

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

**ENERGY DIVISION**

**ID # 11879  
RESOLUTION E-4570  
February 13, 2013**

**R E S O L U T I O N**

Resolution E-4570. Pacific Gas and Electric (PG&E) requests approval from the California Public Utilities Commission (CPUC) authorizing PG&E under Public Utilities (PU) Code § 851 to enter into an encroachment agreement with the Yuba Community College District (YCCD) to install a 319.2 kilowatt (kW) solar array on property owned by the College District, but on PG&E's electric transmission line easement located in Sutter County.

**PROPOSED OUTCOME:** This Resolution adopts the findings and conclusions in YCCD's Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) and approves PG&E Advice Letter 4065-E seeking authority to enter into an encroachment agreement with YCCD.

**SAFETY CONSIDERATIONS:** PG&E indicated that entering into this encroachment agreement will neither interfere with the operations of the Palermo-Pease Transmission Line, nor affect PG&E's ability to provide safe and reliable service to its customers and the public at large. All utilities are expected to comply with all federal and state safety regulations, including P U Code section 451.

**ESTIMATED COST:** None. The encroachment agreement will not impact PG&E's ratebase as no PG&E assets are being disposed of with this transaction.

By Advice Letter 4065-E, dated June 18, 2012

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## **SUMMARY**

PG&E submitted Advice Letter (AL) 4065-E seeking approval under PU Code § 851 to grant YCCD an encroachment agreement to install a solar array on PG&E's transmission easement located in Sutter County, California.

This Resolution approves PG&E's Advice Letter 4065-E because the transaction is valued at less than \$5 million, the Lead Agency has completed its CEQA review and has certified its environmental documents, and the utility may request approval of the transaction by Advice Letter. (PU Code §§ 851, 853.)

## **BACKGROUND**

PU Code § 851 requires public utilities to obtain prior authorization from the Commission before selling, leasing, assigning, or otherwise disposing of or encumbering utility property.

On August 25, 2005, Resolution ALJ - 186 implemented a 24-month pilot program to simplify the disposition of certain types of transactions under PU Code § 851. Participation in the pilot program is optional. Applicants may choose to submit a regular application under § 851 for transactions that qualify for this pilot project.

On August 18, 2011, Resolution ALJ - 272 extended the pilot program for another year (until August 23, 2012). The Commission then adopted General Order (GO) 173 to modify and make permanent the former pilot program regulations for Section 851 Advice Letters.

On June 18, 2012, Advice Letter 4065-E was appropriately filed pursuant to the pilot program to expedite the transactions via Advice Letter that otherwise would be subject to a full PU Code § 851 application.

The solar array project is located in the City of Marysville, in the County of Sutter, California. The property is currently an undeveloped field. PG&E's Palermo-Pease Transmission Line runs across it.

In 1954, PG&E entered into an agreement with Robert and Dorothy Berg, and Florence and I. K. Vantress which granted PG&E the right to, among other things, establish a Right of Way for two independent transmission lines across their property. This property subsequently became part of YCCD. On May 25, 2011, YCCD prepared a Draft Initial Study (IS)/MND in compliance with the California Environmental Quality Act (CEQA) (Pub. Res. Code § 21000 et. Seq.) and the State CEQA Guidelines (14 California Code of Regulations

[CCR] 15000 et. seq.). It was available for a 30-day review period between June 3, 2011 and July 5, 2011.

CEQA Guidelines § 15186 identifies specific requirements for environmental review and public disclosure of possible hazardous materials impacts when a project would involve a school or be located near a school site.

In June 2011, YCCD entered into an agreement with SunPower to have photovoltaic solar systems installed district wide. One of the projects is located at the Yuba College's Sutter Center. However, the project location intersects PG&E's easement for the Palermo-Pease Transmission Line. The solar array, including concrete foundation, will encroach onto the easement area by approximately 100 feet.

