

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4373
November 19, 2010

R E S O L U T I O N

Resolution E-4373; Responds to protests concerning San Diego Gas & Electric's advice letter claiming exemption from environmental review pursuant to General Order 131-D and the California Environmental Quality Act, for the Orange Grove transmission enhancement project and for the Pala to Monserate wood to steel pole replacement project.

Resolution E-4373, San Diego Gas and Electric

PROPOSED OUTCOME: SDG&E's request is approved. The Commission finds the stated projects exempt pursuant to General Order 131-D III.B.1.b and g.

ESTIMATED COST: \$0

By Advice Letter 2106-E filed on August 31, 2009

SUMMARY

This Resolution approves San Diego Gas & Electric's ("SDG&E") 2106-E Advice Letter ("AL") asserting exemption under General Order ("GO") 131-D for the Orange Grove transmission enhancement project and the Pala to Monserate wood to steel replacement project. The Commission finds the Orange Grove transmission enhancement project to be exempt from a Permit To Construct ("PTC") under GO 131-D Section III.B.1.g. The Commission finds the Pala to Monserate wood to steel replacement project to be exempt from a PTC under GO 131-D Section III.B.1.b.

BACKGROUND

On August 31, 2009 SDG&E filed AL 2106 - E.

AL 2106-E contains two distinct projects that are temporally concurrent. The intent of AL 2106 - E is to ensure that both projects can be noticed and carried out together.

Project one, the Orange Grove transmission enhancement project, is designed to increase the capacity and strengthen the transmission line as part of the Orange Grove Energy Project (a power plant adjacent to the Pala Substation). This project has already been reviewed pursuant to the California Environmental Quality Act ("CEQA"), as part of the California Energy Commission's ("CEC") staff assessment for approval of the power plant¹.

Project two, the Pala to Monserate wood to steel replacement project, aims to fire-harden the same line by removing all wooden poles and replacing them with Tubular steel poles. SDG&E propose that this project is exempt from a Permit to Construct under GO 131-D Section III.B.1.b & Section III.B.1.h,¹ and that it is Categorically Exempt pursuant to CEQA Guidelines 15302.

NOTICE

Notice of AL 2106-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with GO 131-D.

PROTESTS

AL 2106-E was timely protested by:

Via Loma - Via Alicia Road Association; Charles & Helen Tillotson; KJ Corica; Thomas Caldwell; Peter & Terry Foy; Dwight & Janet Williams; Ralph & Karen Moody; Gene & Janet Heyden; Robert & Linda Beecroft; Jeff Bronson; James Dutcher; Robert & Janie Kent; Viktor Kerzhanovich; Gene and Janet Heyden; Edward Lorentz; and Gail Kerry.

¹ CEC docket no. 08-AFC-04

The protesters raise the following issues with respect to the Pala to Monserate fire-hardening project:

- 1) Increased exposure to Electro Magnetic Field (“EMF”);
- 2) Negative effect on property values;
- 3) The structures are not equivalent i.e. not like for like replacement;
- 4) Reduction in aesthetic quality of the environment; and
- 5) Unnecessary temporary disturbance to property by construction crews and equipment, including the dangerously intrusive use of helicopters.

The protesters also raise the following procedural issues and requests with respect to the Pala to Monserate fire-hardening project:

- 1) The project has been incorrectly noticed;
- 2) There should be a requirement to determine the project’s need on a cost basis; and
- 3) There should be a public hearing.²

SDG&E responded to all the protests of the above parties on September 28, 2009.

A late-filed protest was filed on October 9, 2009, by Chuck and Ann Leatherbury, and Mark Lowell on behalf of the Leatherbury and Lowell Family Trusts. They state that they did not receive notice of SDG&E’s proposed project until after receiving notice of public meetings regarding the project, to be held on October 12, 2009.

In the late-filed protest, protesters state that the:

- 1) Scope of SDG&E’s easement is not broad enough to cover the type of work proposed by SDG&E; and
- 2) Notice was inadequate.²

² They state that not only did they not receive written notice of the proposed projects, but that the number provided by Sempra in its “Wood Pole Replacement Fact Sheet” is a non-working telephone number.

DISCUSSION

Noticing and late protests

Section XI.B of GO 131-D sets forth the minimum notice requirements required of utilities for projects exempt pursuant to Section III of the GO. Per the notice requirements, utilities are not required to mail individual notices to property owners within 300 feet of the proposed project's right of way.

