PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

I.D.# 8518

ENERGY DIVISION **RESOLUTION E-4243**
JUNE 4, 2009

R E S O L U T I O N

Resolution E-4243. Southern California Edison Company (SCE). This Resolution affirms Executive Director's Action Resolution E-4225 ("Executive Resolution"), which found the proposed utility facilities described in SCE's Advice Letter 2272-E, the Moorpark-Newberry 66 kV Subtransmission Line Project, to be exempt from the Commission's requirements to obtain a Permit to Construct ("PTC Requirements") pursuant to General Order 131-D ("GO 131-D"), Section III, Subsection B.1.g. ("Exemption g."); and dismissed the protests submitted to the Commission because the facts claimed in the protests did not support a finding that the exception criteria contained in GO 131-D, Subsection B.2.a-c. applied. This Resolution denies three appeals of the Executive Resolution.

By Advice Letter 2272-E. Filed on October 2, 2008.

SUMMARY

This Resolution affirms Executive Director's Action Resolution E-4225 ("Executive Resolution") because it correctly found that: 1) SCE complied with the applicable notice requirements for the proposed construction of utility facilities ("proposed facilities"); 2) the proposed facilities were exempt from the Commission's requirements to obtain a Permit to Construct ("PTC Requirements") pursuant to General Order 131-D ("GO 131-D"), Section III, Subsection B.1.g.("Exemption g."); 3) facts claimed in protests to the proposed facilities did not support a finding that the exception criteria contained in GO 131-D, Subsection B.2.a-c. applied; 4) and the protests should be dismissed. Thus, the appeals submitted to the Commission asking for the Executive Resolution to be overturned

and for SCE to be required to file an application for a PTC are dismissed. This Resolution is effective immediately.

BACKGROUND

On October 2, 2008, Southern California Edison ("SCE") filed Advice Letter 2272-E; Notice of Proposed Construction Project Pursuant to General Order 131-D, Moorpark-Newbury 66 kV Subtransmission Line Project. SCE proposes to construct the new Moorpark-Newbury 66 kilovolt (kV) subtransmission line to address a base case overload on the Moorpark tap of the existing Moorpark-Newbury-Pharmacy 66kV subtransmission line. The new Moorpark –Newbury 66 kV subtransmission line will be constructed between SCE's Moorpark Substation, located at the northwest corner of Gabbert Road and Los Angeles Avenue in the City of Moorpark, and SCE's Newbury Substation, located at 1295 Lawrence Drive in the City of Thousand Oaks. The project, which will involve both the construction of new facilities and replacement and reconductor of existing facilities, is approximately 9 miles in length, and will traverse portions of the City of Moorpark, unincorporated areas of Ventura County, and the City of Thousand Oaks. The proposed facilities will be constructed entirely within SCE's existing easements, rights-of-way ("ROW") and fee-owned property.

Specifically, the new Moorpark-Newbury 66kV line would be constructed as follows:

Section 1: Construction of approximately 2,000 feet of underground 66kV line, entirely within Moorpark Substation.

- This section would extend from Position 2 in the Moorpark 66kV bus to a new tubular steel pole (TSP) riser, up to approximately 90 feet in height, in the northeast corner of Moorpark Substation, and will be cabled with 2,000 kcmil (thousand circular mils) copper.

Section 2: Construction of 34 engineered TSPs in SCE's existing Ormond Beach –Moorpark 220kV ROW for approximately 5 miles.

- This portion of the project would extend from the Moorpark Substation east and then south to a point adjacent to SCE's existing

220kV tower M16 T5. From this point, the new line will transition to an existing 66kV ROW as described below.

- The new TSPs, which would be approximately 75-125 feet tall and strung with 954 aluminum conductor, steel reinforced (ACSR), would be installed adjacent to the existing 220 kV towers and the new subtransmission line will have approximately the same span lengths as the existing Ormond Beach-Moorpark 220 kV lines in the ROW.

Section 3: Replacement of 14 existing double-circuit 66 kV lattice steel towers (LSTs) with 14 double-circuit TSPs for approximately 2.5 miles on the existing Moorpark –Newbury-Pharmacy 66 kV subtransmission line.

- As noted above, this section would begin where the existing Moorpark-Newbury-Pharmacy 66 kV subtransmission line crosses SCE's existing Ormond Beach-Moorpark 220 kV ROW at a point approximately 4,150 feet south of the intersection of Santa Rosa Road and Gerry Road.

