

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION

I.D. # 10799
RESOLUTION E-4400
December 1, 2011

RESOLUTION

Resolution E-4400 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.

ESTIMATED COST: None

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

SUMMARY

This Resolution E-4400 affirms that Executive Director's Resolution E-4392 correctly disposed of protests, reaffirms Southern California Edison Company ("SCE") Advice Letter 2517-E-A to be complete, and further finds that SCE properly notified the Commission of the proposed construction of utility facilities, 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, filed by The Utility Reform Network and the City of Oxnard (Joint Parties) in Application (A.) 11-02-012, because the appeal does not support a finding that the SCE incorrectly applied for an exemption pursuant to Section III of GO 131-D.

BACKGROUND

On August 15, 2006, in response to the extreme heat and power demands of that summer, Commission President Peevey issued an Assigned Commissioner Ruling (ACR) in R.05-12-013, R.06-02-013, directing SCE to pursue the development of up to five SCE-owned, black-starting peaker units, of up to 250 megawatts (MW) total generating capacity, and inviting SCE to file an advice letter to establish a memorandum account. In response to the ACR, SCE submitted Advice Letter 2031-E, requesting Commission approval to establish a memorandum account to record the acquisition and installation costs of these five peakers. No protests were

filed to this advice letter. The full Commission approved and confirmed the ACR on November 9, 2006 in Resolution E-4031.

In November of 2006, SCE filed its Coastal Development Permit (CDP) with the City of Oxnard. The California Coastal Commission's (CCC) issued this permit, which approved City of Oxnard as the local designee for coastal projects located within City limits. On July 24, 2007, the Oxnard City Council rejected SCE's CDP application. On August 9, 2007, SCE appealed the rejection to the CCC. On March 10, 2009, the California Independent System Operator (CAISO) reconfirmed the continuing need for the proposed peaker. On April 9, 2009, the CCC reversed the City of Oxnard's rejection of the CDP for the McGrath peaker.¹ On April 28, 2009 SCE notified the Commission of its intent to begin pre-construction. The final CDP was issued in August of 2009, and SCE promptly began on-site pre-construction activities.

On June 17, 2009, Joint Parties and the Coastal Alliance United for a Sustainable Economy (CAUSE) filed a motion for "clarification" of the ACR, in Docket A.7-12-029 (the Peaker Cost Recovery Docket), asking the Commission to perform a "need in siting" inquiry before the McGrath peaker is completed. The Commission did not grant the City's "clarification" motion.

The City of Oxnard appealed the CCC decision to issue the CDP by a writ to the Los Angeles Superior Court, but that court upheld the CCC decision. The City of Oxnard filed a notice of appeal with the California Court of Appeal.

On December 1, 2009, in Rulemaking (R.) 05-12-013, Joint Parties filed a motion to reevaluate the need for generation resources in the Oxnard area. The motion was denied. (See, Assigned Commissioner and Administrative Law Judge's Joint Ruling, dated January 21, 2010 at page 5-8.)

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 approved, but not yet constructed 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

¹ On August 18, 2011 the State Appellate Court 2nd District in Los Angeles, upheld the Coastal Commission's Decision.

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 to the Permit to Construct requirements (PTC) under General Order (GO) 131-D, Section III B. This general order provision sets forth 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 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.

Timely protests were filed to SCE Advice Letter 2517-E by Mr. Larry Godwin, several legislators (Assemblywoman Julia Brownley, State Senator Fran Pavley; Ventura County Supervisor Kathy Long, and Ventura County Supervisor John Zaragoza (collectively, Elected Officials); and the City of Oxnard and TURN (Joint Parties). SCE responded to the protests of parties on October 27, 2010.

Mr. Godwin's protest of AL 2517-E was based on the substation being an integral part of the gas turbine peaker generation facility and would have no function if the peaker were not constructed. Because the peaker facility is under litigation, Mr. Godwin viewed the construction of the substation as an attempt to construct part of the project that is subject to litigation.

