

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

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PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

RESOLUTION E-3573
NOVEMBER 12, 1998

RESOLUTION

RESOLUTION E-3573. EXECUTIVE DIRECTOR'S ORDER DISMISSING PROTESTS BY SHARON AND HOWARD HYDE, JUDITH CHETAUD, J. C. MITCHELL, MIKE ZAPPAS, BERT WESTBURG, STEVEN HALL, THE CITY OF PASO ROBLES, AND ROBERT FINLEY ET AL., TO PACIFIC GAS AND ELECTRIC COMPANY'S CLAIM OF EXEMPTION FROM GENERAL ORDER 131-D PERMITTING REQUIREMENTS FOR THE RECONSTRUCTION OF THE COALINGA-SAN LUIS OBISPO 70 KILOVOLT POWER LINE.

BY ADVICE LETTER 1791-E FILED ON JULY 27, 1998.

SUMMARY

Pacific Gas and Electric Company (PG&E) proposes to reconstruct 4.5 miles of the existing 85 mile Coalinga-San Luis Obispo 70 kV power line constructed in 1913 and construct ½ mile of new light duty steel pole line (LDSP) within an existing utility easement from the Templeton Substation to the Templeton Junction. This reconstruction will help improve PG&E's electrical deficiency in San Luis Obispo County. Replacement of wood poles using LDSP's will improve reliability, reduce maintenance costs, and reduce the risk of damage by fire and woodpeckers. Substation modifications will also be made at both Paso Robles and Templeton Substations as part of the project.

The installation of substations and power line facilities 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 1791-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.g, which exempts the construction of "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."

Sharon and Howard Hyde, Judith Chetaud, J. C. Mitchell, Mike Zappas, Robert Finley et al., Steven Hall, Bert Westburg and the City of Paso Robles 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 1791-E, PG&E proposes to reconstruct 4.5 miles of the existing 85 mile Coalinga-San Luis Obispo 70 kV power line constructed in 1913 and construct ½ mile of new light duty steel pole line within an existing utility easement from the Templeton Substation to the Templeton Junction. This reconstruction will help improve PG&E's electrical deficiency in San Luis Obispo County. Replacement of wood poles using LDSP's will improve reliability, reduce maintenance costs, and reduce the risk of damage by fire and woodpeckers. Substation modifications will also be made at both Paso Robles and Templeton Substations as part of the project.

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. 1791-E in accordance with Section III of GO 96-A.

PROTEST

The twenty day protest period ended August 26, 1998. Bert Westburg filed a protest dated August 23, 1998. Robert Finley along with five individuals filed a protest on August 25, 1998; Mike Zappas filed a protest on August 25, 1998; Judith Chetaud and J. C. Mitchell filed protests on August 26, 1998; Howard and Sharon Hyde filed a protest on August 27, 1998 and Steven Hall filed a protest dated September 9, 1998. The City of Paso Robles filed a protest on October 26, 1998.

Some of the protestants claim that PG&E did not provide adequate notice of the transmission construction project. They argue that PG&E should have notified each of the affected landowners individually. PG&E argues that it followed the notice requirements in GO 131-D XI.B. which requires the utility to provide notice by:

1. Direct mail to the planning director for each county or city in which the proposed facility would be located and the Executive Director of the Energy Commission; and
2. Advertisement, not less than once a week, two weeks consecutively, in a newspaper or newspapers of general circulation in the county or counties in which the proposed facility would be located, the first publication to be not later than 45 days before the date when construction is intended to begin; and
3. By posting a notice on-site and off-site where the project would be located.
4. Filing an informational advice letter with the CACD in accordance with General Order 96-A, which includes a copy and distribution list of the notices required by items 1-3 herein. On the same day, a copy of the advice letter must be delivered to the CPUC Public Advisor.

The City of Paso Robles argues that the Notice of Proposed Construction does not adequately describe the height and line configuration of the project. The City Council was presented with evidence that the new steel pole heights could exceed 65 or 70 feet, and that such pole heights would create demonstrable negative aesthetic effect and would be incompatible with existing residential land use in the South River Road area of the City. PG&E argues that the current wooden poles along this route are 40 to 75 feet tall and that the new steel poles will be installed at heights required to meet GO 95 (CPUC Rules for Overhead Electric Line Construction) clearance standards.

