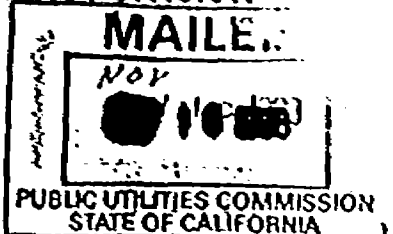


PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-3572
NOVEMBER 12, 1998



RESOLUTION

RESOLUTION E-3572. EXECUTIVE DIRECTOR'S ORDER DISMISSING PROTESTS BY WINN PARKER AND DAVID NUGENT, ET AL., TO PACIFIC GAS AND ELECTRIC COMPANY'S CLAIM OF EXEMPTION FROM GENERAL ORDER 131-D PERMITTING REQUIREMENTS FOR THE SUBSTATION MA PROJECT IN MILLBRAE.

BY ADVICE LETTER 1780-E FILED ON JUNE 26, 1998.

SUMMARY

Pacific Gas and Electric Company (PG&E) proposes to install a substation (known as Substation MA) with appurtenant facilities at the corner of Bay Street and Santa Paula Avenue in the City of Millbrae on San Francisco International Airport (SFIA) property. The installation is part of a larger project to expand electrical facilities currently serving SFIA. PG&E determined that in order to meet anticipated future demand for electrical power at SFIA, the substation would be required to provide the additional electrical capacity.

The installation of substations is governed by General Order (GO) 131-D which requires either an application for a Permit to Construct or an informational advice letter if the project qualifies for an exemption, as specified in GO 131-D, Section III B.1. PG&E filed Advice Letter 1780-E to claim exemption from the requirement to file for a Permit to Construct, as prescribed by GO 131-D, Sections XI.B and C. PG&E's claim of exemption is based on GO 131-D, Section III B.1.f, which exempts the construction of "power lines or substations to be relocated or constructed which have undergone environmental review pursuant to [the California Environmental Quality Act] CEQA as part of a larger project, and for which the final CEQA document (Environmental Impact Report (EIR) or Negative Declaration) finds no significant unavoidable environmental impacts caused by the proposed line or substation."

Winn Parker and David Nugent, et al. protested this advice letter, raising several questions which do not bear on PG&E's application of the specific exemption to this project. Therefore, these protests are dismissed for failure to state a valid reason.

BACKGROUND

Electric utilities proposing to construct new substations and 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.

In Section XIII, 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 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.

In Advice Letter 1780-E, PG&E proposes to construct a substation with appurtenant facilities at the corner of Bay Street and Santa Paula Avenue in the City of Millbrae on SFIA property. The installation is part of a larger project to expand electrical facilities currently serving SFIA. PG&E determined that in order to meet anticipated future demand for electrical power at SFIA, the substation would be required to provide the additional electrical capacity.

A Final Environmental Impact Report (FEIR) was prepared and certified by the City and County of San Francisco for the SFIA Master Plan. Expansion of electrical services is included in the SFIA Master Plan. The site for the Substation MA new transformer was not identified in the SFIA Master Plan nor was it evaluated in the FEIR. Therefore, a subsequent Negative Declaration was prepared and adopted by the City and County of San Francisco for the specific Substation MA project to address key characteristics that were not evaluated in the SFIA FEIR. No unavoidable significant environmental impacts were identified for the proposed Substation MA and appurtenant facilities.

NOTICE

PG&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. 1780-E in accordance with Section III of GO 96-A.

PROTEST

Winn Parker submitted a timely protest to the Commission on July 14, 1998 claiming that the proposed substation would be too close to homes in the area and would create a hazardous condition in the area due to possible acts of sabotage or terrorism which might cause the release of toxic chemicals from the substation. He also argues that the issue of EMF's and other issues concerning human health and safety and effects on the area's biological resources were not adequately addressed in the negative declaration and requested evidentiary hearings on the matter.

A second protest letter was received at the Commission from Mr. Parker on August 10, 1998 after the close of the protest period stating that the project did not qualify for the exemption because it did not meet the requirements of GO 131-D, Section III.B.2. Mr. Parker claims that there is a reasonable possibility that the project's effects on human health and safety and biological resources will have a significant effect on the environment due to unusual circumstances, and that, therefore, the project should not be eligible for an exemption under GO 131-D, Section III.B.1.f.

Also received on August 10, 1998 was a protest from David Nugent and 48 individuals who signed a letter claiming that the proposed substation would be too close to homes in the area, would create unacceptable noise levels, and would create a hazardous condition in the area due to possible acts of sabotage or terrorism which might cause the release of toxic chemicals from the substation or start a fire.

PG&E responded to Winn Parker's July 14, 1998 letter on July 30, 1998. PG&E's response argues that Winn Parker's protest should be dismissed because it fails to state a valid reason why PG&E should be required to apply for a permit to construct the proposed substation project or why PG&E has incorrectly applied the exemption from the permit requirement provided in GO 131-D, Section III.B.1.f. Further, PG&E argues that Mr. Parker has not demonstrated that the proposed project will create one of the three conditions specified in GO 131-D, Section III.B.2.

DISCUSSION

Mr. Parker's protest alleges that the City and County of San Francisco's environmental review of the proposed project and resulting Negative Declaration have inadequately assessed the health risks to the community and the risks to biological resources. One of the health risks that Mr. Parker is most concerned about is exposure to electromagnetic fields, and the possibility that EMF exposure will increase as a result of the project. Mr. Parker further alleges that the inadequately reviewed risks create unusual circumstances, and that due to

the reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances, it should not be exempt from further environmental review under GO 131-D.

