

**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 (U 902 E) for a Permit to Construct Electrical Facilities With Voltages Between 50 kV and 200 kV and New Substations With High Side Voltages Exceeding 50kV: The East County Substation Project

Application 09-08-003
(Filed August 10, 2009)

**OPENING BRIEF OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON
THE RULES RELATING TO THE PLANNING AND CONSTRUCTION OF
ELECTRIC PUBLIC UTILITY SUBSTATIONS LOCATED IN CALIFORNIA**

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In The Matter of the Application of SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) for a Permit to Construct Electrical Facilities With Voltages Between 50 kV and 200 kV and New Substations With High Side Voltages Exceeding 50kV: The East County Substation Project

Application 09-04-003
(Filed April 13, 2009)

**OPENING BRIEF OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON
THE RULES RELATING TO THE PLANNING AND CONSTRUCTION OF
ELECTRIC PUBLIC UTILITY SUBSTATIONS LOCATED IN CALIFORNIA**

I. INTRODUCTION

In accordance with General Order (GO) No. 131-D (GO 131-D), the California Environmental Quality Act (CEQA), the California Public Utilities Code, the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission” or “CPUC”) and Administrative Law Judge (ALJ) Yacknin’s oral ruling (the “Ruling”) at the pre-hearing conference (PHC) held in this proceeding on February 18, 2011, which sets a deadline of February 28, 2011 for opening briefs, San Diego Gas & Electric Company (SDG&E) hereby respectfully submits this opening brief addressing the

specific rules relating to the planning and construction of electric utility substations located in California.¹

II. BACKGROUND

The Commission has adopted GO 131-D, which provides the CPUC “Rules Relating to the Planning and Construction of Electric Generation, Transmission/Power/Distribution Line Facilities and Substations Located in California.” In brief, and as relevant to the above captioned proceeding, GO 131-D provides the rules that determine whether an electric public utility needs Commission authorization under a Certificate of Public Convenience and Necessity (CPCN) or a Permit to Construct (PTC) to begin construction in this state of any electric “transmission” and “power” lines and related facilities, including new or upgraded “substations”. The applicability of these rules arises in the context of SDG&E’s request that the Commission, upon completion of its review in the matter of this Application for a PTC (Application), issue and certify an appropriate environmental document and issue an expedited *ex parte* decision granting SDG&E a PTC authorizing SDG&E, an electric public utility, to construct the East County (ECO) Substation Project (Proposed Project) in this state as set forth in the Application and Proponents Environmental Assessment (PEA) filed with the Commission on April 13, 2009.

¹ Ruling of ALJ inviting the parties brief the applicability of CPUC GO 131-D’s requirements to SDG&E’s East County (ECO) Substation Project (Proposed Project). Concurrently in Application 10-11-012 Southern California Edison Company (SCE) has applied for a permit to construct the Red Bluff Substation, and the Division of Ratepayer Advocates (DRA) are contesting in that proceeding whether a PTC or a CPCN is required for the project on the basis that it includes as a project component a transmission line that will operate at over 200 kV. The ALJ’s scoping order and ruling on this issue was released in A.10-11-012 on February 25, 2011 and applies here, but SDG&E provides this brief for the record and with respect to the specific facts in this proceeding.

A. Project Purpose

The purpose of the Proposed Project is to provide an economical interconnection platform for renewable generation sources in southeastern San Diego County and Mexico in accordance with the California Independent System Operator (CAISO) Open Access Transmission Tariff. This Proposed Project will also improve the reliability of electric service to the communities of Bankhead Springs, Boulevard, Jacumba, and Manzanita, as well as the Campo, La Posta, and Manzanita Indian Reservations, which experience relatively frequent outages. For a more detailed discussion of the purpose for the Proposed Project, see the Application and PEA.

B. Project Description

The Proposed Project is broken into the following key components:

1. Construction of a new 500/230/138 Kilovolt (kV) electric substation (ECO Substation) including a short feeder line² loop, of approximately 3065 ft overall, to connect the ECO Substation to the existing 500 kV Southwest Power Line (SWPL) transmission line;³
2. Construction of a new, approximately 13.3-mile-long 138 kV transmission line from the ECO Substation to the rebuilt Boulevard Substation, including the placement of an optical ground wire to provide critical communication services and lightning protection;
3. Rebuild of the Boulevard Substation to operate at 138/69/12 kV on a new parcel adjacent to the existing substation to accommodate switch racks, air-insulated buses, transformers, circuit breakers, disconnect switches, communication equipment and protective relays.

² Feeder lines, which are considered a component of substation facilities, rather than transmission line or power line facilities, are used to distribute electric power from a substation to transmission lines, distribution trunk lines or to smaller substations.

³ One of the principal factors in selecting the proposed site for the ECO Substation was to minimize the overall length of the “Substation Feeder Lines” necessary to access the existing SWPL transmission line.

III. DISCUSSION

The Commission's authority to regulate the planning and construction of electric utility substations located in California is firmly rooted in the California Constitution, the Public Utilities Code, and case law. The framers of the California Constitution, in their wisdom, reasoned that public utilities should be regulated by a state agency rather than by a myriad of local political subdivisions. Accordingly, the California Constitution, through Article XII, created and empowered the CPUC with the exclusive jurisdiction to regulate the affairs and operations of public utilities. The regulatory power of the CPUC is quite broad and is derived in large part from the California Public Utilities Code.