SDG&E states that it complied with the notice requirements in GO 131-D. However, because SDG&E was aware of requests for additional information about the proposed project, SDG&E mailed, on September 25, 2009, after the protest date had passed, an informational package to property owners along the right of way.

Generally, providing notice as required by section XI.B is sufficient to alert property owners of the utility's proposed project. However, there are times, such as in the case of the project before us, when property owners do not live on or near the property impacted by proposed projects. Thus, even though SDG&E complied with the requirements set forth in GO 131-D, in the interest of due process, we will accept the late-filed protest of Chuck and Ann Leatherbury, and Mark Lowell on behalf of the Leatherbury and Lowell Family Trusts.

Protests outside the scope of GO 131-D

Of the protests raised, the following have no basis under GO 131-D:

1) Increased exposure to Electro Magnetic Fields ("EMF"):

The Commission clarified its position on EMF in D.96-04-094 stating that:

Concern about possible EMF exposure resulting from a project is not sufficient basis for finding an exemption under Section III.B.2. a, b or c.

Providing SDG&E adhere to current CPUC requirements as set out in D.93-11-013 and updated in D.06-01-042, in which SDG&E is required to include Low Cost/No Cost EMF reduction techniques as part of their design, there is no ground for protest.

2) Negative effect on property values:

Changes in property value are considered social and economic effects that are not to be treated as environmental effects under CEQA (CEQA guidelines 15131(a)). Consequently, a negative effect on the value of property is not considered an unusual circumstance or an impact on an environmental resource as defined in GO 131-D Section III.B.2.

3) A requirement to determine the projects' need on a cost basis.

Cost and need are only required for projects that operate at voltages greater than 200kV (GO 131-D. Section IX.A). Utilities are not required to demonstrate cost and need for projects that are designed to ultimately be operated between 50kV and 200kV (GO 131- D Sections III.B & IX.B).

4) Adequacy of SDG&E's easement.

In AL 2106-E, SDG&E states that for this project, the edges of the utility right of way are 10 feet either side of the centerline of the utility facilities, i.e. SDG&E has a 20 foot easement. Protesters state that the utility only has an easement that is 12 feet wide and that the scope of the easement is not broad enough to cover the type of facilities proposed by SDG&E in AL 2106-E.³

The Commission notes that SDG&E, in its response to protests, has undertaken to remain within the 12 foot easement where it is feasible to do so. Specifically, this includes an undertaking to remain within the current 12 foot easement where the width of the right of way is in dispute.

As a general matter, the Commission has extensive, wide-ranging jurisdiction of utility matters within the State of California. However, the scope of SDG&E's easements is a matter that is not specific to the Commission's utility jurisdiction,

³ Subsequent to the filing of the late-filed protest, protesters and SDG&E have provided the Commission with numerous emails and faxes that delineate and support their different positions.

and the Commission generally does not decide matters such as this.⁴ Yet, while the Commission does not determine the scope of SDG&E's easements, the Commission does need to be certain that SDG&E actually has, prior to construction, the appropriate property rights to the land underlying or otherwise impacted by the projects in question.⁵

The Commission notes that SDG&E, in its response to protests, states that SDG&E "is working with impacted customers to address their concerns." The Commission commends SDG&E for doing so. However, at present insufficient evidence has been provided by either party to ascertain the width of the current easement. Therefore, in this specific case, the Commission requires definitive evidence that its property rights are sufficient to carry out the projects. This may take the form of a settlement agreement between SDG&E and affected property owners reflecting a mutually satisfactory determination of the scope of the easement; an order or ruling by a court of competent jurisdiction clearly defining the scope of SDG&E's easements; or other similarly definitive documentation.

It should be noted that this requirement is specific to the dispute and facts presented within this advice letter and subsequent protests, and in no way provides a precedent for future Commission actions.

⁴ In *Camp Meeker Water System, Inc. v. Public Utilities Commission* (1990) 51 Cal.3d 845, the Commission construed the deeds and easements at issue pursuant to its rate-making authority and did so only for the limited purpose of ascertaining facts relevant to an application for increased rates. The Commission acknowledged in *Camp Meeker* that it does not have jurisdiction to adjudicate incidents of title. (*Id.*, at p. 850.) See also, *Koponen v. Pacific Gas & Electric Co.*, (2008) 165 Cal. App. 4th 345, "Plaintiffs contend the commission has no regulatory authority or interest in private disputes over property rights between PG&E and private landowners. We agree." (*Id.* at 353) In *Kaponen*, the Commission further stated that with regards to utility easements "It is important to note that, in the Commission decisions cited by PG&E, the Commission did not (and could not) authorize PG&E to do more than what is legally permitted under the scope of PG&E's existing easements." (*Id.* at 356).