- The new double-circuit TSPs, which would be approximately 75-125 feet tall, will carry both the existing Moorpark-Newbury-Pharmacy 66 kV subtransmission line and the new Moorpark-Newbury 66 kV line. Both circuits would be strung with 954 ACSR (the existing Moorpark-Newbury-Pharmacy 66 kV line currently is strung with 653.9 ACSR, but would be reconductored as part of this project to avoid conductor swing and rise conflict with the new Moorpark-Newbury 66 kV line).

- Section 4: Replacement of 36 single-circuit wood poles with 36 double-circuit lightweight steel (LWS) poles for approximately 1.2 miles in existing ROW.

- This section would begin at a point approximately 0.3 miles west of the intersection of Conejo Center Drive and Rancho Conejo Blvd and end at Newbury Substation.

- This section would involve the transfer of the existing Moorpark-Newbury-Pharmacy 66 kV subtransmission line from existing 70-90 foot tall poles to new 75-95 foot tall double-circuit LWS poles carrying both the new Moorpark-Newbury-Pharmacy 66 kV subtransmission line and the existing Moorpark-Newbury-Pharmacy 66 kV subtransmision line.

Within the 20-day protest period specified in GO 131-D, the Commission received approximately 100 form letters from area residents protesting the proposed construction of the facilities. The Commission also received protests from: Mr. David Tanner; Ms. Danalynn Pritz; the Santa Rosa Valley Estates Homeowner's Association; and Paul D. Burns. Additionally, representatives of four local governmental bodies protested: Alan Sozio, Esq. representing the City of Moorpark; the Ventura County Board of Supervisors County; City of Thousand Oaks; and Santa Rosa Valley Municipal Advisory Council.

Due the large number of protests received, the Commission granted SCE an extension of the normal 5-day period, to respond to the protests. On October 31, 2008, SCE responded to the protests.

The protests raised questions about the Project in the following areas: (1) Noticing; (2) the application of Exemption g. to the project; (3) electric and magnetic fields (EMF); (4) safety, including concerns related to wind, earthquake and potential fire hazard; (5) aesthetics and property values; (6) impacts to sensitive plant and animal species; (7) project need; (8) project alternatives; (9) tree removal; (10) climate change; (11) project construction impacts.

In addition, protestants requested that an Environmental Impact Report ("EIR") be prepared and evidentiary hearings be held to resolve factual disputes. Protestants also alleged that GO 131-D violates the California Environmental Quality Act ("CEQA") (Public Resources ("Pub. Res.") Code Section 21000 et seq.).

SCE addressed each of the issues raised in the Protests. SCE claimed that the grounds for a valid protest under Section XIII of GO 131-D had not been met and, therefore, the protests should be dismissed. SCE claimed that the protests failed to demonstrate that the conditions specified in GO

131-D, B.2.a.-c. were present, which would have required SCE to file an application requesting that the Commission issue a Permit to Construct ("PTC").

On January 6, 2009, the City of Moorpark ("City") filed a Supplemental Protest notifying the Commission of potentially conflicting information being provided by SCE to the Commission on the one hand and to a Superior Court hearing a condemnation case between SCE and the City on the other. The issue was whether the proposed facilities would conflict with a proposed access road for which the City was seeking condemnation. On January 15th SCE asked the Commission temporarily suspend review of Advice letter 2272-E until SCE could resolve the issue and properly respond to the City's allegation. On January 23rd SCE amended their declarations with the court, consistent with the information provided to the Commission, i.e. the proposed facilities and proposed access road would not be in physical conflict.

On February 24, 2009, the Executive Resolution was issued. It found that SCE Advice Letter 2272-E, was exempt from the PTC Requirements pursuant to GO 131-D, Exemption g.; and it dismissed the protests submitted to the Commission because the facts claimed in the protests did not support a finding that the exception criteria contained in GO 131-D, Subsection B.2.a-c applied.

On March 24, 2009, Mr. and Mrs. Peggy Ludington appealed the Executive Resolution. On March 25, 2009, Danalynn Pritz of Pritz & Associates and David J. Tanner of Environmental and Regulatory Specialists, Inc. ("EARSI") appealed the Executive Resolution. For the purposes of this appeal, the appeals and previously submitted protests will be examined by the Commission collectively ("the Appeals").