The Mitigated Negative Declaration adopted by the City and County of San Francisco addressed human health and biological resource issues just as it addressed all of the potential environmental impacts which must be assessed in such a review. In constructing the substation PG&E will comply with Commission Decision 93-11-013 ("EMF Decision") and employ "no cost" and "low cost" measures to reduce public exposure to EMF. Further, the area of the proposed substation has not been officially designated as an environmental resource of hazardous or critical concern pursuant to law by any federal, state, or local agency and no endangered species habitat exists on the proposed substation site. Nor is the substation project part of a set of successive or cumulative power line or substation construction projects of the same type, in the same place, which is likely to have significant impacts over time. Therefore, the issues raised by Mr. Parker do not demonstrate that a reasonable possibility exists that the project will have a significant effect on the environment due to unusual circumstances.

Mr. Nugent et al. do not argue that PG&E incorrectly applied the exemption from the permit requirement provided in GO 131-D, Section III.b.1.f, nor do they argue that the proposed project will create one of the three conditions specified in GO 131-D, Section III.B.2. Their concerns are about safety, noise levels and the siting of the substation. All of these concerns were appropriately addressed in the Mitigated Negative Declaration prepared by the City and County of San Francisco.

FINDINGS

1. PG&E proposes to construct a substation with appurtenant facilities at the corner of Bay Street and Santa Paula Avenue in the City of Millbrae on SFIA property. The installation is part of a larger project to expand electrical facilities currently serving SFIA. PG&E determined that in order to meet anticipated future demand for electrical power at SFIA, the substation would be required to provide the additional electrical capacity.
2. As its grounds for an exemption from a Permit to Construct, PG&E cites GO131-D, Section III.B.1.f, which exempts the construction of "power lines or substations to be relocated or constructed which have undergone environmental review pursuant to CEQA as part of a larger project, and for which the final CEQA document finds no significant unavoidable environmental impacts caused by the proposed line or substation."
3. PG&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. 1780-E in accordance with Section III of GO 96-A.

4. Winn Parker submitted a timely protest to the Commission July 14, 1998 claiming that EMF issues as well as other issues concerning human health and safety and effects on the area's biological resources were not adequately addressed in the negative declaration and requested evidentiary hearings in the matter.
5. A second protest letter was received from Winn Parker on August 10, 1998 after the close of the protest period stating that the project did not qualify for the exemption because it did not meet the requirements of GO 131-D, Section III.B.2. Mr. Parker claims that there is a reasonable possibility that the project's effects on human health and safety and biological resources will have a significant effect on the environment due to unusual circumstances, and that, therefore, the project should not be eligible for an exemption under GO 131-D, Section III.B.1.f.
6. Also received on August 10, 1998 was a protest from David Nugent and 48 individuals who signed a letter claiming that the proposed substation would be too close to homes in the area, would create unacceptable noise levels, and would create a hazardous condition in the area due to possible acts of sabotage or terrorism which might cause the release of toxic chemicals from the substation or start a fire.
7. PG&E responded to Winn Parker's July 14, 1998 letter on July 30, 1998. PG&E's response argues that Mr. Parker's protest should be dismissed because it fails to state a valid reason why PG&E should be required to apply for a permit to construct the proposed substation project or why PG&E has incorrectly applied the exemption from the permit requirement provided in GO 131-D, Section III.B.1.f. Further, PG&E argues that Mr. Parker has not demonstrated that the proposed project will create one of the three conditions specified in GO 131-D, Section III.B.2.
8. PG&E argues that the protest from Mr. Nugent et al. should be dismissed because it fails to state a valid reason why PG&E should be required to apply for a permit to construct the proposed substation project or why PG&E has incorrectly applied the exemption from the permit requirement provided in GO 131-D, Section III.B.1.f.
9. The Mitigated Negative Declaration adopted by the City and County of San Francisco addressed the environmental impacts of the proposed project. In constructing the substation PG&E will comply with Commission Decision 93-11-013 ("EMF Decision") and employ "no cost" and "low cost" measures to reduce public exposure to EMF. Further, the area of the proposed substation has not been officially designated as an environmental resource of hazardous or critical concern pursuant to law by any federal, state, or local agency and no endangered species habitat exists on the proposed substation site. Nor is the substation project part of a set of successive or cumulative power line or substation construction projects of the same type, in the same place, which is likely to have significant impacts over time. Therefore, the issues raised by Mr. Parker do not demonstrate that a reasonable possibility exists that that

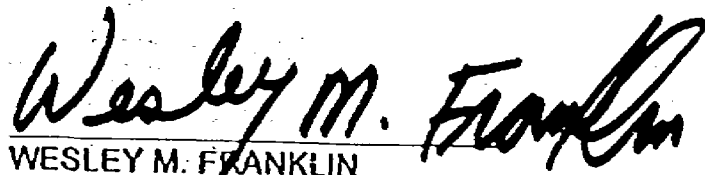
the project will have a significant effect on the environment due to unusual circumstances.

10. GO 131-D specifies two bases for sustaining a protest of an informational advice letter: 1) that the utility incorrectly applied a GO 131-D exemption, or 2) that there exists any of the three conditions specified in GO 131-D, Section III.B.2. which preempts an exemption.
11. Neither David Nugent et. al. Nor Winn Parker have shown that PG&E incorrectly applied a GO 131-D exemption, nor have they shown that any of the conditions specified in GO 131-D III.B.2 exist.

THEREFORE, IT IS ORDERED that:

1. David Nugent et. al. and Winn Parker's protests to Pacific Gas and Electric Company's Advice Letter No. 1780-E are dismissed.
2. This Resolution is effective today.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA


WESLEY M. FRANKLIN
Executive Director