⁵ This includes both Project's one and two as described infra.

Protests within the scope of GO 131-D

The following protests can legitimately be assessed under GO 131-D:

1. The structures are not equivalent, i.e. this is not like for like replacement;
2. The aesthetic quality of the environment has been significantly reduced, and changes constitute an unusual circumstance as per Section III.B.2.;
3. Construction noise and disturbance constitute unusual circumstances as per Section III.B.2.;
4. The project has been incorrectly noticed as per Section III.B; and
5. No hearing is available and as such is requested.

Determination on the appropriate application of exemptions

There are two projects described in advice letter AL 2106-E. The first is the expansion of capacity and function of the Pala to Monserate transmission line as part of the Orange Grove Peaker Plant Energy Project. The Commission agrees with SDG&E that the transmission upgrades for the Orange Grove Energy Project are exempt from Commission review under GO 131-D Section III.B.1.g .

The second project in question is the replacement of wood with tubular steel poles. The Commission is required to determine whether the replacement of wood with steel is equivalent in function and purpose for this transmission line (Section III.B.1.b). The Commission must also assess whether any changes constitute unusual circumstances (Section III.B.2).

The proposed wood to steel pole replacement, in and of itself, involves no increase in capacity and no change to the function of the transmission line. There is no evidence that the structures are not performing an equivalent function or that they are required for capacity upgrade. However, the Commission is also required to determine whether unusual circumstance exist for this project (Section III.B.2).

Determination on the presence of unusual circumstances

Unusual circumstances can include significant impacts to any environmental resource. In the case of the Wood to Steel replacement project two possible areas of concern have been highlighted: aesthetic impacts and the temporary impact of construction activity.

Aesthetic impact

In assessing the aesthetic impact of a project, CEQA seeks to determine whether the project will:

- 1) Have a substantial adverse effect on a scenic vista;
- 2) Substantially damage scenic resources;
- 3) Substantially degrade the existing visual character or quality of the site and its surroundings; or
- 4) Create a new and substantial light or glare.

In this case, both the current and replacement poles are direct burial pole type, and heights are similar (average height increase of 10 feet). For the replacement steel poles, use of weatherized steel results in a similar matt/dark finish to that of the wood poles. Consequently, no substantially different elements are being introduced into the current view shed. Therefore, it is unlikely that the reconstruction will constitute a substantial visual change, and any aesthetic changes are unlikely to constitute an unusual environmental circumstance.

Construction noise and disturbance

Transmission construction does not constitute an unusual environmental impact unless it is expected to impact an environmental resource, of which the most likely are impacts to noise ordinances or air quality.

Air quality

The primary issue with construction emissions is whether they will violate any air standards or contribute substantially to an existing or projected air quality violation.

It is not expected that the wood to steel pole replacement will violate State or Federal standards. The most likely issue is dust control. SDG&E will implement

its standard operating procedures for dust control (Particulate Matter (PM) 10 & PM 2.5 Control) and will ensure that dust control measures will comply with the San Diego Air Pollution Control District Rules 50 and 51. By implementing these measures SDG&E are not expected to create a significant air quality impact.

Noise

In assessing noise impact CEQA requires the agency to determine whether the project will:

Create a substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project

In situations such as this CPUC will usually defer to local county or city ordinances and only in unusual circumstances make determinations of its own.

The local agency is the County of San Diego. The County's practice for construction is to consider the effect of specific noise sources averaged over a one hour period. Therefore, periodic temporary noises (such as helicopters delivering transmission poles) in excess of stated ordinance are not considered excessive, providing the average hourly noise impact remains below the County's stated threshold.

In conclusion, the Commission finds that exemption GO 131-D III.B.1.g has been appropriately applied to the Orange Grove transmission enhancement project and that GO 131-D III.B.1.b has been appropriately applied to the wood to steel pole replacement project. Moreover, there is no evidence of the existence of unusual circumstances that would trigger a full PTC review.