Taken together, the Appeals request that the Commission take the following actions: 1) overturn the Executive Resolution and require SCE to obtain a PTC for the proposed facilities; 2) issue an Order Instituting Rulemaking to update GO 131-D to bring the General Order into compliance with CEQA, and clarify the intent of Exemption g.; 3) institute changes to Commission policies for implementation of GO 131-D; and 4) undertake an investigation into SCE's actions to determine if a violation of Rules of Practice and Procedure, (Rule 1.1) Ethics has occurred. The Appeals assert that "SCE is attempting to re-establish an exemption for

projects that upgrade 50-200 kV lines and facilities in existing rights-of-way that were eliminated in 1995 by the revision of GO 131-C."

GO 131-D

GO 131-D was adopted by the Commission in Decision D. 94-06-014 and modified by D.95-08-038. It establishes the permitting processes for transmission lines (a line designed to operate at or above 200 kilovolts (kV), power lines (a line designed to operate between 50 and 200 kV), and distribution lines (a line designed to operate under 50kV). Distribution lines do not require do not require a permit from the Commission, while transmission lines require either a Certificate of Public Convenience and Necessity (for lines 200 kV or greater) or a PTC (for lines between 50 - 200 kV), unless specific exemption criteria apply.

The exemption at issue in this appeal, which would preclude SCE from having to obtain a PTC, is GO 131-D, Exemption g.,

> power line facilities or substations to be located in an existing franchise, road-widening setback easement, or public utility easement; or in a utility corridor designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies for which a final Negative Declaration or EIR finds no significant unavoidable environmental impacts.

SCE demonstrated that the proposed facilities would be constructed entirely within SCE's existing easements, rights-of-way ("ROW") and SCE fee-owned property. Thus, the propose facilities meet the conditions that exempt SCE from the PTC Requirements pursuant to Exemption g. Unless the proposed facilities trigger criteria contained in GO 131-D, which nullify the applicability of Exemption g., SCE is not required to file an application for a PTC; and the Commission would not grant any entitlement for the proposed facilities.

GO 131-D Section III.B.2. contains criteria for exceptional circumstances, which if applicable, do not permit exemptions from the PTC Requirements (Exception Criteria). Exemptions from the PTC Requirements do 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."

GO 131-D, Section XIII provides in pertinent part, "Within 30 days after the utility has submitted its response [to protests to require utility to file for permit to construct], the Executive Director. . .shall issue an Executive Resolution on whether the utility is to file an application for a permit to construct, or the protest is dismissed for failure to state a valid reason. Also, the Executive Director shall state the reasons for granting or denying the protest. . ." If a protestant states facts demonstrating "that any of the conditions described in Section III.B.2 exist or the utility has incorrectly applied an exemption as defined in Section III..." then the Executive Director must reject the advice letter and require the utility to file an application for a PTC.

For reasons reiterated in this Resolution, the Executive Resolution found that the proposed facilities qualified for Exemption g., and that the record did not support a finding that the Exception Criteria applied to the facts at hand.

APPEAL – STANDARD OF REVIEW

Because the Executive Resolution was appealed, the Commission must decide whether to affirm the Director's Resolution or to overturn it and require SCE to file for a PTC. In order to affirm the Executive Resolution, the Commission must adopt Findings of Fact, which are supported by the evidentiary record, that demonstrate that the proposed facilities are exempt from the PTC requirements and that none of the Exception Criteria apply.

DISCUSSION OF APPEALS

The following Section summarizes the grounds of the Appeals and states the Commission's findings with regard to whether the facts alleged in the protests and appeals demonstrate that the Exception Criteria apply.

Notice

The Appeals allege that inadequate notice was provided for the project.

GO131-D Section XI, Subsection B

GO131-D Section XI, Subsection B requires that for facilities deemed exempt from the PTC Requirements, notice is to be provided: by direct mail to the planning director of each county or city in which the facilities will be located and the Executive Director of the Energy Commission; advertisement in newspapers in the county or city in which the facilities will be located; by posting on-site and off-site where the project would be located; and by filing an informational advice letter with specific departments at the CPUC.

SCE claims to have complied with these requirements. The Appeals do not allege that SCE deviated from the provisions described above. Thus, the Commission finds that SCE complied with the notice requirements of GO 131-D Section XI, Subsection B.

GO 131-D Section XI, Subsection C(2)

GO 131-D Section XI, Subsection C(2) ("Subsection C(2)") requires that contents of notices include a concise description of the proposed construction and facilities, its purpose and its location in terms clearly understandable to the average reader.

The Appeals argue that Subsection C(2) was not adequately followed because the notice did not provide its purpose and location in terms clearly understandable to the average reader. In particular, the Appeals claim that the notice failed to specify which section of the project applied to Santa Rosa Valley residents, and failed to address that some power lines from the project would be placed closer to residents. According to appellant, Santa Rosa Valley did not initially realize that of the portion proposed facilities described in the notice as "Section 2" was near their community.

