

Decision 96-06-036 June 6, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
Sierra Pacific Power Company for a )  
Certificate of Public Convenience and )  
Necessity to Construct and Operate the )  
Alturas Transmission Line Project. )

**ORIGINAL**

A.93-11-018  
(Filed November 9, 1993)

ORDER DENYING REHEARING OF DECISION 96-01-012

Three citizen groups, Bordertown Residents, Citizens for the Preservation of Long Valley and Neighbors Opposing Power Encroachment (NOPE) (Citizens) filed an application for rehearing of Decision (D.) 96-01-012 on February 15, 1996. In D.96-01-012 the Commission granted a Certificate of Public Convenience and Necessity (CPCN) to Sierra Pacific Power Company (Sierra) to construct a 345 kV electric transmission line and two related substations between Alturas, California and Reno, Nevada (Alturas line).

We have considered all the allegation of error in the application and are of the opinion that good cause for rehearing has not been shown. We are therefore denying the Citizens' application.

Citizens' main contention is that they did not receive notice of Sierra's application as required by the Commission's General Order (G.O.) 131-D. Because of this alleged failure, Citizens maintain that the Commission did not acquire subject matter jurisdiction over the Alturas application and that Citizens were denied due process. Citizens' arguments fail on a number of grounds.

First, a defect in notice affects personal jurisdiction not subject matter jurisdiction as Citizens claim. (See e.g. Hayman v. Los Angeles County (1936) 17 Cal.App.2d 674, 677.) The significance of this is that subject matter jurisdiction claims cannot be waived, but claims regarding personal jurisdiction are waived by making a general appearance in a proceeding.

(Northington v. Industrial Accident Comm. (1937) 23 Cal.App.2d 255, 259.) In this case all three citizens groups made general appearances in the Alturas CPCN proceeding. Therefore they have waived whatever personal jurisdiction claim they may have had.

Second, Sierra did not violate the G.O. 131-D notice requirements because G.O. 131-D was adopted after Sierra's Alturas application was filed and noticed. G.O. 131-D and its predecessor G.O. 131-C govern applications to the Commission for approval of electric lines. Sierra filed the Alturas CPCN application on November 9, 1993, and satisfied the then-existing G.O. 131-C notice requirements. G.O. 131-D was subsequently adopted on June 8, 1994. G.O. 131-D requires utilities to provide notice to landowners within 300 feet of the right-of-way within 10 days of the application. This notice requirement could not apply to the Alturas application since the requirement did not exist until seven months after the application was filed. There is no indication that retroactive effect was intended.

Citizens argue that Sierra's October 1994 amendment to the Alturas application made G.O. 131-D applicable. Citizens fail to support this contention, however. The plain language of the G.O. 131-D notice provisions applies to applications and not amendments. (G.O. 131-D § XI.) Citizens also make an argument regarding the G.O. 131-D grandfather exemption. That exemption is only concerns under 200 kV lines, and is therefore not relevant to the instant case.

Finally, Citizens allege that they were deprived of due process. There is no indication that this is true, and Citizens present no adequate arguments. All notice requirements contained in the California Environmental Quality Act (CEQA) (Pub.Resources

Code § 21000 et seq.) and G.O. 131-C were satisfied. Furthermore, all groups appeared at the hearing in this proceeding and had the opportunity to present their notice claims and any other relevant arguments.

IT IS ORDERED that:

1. Rehearing of D.96-01-012 is denied.

This order is effective today.

Dated June 6, 1996, at San Francisco, California.

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

Commissioner Daniel Wm. Fessler,  
being necessarily absent, did  
not participate.