The CPUC's exclusive jurisdiction to regulate public utilities recognizes the statewide interest in preserving for the benefit of California's citizens uniform, safe and reliable utility service. For example, Section 701 generally empowers the CPUC to "supervise and regulate every public utility in the State and to do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." Section 761 empowers the CPUC to fix rules pertaining to practices, equipment, appliances, facilities, service or methods of manufacture, distribution, storage or supply to be observed, furnished, constructed, enforced or employed relative to a utility service. Section 762 empower the CPUC to issue orders for such extensions, repairs, improvements or changes to existing plant, equipment, apparatus, facilities or other physical property for any public utility to promote safety, convenience and adequate service. Section 768 permits the CPUC to require public utilities to construct, maintain and operate their facilities in a safe manner.

Regulation of public utility activities involve, among other things, the safety, siting, and construction of electric utility facilities.⁴ Moreover, the siting, construction, design, operation, safety and maintenance of electric public utility facilities have been determined to be matters of statewide concern, and therefore, beyond the jurisdictional power of local government.⁵ The CPUC, under General Order (GO) 131-D, supersedes local government jurisdiction to regulate the Proposed Project. GO 131-D, Section XIV.B clarifies that, under the California Constitution:

“... local jurisdictions acting pursuant to local authority are preempted from regulating electric power line projects, distribution lines, substations or electric facilities constructed by public utilities subject to the Commission’s jurisdiction.”

Under GO 131-D, electric public utility projects can be divided, roughly, into four categories:

- (1) Projects that require a certificate of public convenience and necessity (“CPCN”), which requires a detailed application, including a Proponent’s Environmental Assessment (“PEA”), a showing of need for the project, and a detailed cost estimate, submitted to the CPUC not less than 12 months before the date of a required CPUC decision on the application.⁶
- (2) Projects that require a permit to construct (“PTC”), which requires an application, including a PEA, but does not require a showing of need or a detailed cost estimate, submitted to the CPUC not less than 9 months before the date of a required CPUC decision on the application.
- (3) Projects that are deemed exempt from the PTC requirement, but for which the utility must give notice to the CPUC, the planning

⁴ See Polk v. City of Los Angeles, 26 Cal.2d 519, 159 P.2d 931 (1945) pertaining to electric line safety; Town of Woodside v. PG&E 83 Cal.P.U.C. 418 (1978) affecting the construction of electric lines; Los Angeles Metropolitan Transit District 60 Cal.P.U.C. 125 (1962) involving the construction, design, operation, and maintenance of public utility facilities.

⁵ See, e.g., Southern California Gas Company v. City of Vernon (1995) 41 Cal.App.4th 209; San Diego Gas & Electric v. City of Carlsbad (1998) 64 Cal.App.4th 785

⁶ The CPUC has in the past taken far longer than 12 months to provide a decision on a CPCN application, and it would not be prudent to assume a 12 month turn-around for planning purposes.

directors for affected local governments, and to the public by advertisement and posting notices where the project would be located (an “Exemption Notice”). Any individual or entity may protest that the claimed exemption is not applicable and the CPUC Executive Director will then decide whether the protest should be dismissed or the utility be required to file a PTC application for the project.

- (4) Projects that are deemed excluded or exempt from the CPCN and PTC requirements, and for which an Exemption Notice is not required. As to such projects, any person may file a complaint with the CPUC alleging a violation of GO 131-D or other violation of applicable law.

A. Statutory Certificates of Public Convenience and Necessity

The statutory requirements for obtaining a CPCN are contained in the California Public Utilities Code (Code). Code Section 1001 (Chapter 5, Article 1) provides in relevant part that “No ... electrical corporation ... shall begin the construction of ... a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.” Code Section 1001 goes on, however, to provide that this “shall not be construed to require any such corporation to acquire such certificate for an extension within any city or city and county within which it has theretofore lawfully commenced operations, or for an extension into territory either within or without a city or city and county contiguous to its ... line, plant, or system, and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business.”⁷

⁷ The other provisions of Chapter 5, Article 1 generally discuss the showing that must be made in a CPCN application. Of particular interest is Code Section 1005.5 which states that, in the case of a project costing greater than \$50 million, the CPUC will establish a maximum cost that is presumed reasonable, but permitting the gas utility to “apply” later to the CPUC for an increase in the maximum cost and permitting the CPUC to authorize the increased cost if it finds that the increase is in fact expected and that the present or future public convenience and necessity still require construction at the increased cost.

Read together, these provisions make it clear that an electric public utility need not obtain a CPCN for certain construction activities that are necessary in the ordinary course of its business and are located in a city or county in which it already is providing service. The CPUC has generally recognized this principle, stating that granting a CPCN to Western Gas Resources Corporation (WGRC) in PG&E's service territory would permit WGRC to engage in significant expansion of its system without the need for obtaining prior CPUC approval.⁸ Similarly, in Decision (D) No. 94-01-008, the Commission dismissed the complaint because Public Utilities Code Section 1001 does not require utilities to apply for a CPCN for a substation. On rehearing in D.94-12-028 the Commission further stated:

“As a point of clarification, Homeowners are mistaken in their assertion that SDG&E is required to obtain a certificate of public convenience and necessity (CPCN) for the North City West Substation. Public Utilities Code Section 1001 does not require utilities to apply for CPCNs for extensions within their service territory. The newly promulgated General Order 131 D will require utilities to obtain ‘permits to construct’ for certain substations, but that only applies to substations constructed after December 31, 1995.”