The notice stated that the project would extend between SCE's Moorpark Substation, located at the northwest corner of Gabbert Road and Los Angeles Avenue in the City of Moorpark, and SCE's Newbury Substation, located at 1295 Lawrence Drive in the City of Thousand Oaks. Section 1 was described as extending 2,000 feet entirely within Moorpark. Section 2 was then described as extending from the Moorpark Subsation east and south for approximately 5 miles. Moreover, Section 2 of the proposed facilities would extend within existing Ormond Beach-Moorpark 220 kV right-of-way.

The Commission finds that an average reader would be able to understand, by carefully reading the project description, that Section 2 runs for five miles in an eastern and southern direction from the Moorpark Substation, and would extend within SCE's existing Ormond Beach-Moorpark right of way, which is marked on the land by the 220 kV line identified in the project description. Each reference point, including the Moorpark Substation, the direction the lines run from it, the fact that the lines are completely within SCE existing right-of-way, and the fact that the new lines would span approximately the same lengths as the existing 220 kV lines, would enable the reader to identify that Section 2 runs near the concerned Santa Rosa Valley residents.

The Appeals claim that residents could not know, based upon the project description, that the new project would be placed 40 feet closer to residents than the existing 220 kV lines. However, the project description identifies that the project would be located within existing SCE rights of way, which should be easily identified by Santa Rosa Valley residents due to the large size of the existing 220 kV lines that are present in the right-of-way.

Therefore, the Commission finds that the project description in the notice has adequately explained the project location in a way that is clearly understandable to the average reader, and that GO 131-D Section XI, Subsection C(2) standard has been met.

The Appeals go on to claim that GO 131-D Section XI, Subsection C(4) was not adequately met. This provision requires that the notice contain "Instructions on obtaining or reviewing a copy of the application, including a Proponent's Environmental Assessment ("PEA") or available equivalent, from the utility." In this case, SCE provided the Commission with an advice letter noting that the proposed project was exempt from the

PTC Requirements that would normally apply to power line facilities. Therefore, neither an application nor a PEA was required for the project. However, the notice provided two names, addresses, and phone numbers that the public could call to obtain additional information about the proposed project. The Commission finds that, in this case, such information is adequate to meet the requirements set forth under GO 131-D Section XI, Subsection C(4).

The Appeals also note that Section 3 of the notice does not disclose the height of proposed towers. However, this objection is misplaced. Section 3 identifies that existing towers will be replaced rather than new ones being added. The Tubular Steel Poles that would replace the existing towers do have their heights described under the second bullet point of describing the portion of the proposed facilities referred to as "Section 3".

The Appeals remaining assertions fail to cite authority under GO 131-D. The Commission finds that the contents of the Advice Letter adequately met the requirements set forth by GO 131-D Section XI. Thus, the Appeals have not raised facts with regard to the notice requirements of GO 131-D that would cause the Commission to overturn the Executive Resolution.

The Executive Resolution Properly applied the GO 131 D, Section III.B.1.g exemption ("Exemption g.")

Appellants make several claims that Commission has improperly applied Exemption g. to the case at hand.

The Appeals claim that Exemption g. cannot apply because a copy of a negative declaration (ND) or environmental impact report (EIR) must be provided for this project; and that the majority of area within the right-of-way in this case is undisturbed, and that applying Exemption g. fails to require proper environmental review under CEQA. Appellant specifically claims that 55 CPUC 2nd 87 does not support a reading of Exemption g. so expansive as to exempt any 50-200 kV project in any right-of-way.

The relevant Commission Decision reads as follows:

The obvious rationale for [Exemption g.] is that franchise areas in which the power lines are to be installed are already improved and the original environment disturbed by virtue of the construction of the streets and

associated public uses such as curbs, gutters, sidewalks, sewer, and other facilities. In other words, locating a power line in a franchise is not the same as locating a power line in virgin territory. Therefore, we believe that this exemption is logical since these locations are either already disturbed areas containing significant public improvements or have been designated by the local jurisdiction as areas for public improvements. (*71 CPUC2d 339, 23-25;* Decision No. 97-03-058, Application No. 95-12-048 (Filed December 13, 1995).

