

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4360
August 13, 2010

R E S O L U T I O N

Resolution E-4360. Executive Director's order dismissing protest by The Highway 68 Coalition to the Pacific Gas and Electric Company (PG&E) claim of exemption from General Order 131-D permitting requirements for construction of the Salinas-Laureles 60kV Pole Relocation in the County of Monterey. This Resolution approves PG&E's Advice Letter 3665-E.

By Advice Letter 3665-E. Filed May 10, 2010.

SUMMARY

This Resolution dismisses as invalid a protest from The Highway 68 Coalition and approves PG&E's Advice Letter 3665-E with an effective date of today. Pursuant to this advice letter, PG&E proposes to relocate five utility poles along a 1,200-foot portion of an existing power line in an unincorporated area of Monterey County. The State Department of Transportation (CalTrans) conducted an environmental review that included the proposed installation of PG&E's facilities (State Route 68/San Benancio Road Intersection Improvement Project - SCH No. 20080061098) and found no significant unavoidable environmental impacts associated with those facilities.

The Commission's General Order (GO) 131-D governs the planning and construction of electric generation, transmission/power/distribution line facilities and substations. This project falls within and qualifies for the exemptions cited by PG&E in their Advice Letter 3665-E. None of the concerns raised by the protestant fits within the specific exceptions to the exemptions of GO 131-D, nor do the protestant's claims support a claim of misapplication of an exemption by PG&E. Therefore, the protest is denied for failure to state a valid reason.

BACKGROUND

Electric utilities proposing to relocate transmission lines must comply with GO 131-D which, among other things, provides for filing an application for a Permit to Construct unless the project is exempt for certain reasons specified in Section III.B. of the GO. If a timely protest is filed, construction shall not commence until the Executive Director has issued an Executive Resolution either requiring the utility to file an application for a Permit to Construct or dismissing the protest.

A person or entity may protest a utility claim of exemption for failure to provide proper notice pursuant to Section XI.B and C. of GO 131-D. Furthermore, Section XIII of GO 131-D provides that any person or entity may protest a claim of exemption for one of two reasons: 1) that the utility incorrectly applied a GO 131-D exemption, or 2) that any of the conditions exist which are specified in the GO to render the exemption inapplicable.

GO 131-D, Section III.B.2. states that an exemption shall not apply to a construction project when: 1) 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 2) the cumulative impact of successive projects of the same type, in the same place, over time, is significant; or 3) there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

On May 10, 2010, PG&E filed Advice Letter 3665-E claiming an exemption from the requirements of GO 131-D for construction of the Salinas-Laureles 60kV Pole Relocation in the County of Monterey. PG&E proposes to relocate five utility poles along a 1,200-foot portion of an existing power line in an unincorporated area of Monterey County. The State Department of Transportation (CalTrans) conducted an environmental review that included the proposed installation of PG&E's facilities (State Route 68/San Benancio Road Intersection Improvement Project - SCH No. 20080061098) and found no significant unavoidable environmental impacts associated with those facilities.

PG&E has claimed exemption from the requirement to file for a Permit to Construct, as prescribed by GO 131-D, Sections XI.B. and C. PG&E's claim of exemption was based on two Sections of the GO: (1) Section III.B.1.(c), which

exempts “the minor relocation of existing power line facilities up to 2,000 feet in length, or the intersetting of additional support structures between existing support structures;” and (2) Section III.B.1.(g), which exempts “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.”

NOTICE

PG&E distributed a Notice of Proposed Construction in accordance with Section XI.B. and C. of GO 131-D, including the filing and service of Advice Letter No. 3665-E in accordance with Section III of GO 96-B.

PROTESTS

The 20-day protest period for Advice Letter 3665-E closed on June 1, 2010. The Commission has received one late protest to Advice Letter 3665-E on June 7, 2010, from Mr. Mike Weaver, Chair, The Highway 68 Coalition. The protestant raised concerns in the following areas: lack of project information; lack of proper notice for the project; impacts to property values; EMF issues; visual blight and aesthetics; and more general concerns regarding the appropriateness of the County of Monterey’s and CalTrans’ ongoing projects in the Highway 68 corridor. The protestant’s arguments make clear that they are generally opposed to the County of Monterey’s plans for certain types of local development in the area and are not satisfied with the County’s environmental review for such planning and development.

PG&E responded to the above protest on June 14, 2010, via letter to the Director of the Energy Division. PG&E’s response argues that the protests should be dismissed because none of the protestants’ arguments are relevant to any issue that may properly be raised in a protest pursuant to GO 131-D, Section XIII - i.e., that PG&E has either incorrectly applied for an exemption, or that one of the three special conditions outlined in GO 131-D Section III.B.2 exist. PG&E asserts that the protestants’ arguments fail to address, much less establish, how the claimed exemption to GO 131-D fails to apply to the project outlined in Advice Letter 3665-E. PG&E asserts that the protestant has also failed to establish that

the project area involves any “unusual circumstances” that would trigger any exception to an exemption as specified in GO 131-D Section III.B.2.

