

MAILED: 05/15/07

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

**ENERGY DIVISION**

**RESOLUTION E-4091  
May 14, 2007**

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

Resolution E-4091. Executive Director's order dismissing the protest by Linda Ghilarducci to Pacific Gas and Electric Company's (PG&E) claim of exemption from General Order 131-D permitting requirements for construction of the Contra-Costa-Balfour 60 kV, Relocation Project in the City of Oakley, Contra Costa County.

Project in the City of Oakley, Contra Costa County. This Resolution approves PG&E's Advice Letter 2898-E.

By Advice Letter 2898-E. Filed on September 6, 2006.

---

**SUMMARY**

This Resolution approves PG&E's Advice Letter 2898-E with an effective date of today. Pursuant to this advice letter, PG&E proposes to relocate the approximately 1,800 feet of its Contra Costa-Balfour 60kV power line (approximately seven poles) roughly thirty feet west from its original location in the City of Oakley in order to accommodate the widening of Ohara Avenue between Carpenter Road and Brown Road.

The 20-day protest period for Advice Letter 2898-E ended on September 26, 2006.

The first protest to Advice Letter 2898-E was filed by Linda Ghilarducci on or about September 14, 2006. In the letter, the protestant raised concerns about the widening of the road in the City of Oakley, including issues relating to the displacement of trees, compensation for the losses, and the impact on the protestant's property.

A second protest to Advice Letter 2898-E was filed by Linda Ghilarducci on or about October 4, 2006--approximately eight days after the end of the protest period. In the letter, the protestant states that the City of Oakley could have installed a curve on the East side rather than on the West side of the road where a "historical" house would be affected. The protestant questioned the purpose of widening the road for one mile and requested that a curve be installed on the east side of the road.

A third protest filed to Advice Letter 2898-E was by Brian Siebel, attorney for the Ghilarducci family, on October 19, 2006 – 23 days after the end of the protest period. In the letter, Mr. Siebel questions whether PG&E's proposed power line relocation project is eligible for exemption from the Permit to Construct process since a preliminary title report for the Ghilarducci property does not indicate "an existing franchise, road-widening setback easement or public utility easement" for PG&E's line.

The Commission's General Order (GO) 131-D governs the planning and construction of electric generation, transmission/power/distribution line facilities and substations. The project falls within and qualifies for the exemptions cited by PG&E.

Protestant Ghilarducci's protests raise issues about the road widening project and homeowner compensation that appear to be in the developer's or the City of Oakley's purview rather than PG&E's or this Commission's. PG&E has advised the Protestant Ghilarducci that the road widening dispute is between the City of Oakley and Ghilarducci family. PG&E explained that it is simply fulfilling its obligation to relocate its facilities when requested by a local agency.

In the third protest, Mr. Siebel questions whether PG&E's proposed power line relocation project is eligible for exemption from the Permit to Construct process since a preliminary title report for the Ghilarducci property does not indicate "an existing franchise, road-widening setback easement or public utility easement" for PG&E's line. PG&E states that this protest should be denied for several reasons. First, the protest was filed 23 days after the end of the protest period. Second, no formal document review is necessary to verify that the project is exempt from GO 131D's Permit to Construct permitting requirements. PG&E's project consists of moving approximately 1,800 feet of power line from its existing location beside O'Hara Avenue to a new location beside O'Hara Avenue after it is widened. Even if, assuming arguendo, PG&E's project did not qualify

for the exemption for facilities "located in an existing franchise, road-widening setback easement, or public utility easement" under GO 131D, section III.B.1.g, there is no question that this relocation qualifies under section III.B.c, "the minor relocation of existing power lines up to 2,000 feet in length."

None of the concerns raised by 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.

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 September 6, 2006, PG&E filed Advice Letter 2898-E claiming an exemption from the requirements of GO 131-D for construction of the Contra Cost-Balfour 60kV Relocation Project in the City of Oakley. PG&E was requested by Pulte Homes to relocate 1,800 feet of power line roughly 30 feet West from its original location in the City of Oakley in order to accommodate the widening of Ohara Avenue between Carpenter Road and Brown Road.