In their protests, Elected Officials argued that the Commission should not permit SCE to go forward until a full and public review of the proposed peaker's need is conducted. Elected Officials claimed that the proposed plant is one of up to five peaker plants ordered by the Commission in response to unprecedented electric supply constraints. Elected Officials noted that the extraordinary need that occasioned that order has not reoccurred since, and raised the question of whether the plant was still needed. They also contended that the RRI Mandalay Energy Facility could be retrofitted to serve the purpose and that evidentiary hearings on the issue of need were necessary.

In their protest, Joint parties asserted that the full Commission never specifically approved the gas turbine peaker generating facility for the Oxnard site. Joint Parties also argue that the substation facilities are inextricably tied to the peaker plant and the proposed peaker plant should be subject to a decision by the full Commission, taking into account current local electric system reliability concerns. Only if the peaker is determined to be needed would the substation be built. Joint

protesters also argue that the Advice Letter's failure to acknowledge or address local permitting constraints such as Oxnard's Water Use Neutrality Policy raise serious doubts about the ultimate viability of the peaker facility. Joint Parties recommend that until SCE has obtained all necessary peaker facility permits, all development work on the McGrath substation should halt.

On December 6, 2010, SCE supplemented Advice Letter 2517-E with the final California Environmental Quality Act (CEQA) equivalent document prepared by the 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 the Joint Parties, and SCE did not respond to this protest.

In the supplemental advice letter, Joint Parties asserted that the CCC analyzed a project addressing local reliability need, which the Commission has never considered or addressed. Joint parties essentially argued that Energy Division staff erroneously accepted the CCC reports as a CEQA equivalent document. They alleged that these reports failed to meet CEQA guidelines, because the reports did not consider a range of reasonable alternatives, and because the alternatives that the CCC did consider were based on erroneous screening criteria. Joint Parties recommended that the Commission's approval of AL 2217-E-A be subject to SCE obtaining the various permits necessary to construct and operate the McGrath peaker plant.

On October 20, 2010, in R. 09-10-032, Joint Parties filed a motion asking the Commission to determine "need" for the project. That motion too was denied. (See Revised Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, And Need For Hearing In This Proceeding filed 2-3-11 at page 5.

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 PTC Requirements. On the basis of the CCC

² When the Energy Division staff realized that SCE could not claim exemption under subsection (g), it notified SCE that a CEQA equivalent document would be required. 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. As such, the discussion focuses on the applicability of GO 131-D, Section III B (f) exemption to the PTC requirements.

Certified Staff Report, Energy Division staff found that the SCE was exempted under GO 131-D, Section III B (f). Resolution E-4392 determined that the protests do not meet the criteria to require SCE to file a PTC, and thus the protests were dismissed for failure to state a valid reason; which granted approval to construct the McGrath 66kV Substation project.

On February 14, 2011, Joint Parties filed an appeal of this decision.³ They argue that the Commission has never issued a ruling that addresses the specific need for SCE's proposed peaker plant in the proposed location, and further argues that the Commission committed factual error in analyzing the SCE AL 2517-E-A by assuming the Commission has approved the generation plant as proposed by SCE. Joint Parties assert 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 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.

Joint Parties believe that the discussion of the adopted outcomes in Resolution E-4392 was inadequate and failed to provide the rationale necessary for the findings. They point out 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, but there is nothing in the document that considers the interconnection facilities as distinct from the associated generation plant. Joint Parties also fault 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 Joint Parties' appeal. In its response, SCE argues that it is indisputable that the transmission work at issue meet the exemption criteria outlined in General Order 131(d), Section III (b)

³ 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.)

subsection (f). Regarding the broader argument that the project is not authorized or needed, SCE asserts that the ACR directed SCE to immediately develop up to 250 megawatts of utility-owned black starting peaker generating units. SCE then responded with Advice Letter 2031-E, which requested Commission approval to establish a memorandum account to record the costs of the peaker plants. Because the full Commission approved and confirmed the ACR on November 9, 2006 in Resolution E-4031, SCE argues that the peaker was clearly authorized in the ACR and Resolution E-4031. SCE further notes that 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 Commission grant of Joint Parties' appeal would set a precedent which would effectively deter many future energy projects.

