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MAIL DATE
2/8/96

ORIGINAL

Decision 96-02-024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the rules, procedures))
and practices which should be)
applicable to the Commission's review))
of transmission lines not exceeding)
200 Kilovolts.)

I.83-04-03
(Filed April 20, 1983)

ORDER MODIFYING DECISION 94-06-014 AND DENYING REHEARING

The County of Santa Barbara ("Santa Barbara") has filed an application for rehearing of Decision (D.) 94-06-014. D.94-06-014 adopts Commission General Order (GO) 131-D, which provides for Commission review of certain electric power lines projects before they are constructed. Pacific Gas & Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company ("Utilities") filed a joint response and motion for acceptance of a late-filed response.

We have considered all the allegations of error in the application and are of the opinion that good cause for rehearing has not been shown. However, we will modify the decision and GO to correct a minor inaccuracy, as set forth below.

The inaccuracy identified by Santa Barbara concerns GO 131-D's provision for regulation of power lines in the Coastal Zone. The GO provides:

A coastal development permit shall be obtained from the Coastal Commission for development of facilities subject to this order in the coastal zone.

(GO 131-D § XV.)

Santa Barbara points out that Public Resources Code section 30519 (a) specifically delegates Coastal Commission

development permit review authority to local governments which are implementing a certified Local Coastal Program. Therefore, a coastal development permit may be obtained from a local government rather than the Coastal Commission, and section XV of the GO is not entirely accurate. Santa Barbara requests that we specifically acknowledge the local role in the coastal review process.

We concur that the language of section XV should be changed, because it is inaccurate as it stands. However, there is no controversy concerning whether the local Coastal Zone permits need to be obtained by the utilities. All interested parties agree that they do. Therefore, we will modify the GO, as set forth in Ordering Paragraph 3, to require more generally that all provisions of the Coastal Act be followed for construction within the Coastal Zone. We find that this is preferable to referring to any specific requirements of the Coastal Act, over which we have no control.

Santa Barbara also contends that the Decision errs in concluding the Commission pre-empts local regulation of under-50 kV lines. Santa Barbara argues that because the Commission still does not actively regulate these lower voltage lines, local regulation does not conflict with the Commission's regulation and is therefore not pre-empted. We find that with 131-D the Commission has fully occupied the area of electric power line approval, and that local discretionary permit authority would conflict with our regulation.

Local regulation has been found to be pre-empted if it enters an area fully occupied by general law. (Candid Enterprises, Inc. v. Grossmont Union High School Dist. (1985) 39 Cal.3d 876, 875.) As Santa Barbara notes, regarding utility matters the Commission has, "paramount jurisdiction in cases where it has exercised its authority, and its authority is pitted against that of a local government involving a matter of statewide concern..." (Orange County Pollution Control District

v. Public Util. Com. (1971) 4 Cal.3d 945, 951; see also Los Angeles Ry. v. Los Angeles (1940) 16 Cal.2d 779, 786.)

We recognize, as well, that there is some authority which indicates that local governments may assert jurisdiction over utility matters where there is no conflict with Commission regulation. (Harbor Carriers v. City of Sausalito (1974) 46 Cal.App.3d 773.) In fact, the Commission has allowed local concurrent jurisdiction in certain areas of utility regulation.

In the instant case, however, the Commission has fully occupied the field of electric power line regulation, and local regulation of under-50 kV lines would conflict with the Commission's regulation.

The Commission has consistently stated that it has "exclusive jurisdiction" over electric lines of all voltages. (Town of Woodside v. PG&E (1978) 83 CPUC 418.) GO 131-D and the accompanying Decision again explicitly announce the Commission's intention to occupy regulation of power lines. We have decided as a matter of policy that the lower voltage lines do not require active regulatory oversight. (D.94-06-014, at p.17.) The Decision clearly states:

Utility-owned under-50 kV lines remain under the Commission's jurisdiction, which may not be pre-empted. The absence of Commission permit requirements for under-50 kV lines is not an invitation for concurrent jurisdiction.

(D.94-06-014, at p.18.) We could not evince an intent to occupy the field more clearly.

In addition, the GO does not leave lower voltage lines completely unregulated. Rather, it provides a specific process for utilities to follow for under-50 kV lines. The utilities are to consult with the local governments and obtain relevant non-discretionary permits. If the construction is contested any interested party can file a complaint with the Commission as provided for in the GO. (See GO 131-D §§ III.C., XIV. C.)

It is clear that local permit regulation which transcends that described above is inconsistent with the process we articulated in GO 131-D. Therefore, the Decision is correct in declaring local permit regulation to be pre-empted.

Therefore, IT IS ORDERED that:

1. The motion of the Utilities for acceptance of their late-filed response is granted.
2. Rehearing of D.94-06-014, as modified herein, is denied.
3. The Executive Director is directed to modify the second paragraph of section XV of GO 131-D to read:

Each utility shall comply with all relevant provisions of the Coastal Act (Pub. Resources Code § 30000 et seq.) for the development of facilities subject to this order in the Coastal Zone. Coastal development permits shall be obtained for those facilities as required by the Coastal Act.

This order is effective today.

Dated February 7, 1996, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners