

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**RESOLUTION E-4510**  
**May 31, 2012**

**R E S O L U T I O N**

Resolution E-4510. Executive Director's order dismissing the protests filed by BackCountry Against Dumps and the Viejas Band of Kumeyaay Indians contesting San Diego Gas & Electric's (SDG&E) Advice Letter (AL) 2350-E claim of exemption from General Order 131-D permitting requirements for construction of the Ocotillo Switchyard Project in the County of Imperial, CA. This Resolution approves SDG&E's Advice Letter 2350-E.

By Advice Letter 2350-E. Filed April 27, 2012.

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**SUMMARY**

This Resolution dismisses as invalid protests from the BackCountry Against Dumps (BAD) and the Viejas Band of Kumeyaay Indians (Viejas) and approves SDG&E's Advice Letter 2350-E with an effective date of today. Pursuant to this advice letter, SDG&E proposes to construct the Ocotillo Switchyard Project in the Imperial Valley just east of the San Diego/Imperial County Line in California. The County of Imperial and the United States Department of the Interior Bureau of Land Management conducted an environmental review that included the proposed construction of SDG&E's facilities (Proposed Plan Amendment & Final Environmental Impact Statement/Final Environmental Impact Report (FEIR) for the Ocotillo Wind Energy Facility- SCH No. 2010121055) and found no significant unavoidable environmental impacts associated with the construction of those facilities, provided the required mitigations were applied.

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 SDG&E in their Advice Letter 2350-E. None of the concerns raised by the protestants fits within the specific exceptions to the exemptions of GO 131-D, nor do the protestants' claims support a claim of misapplication of an exemption by SDG&E. Therefore, the protest is denied for failure to state a valid reason.

## **BACKGROUND**

Electric utilities proposing to construct electric facilities must comply with GO 131-D which, among other things, provides for filing an application for a Permit to Construct (PTC) unless the project is exempt for certain reasons specified in Section III.B. of GO 131-D.

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. 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.

On April 27, 2012, SDG&E filed Advice Letter (AL) 2350-E claiming an exemption from the requirements of GO 131-D for construction of the Ocotillo Switchyard Project. SDG&E proposes to construct the Ocotillo Switchyard Project in the Imperial Valley just east of the San Diego/Imperial County line. The County of Imperial and the Bureau of Land Management conducted an environmental review that included the proposed construction of SDG&E's facilities (Proposed Plan Amendment & Final Environmental Impact Statement/Final Impact Report for the Ocotillo Wind Energy Facility - SCH No. 2010121055) and found no significant unavoidable environmental impacts associated with those facilities.

SDG&E has claimed exemption from the requirement to file for a Permit to Construct, as prescribed by GO 131-D, Section XI.B. and C. SDG&E's claim of exemption was based on two Sections of the GO: (1) Section III. A., which exempts "power lines or substations to be ...constructed which have undergone environmental review pursuant to CEQA as part of a larger project, and the placing of new or additional conductors . . . on or replacement of supporting structures already built;" and (2) Section III.B.1.(f), 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**

SDG&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. 2350-E in accordance with Section III of GO 96-A.

### **PROTESTS**

The 20-day protest period for Advice Letter 2350-E closed on May 17, 2012. The Commission has received two protests to Advice Letter 2350-E. On May 17, 2012, the Viejas Band of Kumeyaay Indians, a federally recognized tribe, filed a protest stating that SDG&E incorrectly applied for an exemption and that the proposed project's cumulative effects and unusual circumstances associated with both the Switchyard and the Ocotillo Wind Express Facility (OWEF) may adversely affect the environment. Additionally, on May 17, 2012, BackCountry Against Dumps, members of which include local Ocotillo residents, supporters and desert recreationalists, submitted a protest claiming that SDG&E misrepresented that the certified FEIR found no significant unavoidable environmental impacts caused by the Switchyard or 500kV loop interconnections.

Viejas believes that information about the Switchyard was withheld from the public during the OWEF Draft EIS/EIR process. The Viejas also claim that additional studies and field work have been completed since the OWEF environmental document was finalized that refute the significance conclusion in the FEIR relative to several impact areas, particularly tribal cultural resources.

The Viejas raise a concern that consultation between the BLM and the Tribes regarding the new reports has not yet occurred and that the memorandum of Agreement regarding cultural resources is not being followed. Finally, the Viejas note that the OWEF is already the subject of litigation in federal court.