The Executive Resolution concluded that Exemption g. applied because it was undisputed that the proposed facilities were planned for existing SCE right-of-way, and there was already an existing 220 kV line within the segment of the right-of-way at issue in this appeal. The Executive Director's Resolution is consistent with the Commission's past interpretations of Exemption g. and serves to further the Commission's policy of locating power lines within existing utility corridors. The Commission refuses to interpret the "virgin lands" reasoning of past decisions in a manner that would apply to land within utility corridors and adjacent to existing towers supporting transmission and power lines. Thus, the Commission finds that Exemption g. applies to the proposed facilities.

The Executive Resolution Properly found that none of the Exception Criteria applied.

If the Exception Criteria were applicable, then the applicant would need to file an application for Permit to Construct. For the reasons stated below, the Commission finds that the Executive Director correctly determined that the Exception Criteria did not apply to the proposed facilities.

EMF

The Appeals allege that the Project will cause increased cumulative EMF exposure. The Commission's practice is to address EMF concerns universally. The action plan established in Commission Decision 93-11-013 adopted various "no-cost and low-cost" measures into the construction of new or upgraded power facilities.

SCE will employ the "no-cost and low-cost" measures to minimize possible EMF exposure. The Commission finds that, because SCE is complying with Commission policy, EMF exposure resulting from the

project is not sufficient basis for finding that the Exception Criteria are applicable.

Brush fire

The Appeals claim that the proposed facilities have the potential to result in increased fire hazards due to strong Santa Anna wind events. The Appeals also claim that the proposed facilities would expose people to hazards resulting from the toppling of towers during an earthquake, as the project area may traverse the Simi-Santa Rosa Fault zone.

The Executive Resolution relied on SCE's statements that brush fire and earthquake hazards are common in their service territory and that neither circumstance is "unusual". SCE argued that even if these were determined to be unusual circumstances, there is no possibility of a significant impact because of required design and maintenance measures. Once again, concern regarding fires caused by power lines is an issue that the Commission takes very seriously and addresses in broad fashion. The Appeals did not demonstrate why these particular facilities represent a unique risk of fire as compared to other power lines in SCE's service territory. The Commission's rules that address tower design standards and fire prevention will apply to the proposed facilities. Therefore, the Director Resolution correctly found that this concern did not allege facts to support the application of the Exception Criteria.

Aesthetics or property values

The Appeals claim that the construction of additional power lines would have a significant impact on scenic views and the existing visual character and quality of the sites and surroundings. In support of this claim, appellants note that the new power lines would be located substantially closer to residents, increase the already significant adverse impact to scenic vistas, and overburden the existing utility corridor due to its narrow width.

In response to the claim of significant aesthetic impacts, SCE used CEQA aesthetic criteria as evidence that the proposed project would not meet the thresholds for a significant impact. SCE argued that the project would result in a small incremental aesthetic change, and would not substantially impact the visual quality of the site.

After considering arguments made by SCE and the Appeals, the Executive Resolution recognized that the incremental nature of the proposed power lines, due to the existing 220 kV lines, would not result in a potentially significant aesthetic impact. Also, the Executive Resolution found that the impact on property values is not a consideration that would support the application of the Exemption criteria. The Executive Resolution noted that "an accepted methodology for assessing property value impact resulting from the proximity of electric facilities has yet to be established." The Commission finds that because of the existing 220 kV line within the right-of-way, aesthetic and property value concerns do not support the application of the Exception Criteria.

Impact to sensitive plant and animal species

The Appeals state that the Executive Resolution failed to address long-term operation and maintenance impacts to habitats and protected species; that the Resolution erred by not considering impacts from habitat loss of endangered animal species and riparian resources known to exist in the area; that the Resolution erred by failing to address endangered animal and avian species; and that the Resolution erred by failing to address impacts to riparian resources.

In particular, the Appeals claim that the habitat of special status plants Lyon's Pentacheata and Conejo Dudleya will be lost, even though neither species was observed during focused surveys by a qualified biologist. Moreover, the Appeals claim that habitat assessments and focused surveys for species such as the Least Bell vireo and California gnatcatcher should be undertaken to determine Project impacts from loss of habitat, physical "take" of species and impact on species recovery. In fact, focused surveys for California gnatcatchers failed to detect the species within SCE's right-of-way.

The Executive Resolution recognized that the facts alleged did not support application of the Exception Criteria because the proposed facilities are either not within a designated or mapped habitat for these species or there is no reasonable possibility that the facilities will impact the species because they are not physically present within the right-of-way. With regards to the above mentioned plant species, the Executive Resolution recognized that, because focused surveys demonstrated that the species were not present in SCE's right-of-way, there is no reasonable possibility that "the Project 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." Thus, the protests and appeals do not raise facts demonstrating that the Exception Criteria are applicable.