Thus, the substation and power line project contemplated by SDG&E are considered an extension within territory already served by it, necessary in the ordinary course of its business, and which does not require SDG&E to apply for a CPCN pursuant to Code Section 1001. This conclusion is even stronger for the Proposed Project since it is not designed to relocate or expand the existing 500 kV SWPL transmission system currently operated in the performance of its duties to the public within SDG&E's service territory.

⁸ See, D.99-11-023, 1999 Cal. PUC LEXIS 856, 865 (granting WGRC a CPCN would open the door for “WGRC to expand later by building duplicate facilities [to PG&E's], without the need to seek explicit [CPUC] permission first.”)

B. General Order No. 131-D

The Commission first adopted GO 131 in 1970 to define more precisely when an electric public utility must obtain a CPCN pursuant to Code Section 1001.⁹ GO 131-D is the fifth revision¹⁰ of GO 131,¹¹ and was adopted by the CPUC in D.94-06-014 (June 8,

⁹ **GO 131:** On January 27, 1970, the Commission initiated an investigation and proposed to issue a GO to protect the environment and to better carry out the Commission's responsibilities to promote the safety, health, comfort and convenience of the public and to regulate electrical public utilities in the public interest. The proposed GO covered "Rules Relating to the Planning and Construction of Facilities for the Generation of Electricity and Certain Electric Transmission."

By D.77301, dated June 3, 1970, in Case No. 9015, the Commission adopted GO 131 *regarding siting of electric generating plants and overhead transmission lines*, effective July 1, 1970, which prescribed rules requiring electric utilities to file certain reports respecting electric loads, resources, and transmission facilities, as well as establishing procedures, in combination with the Commission's Rule of Procedure 18(1), for the filing of applications for Certificates of Public Convenience and Necessity (CPCN) for electric generating and certain transmission facilities of 200 kV or greater located in-state.

D.77301, Section 5 (Transmission Line Certification) at p. 3, discusses that "[t]he City of Torrance... suggest certification of substations" (in addition to recommending that the Commission require the utility to receive the consent of the affected cities before proceeding with the construction of any new overhead transmission facility). The Commission rejects this proposal stating "[s]uch installations should be reviewed with local governments and may be brought to the Commission's attention if not satisfactorily resolved."

¹⁰ GO 131-A was revised without redesignation by Resolution No. L-192, dated November 3, 1977.

¹¹ **GO 131-A:** By D.85446 dated February 10, 1976, GO 131 was amended to reflect the transfer of primary jurisdiction over electric utility load and resources forecasting to the California Energy Commission (CEC) by enactment of the Warren-Alquist Energy Resources Conservation and Development Act in the Public Resources Code, and D.85446 was amended by D.85970 to show that the number of the General Order is redesignated as GO 131-A. The amended GO also included appropriate changes to recognize the requirements of the then current version of Rule 17.1 of the Commission's Rules of Practice and Procedure, adopted in 1973, establishing the "Special Procedure for Implementation of the CEQA, which more specifically covers the requirement to prepare and submit Environmental Impact Reports". Substations and undergrounding of high voltage transmission lines were not subject to GO 131-A.

Later in accordance with D.88005, dated October 18, 1977 in Application No. 56050 (In the Matter of the Participation of Southern California Edison Company and San Diego Gas & Electric Company in the proposed Kaiparowits Electric Generating Plant), in which the Commission held that its certification jurisdiction, pursuant to the provisions of Section 1001 of the Public Utilities Code, also applied to power plant projects located outside California, GO 131-A was revised by Resolution No. L-192, dated November 3, 1977, to delete the language limiting its application to power plant projects located within the State, and to provide that this revision would be applied prospectively.

GO 131-B: On August 28, 1979, GO 131-B was adopted by D.90700, effective immediately, to supersede G.O. 131-A. GO 131-B, containing rules governing the planning and construction of electric generating and transmission facilities in the State of California. Notable changes were as follows:

- D.90700 reversed Resolution No. L-192, dated November 3, 1977, and found that GO 131-B should apply only to facilities to be located within California, and that a new general order should be promulgated to govern power plant and related transmission line facilities to be located outside California.
- GO 131-B further provided for the establishment of procedures under which the Commission would concurrently review and approve certificate applications for electric generating and related

1994), and later modified into its current version in D.95-08-038 (August 11, 1995).¹²

Under the prior GO 131-C, a CPCN was required for transmission lines designed for immediate or eventual operation at over 200 kV.¹³ However, before 1994, the CPUC did not require a CPCN or other permit for construction of transmission lines under 200 kV or for any “stand-alone”¹⁴ substations.¹⁵ Further, because the CPUC had no discretionary permitting authority over such projects, it had no jurisdiction to conduct an environmental review for such projects. Therefore, in 1994, the CPUC adopted General Order 131-D to introduce a separate process to permit power lines between 50 kV and 200 kV, and new or upgraded substations designed to operate with a high side voltage over 50 kV. The CPUC declined to adopt a PTC requirement for distribution lines (*i.e.*

facilities subject to the certification jurisdiction of the CEC so as to comply with Public Resources Code Sections 25518 and 25518.5 and to allow review and issuance of this Commission's certificate as soon after the issuance of the CEC's certificate as possible.