In late-2011, YCCD approached PG&E about constructing a solar array at the Sutter Center location. After many months of negotiations, YCCD and PG&E reached a resolution on the encroachment agreement language for the proposed installation. PG&E attached this agreement with the Advice Letter. The encroachment agreement is subject to review and approval by CPUC prior to PG&E's final approval and execution of this agreement. CPUC and PG&E's approval are required for construction to commence.

### **NOTICE**

Notice of AL 4065-E was made by publication in the CPUC's Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 3.14 of General Order 96-B.

### **PROTESTS**

Protests to Advice Letter 4065-E were due no later than July 9, 2012. No protests were received.

### **DISCUSSION**

PG&E's request for entering into an encroachment agreement with YCCD will be evaluated based on:

- environmental consequences
- safety and reliability
- cost or savings
- review of the encroachment agreement

*Environmental Consequences*

**CPUC as a Responsible Agency adopts the Findings and Conclusions of YCCD's Mitigated Negative Declaration (MND)**

CEQA requires the Commission to consider the environmental consequences of its discretionary decisions. Pursuant to CEQA and Rule 2.4 of the Commission's Rules of Practice and Procedure, the Commission examines projects to determine whether any potential environmental impacts are likely in order that adverse effects are avoided and environmental quality is restored or enhanced to the fullest extent possible. In this instance, the Commission is not a Lead Agency, but a Responsible Agency under CEQA with respect to the environmental review of the solar array project underlying the easement agreement with PG&E. YCCD as the lead agency developed a draft and final MND. The final MND was approved by YCCD on July 11, 2011 and a Notice of Determination was filed on July 12, 2011. The Commission, as a Responsible Agency, adopts YCCD's findings and conclusions as set out in the MND.

The Draft IS/MND concluded that air quality, cultural resources, geology and soils, and noise could be reduced to less than significant impacts with the following prescribed mitigation measures.

*Air Quality*

MND recommends water, chemical stabilizer/suppressant, and tarps to stabilize dust emission. This project also will limit the use of dry rotary brushes and blower devices, and traffic speeds.

*Cultural Resources*

In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the YCCD shall consult with a qualified archaeologist or paleontologist to assess the significance of the find. If any find is determined to be significant, YCCD and the archaeologist and/or paleontologist would meet to determine the appropriate avoidance measures.

In the event of the accidental discovery or recognition of any human remains, excavation will stop until the coroner of the county is contacted to assess whether an investigation of the cause of death is required. If the coroner determines that the remains to be Native American, then he will contact the Native American Heritage Commission and let the most likely descended to choose the appropriate action.

*Geology and Soils*

In the event that significant wind erosion of soil is observed during construction activities, the soil surface shall be sufficiently wetted to minimize dust generation.

*Noise*

YCCD will reduce ambient sound levels during construction by requiring all construction equipment to have sound-control devices and muffled exhaust pipes. It also will require stationary noise sources to be located as far from sensitive receptors as possible.

Because these measures have been incorporated into the project's design, construction and operation, impacts to sensitive environmental resources will be avoided or minimized to less than significant levels.

This project also aligns with CPUC's policy to promote renewable energy.

*Safety and Reliability*

PG&E's transmission planning unit has determined that, as designed, the solar array would not conflict with PG&E's ability to safely and reliably operate the transmission line and that there are no plans on the horizon to install an additional transmission line in the area to be occupied by the proposed solar array.

*Cost or Savings*

PG&E will receive no compensation for the encroachment agreement. YCCD estimates that it will save \$300,000 annually by installing the solar array.

*Review of the encroachment agreement*

PG&E has incorporated the appropriate provisions into the encroachment agreement. It is not subject to termination by PG&E for a period of five years from the date of execution except in an emergency situation. As a standard practice, PG&E includes a "Restoration" condition with its encroachment agreements, which requires that the encroachment agreement grantee vacate the encroachment area within 90 days of receiving written notice to vacate from PG&E. The Restoration section is typically a required condition in PG&E's encroachment agreements so as to not restrict PG&E in its effort to safely and reliably operate its electric system, and not restrict it in its ongoing transmission planning efforts. However, PG&E stated that it does not have any plan on the horizon to install an additional transmission line in the area to be occupied by the proposed solar array. Energy Division staff has reviewed this agreement and recommends its approval.