On March 24, 2011 an Assistant Chief Administrative Law Judge's Ruling set up a procedure for review by the full Commission of Joint Parties' appeal.

DISCUSSION

In Resolution E-4392 Energy Division staff found that the construction of the 66kV switching 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 under General Order 131(d), Section III(b) subsection(f). Pursuant to this subsection, SCE properly attached the CCC's final certified CEQA equivalent document, thus meeting the exemption requirements of 131D.

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, to address the concerns identified in the appeal, discussion of issues beyond the scope of GO 131D is warranted.

As previously outlined, authority to build the plant was granted as part of an emergency action in summer of 2006, by means of an Assigned Commissioner Ruling. (ACR 8-15-06). The ACR, citing surprising growth in demand, the effects on demand of a heat storm that summer, the CAISO's demand assessments for Southern California and its recommendation that the Commission take steps to develop quick start generation to provide additional peak period supply,

consistent with the CAISO's recommendations, directed SCE to target an additional 300 MW ACCP (Air Conditioning Cycling Program) for the summer 2007 season, and directed SCE to pursue new utility-owned generation that could be online for summer 2007.

As previously stated, the full Commission approved and confirmed the order to build up to five utility-owned peakers on November 9, 2006 in Resolution E-4031, when it approved SCE's request to establish a Peakers Generation Memorandum Account (PGMA) and revise the Generation Sub-account of the Base Revenue Requirement Balancing Account. Immediately following approval of Resolution E-4031, SCE filed a Coastal Development permit with the City of Oxnard. The timely filing of the Coastal Development permit indicates that SCE was taking immediate action to quickly develop the Oxnard peaker in accordance with CPUC orders.

Resolution E-4031 directed SCE to file an application to demonstrate the reasonableness of these costs. On December 31, 2007 SCE filed A.07-12-029 for the recovery of the peaker costs. The Commission issued D06-07-029 on June 20, 2006 in order to address who pays for certain costs and on March 26, 2009, D.09-03-031 allocated any recoverable Peaker plant costs to all benefiting customers as a one-time exception to D.06-07-029.

On June 17, 2009 the City of Oxnard and CAUSE file a Notice of Ex Parte Communication after meeting with Commission President Peevey. During the meeting, Oxnard and CAUSE requested that President Peevey clarify a provision in the June 9, 2009 Assigned Commissioner's Ruling and Scoping Memorandum. The ACR and Scoping Memorandum limits the scope of issues to be addressed in the proceeding to the reasonableness of the costs Edison incurred to acquire, install, operate and maintain four peaker generation units, from August through November 2007. All issues with the proposed fifth peaker unit including siting, all costs, and initial operation were excluded from this proceeding. Edison was ordered to timely file a separate application for the proposed fifth peaker unit. (ACR 6-9-09 at 3) Discussion in D.09-03-031 explains that the permitting delays associated with the fifth peaker would require a separate application by SCE to recover the reasonable capital and operating costs once those costs were recorded by SCE. Finally, in Decision 10-05-008, the Commission authorized SCE to recover the reasonable capital and operating costs of the four built and operating peaker units then subject to refund in Edison's Peakers Generation Memorandum Account authorized by Resolution E-4031.

It is clear to staff that SCE has pursued the development of the Oxnard peaker with the same diligence demonstrated with the four other authorized plants. While

permitting delays have significantly postponed the construction of the fifth and final plant authorized in the 2006 ACR, the procedures for interim tracking of the peaker installation and acquisition costs (Edison's Peakers Generation Memorandum Account) have been in place since the issuance of Resolution E4031. Similarly, recovery of costs associated with the Oxnard peaker booked to the Peakers Generation Memorandum Account will be subject to refund until such time as SCE files an application to the Commission seeking the recovery of reasonable capital and operating costs.