- The rules and provisions of GO 131-B were also revised to specifically apply to the undergrounding of new electric transmission lines of 200 kV or greater in order to determine the need and cost/benefit relationship of all new transmission lines, whether such lines are overhead or underground lines.

GO 131-C: GO 131-C was adopted on September 18, 1985 by Resolution No. E-2059 (effective that day). GO 131-C set forth rules governing the planning and construction of electric generation and transmission facilities in California. For transmission lines designed to operate over 200 kV, the utility was required to obtain a CPCN. For construction of lines designed to operate at or below 200 kV, GO 131-C did not require a utility to obtain a permit, license, certificate, or other entitlement, and they received no routine review by the Commission for compliance with CEQA. Since CEQA applies only to "discretionary projects to be carried out or approved by public agencies" (Pub. Res. Code § 21080(a)), most under-200-kV power lines are not "projects" under CEQA, and they received no routine review by the Commission for compliance with CEQA.

¹² **GO 131-D:** GO 131-D was adopted on June 8, 1994 by D.94-06-014 (to be effective July 8, 1994). It was later modified into its current version on August 11, 1995 in D.95-08-038 (to be effective September 10, 1995). G.O. 131-D prescribes two permitting processes potentially applicable to an electric public utility's construction of certain electric facilities: the CPCN process (*see* G.O. 131-D.III.A), and the PTC process (*see* G.O. 131-D.III.B). Each applies to the construction of different types of electric facilities, and each expressly exempts certain construction work from the permitting requirement. GO 131-D also addresses notice requirements.

¹³ GO 131-C, Section III referred to substations as “[t]he terminal points of a transmission line, whereas the language used under GO 131-C, Section VII.A.1 and GO 131-D, Section IX.A.1.a specifically distinguished transmission facilities from substation equipment.

¹⁴ The term “stand-alone” substation as used herein refers to any new or upgraded substation with a high side voltage exceeding 50kV which is not considered transmission equipment included in the description of a larger project to construct an electric public utility transmission line facility of 200kV and over.

¹⁵ *See Accord Findlay v. Pacific Gas and Elec. Co.*, 1988 Cal. PUC LEXIS 41, *38 (April 27, 1988).

lines to operate at below 50 kV) or substations designed to operate with a high side voltage below 50 kV.

C. Conflicts of Interpretation

Where regulations and case law are in potential conflict, there is a presumption that the specific regulations take precedence insofar as there is any inconsistency. In interpreting a GO one should always turn to one cardinal canon before all others. Presume that the Commission says in a regulation what it means and means in a regulation what it says there. In fact, the CPUC has expressly stated that “*the literal language of G.O. 131-D reflects our intent. The language of G.O. 131-D is consistent with the intent expressed in D.94-06-014, the decision in which we adopted G.O. 131-D.*”¹⁶ (Emphasis added). Thus, the Commission has previously confirmed that the plain language of G.O. 131-D determines whether an electric public utility must obtain a CPCN or PTC before constructing new or upgraded substation facilities with high side voltage exceeding 50 kV.

D. Non-public Utility Projects

By its plain terms, G.O. 131-D applies only to certain projects of electrical utilities; it does not apply to all projects or projects constructed by unregulated entities. Second, developer transmission generation tie (gentie) source lines¹⁷ that may or may not connect to the Proposed Project are unlike the projected electrical utility activities of SDG&E, which are subject to Commission approval promulgated pursuant to a state statute. Such non-electrical corporation constructed transmission lines above 200 kV would not require an approval under PU Code Section 1001 (“no . . . electrical

¹⁶ See *In re San Diego Gas and Electric Co.*, 71 CPUC 2d 339, D.97-03-058 at *18 (March 18, 1997).

¹⁷ Source or supply lines are used to provide electric power to a substation.

corporation . . . shall begin the construction of . . . a line” without having first obtained from the commission a certificate . . .”). In G.O. 131-D, the Commission merely adjusted the procedure by which the CPUC subjected electric public utility constructed “power lines” designed for immediate or eventual operation at any voltage between 50 kV and 200 kV or new or upgraded “substations” with a high side voltage exceeding 50 kV to examination.¹⁸

In addition, the California Constitution authorizes counties and cities to make and enforce, within their limits, all local police, sanitary, and other ordinances and regulations not in conflict with the general laws or the Constitution.¹⁹ Thus, while the Legislature has expressly charged the Commission with authority to issue a CPCN to a company seeking to provide service as a public utility in California,²⁰ consistent with the constitutional and statutory limitations on its jurisdiction, the Commission can issue a CPCN only to a public utility of one of the types listed in Pub. Util. Code § 1001.²¹ It follows that the Commission’s CPCN process necessarily includes a determination by the Commission of a company’s public utility status. Accordingly, entities not of the types listed in Pub. Util. Code § 1001 who wish to construct projects in this state are governed by county and city ordinances and regulations, if any, that are not in conflict with the jurisdiction of the Commission, general laws, or the Constitution.

The Commission has long recognized that Cal. Pub. Util. Code Section 1001 read in context is clear that the naming of specific types of corporations was intended, not to

¹⁸ See D.96-11-015, Case 96-01-019 (Filed January 19, 1996).

¹⁹ See California Constitution, Article XI, Section 7.

²⁰ See Pub. Util. Code § 1001.