It should be noted that the Commission is neither issuing an entitlement for the proposed facilities nor conducting environmental review. GO 131-D delegates to staff the duty to review proposed facilities to ensure that they are exempt from the Commission's permitting requirements and that no facts exist that would otherwise require the utility to seek a permit. The Exception Criteria mirrors language from CEQA in order to disqualify projects that would otherwise be exempt, but for the high likelihood that the proposed facilities would result in environmental impacts. In this instance, SCE submitted a memorandum from Bonterra Consulting, demonstrating that focused surveys for endangered species were conducted according to resource agency protocols and none of the species were found to exist along the route of the proposed facilities. For these reasons, the Appeals fail to allege facts that demonstrate that the Exception Criteria are applicable. The Executive Resolution correctly dismissed the protests for this reason. Although SCE does not have to obtain a permit from the Commission, SCE is still required to comply with Federal, Sate and Local laws pertaining to endangered species.

Project need

The Appeals assert that the proposed facilities address no immediate electrical need, but rather possible future need assessed during the housing boom that may no longer be relevant in the current economic downturn. The Appeals also state that programs promoting solar electrical systems may negate the need for the project.

SCE's responded that the project is needed immediately to address current possible overload conditions during periods of peak customer demand. SCE has a responsibility to maintain reliable electric service for its customers. The Commission finds that there is no evidence in the record that would cause the Commission to doubt that the proposed facilities are required to meet reliability needs. Additionally, this type of generalized protest does not allege facts necessary to trigger the Exception Criteria.

Project alternatives

The Appeals assert that SCE failed to consider alternatives to the proposed facilities, including locating the project in an existing, 66kV

subtransmission corridor that runs parallel to the existing 220 kV corridor, or on the west side of the 220 kV corridor rather than the east side.

SCE responded that the line should not be built in the existing 66kV subtransmission corridor located 1800 feet to the west of the 220 kV ROW because of cost, lack of ROW and reduced reliability. Regarding placement of the facilities on the west side, SCE states that this option would require that the 66 kV line cross under the 220 kV line several times, resulting in engineering, construction, and safety complications. Regarding using the 220 kV facilities to support the new 66 kV circuit, SCE states that the existing 220 kV structures are not designed to accommodate a third circuit.

The Commission finds SCE's assessment that an alternative route is not feasible due to engineering and technical considerations to be reasonable.

Tree removal

Protesters note the presence of a "Heritage Tree" protected by the Ventura County Tree Protection Ordinance. SCE acknowledged that the height and position of the tree would necessitate its removal pursuant to State Vegetation Management laws and the Commission's General Order 95. SCE states that they will obtain any applicable ministerial permits from Ventura County prior to the tree's removal.

The Commission finds that the Executive Resolution was properly conditioned on SCE acquiring all required local permits.

Climate change

Appellant argues that the project will generate greenhouse gasses that will incrementally contribute to a cumulatively significant global warming impact. Appellant argues that the fact that no CEQA threshold of significance exists for climate change is an unusual circumstance that should trigger application of the Exception Criteria. However, construction of a 66kV power line is a common activity necessary to maintain service reliability. In such context, the absence of certain regulations cannot be considered unusual. If appellant's argument were carried to extremes, no construction projects could take place in California without triggering the need for an Environmental Impact Report. Clearly this would not benefit California or the environment. The Commission

finds that incremental contributions to climate change are not a valid reason to require application of the Exception Criteria.

Project construction impacts

The City of Thousand Oaks voiced concerns that the new spur roads SCE will need to build will have adverse impacts within protected open space land owned directly by the City or through a JPA, the Conejo Open Space Conservation Agency (COSCA).

SCE reports to have met and conducted site visits with City of Thousand Oaks Community Development Director and the COSCA Executive Director to review these conditions and addressed their concerns. SCE will use best management practices ("BMPs") to minimize construction related impacts to the environment. These BMPs include following the accepted U.S. Fish and Wildlife protocols and those of other resource agencies. The Commission finds that SCE's efforts to address concerns about potential construction related impacts through the use of BMPs is sufficient to avoid application of the Exemption Criteria.

Land Use Impacts

The Appeals claim that the County of Ventura notified the Commission that it objected to Advice Letter 2272-E on the basis of land use issues in accordance with GO 131-D Section XIV.B.