Determination on correct noticing and hearing requirements

To determine whether a project had been properly noticed and also whether a hearing is required, the Commission is required to determine whether the project requires a Permit To Construct; or is exempt under the GO 131-D; or is categorically exempt (CEQA Guidelines 15302). The Commission finds that the project has been correctly identified as exempt pursuant to GO 131-D Section III.B.1.b and g, as such noticing is controlled by Section XI.B of the General Order. Furthermore, because the project has been identified as an exempt

project, there is no requirement or recourse to a hearing under GO 131-D. Thus, SDG&E did not violate the noticing requirements as set forth in Section XI.B.

GO 131- D is structured such that the utility is required to satisfy only one condition in order to be exempt from either the CPCN or PTC, and as such determinations on other exemptions need not be demonstrated. Therefore, the Commission need not address the applicability or appropriateness of the other exemptions relied on by SDG&E.

COMMENTS

Public Utilities Code section 311.g.1 provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311.g.2. provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

RESPONSE TO COMMENTS

Three parties raised comments on the above resolution. Via Loma – Via Alicia Road Association, the Tillotson Family and San Diego Gas an Electric.

Response to the Via Loma – Via Alicia Road Association.

The Via Loma – Via Alicia Road Association (the Association) comments reiterate their protests that the wood to steel replacement project represents an unusual circumstance under CEQA, specifically the aligning and expansion of HWY 76. The Association presents no new information that calls into question the need to realign the current transmission ROW based on substantive environmental issues that would constitute unusual circumstances under GO 131-D III.B.2.c. Therefore the recommend changes are not accepted.

Response to the Tillotson Family.

The Tillotson family request findings on cost and need for the wood to steel replacement project. It has been explicitly determined as unnecessary for transmission projects less than 200kV in GO 131 Section III.B. The recommended changes to the findings pertaining to the above comment are therefore not accepted.

The Tillotson family further protests the Commission's conclusion that no unusual environmental circumstances exist. Specifically they protest excessive disturbance and risk to property and life created by the use of helicopters during construction activity. The Commission recognizes that residents like the Tillotsons will be affected by the project. However, construction activities, such as helicopter usage, are temporary and no evidence has been presented to the Commission that temporary noise sources would violate applicable ordinances. Furthermore helicopter usage on transmission line construction is a not unusual and SDG&E are required to adhere to all appropriate safety practices. The recommended changes to the findings pertaining to the above comment are therefore not accepted.

Response to San Diego Gas an Electric.

SDG&E raised objections to the Commission conditioning the approval of the advice letter on resolution of the disputed easement. However, the easement is disputed, and the evidence presented is silent as to the actual width of the easement in the disputed sections. Therefore, an exemption can only be granted by the Commission if the utility undertakes to remain within the 12 foot easement already occupied by the current transmission line in the disputed sections.

FINDINGS AND CONCLUSIONS

1. SDG&E properly filed an Advice Letter to request exemption from permitting requirements under GO 131-D Section III for the Orange Grove transmission enhancement project and the Pala - Monserate wood to steel replacement.

2. There has been no evidence presented to the Commission that this project involves unusual circumstances pursuant to CEQA.
3. The Commission finds the Orange Grove transmission enhancement project is exempt pursuant to GO 131-D Section III.B.1.g, (work within a utility easement) and consequently it is exempt from the permitting requirements set forth in GO 131-D Section XI.B.
4. The Commission finds Pala – Monserate wood to steel replacement project is exempt pursuant GO 131-D Section III.B.1.b (replacement of equivalent structures) consequently it is exempt from the permitting requirements set forth in GO 131-D Section XI.B.
5. The Commission finds that SDG&E noticed this transmission project correctly.
6. The Commission accepts the October 9, 2009 late-filed protest.
7. The Commission finds that there is a dispute between the parties as to the scope of SDG&E’s easements.
8. The Commission does not determine the scope of SDG&E’s easements.
9. The Commission cannot authorize SDG&E to do more than what is legally permitted under the scope of its easements.
10. SDG&E currently occupies a 12 foot wide easement and cannot exceed the currently occupied easement in the disputed sections.
11. The Commission finds no requirement for a hearing.

THEREFORE IT IS ORDERED THAT:

San Diego Gas and Electric’s Advice Letter AL 2173-E is approved, subject to the condition that SDG&E remain within their occupied 12 foot easement within the disputed sections.

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 November 19, 2010; the following Commissioners voting favorably thereon:

/s/ Paul Clanon

Paul Clanon
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
DIAN M. GRUENEICH
JOHN A. BOHN
TIMOTHY ALAN SIMON
NANCY E. RYAN
Commissioners