²¹ The listed entities are: a railroad corporation primarily operated by electric energy, a street railroad corporation, a gas corporation, an electrical corporation, a telegraph corporation, a telephone corporation, a water corporation, and a sewer system corporation.

extend the certification requirement to other than public utilities, but to specify the public utilities that must secure certificates.²² Further, in D.96-11-015 the Commission recognized that Section 1001 and GO 131-D only apply to public utilities and not to any non-utility projects, specifically stating that:

CEQA imposes a duty, among others, on the Commission to undertake an environmental review of any activity that may result in a physical change to the environment that also “involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.” (Public Res. Code § 21065(c).) “Private action is not subject to CEQA unless the action involves governmental participation, financing, or approval.” (Cal. Code Reg. Tit. 14 § 15002 ((c) (CEQA Guidelines).)

By its terms, G.O. 131-D applies only to certain projects of electric utilities; it does not apply to all projects of all utilities.

However, our authority under Section 1001 applies only to certain utilities, specifically not including railroad corporations, such as Santa Fe, whose railroads are not operated primarily by electric energy. We do not think that we can rely upon Section 701 of the PU Code to expand our authority under Section 1001 to a class of railroad corporation that the Legislature excludes.

Vernon next argues that we have a history of subjecting projects not otherwise subject to environmental review to CEQA, citing G.O. 131-D and a 1979 decision in which we included a finding that a regulatory system would have a beneficial effect on the environment. Neither precedent is persuasive. In G.O. 131-D we were dealing with the means of implementing broader statutory authority to require a certificate or permit; here, we lack such authority. The fact that we once determined it prudent to make an environmental finding on our own actions is no authority for us to require a CEQA review for private action not otherwise subject to our approval.

a. CPCN Requirement

Under GO 131-D, Section III.A, leaving aside the exemptions for the moment, utilities must seek a CPCN before beginning construction of “major electric transmission line facilities which are designed for immediate or eventual operation at 200 kV or

²² See *Richfield Oil Corp. v. Public Utilities Com.* (1960) 54 Cal 2d 419, 6 Cal Rptr 548, 354 P2d 4, 1960 Cal LEXIS 178, cert den (1960) 364 US 900, 5 L Ed 2, 81 S Ct 233, 1960 US LEXIS 157.

more.”²³ (Emphasis added). Rather obviously, the CPCN requirement does not apply to transmission line facilities designed for operation at less than 200kV.

Under GO 131-D, Section IX.A.1.a any substation construction that is associated with the construction of a new over-200 kV transmission line should be included in a CPCN application for the entire project. This interpretation is supported by Section IX.A.1.a, which notes that a CPCN application should describe “proposed transmission equipment; such as ... substations,” and by Section IX.B, which provides that, unless exempt or “already included in an application before this Commission for a CPCN,” a utility desiring to build “substations for immediate use or eventual operations over 50kV” shall apply for a PTC. Moreover, the CPUC previously has approved CPCN applications in which substations that are constructed or upgraded in larger transmission line projects have been identified as major project components.²⁴ Finally, it would simply make no sense to file both a CPCN application and a PTC application concurrently for different components of a single project. In light of GO 131-D’s plain language, past practice, and CPUC caselaw, SDG&E believes that substation projects that are identified as major project components of larger over 200 kV transmission line projects should be included in the CPCN application (unless it is exempt).

Conversely, a stand-alone substation construction project, even if rated for operation at 200 kV or more, should only be considered under the PTC process. This conclusion is again based on GO 131-D’s plain language past practice, and CPUC caselaw.

²³ GO 131-D.III.A.

²⁴ See, e.g., In the matter of the Application of Sierra Pacific Power Company, 1996 Cal. PUC LEXIS 24, *62-63 and *104 (CPUC Jan. 10, 1996); see also Sobhani v. Pacific Gas & Elec. Co., 1996 Cal. PUC LEXIS 879, *24 (CPUC Nov. 3, 1993).

b. PTC requirement

Subject to certain exemptions, G.O. 131-D, Section III.B requires electric public utilities to obtain PTCs for construction of electric power line facilities with a voltage rating between 50 kV and 200 kV and for construction of new or upgraded substations with high side voltage exceeding 50 kV. Accordingly, a *stand-alone* substation construction project, even if rated for operation at 200 kV or more, should be considered under the PTC process. This conclusion is based on the plain language of GO 131-D, Section III.B, which provides: “No public utility shall begin construction in this state of any electric power line facilities and substations which are designed for immediate or eventual operation at any voltage between 50 kV or [sic]²⁵ 200 kV or new or upgraded substations with high side voltage exceeding 50 kV” without the CPUC issuing a PTC. (Emphasis added).

By contrast, the CPCN requirement under GO 131-D, Section III.A does not mention substations except as they fall within “major transmission line facilities” and the CPCN application requirements.²⁶ In addition, this language, which first appeared in GO

²⁵ The “or” is a typo in the published version of GO 131-D which as originally read “and” as adopted in D.95-08-038, Appendix A.

²⁶ *Accord, e.g., D.94-06-014*, 55 CPUC 2d 87, FOF 5, at *65 (“So that the Commission may institute expedited review of projects for CEQA compliance, a permit-to-construct requirement for ... substations designed to operate over 50 kV is needed”).