GO 131-D Section XIV.B provides in part, "This General Order clarifies that 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. However, in locating such projects, the public utilities shall consult with local agencies regarding land use matters. In instances where the public utilities and local agencies are unable to resolve their differences, the Commission shall set a hearing no later than 30 days after the utility or local agency has notified the Commission of the inability to reach agreement on land use matters."

The Commission received a letter from the Ventura County Board of Supervisors ("County of Ventura") dated October 28th, 2008, which identifies several alternatives to the proposed project and suggests those alternatives would be in keeping with the County General Plan. The letter states, "Our County stands ready to assist Southern California Edison and

the California Public Utilities Commission to review the Moorpark-Newbury 66kV Subtransmission line proposal and provide a better project to address the growing energy demands of our region and minimize the impacts to residents." The Commission welcomes input from Ventura County. However, the concerns voiced by the County of Ventura are not germane to the issue of whether the proposed facilities are Exempt from the PTC Requirements or whether the Exception Criteria applies. Additionally, the County of Ventura asked for an alternative location to be considered for the proposed facilities but did not request that the Commission hold evidentiary hearings.

GO 131-D Validity

Appellant raises the issue of whether GO 131-D Section III.B.1.g is consistent with CEQA. In this Resolution, the Commission is reviewing whether the Executive Director correctly implemented GO 131-D. The Executive Director was not delegated authority to amend GO 131-D. As with all general orders, the Commission may opt to amend GO 131-D to address the passage of time or other policy considerations. The Commission has not done so.

Rule 1.1 Violation

The Appeals allege a violation by SCE of the Commission's Rules of Practice and Procedure 1.1 (Ethics). This Resolution is not the proper procedure to decide alleged ethics violations.

Findings

1. On October 2, 2008, Southern California Edison Company (SCE) filed Advice Letter 2272-E; Notice of Proposed Construction Project Pursuant to General Order 131-D, Moorpark-Newbury 66 kV Subtransmission Line Project ("proposed facilities").
2. The proposed facilities would be constructed between SCE's Moorpark Substation, located at the northwest corner of Gabbert Road and Los Angeles Avenue in the City of Moorpark, and SCE's Newbury Substation, located at 1295 Lawrence Drive in the City of Thousand Oaks.
3. The proposed facilities would involve both the construction of new facilities and the replacement and reconductor of existing facilities, is

approximately 9 miles in length, and will traverse portions of the City of Moorpark, unincorporated areas of Ventura County, and the City of Thousand Oaks.

4. SCE would construct the proposed facilities within existing SCE easements, fee-owned rights-of-ways, and franchise locations to address a base case overload on the Moorpark tap of the existing Moorpark-Newbury-Pharmacy 66 kV subtransmission line.
5. The proposed facilities are consistent with General Order 131-D ("GO 131-D"), Section III, Subsection B.1.g. ("Exemption g."): "power line facilities or substations to be located in an existing franchise, road-widening setback easement, or public utility easement; or in a utility corridor designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies for which a final Negative Declaration or EIR finds no significant unavoidable environmental impacts."
6. The proposed facilities are exempt from the requirements to obtain a permit to construct ("PTC Requirements") because they will be located entirely within SCE's existing easements, rights-of-way ("ROW") and SCE fee-owned property, which is consistent with Exemption g.
7. SCE's Advice Letter AL 2272-E was timely protested by approximately 100 area residents by means of form letters; Ms. Danalynn Pritz; the Santa Rosa Valley Estates Homeowner's Association; and Paul D. Burns. Additionally, representatives of three local governmental bodies protested: Alan Sozio, Esq. representing the City of Moorpark; Board of Supervisors County of Ventura; City of Thousand Oaks; and Santa Rosa Valley Municipal Advisory Council.
8. The protests raised questions about the Project in the following areas: (1) Noticing; Application of Exemption g. to the project; (2) electric and magnetic fields (EMF); (3) safety, including concerns related to wind, earthquake and potential fire; (4) Aesthetics or property values; (5) Impact to sensitive plant and animal species; (6) Project need; (7) Project alternatives; (8) Tree removal; (9) Climate change; (10) Project construction impacts.
9. SCE complied with the notice requirements of GO 131-D Section XI, Subsection B for the reasons stated above.
10. The project description in SCE's notice adequately explained the project location in a way that is clearly understandable to the average reader, and that GO 131-D Section XI, Subsection C(2) standard has been met.

