

[1.] Construct two new 500 kV mid-line series capacitors (*i.e.*, he proposed Newberry Springs Series Capacitor and Ludlow Series Capacitor) and associated equipment.

[4.] Extend or reroute approximately 2 miles of overhead and approximately 700 feet of underground 12 kV distribution circuits to provide station light and power to the proposed Newberry Springs Series Capacitor and Ludlow Series Capacitor (the distribution poles are supporting the overhead telecommunication facilities on the same route).

[12.] Perform modifications within the existing Lugo Substation on the existing series capacitors and install new terminating equipment; remove two existing TSPs within the substation and install two new TSPs within the substation on the Eldorado and Mohave 500 kV Transmission Lines.

[13.] Perform modifications within the existing Eldorado Substation on the existing series capacitors and upgrade the terminal equipment on the Lugo 500 kV Transmission Line.

[14.] Replace existing series capacitors on the Lugo 500 kV Transmission Line, and install new terminal equipment on the Eldorado and Lugo 500 kV Transmission Lines at the existing Mohave Substation.

An analysis begins with the primary arguments offered: SCE contends that this work is the functional equivalent of a substation, and Cal Advocates contends that this work is not equivalent to a substation and is essentially equivalent to a new 500 kV transmission line segment and must be treated as
such. Regarding its substation argument, SCE offers that the physical setting for the series capacitors would be similar to the physical setting for a substation.

At the outset, it is noted that an exhaustive review of Commission Decisions discloses nothing on point for the analysis required here. While the parties have offered certain Rulings and Decisions, none are dispositively analogous in their facts to those now at issue. Consequently, the determination here must be made on direct consideration of the statute and the facts at hand.

As a basic statement of function, a substation uses transformers to step up or to step down voltages from one level to another level (and/or to protect or control the flow of electricity with relays and system monitors, or to isolate equipment). As a basic statement of function, a series capacitor reacts to voltage and current and uses resistance to dampen voltage phase shift to improve line efficiency and enable increased current flow. Further, as is apparently the case with this project, series capacitors are typically designed for the unique characteristics of the particular transmission line in question.

A thorough review of the citations and arguments of SCE do not alter these basic descriptions. SCE relies heavily and virtually exclusively upon *Red Bluff*, citing to it repeatedly in its briefings.\(^4\) *Red Bluff*, for purposes of the

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\(^4\) SCE also cited to Decision (D.) 11-07-055 (*Sandlot Substation Project*), an uncontested proceeding brought by SCE that focused on two 1500-foot power line extensions. That Decision is initially distinguishable based upon its focus and treatment. In footnote 24 of its Opening Brief, SCE contends that that proceeding demonstrates the expanded consideration of projects that may apply for PTCs for work similar to but not exactly the same as substation work. As SCE writes in its footnote, “While the decision referred to the project primarily as a “substation”, it was clarified… [that] the facility is actually a switching station… (See Final Mitigation Negative Declaration filed in Application No. 11-05-006 for the Sandlot Substation Project at ES-6, Footnote 4...).” In fact, the Decision exclusively referred to the project as a substation, just as SCE had titled its project, and had referred to it in its environmental
PTC v. CPCN issue, primarily concerned a narrow question: whether a certain length of a loop of transmission wiring to a new substation constituted minor or major work. As expressly noted in the Red Bluff Scoping Memo and Ruling,

GO 131-D does not define what constitute (sic) a “major” transmission line for purposes of Section III.A, although Section III.B[1.c.] loosely defines a “minor” power line relocation (as opposed to a new power line) as one that is up to 2000 feet long. (Id. at 4.)(Italics as in the original.)

In Red Bluff (D.88-01-062), the Commission required only a PTC for a new substation requiring a length of new power lines. Clearly, the focus of the Commission, solely for purposes of the issue of transmission lines, was simply on the length of those lines.

Red Bluff concluded that:

The more reasonable reconciliation of GO 131-D’s provisions exempting substations from CPCNs and requiring CPCNs for over-200 kV transmission lines is to require a CPCN for projects that involve the construction of “major” transmission lines, regardless of whether they also involve the construction of a substation. In this case, in view of the relatively short length of the new transmission lines segments [ 2,500-3,500 feet, as compared to the statutory exemplary description of 2,000 feet ] and in the context of the overall project, the transmission loop-in lines are not “major” facilities that require a CPCN. (Red Bluff Scoping Memo and Ruling at 6.)

Distinguishing the possible value of Red Bluff’s analysis is therefore an easy task in this proceeding. Here, the primary issue is not the length of a power line, but the question of whether there is exceptional latitude to be
accorded the determination of what is a “substation” as that term is found in GO 131-D Section III B.

Based upon the voltage and function of these series capacitors, it is determined that the PTC application process is unavailable for this project’s series capacitors and their related equipment. Due to its voltage, this equipment clearly falls under the express primary categorization found in GO 131-D Section III Subsection A. Its function is more analogous to the construction of a new segment of transmission line, which would require a CPCN (due to its 500 kV voltage). It is not amenable to any categorical exception under that CPCN Subsection.

Further, series capacitor equipment is not deemed to be “functionally equivalent” to that of a substation. The work performed by that series capacitor equipment, which concerns tailoring for transmission line efficiency, is clearly different from the work performed by a substation, which simply steps up or steps down voltage.

Therefore, the equipment does not fit within the “substation” exclusion found in the express categorical language of GO 131-D Section III A. Consequently, an Application for a CPCN will be required for this project work.