131-B, was specifically added by the Commission to satisfy CEQA.²⁷ GO 131-B required that the CPCN application contain, among other things:²⁸

1. A detailed description of the proposed transmission facilities, including the proposed transmission line route and alternate routes, if any; proposed transmission equipment, such as tower design and appearance, heights, conductor sizes, voltages, capacities, substations, switchyards, etc.; and a proposed schedule for certification, construction, and commencement of operation of the facilities.
2. A Proponent's Environmental Assessment (PEA) or equivalent information on the environmental impact of the project in accordance with the provisions of CEQA and this Commission's Rules 17.1 and 17.3. If a PEA is filed, it may include the data described in Items 1 through 7 above.

GO 131-D expands the previous rules to cover the construction of the following electric facilities under the new PTC process:

- Power line facilities designed to operate between 50 and 200 kilovolts (kV)
- New or upgraded electric substations designed to operate over 50 kV

D.95-08-038 specifically clarified that all substations rated above 50 kV were covered under the new PTC process adopted in D.94-06-014, by changing all references to “new or upgraded substations with low side voltage exceeding 50 kV” to “new or upgraded substations with high side voltage exceeding 50 kV”. [Emphasis added] Thus, unlike a generation plant in excess of 50 megawatts (MW) at the busbar and electric transmission line facilities which are designed for immediate or eventual operation at 200kV or more, a substation was specifically excluded from a CPCN.

²⁷ CEQA was originally enacted in 1970, following the passage in 1969 of the National Environmental Policy Act of 1969 (“NEPA”), in response to growing concerns for protecting the environment. Importantly, CEQA does not directly regulate utilities or land uses, but instead generally requires state and local agencies within California to consider and disclose potential environmental impacts of discretionary agency actions. CEQA has no relevance or bearing on the threshold regulatory question of whether a PTC or a CPCN is required under the Public Utilities Code for a particular utility project. Rather, the Public Utilities Code and GO 131-D address the question of whether an activity requires a PTC or a CPCN, both of which are considered discretionary approvals subject to CEQA.

²⁸ See also D.84-10-034, 1984 Cal. PUC LEXIS 809; 16 CPUC2d 310.

In addition, the Commission explained in D.94-06-014 that “[t]he 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.” [Emphasis added] Moreover, the Commission further stated that “[t]he permit to construct is meant strictly for environmental review, not economic or “needs” review. [Emphasis added] 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.”

Importantly, D.94-06-014 and D.95-08-038 make it clear the new PTC permit rules for under 200-kV power lines and substations designed to operate over 50 kV were not implemented as a condition pursuant to the provisions of Section 1001 of the Public Utilities Code, but to: (1) ensure that such power line and substation projects 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. Therefore, strictly speaking, power line and substation

activities, including construction of any substation feeder lines over 200 kV, retain their status of being system extensions outside of the statutory provisions of Section 1001 of the Public Utilities Code. Accordingly, all stand-alone substation construction activities in-state fall within a narrow exemption under the Public Utilities Code and the utilities are not required to obtain a certificate that the present or future public convenience and necessity require or will require such construction. Likewise, in the following cases, the various electric public utilities have sought a PTC – not a CPCN – for construction of a stand-alone substation with high side voltage exceeding 200kV project, including over 200kV feeder lines, and the CPUC granted the PTC:

- *In re Pacific Gas and Electric Company*, Application No. 97-04-043, 1998 LEXIS 967 (CPUC Oct. 8, 1998). PG&E’s proposed new 230kV Vasona Substation, including 230kV feeder line loop Pursuant to General Order 131-D.
- *Interim Opinion on Transmission Constraints: Miguel Mission and Imperial Valley Upgrades*, D.03-02-069 at 27-28. SDG&E’s proposed modifications to the Imperial Valley 230/500 kV substation were properly considered under the PTC requirement. Including new 230 kV feeder line loop.
- *Viejo System Project*, Application 03-03-043, D.04-07-027 (July 8, 2004). SCE’s proposed new 220/66/12 kV Viejo Substation, including 220 kV feeder line loop to connect the Viejo Substation to the existing Chino-San Onofre 220 kV circuit.

SDG&E has diligently searched all available Commission CPCN decisions prior to the issuance of 131-D and found no decisions where a utility applied for, or the Commission required a CPCN for a stand-alone substation with high side voltage exceeding 200kV. Moreover, GO 131-D implicitly recognizes that the construction of over 200kV feeder lines are approved and permitted under the PTC rules. The plain language of GO 131-D, Section III.B requires, subject to specified exemptions, that “[n]o public utility shall begin construction in this state of any electric... substation... with a high side voltage exceeding 50kV without this Commission’s having first authorized the

construction of said facilities by issuance of a permit to construct”. By definition any stand-alone substation project with a high side voltage in excess of 200kV will include the construction of an above 200kV feeder line.²⁹ Further, as stated in *Viejo*, D.04-07-027:

[w]hen considering whether a project would operate at 200 kV or more for purposes of determining whether to require a PTC or CPCN, the Commission does not cumulatively add the voltage of separate (source or supply line) circuits proposed to be installed. That is, the project is considered to operate at a level of 66 kV notwithstanding the number of installed (source or supply line) circuits as long as all (source or supply line) circuits are 66 kV. Because all (source or supply line) circuits SCE proposes to install are 66 kV, the project was appropriately filed as a PTC.³⁰

E. CPCN Minor Relocation Exemption

The Proposed Project does not rely on the CPCN Minor Relocation Exemption but for purpose of completeness in responding to the ALJ’s instructions, SDG&E provides the following brief overview. Subject to certain express exemptions, G.O. 131-D, Section III.A requires electric public utilities to obtain a CPCN for the construction of transmission lines with a voltage rating of 200 kV or more:

No electric public utility shall begin construction in this state of . . . 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

²⁹ Substation feeder lines are designed to distribute electric power from a substation to transmission lines, distribution trunk lines or to other substations. The *Viejo* decision explicitly states that the “minor relocation” exemption does not apply (D.04-07-027, at 7).