11. Because no application is required for the proposed facilities, and therefore no Petitioner's Environmental Assessment is required, the information provided by SCE meets the requirements set forth under GO 131-D Section XI, Subsection C(4).
12. Because SCE will employ the Commission's adopted "no-cost and low-cost" measures to minimize possible EMF exposure, EMF exposure is not a sufficient basis for qualifying for the exceptions listed in GO 131-D, Subsection B.2.a-c. ("Exception Criteria") that would override Exemption g.
13. Neither the protestants nor the appellants demonstrated why the proposed facilities represent a unique risk of potential brushfire and seismic concerns as compared to other power lines in SCE's service territory. Therefore, the facts alleged do not support the application of the Exception Criteria due to "unusual circumstances".
14. The incremental nature of the proposed power lines in the established right-of-way would not result in potentially significant aesthetic impacts.
15. Alleged impacts to property values are not sufficient to trigger the application of an exception that would require SCE to obtain a PTC.
16. The project ROW sections within designated, precisely mapped habitat were surveyed according to resource agency protocol and were found to be devoid of the listed species. Thus, there is not a reasonable possibility that the activity of constructing the facilities would impact on the listed species.
17. The proposed facilities are needed to maintain reliable electric service for SCE's customers. The protestants and appellants did raise facts supporting a conclusion that this project is not required to meet reliability needs.
18. Evidence in the record supports SCE's claim that an alternative route is not feasible due to engineering and technical considerations described above.
19. The incremental contribution to climate change of the proposed facilities does not support the application of the Exception Criteria.
20. This Resolution does not relieve SCE from obtaining acquiring all required local, state and federal entitlements.

IT IS HEREBY RESOLVED

1. Executive Director's Action Resolution E-4225 ("Executive Resolution") correctly found that the proposed facilities qualified for Exemption g. and

that the protests did not allege facts that would trigger the Exception Criteria.

2. SCE's Advice Letter 2272-E, notifying the Commission of the proposed construction of utility facilities, is exempt from a Permit to Construct pursuant to General Order 131-D (GO 131-D), Section III, Subsection B.1.g.

3. The Appeals are dismissed because the facts claimed in the appeals do not support a finding that the Exception Criteria contained in GO 131-D, B.2.a-c. apply.

4. This Resolution is effective today.

I certify that the foregoing Resolution was duly introduced, passed and adopted at conference of the Public Utilities Commission of the State of California held on June 4, 2009; the following Commissioners voting favorably thereon:

_____
Paul Clanon
Executive Director

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 5, 2009

RESOLUTION E-4243
June 4, 2009 Commission Meeting
I.D.# 8518

TO: PARTIES TO SOUTHERN CALIFORNIA EDISON ADVICE LETTERS 2272-E

Enclosed is Draft Resolution Number E-4243 of the Energy Division, issued in response to Southern California Edison (SCE) Advice Letter (AL) 2272-E. This Draft Resolution responds to the appeal of Executive Director Action Resolution E-4225. The Energy Division expects that the draft resolution will appear on the agenda at the June 5, 2009 Commission meeting. The Commission may vote on this Resolution at that time or it may postpone a vote until a later meeting. When the Commission votes on a Draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the Draft Resolution. All comments on the Draft Resolution must be received by the Energy Division by May 25**,** 2009. The Appeal of Executive Director Action Resolution E-4225, and other related documents can be found at: ftp://ftp.cpuc.ca.gov/gopher-data/environ/res-E4243/

An original and two copies of the comments, along with a certificate of service, shall be sent to:

Honesto Gatchalian
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Email: jnj@cpuc.ca.gov
FAX: 415-703-2200

A copy of the comments shall be submitted in electronic format to:

Mike Rosauer and Chloe Lukins
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Email: FLY@cpuc.ca.gov and CLU@cpuc.ca.gov

Those submitting comments on the Draft Resolution must serve their comments on: 1) the entire service list attached to the draft Resolution, 2) all Commissioners, 3) the Director of the Energy Division, 4) the Chief Administrative Law Judge, and 5) the General Counsel on the same date that the comments are submitted to the Energy Division.

Comments shall be limited to five pages in length and should list the recommended changes to the Draft Resolution.

Comments shall focus on factual, legal or technical errors in the proposed Draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight.

Late submitted comments will not be considered.
Reply comments will not be accepted.

Sincerely,

Chloe Lukins, Program and Project Supervisor
Energy Division

Enclosure: Service List
Certificate of Service

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of Draft Resolution E-4243 on all parties or their attorneys as shown on the attached service list.

Dated May 5, 2009 at San Francisco, California.

_____

Mike Rosauer

NOTICE

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name appears.

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