PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ITEM # 46
I.D. # 10799

ENERGY DIVISION **RESOLUTION E-4400**
March 22, 2012

R E S O L U T I O N

Resolution E-4400 McGrath Substation Project Southern California Edison.

PROPOSED OUTCOME: Resolution E-4400 denies the appeal of Executive Director's Resolution E-4392, and finds that Resolution E-4392 correctly disposed of the protests to Advice Letter 2517-E-A.

By Appeal of Resolution E-4392 Filed on February 14, 2011

SUMMARY

This Resolution affirms that Executive Director's Resolution E-4392 correctly disposed of protests, and finds that the proposed facilities are exempt from the requirements to obtain a Permit to Construct ("PTC Requirements") pursuant to General Order 131-D ("GO 131-D"), Section III, Subsection B.1.f.("Exemption f.").

This Resolution denies the appeal of Resolution E-4392, 1 filed by The Utility Reform Network in Application (A.) 11-02-012, because the appeal

[1] The appeal was titled: "Application of The Utility Reform Network and the City of Oxnard for Rehearing of Resolution E-4392 Regarding Interconnection Facilities for McGrath Gas Turbine Peaker Proposed for Oxnard, California." This application for rehearing is considered an appeal of Resolution E-4392 to the full Commission, and is not an application for rehearing under Public Utilities Code section 1731. (See Assistant Chief Administrative Law Judge's Ruling Setting Up Procedure for Review by the Full Commission of an Appeal of Resolution E-4392 (ACALJ Ruling), filed March 24, 11, p. 2.) The City of Oxnard subsequently withdrew its appeal as a result of a legal settlement with SCE.

failed to demonstrate that Exemption f. was incorrectly applied to the proposed facilities.

Draft Resolution E-4400 originally issued on November 3, 2011 and comments were submitted by The Utility Reform Network (TURN) and the Southern California Edison Company (SCE). Due to the extent of the changes made to this Resolution after comments were received, this Resolution is being re-circulated for an additional round of comments.

BACKGROUND

On September 30, 2010, SCE filed Advice Letter 2517-E; Notice of Proposed Construction Project Pursuant to General Order 131-D, McGrath 66 kilovolt (kV) Substation Project. SCE proposes to construct this new substation to interconnect the proposed SCE McGrath gas turbine peaker generating facility, located at 251 N. Harbor Boulevard in Oxnard, California. The substation will be equipped with one 66kV circuit breaker, three three-phase 66kV disconnect switches, and one prefabricated mechanical electrical equipment room. The substation will be located adjacent to and south of the proposed peaker generating facility on a site approximately 76 feet long by 65 feet wide, surrounded by an 8-foot high perimeter fence, on property already owned by SCE.

The McGrath Substation Project will involve the construction of two new 66kV lines (the McGrath Peaker 66kV interconnection line and the Gonzales-Mandalay-McGrath 66kV line) to connect the SCE McGrath peaker generating facility to the SCE transmission grid. In this advice letter, SCE sought an exemption from the PTC Requirements of GO 131-D, Section III B. This provision sets forth the PTC Requirements for utilities proposing to construct power line facilities and substations between 50kV and 200kV. Section III B.1.f. allows utilities to file for an exemption to the PTC requirements where the substation to be constructed has been reviewed pursuant to CEQA and where the final CEQA document finds no significant unavoidable environmental impacts caused by the proposed substation.

On December 6, 2010, SCE supplemented Advice Letter 2517-E with the final California Environmental Quality Act (CEQA) equivalent document prepared by the California Coastal Commission (CCC) pursuant to its certified state regulatory program authority for the McGrath 66kV

Substation Project relevant to General Order (GO) 131-D, Section III.B(f).[2] A timely protest was filed by TURN to AL 2517-E-A.

After reviewing the CCC Certified Staff Report, Energy Division staff found that the proposed project was exempt from PTC requirements under GO 131-D, Section III B.1.f. On January 14, 2011, the Executive Director issued Resolution E-4392, which adopted Energy Division staff's conclusion that the proposed facilities met the criteria for an exemption from the PTC Requirements. Resolution E-4392 dismissed the protests for failure to state a valid reason and found that the McGrath 66kV Substation project was exempt from the requirements to obtain a PTC.

PROTESTS AND RESPONSES TO EXECUTIVE DIRECTOR RESOLUTION E-4392

On February 14, 2011, TURN filed an appeal of Executive Director Resolution E-4392. TURN argued that the Commission had never issued a ruling that addresses the specific need for SCE's proposed peaker plant in the proposed location, and further argued that the Commission committed factual error in analyzing AL 2517-E-A by assuming the Commission had approved the generation plant as proposed by SCE. TURN asserted that the Resolution must identify the Commission decision or ruling that approved SCE's proposal to build a gas-fired peaker plant in Oxnard. They also found fault with the Commission's reliance on the CCC's review of whether the proposed plant would be consistent with the local coastal plan and failed to recognize that the CCC's analysis focused on meeting local reliability needs within very restricted options including meeting local reliability needs and the need to build on utility-owned property.