³⁰ Source or supply lines are generation tie, transmission or power lines used to provide electric power to a substation. Substations energized by more than one supply line must be constructed so that the supply lines cannot normally be connected together through the substation bus. This is accomplished by wiring the control circuits for the line and bus tie circuit breakers or interrupter switches so that at least one circuit breaker or interrupter switch is open at all times.

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.³¹ (Emphasis added).

The use of the defined term "power lines" in the CPCN exceptions appears to be an inadvertent error as "power lines," by definition, are not subject to the CPCN process. As noted above, Section III.A provides four specified exemptions to the CPCN requirement even for "major transmission line facilities designed for immediate or eventual operation at 200 kV or more."

The first interpretive step is to determine what is meant by "the minor relocation of existing power line facilities." As noted above, GO 131-D, Section I defines a "power line" as a line that operates between 50 and 200 kV. However, if that definition were truly meant to apply in this exception, it would have anomalous results. Either it would mean that 50 to 200 kV line facilities could be replaced by over 200 kV line facilities without a CPCN (interpreting "equivalent facilities" as meaning over-200 kV facilities as the CPCN requirement only applies to over 200 kV line facilities) or that this exception is meaningless (if "equivalent facilities" means only facilities of the same voltage, this exception would only authorize replacement of power lines with other power lines, which would not need a CPCN in any event). To interpret "power line facilities" as used in the CPCN exception to not apply to "transmission line facilities" would also mean that even basic replacement of outdated equipment could be construed to require a CPCN application. Moreover, it has been standard practice for SDG&E and other utilities to apply this exception to transmission line facilities, and the Commission has also applied that interpretation in defining the minor relocation exemption. *See* D.94-06-014, 55

³¹ G.O. 131-D, Section III.A.

CPUC 2d 87 at * 41 (“GO 131-C, Section I, which applies to transmission lines over 200 kV, contains a parenthetical exemption which we characterize as the “minor relocation exemption”:

“IT IS HEREBY ORDERED that no electric public utility, . . . shall begin construction . . . of major electric transmission line facilities which are designed for immediate or eventual operation at any voltage in excess of 200 kilovolts (kV) (except for the replacement or minor relocation of existing transmission line facilities with equivalent 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 . . . they are required by the public convenience and necessity.” (GO 131-C, Section I, emphasis added.)

DRA and PG&E recommend that the minor relocation exemption be retained for existing facilities designed to operate between 50 and 200 kV. We agree.”).

Thus, the key interpretive issue is what falls within the meaning of a “minor relocation.” SDG&E and the CPUC Energy Division staff may have differing interpretation about what is a “minor relocation.” It is clear, however, that the 2000 foot limitation was not applied to over-200 kV lines when the CPUC adopted GO 131-D. *See* D.94-06-014, 55 CPUC 2d 87 at * 62 (“We are particularly interested in collecting data on the reasonableness of the 2000’ line length limitation prescribed in the minor relocation exemption for 50-200 kV power lines, and whether the minor relocation exemption for over-200 kV lines should be refined similarly.”). And, of course, there is nothing in GO 131-D’s plain language that limits the CPCN “minor relocation” exemption to 2000 feet.

There is also a correlated question whether the “minor relocation” exemption should be limited to relocation of lines within an existing easement or allowed within an existing easement regardless of length. GO 131-D’s plain language does not impose a

“within an existing easement” limitation on the “minor relocation” exemption. In adopting GO 131-D, the CPUC specifically decided not to adopt an exemption for relocation of power lines on property owned entirely by a requesting landowner. *See* D.94-06-014, 55 CPUC 2d 87 at * 44 (“While the proposed exemption does make sense, on balance, we conclude that with the availability of the minor relocation exemption discussed above, the landowner exemption is not really necessary since most power line relocations pursuant to landowner requests can be accommodated under the minor relocation exemption.”). The CPUC recognized that such requests frequently are made to accommodate new construction of buildings or roads, and that such relocations are unlikely to have significant environmental impacts. The CPUC concluded, however, that “the landowner exemption is not really necessary since most power line relocations pursuant to landowner requests can be accommodated under the minor relocation exemption.”³² This indicates that “minor relocations” would not be limited to construction of projects or facilities within an existing easement. Such rationale is equally applicable to the transmission line “minor relocation” exemption.

