

**DRAFT
ALTERNATE TO ID # 10799**

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**ID # 11075
RESOLUTION E-4400
March 22, 2012**

ALTERNATE DRAFT RESOLUTION

Resolution E-4400 Southern California Edison

PROPOSED OUTCOME: This Alternate Resolution finds that Executive Director’s Resolution E-4392 correctly disposed of the protests to Advice Letter 2517-E-A, but grants the appeal based on broader policy considerations.

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.”). However, this Resolution grants the appeal of Resolution E-4392,¹ filed by The Utility Reform Network (TURN), based on policy considerations broader than whether this particular substation meets the criteria of Exemption f. This Resolution grants the appeal to allow the Commission to consider whether the power plant, which will create the need for the utility facilities at issue in Resolution E-4392, should even be constructed.

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). This Alternate Resolution incorporates the comments filed on Draft Resolution E-4400.

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.

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. Four of the peaker units have already been constructed. Construction on the fifth unit, known as the McGrath Gas Turbine Peaker Generating Facility (McGrath Peaker), was significantly delayed, mostly due to permitting issues.

On April 28, 2009 SCE notified the Commission of its intent to begin pre-construction of the McGrath Peaker. The final Coastal Development Permit was issued in August of 2009, and SCE promptly began on-site pre-construction activities. On June 17, 2009, TURN 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’s completion. The Commission did not grant the City’s “clarification” motion.

On December 1, 2009, in Rulemaking (R.) 05-12-013, TURN 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 proposed SCE McGrath Peaker, 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 McGrath Peaker, 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 McGrath Peaker 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.

TURN protested Advice Letter 2517-E, asserting that the full Commission never specifically approved the McGrath Peaker for the Oxnard site. TURN also argued that the substation facilities are inextricably tied to the McGrath Peaker, which TURN argues, should be subject to a decision by the full Commission, taking into account current local electric system reliability concerns. TURN claimed that the substation should only be built if the McGrath Peaker is needed.

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 Peaker Project, which included the 66kV Substation Project.² SCE submitted this document to demonstrate compliance with the criteria of General Order (GO) 131-D, Section III.B(f), which exempt from the PTC Requirements: “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.” 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.

² SCE 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.

**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 the McGrath Peaker 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 McGrath Peaker 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 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 rationale 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 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 McGrath 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 Executive Director’s Resolution E-4392 was properly limited to whether SCE demonstrated that the proposed facilities meet the exemption criteria and whether TURN demonstrated that an exception applies. However, the full Commission’s review is not limited in the same way. Therefore, it is now appropriate to consider whether the Commission should reevaluate the need for the McGrath Peaker before authorizing construction of the substation.

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:

- a) 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.
- b) 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 finding that Resolution E-4031 represented evidence of the full Commission's approval of the McGrath Peaker. 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 also finds error in staff's citing of D.09-03-031 and D.10-05-008, both issued in A.07-12-029.

DISCUSSION

Executive Director Resolution E-4392 found that the construction of the 66kV McGrath substation required to interconnect the McGrath Peaker 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.

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.

The issue as to whether the Commission properly approved the McGrath Peaker, as well as, the need for the plant was not fully discussed in Resolution E-4392. The issue is of the need for the McGrath Peaker plant was beyond the scope of staff's inquiry because it was beyond the scope of staff's delegated authority. However, as this issue is now before the full Commission, it should be considered.

The McGrath Peaker is the fifth peaker project that SCE plans to build to address an emergency situation that arose in 2006. With the passage of more than five years, the questions of whether the emergency situation still exists and whether the McGrath Peaker is the right project to address the issues underlying the emergency are both valid. In addition, there has been an extreme change in economic forecasts from the time of the issuance of the ACR to the consideration of the matter before us. We agree with TURN that the Commission should consider whether the McGrath Peaker should be constructed. Therefore, any action on the McGrath substation at this time would be premature. We acknowledge that staff has correctly followed its delegated duties, and SCE has taken appropriate steps with respect to filing for an exemption to the PTC Requirements. However, the Commission has a responsibility to the ratepayer to ensure that all procurement is needed, just and reasonable. Therefore, in order to adapt to changed circumstances, we take the extraordinary step to reconsider the need for the McGrath Peaker. This will ensure that new utility owned generation is built only if it is needed. While we favor regulatory certainty, the long lag time external to our actions compels us to re-examine the issues surrounding the McGrath Peaker project. Thus, SCE should be required to file an application for the authority to construct the McGrath Peaker project, which includes the McGrath substation. SCE's application should demonstrate the current need for the project, including any scenarios where McGrath was implicit in modeling assumptions. The Commission will process this application, if submitted, on an expedited basis.

SCE's argument that the precedent set by this resolution will deter many future energy projects is taken into consideration. Hopefully, this Resolution will deter energy utilities from seeking to construct generation projects until a need for those projects has fully been demonstrated. Additionally, the cost concerns that SCE raises in its comments can better be evaluated in an application.

CONCLUSION

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. However, due to broad policy considerations, this Resolution requires SCE to file an application for the authority

to construct the McGrath Peaker project, which includes the McGrath substation, if SCE wishes to complete the project.

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 (McGrath Peaker) 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, 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 not strictly limited to whether SCE demonstrated that the proposed facilities meet the GO 131-D exemption criteria and whether TURN demonstrated that an exception applies.
5. TURN's arguments regarding the need for the McGrath Peaker raise valid policy considerations; thus, the Commission should require that SCE submit an application for the authority to construct the McGrath Peaker, including the McGrath substation, if SCE wishes to complete the project.