TURN argues that the discussion of the adopted outcomes in Resolution E-4392 was inadequate and failed to provide the rational necessary for the findings. TURN claims that the discussion section of Resolution E-4392 errs in referring to the CCC as having prepared a document for the McGrath 66kV Substation Project because there is nothing in the document

[2] SCE then amended Advice Letter 2517-E, by filing Advice Letter 2517-E-A. This advice letter appended the CEQA equivalent environmental review document, a CCC certified Staff Report that adequately evaluated the substation facilities in question. SCE's amended AL 2517-E-A, supersedes AL 2517-E.

that considers the interconnection facilities as distinct from the associated generation plant. TURN also faults the Resolution for stating that Energy Division had concluded that the criteria for an exemption had been met, without specifically identifying the criteria that Energy Division applied, or the basis for finding the reasons in the protest were not valid.

On February 28, 2011 SCE filed a response to the TURN appeal. In its response, SCE argued that it is indisputable that the transmission work at issue meets the exemption criteria outlined in Exemption f. Regarding the broader argument that the project is not authorized or needed, SCE argues that the peaker was clearly authorized in a prior Assigned Commissioner's Ruling and in Resolution E-4031. SCE further notes that the Commission has had several opportunities to reverse that authorization if it wished, yet it has not. Further, SCE argues that the establishment of the memorandum account has authorized the expenditure of funds to develop and construct the peaker and to date has spent approximately $40 million. SCE adds that the granting of TURN's appeal would set a precedent, which would effectively deter many future energy projects.

SCOPE OF THE COMMISSION'S REVIEW ON APPEAL

General Order 131-D Section III, Subsection B.1.f states that a utility does not need to obtain a permit to construct from the Commission in order to build: "power lines or substations to be relocated or constructed which have undergone environmental review pursuant to CEQA as part of a larger project, and for which the final CEQA document (Environmental Impact Report (EIR) or Negative Declaration) finds no significant unavoidable environmental impacts caused by the proposed line or substation."

General Order 131-D Section III, Subsection B.2. states that an exemption "shall not apply when any of the conditions specified in CEQA Guidelines 15300.2 exist:

a. there is reasonable possibility that the activity may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies; or

b. the cumulative impact of successive projects of the same type in the same

place, over time, is significant; or

c. there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."

Therefore, the scope of the Commission's review of Executive Director Resolution E-4392 is limited to whether SCE demonstrated that the proposed facilities meet the exemption criteria and whether TURN demonstrated that an exception applies.

COMMENTS ON DRAFT RESOLUTION E-4400 AS ISSUED ON NOVEMBER 3, 2011

Draft Resolution E-4400 issued on November 3, 2011. SCE commented that Draft Resolution E-4400 is well reasoned and should be adopted by the Commission with minor changes. SCE also identified additional developments that it believed further support the Draft Resolution's denial of the appeal including:

The State appellate decision became final on October 18, 2011 when the City of Oxnard decided not to seek California Supreme Court review and remittitur was issued. Pursuant to the Settlement Agreement, SCE has paid for, and the City has issued, the project's necessary ministerial construction permits.

On October 27, 2011 TURN filed a motion for Assigned Commissioner's Ruling Regarding SCE's construction plans for the McGrath Peaker in SCE's GRC proceeding (A.10-11-015). On November 14, 2011 SCE filed a written response to TURN's motion in which SCE argues the Commission's support for all five peaker plants has been repeated and constant.

On November 21, 2011 TURN submitted comments on Draft Resolution E-4400. TURN reiterated its belief that the Draft Resolution "commits factual and legal error in suggesting that the full Commission has previously weighed in on the specific need for the McGrath Peaker." TURN argues that the ACR from 2006 does not mention the Oxnard location, or the McGrath peaker by name. TURN disputes the Resolution's contention that Resolution E-4031 represented evidence of the full Commission's approval of the plant. Finally, TURN takes issue with staff's statement

that "review of the procedural record and past Commission decisions suggest to staff that all five peakers enjoyed the support of the full Commission." TURN finds error in staff's citing of D.09-03-031 and D.10-05-008, both issued in A.07-12-029.

NOTICE

Notice of AL 2517-E-A was made by publication in the Commission's Daily Calendar. Southern California Edison states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

PROTESTS

On February 14, 2011, TURN filed an appeal of Executive Director Resolution E-4392. TURN argued that the Commission had never issued a ruling that addresses the specific need for SCE's proposed peaker plant in the proposed location, and further argued that the Commission committed factual error in analyzing AL 2517-E-A by assuming the Commission had approved the generation plant as proposed by SCE.

DISCUSSION

Executive Director Resolution E-4392 found that the construction of the 66kV McGrath substation required to interconnect the McGrath gas turbine peaker generating facility is exempt from the Commission's requirement to file an application for a PTC. Specifically, Resolution E-4392 correctly found that SCE Advice Letter 2517-E-A (amending SCE Advice Letter 2517-E) demonstrated that SCE was exempt from filing a PTC pursuant to General Order 131-D, Section III.B.1.f. The Resolution found that SCE demonstrated that the facilities qualified for Exemption f. because they were studied in the CCC's final, certified CEQA equivalent document.