Review of the procedural record and past Commission decisions suggests to staff that all five peakers enjoyed the support of the full Commission.⁴ Although a Commission Decision was not the procedural vehicle used to order SCE to develop the peakers units, a Resolution by the full Commission approved the booking of associated costs to a memorandum account, followed by a Commission Decision approving those costs to be recovered in rates. As such, following the completion of the fifth and final unit, SCE must file an application to recover the costs recorded in Edison's Peaker Generation Memorandum Account

Finally, Joint Parties find fault with the Commission's reliance on the CCC's review of whether the proposed Oxnard plant would be consistent with the local coastal plan. Joint Parties assert that the Coastal Commission's analysis addressed a different project, at least in terms of underlying objectives. Specifically, Joint Parties take issue with the "alternatives" that the CCC was required to identify and consider. However, staff reviewed the adequacy of the CCC review of the Oxnard peaker as it related to the proposed substation and found it to be sufficient and consistent with GO 131D(f): 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 caused by the proposed substation .

The Executive Director has reviewed the Joint Parties' appeal, and has recommended that it be denied as without merit. Nothing in the appeal would justify altering the finding in Resolution E-4392 that construction of the 66 kV switching 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.

⁴ D.09-03-031 at pages 13, 14, D.10-05-008 at pages 3-6.

THEREFORE IT IS ORDERED THAT:

1. For the reasons stated above, the determinations in Resolution E-4392 are hereby affirmed.
2. SCE's AL 2517-E-A is exempt from PTC requirements pursuant to GO 131-D, Section III B (f).
3. The appeal of the Executive Director's Resolution E-4392, filed by Joint Parties, has no merit and is hereby denied.
4. Application (A.) 11-02-012 is hereby closed.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference to the Public Utilities Commission of the State of California held on December 1, 2011: the following Commissioners voting favorably thereon:

Paul Clanon
Executive Director

STATE OF CALIFORNIA

EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION

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I.D. # 10799

November 3, 2011 Draft Resolution **E-4400**
Commission Meeting Date: December 1, 2011

**TO: PARTIES TO DRAFT RESOLUTION
E-4400**

Enclosed is draft Resolution E-4400 prepared by the Energy Division. It will be on the agenda at the December 1, 2011 Commission meeting. The Commission may then vote on this draft Resolution or it may postpone a vote until later.

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 draft Resolution. Only when the Commission acts does a Resolution become binding on the parties.

Parties may submit comments on the draft Resolution by November 21, 2011.

Comments should be submitted to:

Honesto Gatchalian and Maria Salinas
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
jnj@cpuc.ca.gov; mas@cpuc.ca.gov

A copy of the comments should also be submitted
to:

Michael Rosauer
Energy Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Fax: 415-703-2200
Email: FLY@cpuc.ca.gov

Comments may be served by email. Any comments on the draft Resolution must be received by the Energy Division by November 21, 2011. Those submitting comments must serve a copy of their comments on 1) the entire service list attached to the draft Resolution, 2) all Commissioners, and 3) the Director of the Energy Division, the Chief Administrative Law Judge, and the General Counsel, on the same date that the comments are submitted to the Energy Division.

Comments shall be limited to fifteen pages in length, plus a subject index listing the recommended changes to the draft Resolution, a table of authorities, and an appendix setting forth the proposed findings and conclusions.

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 and are not to be submitted.

Late submitted comments will not be considered.

/s/ Ken Lewis
Ken Lewis
Program Manager
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-4400 on all parties in these filings or their attorneys as shown on the attached list.

Dated November 3, 2011 at San Francisco, California.

/s/ Honesto Gatchalian
Honesto Gatchalian

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 ensure 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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