THEREFORE IT IS ORDERED THAT:

1. The appeal of the Executive Director's Resolution E-4392, filed by TURN, is hereby granted.
2. Executive Director's Resolution E-4392 is vacated due to broad policy considerations.
3. Southern California Edison Company should file an application if SCE wishes to proceed with the McGrath Gas Turbine Peaker Generating Facility.
4. Application (A.) 11-02-012 is closed.
5. 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

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



I.D. 11075

February 17, 2012

Alternate Draft Resolution **E-4400**
Commission Meeting Date: March 22, 2012

**TO: PARTIES TO Draft Alternate
RESOLUTION E-4400**

Enclosed is Alternate Draft Resolution E-4400 prepared by Commissioner Ferron's Office. Alternate Draft Resolution E-4400 will be placed on the agenda for the March 22 Commission meeting. The Commission may then vote on this Alternate Draft Resolution or it may postpone a vote until later.

When the Commission votes on an Alternate 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 a Resolution become binding on the parties.

Parties may submit comments on the Alternate Draft Resolution by March 12, 2012.

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 March 12, 2012. Those submitting comments must serve a copy of their comments on 1) the entire service list attached to the Alternate 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 Alternate 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 Alternate 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/ Molly Sterkel
MOLLY STERKEL
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 Alternate Draft Resolution E-4400 on all parties in these filings or their attorneys as shown on the attached list.

Dated February 17, 2012 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.

Service List

Draft Resolution E-4440

MATTHEW FREEDMAN
THE UTILITY REFORM NETWORK
Company

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M e m o r a n d u m

DATE: February 9, 2012

TO: Agenda Hold List

FROM: Commissioner Ferron's Office

SUBJECT: Alternate to Item #2 on 2/16/Agenda (Agenda ID # 10799)

Commissioner Ferron is sponsoring an alternate to Energy Division Draft Resolution E-4400. Resolution E-4400 addresses the Permit to Construct (PTC) for the McGrath Peaker Substation. We anticipate that these items will be ready for consideration for the 3/22/12 Agenda.

**DIGEST OF DIFFERENCES BETWEEN
ENERGY DIVISION DRAFT RESOLUTION E-4400
AND ALTERNATE RESOLUTION TO E-4400 OF COMMISSIONER FERRON**

Pursuant to Public Utilities Code Section 311(e), this is the digest of the substantive differences between the Energy Division's DRAFT resolution E-4400 made available for comment on January 13, 2012 and the proposed alternate Resolution to E-4400 made available for comment on March 12, 2012.

This resolution is an alternate to draft resolution E-4400. Resolution E-4400, relating to the McGrath Substation Project. E-4400 denies the appeal of Executive Director Resolution E-4392, and finds that Resolution E-4392 correctly disposed of the protests to Advice Letter 2517-E-A.

The substantive change between this alternate and the original draft resolution is that this alternate directs Southern California Edison (SCE) to file an application on all matters regarding the McGrath Peaker, including the substation.

The McGrath Peaker is the fifth peaker project that SCE plans to build to address an emergency situation that arose in 2006. With the passage of more than five years, the questions of whether the emergency situation still exists and whether the McGrath Peaker is the right project to address those issues are both valid. In addition, there has been an extreme change in economic forecasts. Given these circumstances, the alternate prompts the Commission to consider whether the McGrath Peaker should be constructed. The alternate acknowledges that staff has correctly followed its delegated duties, and SCE has

taken appropriate steps with respect to filing for an exemption to the Permit to Construct (PTC) Requirements. The alternate directs SCE to file an application for the authority to construct the McGrath Peaker project, which includes the McGrath substation. SCE's application should demonstrate the current need for the project, including any scenarios where McGrath was implicit in modeling assumptions. The Commission will process this application, if submitted, on an expedited basis.

In summary, the Alternate Resolution states:

- The appeal of the Executive Director's Resolution E-4392, filed by TURN, is hereby granted.
- Executive Director's Resolution E-4392 is vacated due to broad policy considerations regarding the McGrath Gas Turbine Peaker Generating Facility and Substation.
- Southern California Edison (SCE) Company should file an application if SCE wishes to proceed with the McGrath Gas Turbine Peaker Generating Facility.

Agenda ID 11075
Alternate to Agenda ID 10799
Meeting Date: 3/22/12

**DIGEST OF DIFFERENCES BETWEEN
ENERGY DIVISION DRAFT RESOLUTION E-4400
AND ALTERNATE RESOLUTION TO E-4400 OF COMMISSIONER FERRON**

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- The appeal of the Executive Director's Resolution E-4392, filed by TURN, is hereby granted.
- Executive Director's Resolution E-4392 is vacated due to broad policy considerations regarding the McGrath Gas Turbine Peaker Generating Facility and Substation.
- Southern California Edison (SCE) Company should file an application if SCE wishes to proceed with the McGrath Gas Turbine Peaker Generating Facility.

Agenda Blurb McGrath

Alternate to Resolution E-4400. Given broader policy considerations, the Alternate Resolution states:

- The appeal of the Executive Director's Resolution E-4392, filed by TURN, is hereby granted.
- Executive Director's Resolution E-4392 is vacated due to broad policy considerations regarding the McGrath Gas Turbine Peaker Generating Facility and Substation.
- Southern California Edison (SCE) Company should file an application if SCE wishes to proceed with the McGrath Gas Turbine Peaker Generating Facility.