The issue as to whether the Commission properly approved the McGrath peaker, as well as, the need for the peaker was not fully discussed in Resolution E-4392. However, discussion of this issue is beyond the scope of this appeal and is not warranted. The issues before the Commission are whether the substation project was exempt from the need to the Commission for a PTC, and whether TURN filed a valid protest pursuant

to GO 131-D. Therefore, the discussion of the issues raised regarding the peaker plant that was included in the Resolution that circulated on November 3, 2011, has been removed.

Furthermore, Section IX B.1.f. states that "…an application for a permit to construct need not include either a detailed analysis of purpose and necessity, a detailed estimate of cost and economic analysis, a detailed schedule, or a detailed description of construction methods beyond that required for CEQA compliance." Thus, if the Commission were to consider TURN's arguments regarding the need for the McGrath peaker, it would require a more extensive review of the McGrath substation, which is exempt from the PTC Requirements, than for a project that is required to file an application for a PTC. This would be an illogical result and frustrate the purpose of the exemption process.
TURN argues that the Commission's reliance on the CCC's review of whether the proposed Oxnard plant would be consistent with the local coastal plan is misplaced. TURN asserts that the Coastal Commission's analysis addressed a different project, at least in terms of underlying objectives. Specifically, TURN takes issue with the "alternatives" that the CCC was required to identify and consider. However, staff reviewed the adequacy of the CCC's document and found it to be sufficient and consistent with Exemption f as the project is: a substation to be constructed that has undergone environmental review as part of a larger project and for which the final environmental document finds no significant unavoidable impacts.

It was reasonable for staff to conclude that the CCC Certified Staff Report satisfied the Exemption f. criteria. The CCC certified Staff Report is a CEQA equivalent document that adequately evaluated the substation facilities as part of a larger project, the McGrath peaker. The document found there to be no significant and unavoidable impacts associated with the substation. Furthermore, TURN did not raise an argument that one of the GO 131-D exceptions applied. Most of TURN's arguments are outside the scope of this appeal. Nothing in the appeal would justify altering the finding in Resolution E-4392 that construction of the 66 kV substation required to interconnect the McGrath gas turbine peaker generating facility is exempt from the Commission's requirement to file for an application for a PTC.

Executive Director's Resolution E-4392 correctly disposed of TURN's protests because they failed to state a valid reason to find that the proposed facilities failed to meet the PTC exemption requirements of General Order 131-D, Section III, Subsection B.1.f. or that an exception applied.

The construction of the 66kV McGrath substation required to interconnect the McGrath gas turbine peaker generating facility is exempt from the Commission's requirement to file an application for a Permit to Construct (PTC) pursuant to General Order (GO) 131-D, Section III.B.1.f, and no exception applies.

COMMENTS

For DRAFT Resolutions, The Comment Period will NOT be waived or reduced: "Public Utilities Code section 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 Commission. Section 311(g)(3) provides that this 30-day period may be reduced/waived by Commission adopted rule.

FINDINGS

1. Executive Director Resolution E-4392 found that the construction of the 66kV McGrath substation required to interconnect the McGrath gas turbine peaker generating facility is exempt from the Commission's requirement to file an application for a Permit to Construct (PTC) pursuant to General Order (GO) 131-D, Section III.B.1.f.

2. TURN appealed Resolution E-4392 on the basis that the Commission never decided whether there is a need for the McGrath peaker project, the larger project of which the McGrath substation is a component. TURN also claims that the Commission could not rely on the California Coastal Commission's (CCC) Certified Staff Report because it addressed a project with different underlying objectives and did not properly consider alternative projects that could meet the same objectives.

3. The scope of the Commission's review of Executive Director Resolution E-4392 is limited to whether SCE demonstrated that the proposed

facilities meet the GO 131-D exemption criteria and whether TURN demonstrated that an exception applies.

4. SCE demonstrated that the facilities qualified for an exemption from the PTC Requirements pursuant to General Order (GO) 131-D, Section III.B.1.f. because they were studied in the CCC's Certified Staff Report, which is a CEQA equivalent document that studied the McGrath Substation as part of a larger project.

5. TURN's arguments regarding the need for the McGrath Peaker are outside the scope of this appeal and not a valid basis for protest pursuant to GO 131-D; thus, they were properly denied as being without merit in Resolution E-4392.

6. TURN did not claim that a GO 131-D exception applies.

THEREFORE IT IS ORDERED THAT:

1. The appeal of the Executive Director's Resolution E-4392, filed by TURN, is hereby denied.

2. Executive Director's Resolution E-4392 is affirmed.
3. Application (A.) 11-02-012 is hereby closed.
4. 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 March 22, 2012; the following Commissioners voting favorably thereon:

_____
PAUL CLANON
Executive Director