PG&E asserts that the protest fails to state a valid reason for denying PG&E’s claim to an exemption from the requirements of GO 131-D for a Permit To Construct for this project. PG&E also asserts that the protestant fails to state why PG&E has incorrectly applied the exemptions from the permit requirements provided in Section III.B.1 of the GO. In summary, PG&E asserts that the protestant has failed to meet their burden of showing that PG&E’s claim for exemptions from the permit requirements of GO 131-D are invalid and should therefore be dismissed for failure to state a valid reason.

DISCUSSION

In its response to the protests, PG&E addressed each of the areas of concern expressed by the protestant. PG&E correctly argues that the Salinas-Laureles 60kV Pole Relocation Project falls squarely within the context for an exemption from GO 131-D PTC requirements and does not broach the exceptions-to-exemptions clause specified in GO 131-D, Section III.B.2. Furthermore, PG&E correctly argues that the noticing requirements of GO 131-D, Section IX.B were properly followed by the Company for Advice Letter 3665-E. PG&E correctly argues that the Salinas-Laureles 60kV Pole Relocation Project was fully and adequately reviewed by the California Department of Transportation pursuant to the California Environmental Quality Act in its Mitigated Negative Declaration (MND) for the State Route 68/San Benancio Road Intersection Improvement Project (SCH No. 20080061098). The MND included the relocation of PG&E facilities for the Salinas-Laureles 60kV Pole Relocation Project as part of the larger State Route 68/San Benancio Road Intersection Improvement Project environmental review and found no significant unavoidable environmental impacts associated with relocating those facilities.

In its response to the protest, PG&E stated that the protestant fails to raise a valid protest because they fail to provide a valid reason why PG&E should be required to apply for a Permit to Construct for the proposed project or why PG&E has incorrectly applied the claimed exemption from the PTC application requirement.

PG&E appears to have correctly applied the exemptions for obtaining a Permit to Construct set forth in GO-131D, Section III.B.1.(c) and (g). Furthermore,

although the Company did not do so in Advice Letter 3665-E, PG&E could also have claimed an exemption from the GO 131-D PTC requirements pursuant to Section III.B.1.(f) which exempts “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.”

PG&E followed the notification procedures required in GO 131-D for this project. The protestant has not shown that PG&E incorrectly applied a GO 131-D exemption. Nor has the protestant shown that any of the conditions specified in GO 131-D, Section III.2. exist. Because these are the only three valid reasons for sustaining a protest, the protest should be denied.

FINDINGS

1. PG&E filed Advice Letter 3665-E on May 10, 2010.
2. PG&E proposes to relocate five utility poles along a 1,200-foot portion of an existing power line in an unincorporated area of Monterey County.
3. The State Department of Transportation (CalTrans) conducted an environmental review that included the proposed installation of PG&E’s facilities (State Route 68/San Benancio Road Intersection Improvement Project - SCH No. 20080061098) and found no significant unavoidable environmental impacts associated with those facilities.
4. PG&E requests an exemption from a Permit to Construct, under GO 131-D, Section III.B.1.(c) and (g).
5. PG&E distributed a Notice of Proposed Construction in accordance with Section XI.B. and C. of GO 131-D, including the filing and service of Advice Letter No. 3665-E in accordance with Section III of GO 96-B.
6. A late protest to Advice Letter 3665-E was received from The Highway 68 Coalition on June 7, 2010.
7. The protestant raised concerns in the following areas: lack of project information; lack of proper notice for the project; impacts to property values;

EMF issues; visual blight and aesthetics; and more general concerns regarding the appropriateness of the County of Monterey's and CalTrans' ongoing projects in the Highway 68 corridor.

8. PG&E responded to the protest to Advice Letter 3665-E on June 14, 2010, via letter to the Director of the Energy Division. PG&E contends that the protest should be denied because it fails to provide a valid reason why PG&E should be required to apply for a Permit to Construct for the proposed project or why PG&E has incorrectly applied the exemptions from the PTC application requirement provided for in GO 131-D.
9. GO 131-D provides that any person or entity may protest a claim of exemption for one of three reasons: 1) that the utility failed to provide proper notice, 2) that the utility incorrectly applied a GO 131-D exemption, or 3) that any of the conditions exist which are specified in the GO to render the exemption inapplicable.
10. The protestant has not shown PG&E failed to provide notice or incorrectly applied a GO 131-D exemption. Nor have the protestants shown that any of the conditions specified in GO 131-D Section III.B.2. exist to invalidate the claimed exemption.
11. PG&E correctly applied for a GO 131-D exemption in Advice Letter 3665-E.

THEREFORE IT IS ORDERED THAT:

1. PG&E's Advice Letter No. 3665-E is approved.
2. The protest of The Highway 68 Coalition is denied.

This Resolution is effective today.

I certify the foregoing under the authority of General Order 131-D. Dated August 13, 2010, at San Francisco, California.

/s/ Paul Clanon
Paul Clanon

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August 13, 2010

Executive Director