PG&E claimed exemption from the requirement to file for a Permit to Construct, as prescribed by GO 131-D, Section III, Subsection B.1 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," and "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".

The 20-day protest period for Advice Letter 2898-E closed on September 26, 2006. The first protest to Advice Letter 2898-E was received from Linda Ghilarducci on or about September 14, 2006. PG&E responded to this protest on September 20, 2006. The second protest was received from Linda Ghilarducci on or about October 4, 2006. PG&E responded to this protest on October 11, 2006. The third protest was filed Brian Siebel, attorney for the Ghilarducci family on October 19, 2006. PG&E responded to this protest on October 30, 2006.

## **NOTICE**

In accordance with G.O. 96-A, Section III, paragraph G, a copy of Advice Letter 2898-E was sent electronically and via U.S. Mail to interested parties

## **PROTESTS**

The 20-day protest period for Advice Letter 2898-E closed on September 26, 2006.

The first protest to Advice Letter 2898-E was filed by Linda Ghilarducci on or about September 14, 2006. In the letter, the protestant raised concerns about the widening of the road in the City of Oakley, including issues relating to the displacement of trees, compensation for the loss of property, and the impacts on the protestant's property.

A second protest to Advice Letter 2898-E was filed by Linda Ghilarducci on or about October 4, 2006--approximately eight days after the end of the protest period. In the letter, the protestant states that the City of Oakley could have installed a curve on the east side, rather than on the west side of the road, where a "historical" house would be affected. The protestant questioned the purpose of widening the road for one mile and requested that a curve be installed on the east side of the road.

A third protest filed to Advice Letter 2898-E was by Brian Siebel, attorney for the Ghilarducci family, on October 19, 2006 – 23 days after the end of the protest period. In the letter, Mr. Siebel questions whether PG&E's proposed power line relocation project is eligible for exemption from the Permit to Construct process since a preliminary title report for the Ghilarducci property does not indicate "an existing franchise, road-widening setback easement or public utility easement" for PG&E's line.

PG&E responded to the first protest on September 20, 2006. PG&E's response argues that the protest should be dismissed because the protest raises issues within the purview of the housing developer or the City of Oakley, rather than PG&E. In addition, PG&E argues that the protestant's submission fails to establish any issue that may properly be raised in a protest under GO 131-D, section XIII. PG&E claims that the protestant's protest fails to address how the CPUC's exemptions for minor relocations and work within existing franchise or easement areas somehow fail to apply to the power line relocation project.

PG&E responded to the second protest on October 11, 2006. PG&E's response argues that the protest pertains entirely to the City of Oakley's road widening project, not to PG&E's minor power line relocation project. The protestant questions why the road cannot be widened on the opposite side of the street and what impacts the project may have on a "historical" house. PG&E argues that the protestant's submission fails to establish any issue that may properly be raised in a protest under GO 131-D, section XIII. PG&E claims that the protestant's protest fails to address how the CPUC's exemptions for minor relocations and work within existing franchise or easement areas somehow fail to apply to the power line relocation project.

PG&E responded to the third protest on October 30, 2006. PG&E's response argues that the protest should be denied because of the following reasons:

First, PG&E points out that the protest was filed far beyond the 20 day protest filing period.

Second, PG&E claims that no formal review is necessary to verify that the project is exempt from GO 131-D's PTC permitting requirements. The project consists of moving 1,800 feet of power line from its current location on O'Hara Avenue to a new location after the roadway is widened. PG&E argues that even if the project

did not qualify for the exemption for facilities "located in an existing franchise, road-widening setback easement, or a utility easement" under GO 131-D, section III.B.1.g, there is no question that this relocation qualifies under section III.B.1.c, "the minor relocation of existing power line facilities up to 2,000 feet in length."

Third, PG&E claims that it repeatedly advised Linda Ghilarducci that the dispute had nothing to do with PG&E or the Commission and that the issue was a dispute between the Ghilarducci family and the City of Oakley over the road widening project.