**Summary**

The Commission has evaluated this Advice Letter based on safety, reliability, costs, CEQA review, and the content of the agreement. We find that the results of the above evaluations are satisfactory and YCCD's MND findings and conclusions represent our independent judgment regarding the environmental impact of the proposed project. Therefore, we will adopt the encroachment agreement and the MND.

**COMMENTS**

P.U. Code § 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the CPUC. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

All parties in the proceeding have stipulated to waive the 30-day waiting period required by P.U. Code § 311(g)(1) and the opportunity to file comments on the draft resolution. Accordingly, this matter will be decided by the CPUC on February 13, 2013.

**FINDINGS**

1. PU Code § 851 requires public utilities to obtain prior authorization from the Commission before selling, leasing, assigning, or otherwise disposing of or encumbering utility property.
2. Resolution ALJ - 186 implemented a 24-month pilot program to simplify the disposition of certain types of transactions under PU Code § 851.
3. The Commission adopted General Order (GO) 173 to modify and make permanent the former pilot program regulations for Section 851 Advice Letters.
4. AB 698 amends Sections 851 and 853 to provide authority for certain Advice Letters to be approved by Executive Director or Division Director.
5. YCCD acted as the Lead Agency pursuant to CEQA for the environmental review of the proposed solar array project.
6. YCCD issued an Initial Study (IS) and MND for 30 days of public comment between June 3, 2011 and July 5, 2011.
7. YCCD's IS examined the project in detail and all related impacts.

8. The IS and MND concluded that all impacts of the project could be reduced to less-than-significant levels.
9. YCCD estimates that it will save \$300,000 annually by installing the solar array.
10. PG&E submitted Advice Letter 4065-E on June 18, 2012, seeking authority pursuant to PU Code § 851 to enter into an encroachment agreement with YCCD.
11. PG&E appropriately filed Advice Letter 4065-E pursuant to our pilot program to expedite certain transactions via Advice Letter that otherwise would be subject to a full PU Code § 851 application (Resolution ALJ-272).
12. PG&E served all required parties in accordance with General Order 96-B, Section IV.
13. Protests to Advice Letter 4065-E were due no later than July 9, 2012. No protests were received.
14. The CPUC is a Responsible Agency pursuant to CEQA for the environmental review of the solar array project underlying the encroachment agreement with PG&E.
15. The CPUC's decision to grant or deny the relief sought in AL 4065-E requires that the Commission consider the analysis and conclusions of the IS and MND -- including the findings, conclusions, and mitigation measures identified therein.
16. The Commission reviewed and considered YCCD's IS and MND, including the findings, conclusions, and mitigation measures therein; and determined that its findings and conclusions reflect our independent judgment.
17. With the implementation of the mitigation measures identified in the MND approved on July 11, 2011 all environmental impacts are reduced to less-than-significant levels.
18. We conclude that YCCD's IS and MND are competent, comprehensive and have been completed in compliance with CEQA and the Public Resources Code, and should be adopted by the Commission as adequate for our decision-making purposes pursuant to CEQA.
19. Pursuant to PU Code § 311(g)(2) and Rule 14.6(c)(2) the 30-day comment period for Draft Resolutions is being waived.

**THEREFORE IT IS ORDERED THAT:**

1. YCCD's MND for the proposed solar array project is adequate for the Commission's decision-making purposes and is hereby adopted pursuant to CEQA.
2. The encroachment agreement presented in Advice Letter 4065-E between PG&E and YCCD is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on February 13, 2013, the following Commissioners voting favorably thereon:

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Paul Clanon  
Executive Director