Regarding the extension of overhead wiring, SCE contends that Red Bluff is sufficient precedent to hold that such work requires only a PTC. Cal Advocates argues that such work does not fit the cited Red Bluff precedent because in Red Bluff the wiring was for just 2500-3500 feet of transmission power-line loops, incidental to a substation (that required only a PTC). Here, the length of overhead wiring is two miles. But moreover, despite that this overhead wiring is only for 12 kV distribution circuits, these wires are to bring light and power to the proposed series capacitors. Because this aspect of the project is in service of
the proposed series capacitors, this work must be considered as part of the series capacitor-aspect of the project, and therefore subject to the CPCN.

**B. Tower-related work:**

Under this category are the following project elements:

1. Relocate, replace, or modify existing transmission, subtransmission, and distribution facilities at approximately 12 locations along the Eldorado-Lugo, Eldorado-Mohave, and Lugo-Mohave 500 kV Transmission Lines to address 14 potential overhead clearance discrepancies.

2. Perform minor grading at two discrepancy locations along the Lugo-Mohave 500 kV Transmission Line.

An analysis begins with the primary arguments offered: SCE contends that this project work is only “minor modification” and essentially “vertical relocations” of existing components. For its part, Cal Advocates contends that the work should not be characterized as minor, and Cal Advocates further argues that SCE’s description of the work is “misleading” as the work as described in the Preliminary Environmental Assessment (PEA) is not sufficiently limited as to allow that the proposed work is necessarily minor.

GO 131-D Section III Subsection A provides categorical exception for “replacement of existing power facilities or supporting structures with equivalent facilities or structures, [or] the minor relocation of power line facilities…” There is some indirect guidance as to exactly how the Commission has previously applied the term “minor,” but this guidance is limited, and moreover is expressly limited to the facts therein at issue.

From the little information gleaned from the arguments, it would appear that the proposal is, in mean part, to raise nine existing 80-foot to 250-foot towers
by an average of 18.5 feet and in so doing change their height 7-23%.\(^5\) SCE admits that such work would be address “line clearance issues.” (Reply Brief at 7.)

Moreover, SCE further acknowledges that “the ELM Project necessitates [this work].” (Ibid.) Given that the Project work is seen as forming a single whole, and because the series capacitor and its related work will require compliance with GO 131-D Section III Subsection A, it is no longer at issue whether this tower work would suffice as “minor” under the exceptions to that Subsection. As a consequence of this tower aspect of the work needing to proceed as part of the whole, this work too must be brought as part of the required CPCN Application.

C. **Groundwire and telecommunications-related work:**

Under this category are the following project elements:

[5.] Install distribution facilities to provide station light and power to three proposed fiber optic repeater sites.

[6.] Install approximately 235 miles of OPGW (173 miles on the Lugo-Mohave 500 kV Transmission Line, approximately 59 miles on the Eldorado-Mohave 500 kV Transmission Line, including approximately 3 miles of underground telecommunications facilities in the vicinity of Mohave Substation).

[7.] Modify the ground wire peak of existing suspension towers used as splice locations for the OPGW work; some of these towers would also require minor modifications to the steel in the tower body.

[8.] Install approximately 2 miles of overhead and approximately 500 feet of underground telecommunications facilities to connect the proposed

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\(^5\) These figures are derived from Cal Advocates’ Opening Brief (at 8-9), and were not controverted by SCE in its Reply Brief, and so are accepted.
Newberry Springs Series Capacitor and Ludlow Series Capacitor to SCE’s existing system as one communication path (the telecommunications facilities would share the same poles with overhead distribution).

[9.] Install approximately 2 miles of underground telecommunications facilities to connect the proposed Newberry Springs Series Capacitor and Ludlow Series Capacitor to SCE’s existing system as a second communication path.

[10.] Install underground telecommunications facilities from existing transmission structures to three fiber optic repeater sites— Barstow, Kelbaker, and Lanfair— within the Lugo-Mohave 500 kV Transmission Line ROW.

[11.] Install approximately 1,000 feet of underground telecommunications facilities within the existing Lugo, Mohave, and Eldorado Substations.

An analysis begins with the primary arguments offered: SCE contends that this optical groundwire work “serves a telecommunication function. The grounding function of the OPGW is the same as the existing OHGW [overhead groundwire] and therefore an equivalent replacement.” (SCE Reply at 5.) Cal Advocates contends that because OPGW and OHGR are not “like for like” due to the OPGW communication component.

Also, and more compellingly, Cal Advocates argues that, but for the new series capacitors, the OPGW would not be needed -- and that therefore neither would the tower work be needed. (Cal Advocates Opening Brief at 7-8.) SCE does not refute the Cal Advocates’ Opening Brief assertions regarding the nexus between the OPGW work and the series capacitor work (or the asserted nexus between the OPGW work and the tower work, which as noted above SCE acknowledges to be in service of the series capacitor work).
By extension, therefore, the OPGW work is part and parcel of the series capacitor work. Given the determination that the series capacitor work requires a CPCN application, therefore all of the work, including the OPGW (and the tower) work, must be made a part of the series capacitor CPCN application.

2. Conclusion

SCE cannot avail itself of the less stringent PTC Application process for the work for which it has applied. The series capacitor work -- and all the other aspects of the project, which are part and parcel of the series capacitor work -- requires a CPCN application in accordance with GO 131-D Section III Subsection A. Therefore, SCE must file an Amended Application for a CPCN in keeping with all of the requirements of GO 131-D Section III Subsection A and all other Commission Rules.

IT IS SO RULED.

Dated January 9, 2019, at San Francisco, California.

/s/ MICHAEL PICKER  
Michael Picker  
Assigned Commissioner