There is also a second ambiguity in the applicability of the CPCN requirement even before reaching the “minor relocation” exemption. The term “major transmission line facilities” is not defined in GO 131-D. Furthermore, there is no guidance in D.94-06-014 or D.95-08-038, however, on what is “major” and what is “minor.” In light of this uncertainty, SDG&E believes that this issue must be addressed on a case-by-case basis on the rare occasions where it might be relevant; however, SDG&E doubts that many projects in this state to relocate or construct new incoming supply transmission line

³² *D.94-06-014*, 55 CPUC 2d 87 at *18-19.

facilities of 200kV and over to power a substation will be close to “minor”. Conversely, and rather obviously, the CPCN requirement does not expressly or even reasonably imply that it applies to the high side outgoing feeder line equipment of substations designed for operation at 50kV or more. At most the connection of a substation feeder line to an existing transmission line, as outlined in the Proposed Project, only requires minor modifications to the transmission facilities and not relocation. Accordingly, and as discussed in more detail above, SDG&E believes that the more reasonable reconciliation of GO 131-D’s CPCN provisions for the major transmission line “minor relocation” exemption, and PTC provisions for substations with a high side voltage exceeding 50kV, when read together with Code Section 1001, is that these provisions make it clear that an electric public utility need not obtain a CPCN for any stand-alone substation, regardless of whether the project involves the construction of any new substation feeder lines over 200 kV, because this type of facility retains its pre GO 131-D status of being a system extension outside of the statutory provisions of Section 1001 of the Public Utilities Code. Moreover, under this approach, there is no reason for GO 131-D’s plain language to limit the substation outgoing feeder lines over 200 kV to the CPCN “minor relocation” exemption because in the event that the relocation poses any potential significant impacts on the environment, the Commission will be required under CEQA to evaluate alternatives that avoid those impacts, thus appropriate line length will be reviewed by the Commission in the appropriate context. SDG&E argues this context of the overall “Rules Relating to the Planning and Construction of Electric Generation, Transmission/Power/Distribution Line Facilities and Substations Located in California” further balances with the *Alberhill Project* proceeding, A.09-09-022 (*Alberhill*). In A.09-

09-022, SCE sought a PTC for the Alberhill Project which consisted of major transmission source line components including two new 500 kV transmission line segments. The Division of Ratepayer Advocates (DRA) submitted a timely protest arguing that the application should be filed as a CPCN based on GO 131-D, Section IX.A., which states:

“An electric public utility desiring to build transmission line facilities in this state for immediate or eventual operation in excess of 200kV shall file a CPCN...”

In reply to the protest, SCE stated that “[t]he Commission understands electrical engineering components and is aware of the necessity of such transmission line connections (“source lines”) to power a substation. If the Commission intended to require an application for a CPCN every time a source line was connected to a substation, the Commission would have required substations with voltages above 200kV to file an application for a CPCN, as opposed to an application for a PTC.”³³ SCE specifically claimed that the associated 500kV transmission source line segments, are considered a “minor relocation of existing power line facilities,” under GO 131-D, Section III.A.³⁴

The assigned Commissioner in A.09-09-022 ruled that the PTC procedure was inappropriate because it “does not address the need for and economic cost of the project... which involves over-200 kV facilities that are presumed to pose economic risk to ratepayers.”³⁵ Accordingly, in A.09-09-022, the assigned Commission issued a ruling (“Alberhill” Ruling) on March 3, 2010, directing SCE to change the caption of the PTC proceeding to provide for a CPCN application under GO 131-D, section IX.A in lieu of a

³³ *SCE A.09-09-022 Reply* at 3, available at <http://docs.cpuc.ca.gov/efile/REP/109961.pdf>.

³⁴ *Id.*

³⁵ *Alberhill* Ruling at pp. 2-3, available at <http://docs.cpuc.ca.gov/efile/RULINGS/114422.pdf>.

PTC request under GO 131-D, section IX(B).³⁶ Because the *Alberhill* Project involved construction of two new 500kV transmission source line segments, SDG&E believes the Ruling is distinguishable from the Proposed Project, which includes a only short feeder line loop necessary to connect the ECO Substation to the existing 500 kV SWPL transmission line. In this case, the Proposed Project does not involve the construction of any “major” transmission lines. In this case, similar to *Viejo*,³⁷ when considering whether the project would operate at 200 kV or more for purposes of determining whether to require a PTC or CPCN, the Proposed Project is considered to operate at a level of 138kV since all source line circuits being constructed by SDG&E are 138kV. Moreover, because all substation source circuits SDG&E proposes to install, as set forth in the Application and PEA for the Proposed Project, are 138kV the project is appropriately filed as a PTC.

IV. CONCLUSION

For the foregoing reasons, SDG&E requests that the Commission confirm that the Permit to Construct provisions of Section III.B, IX.B, X and XI.B of GO 131-D provide the requisite approval process for an electric public utility to seek authorization for construction of substation facilities located in California.

³⁶ *Id.* at 4.

³⁷ *See* D.04-07-027.

Dated in San Diego, California, this 28th day of February, 2011.

Respectfully submitted,

By: /s/ Allen K. Trial
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CERTIFICATE OF SERVICE

I hereby certify that I have on this day served a true copy of the foregoing **OPENING BRIEF OF SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) ON THE RULES RELATING TO THE PLANNING AND CONSTRUCTION OF ELECTRIC PUBLIC UTILITY SUBSTATIONS LOCATED IN CALIFORNIA** on each party named in the official service list for proceeding **A.09-08-003** by electronic service, and by U.S. Mail to those parties who have not provided an electronic address.

Copies were also sent via Federal Express to Commissioner Michael R. Peevey and to Administrative Law Judge Hallie Yacknin.

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

/s/ Jenny Norin
Jenny Norin



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