### **DISCUSSION**

The protestant is concerned that the City of Oakley's road widening project will result in various impacts to the protestant's property and family home. The protestant asks why the road cannot be widened on the east side of the road instead of the west.

In its response to the protest, PG&E correctly points out that the road design concerns identified by the protestant pertain entirely to the City of Oakley's road-widening project and have nothing to do with PG&E's line relocation project.

In the third protest submitted by Mr. Siebel questions whether PG&E's proposed power line relocation project is eligible for exemption from the Permit to Construct process since a preliminary title report for the Ghilarducci property does not indicate "an existing franchise, road-widening setback easement or public utility easement" for PG&E's line.

In its response, PG&E correctly points out that the protest was filed far after the deadline set for the 20 day protest filing period. PG&E also correctly states that no formal review is necessary to verify that the project is exempt from GO 131-D's PTC permitting requirements. The project consists of moving 1,800 feet of power line from its current location on O'Hara Avenue to a new location after the roadway is widened. PG&E argues that even if the project did not qualify for the exemption for facilities "located in an existing franchise, road-widening setback easement, or a utility easement" under GO 131-D, section III.B.1.g, there is no question that this relocation qualifies under section III.B.c, "the minor relocation of existing power line facilities up to 2,000 feet in length."

PG&E correctly states that the protestant failed to raise a valid protest because the protestant failed 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 exemption for obtaining a Permit to Construct set forth in GO-131D.

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. In this regard, the late-filed protest submitted by Mr. Siebel, on behalf of the Ghilarducci family, together with the two protests previously submitted by Linda Ghilarducci should all be dismissed for "Failure to state a valid reason" under Section XIII of GO 131-D.

## **FINDINGS**

1. PG&E filed Advice Letter 2898-E on September 6, 2006.
2. PG&E was requested by Pulte Homes to relocate approximately 1,800 feet of its Contra Costa-Balfour 60 kV power line (approximately 7 poles) roughly 30 feet west from its original location in the City Of Oakley in order to accommodate the widening of Ohara Avenue between Carpenter Road and Brown Road.
3. PG&E requests an exemption from a Permit to Construct, under GO 131-D, Section XI, Subsection B.4.
4. PG&E distributed a Notice of Proposed Construction in accordance with GO 131-D, Section XI.
5. A protest to Advice Letter 2898-E was received by the Commission from Ms. Linda Ghilarducci on or about September 14, 2006. The protestant raised concerns about the proposed design of the Ohara Avenue and the effect of the road widening on her house and property.
6. PG&E responded to the protest to Advice Letter 2898-E on September 20, 2006, via letter to the Director of the Energy Division. PG&E contends that the protest should be denied because protestant Ghilarducci's protest

raises issues about the road widening and compensation that fall within the developer's or the City of Oakley's purview rather than PG&E's.

7. PG&E responded to the second protest on October 11, 2006. PG&E's response argues that the protest pertains entirely to the City of Oakley's road widening project, not to PG&E's minor power line relocation project.
8. PG&E responded to the third protest on October 30, 2006. PG&E's response argues that the protest should be denied because the protest was filed far beyond the 20 day protest filing deadline and that even if the project did not qualify for the exemption for facilities "located in an existing franchise, road-widening setback easement, or a utility easement" under GO 131-D, section III.B.1.g, there is no question that this relocation qualifies under section B.1.C, "the minor relocation of existing power line facilities up to 2,000 feet in length."
9. PG&E 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 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.
11. The protestant has not shown 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.B.2. exist to invalidate the claimed exemption.
12. PG&E has correctly applied for a GO 131-D exemption in Advice Letter 2898-E.

**THEREFORE IT IS ORDERED THAT:**

1. PG&E's Advice Letter No. 2898-E is approved.
2. The protest of Ms. Linda Ghilarducci is denied.

Resolution E-4091  
PG&E's AL 2898-E/JMU

May 14, 2007

This Resolution is effective today.

I certify the foregoing under the authority of General Order 131-D. Dated  
May 14, 2007 at San Francisco, California.

---

Paul Clanon  
Executive Director