BAD believes the Switchyard Project is not exempt from a Permit to Construct under CPUC GO 131-D, claiming that the FEIR did not parse distinct Project activities, and instead analyzed the Project as a whole. BAD contends that the FEIR found any grading, earth disturbances, or construction would cause unavoidable significant environmental impacts to scenic, cultural, and biological resources designated as protected under the California Desert Conservation Area plan within the Class L limited use public land. BAD believes that it is impossible to construct the 23 acre switchyard without causing substantial direct impacts. BAD further alleges that the generator and applicant know that the wind resources do not meet the standards for an economically viable wind facility. Finally, BAD points out that the owner of Pattern Energy, Riverstone Holdings, was ordered to pay a fine of over \$30 million for involvement in a pay to play scheme in New York, in 2009.

SDG&E responded to the above protests on May 24, 2012, via letter to the Director of the Energy Division. SDG&E's response argues that the protest should be dismissed because none of the protestants' arguments are relevant to any issue that may be properly raised in a protest pursuant to GO 131-D, Section XIII - i.e., that SDG&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 exists. SDG&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 2350-E. SDG&E asserts that the protestants have 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.

SDG&E asserts that the protests fail to state a valid reason for denying SDG&E's claim to an exemption from the requirements of GO 131-D for a Permit To Construct for this project. SDG&E also asserts that the protestants fail to state why SDG&E has incorrectly applied the exemptions from the permit requirements provided in Section III.B.1 of the GO. In summary, SDG&E asserts that the protestants have failed to meet their burden of showing that SDG&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, SDG&E has addressed each of the areas of concern expressed by the protestants. SDG&E correctly argues that the Switchyard 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, the noticing requirements of GO 131-D, Section IX.B were properly followed by the Company for Advice Letter 2350-E. SDG&E correctly argues that the Switchyard Project was fully and adequately reviewed by the County of Imperial pursuant to the California Environmental Quality Act in its Final Environmental Impact Report (EIR) for the OWEF Project (SCH No. 2010121055). The EIR included the entirety of the Switchyard Project in the environmental review and found no significant unavoidable environmental impacts associated with constructing those facilities, provided the required mitigations were followed.

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

SDG&E appears to have correctly applied the exemption for obtaining a Permit to Construct set forth in GO 131-D, Sections III.A. and III.B.1.(f).

SDG&E followed the notification procedures required in GO 131-D for this project. The protestants have not shown that SDG&E incorrectly applied a GO 131-D exemption. Nor have the protestants 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. SDG&E filed Advice Letter 2350-E on April 27, 2012.

2. SDG&E proposes to construct the Ocotillo Switchyard Project ( Imperial County).
3. The County of Imperial conducted an environmental review that included the proposed construction of SDG&E's facilities (Ocotillo Switchyard Project – SCH No. 2010121055) and found no significant unavoidable environmental impacts associated with those facilities.
4. SDG&E requests an exemption from a Permit to Construct, under GO 131-D, Sections III.A. and III.B.1.(f).
5. SDG&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. 2350-E in accordance with Section III of GO 96-A.
6. Protests to Advice Letter 2350-E were received from the Viejas Band of Kumeyaay Indians and from BackCountry Against Dumps on May 17, 2012.
7. The protestants raised concerns regarding significant environmental impacts resulting from the construction of the Ocotillo Switchyard Project and the exemption from the PTC process claimed by SDG&E.
8. SDG&E responded to the protests to Advice Letter 2350-E on May 24, 2012. SDG&E asserts that the protests should be denied because they fail to provide a valid reason why SDG&E should be required to apply for a Permit to Construct for the proposed project or why SDG&E has incorrectly applied the exemptions from the PTC application requirement provided for in GO 131-D.
9. SDG&E correctly followed the notification procedures required in GO 131-D for this project.
10. 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.
11. The protestants have not shown SDG&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.

12. SDG&E correctly applied for a GO 131-D exemption in Advice Letter 2350-E.

**THEREFORE IT IS ORDERED THAT:**

1. SDG&E's Advice Letter No. 2350-E is approved.
2. The protests of the Viejas Band of Kumeyaay Indians and BackCountry Against Dumps are denied.

This Resolution is effective today.

I certify the foregoing under the authority of General Order 131-D. Dated May 31, 2012, at San Francisco, California.

/s/ Paul Clanon  
Paul Clanon  
Executive Director