Some of the protestants argue that PG&E does not have a recorded easement for the transmission line that will be replaced, and that the utility tried to pay them a small sum to obtain the easement. PG&E argues that the line in question has been in place since 1913, and that PG&E purchased the line from the

predecessor utility, Midland Counties Public Service Corporation, on December 31, 1938 along with "lands, rights of way, electric substations, electric transmission lines and electric distribution systems in the Counties of Fresno, Kings, Monterey, San Luis Obispo and Santa Barbara and adjacent areas." The transfer document was recorded in all of the counties affected by the transfer. PG&E acknowledges that no recorded easement exists on some of the properties, and that PG&E offered the landowners a small sum to compensate them for the trouble of having the easements recorded. However, PG&E argues in its September 9, 1998 letter to the Paul Clanon, the Commission's Energy Division Director, that the transmission line has been maintained for 85 years, and that this "open, notorious and continuous use, adverse to the interests of Protestant(s) or any predecessor for this long period has established an easement, denominated an easement by prescription, which is valid against all challenges and claims..."

Some of the protestants were concerned about the proximity of the transmission lines to their homes and the possible negative effects of electromagnetic fields (EMF) emanating from the lines after construction. PG&E argues that it will employ "no cost" and "low cost" measures to reduce exposure to EMF as required in a previous Commission Decision (D.93-11-013). PG&E also pointed out that although the poles are being replaced, the voltage for this line will not change, and it will remain a 70 kV line as it has been since 1913.

Howard and Sharon Hyde expressed concern about the safety of the new transmission line in an earthquake. PG&E stated that the new tubular steel poles would be safer than the current wood poles and that all construction would meet the Commission's building and safety standards as required in GO 95.

Judith Chetaud expressed concern about the aesthetic affect of tubular steel poles in the area. She argued that wood poles would better suite the area because they have a softer effect more befitting the rural atmosphere. PG&E acknowledged Ms. Chetaud's views in this matter, but stated that the new tubular steel poles were stronger, required less maintenance, and were, therefore preferable.

Some of the protestants requested that PG&E move this transmission line to another easement or seek alternative routes. PG&E declined stating that moving the line to another easement would be more costly, would require the utility to obtain additional easements, and would create more land use impacts than using the current route.

Some of protestants requested that PG&E underground the line for aesthetic and safety reasons. PG&E indicated to Commission staff that this alternative would be too costly.

And finally, the City of Paso Robles argues that PG&E does not qualify for the GO 131-D exemption because the utility does not have the necessary easements and because the project may have environmental impacts that have not been considered.

PG&E responded to Mike Zappas' protest on September 2, 1998, separately to J.C. Mitchell and Howard and Sharon Hyde's protests on September 4, 1998, to Judith Chetaud's protest on September 8, 1998, to Robert Finley's protest on September 9, 1998, to Bert Westburg's protest on September 18, 1998 and to Steven Hall's protest on September 21, 1998. PG&E's responses argue that all of the protests should be dismissed because they fail to state a valid reason why PG&E should be required to apply for a Permit to Construct the proposed transmission line project or why PG&E has incorrectly applied the exemption from the permit requirement provided in GO 131-D, Section III.B.1.g.

Additional letters were received from Mike and William Zappas, Sharon and Howard Hyde, and Robert Finley after PG&E responded to their original protests. These more recent letters emphasized the protestants' concerns over issues addressed in their original letters of protests. The protestants argue that the reconstructed line will reduce the value of their properties and will expose them to dangerous levels of EMF. The Zappas and Robert Finley argue that PG&E has no right to reconstruct the line because there is no valid easement and the PG&E project will constitute a violation of their property rights. Sharon and Howard Hyde requested that PG&E underground the line.

PG&E has not yet responded to the protest filed by the City of Paso Robles.

DISCUSSION

The protestants are concerned about the notification procedures PG&E employed, the heights of the poles to be installed and the configuration of the line, PG&E's lack of recorded easements, their property rights and property values, EMF exposure, earthquake hazards, and aesthetic concerns.

PG&E followed the notification procedures required in GO 131-D for this project. PG&E has addressed the issue of EMF exposure and its Commission-ordered procedures for reducing EMF exposure. PG&E has also addressed the need for the tubular steel poles as a necessary improvement in its facilities that will enhance safety. PG&E has also explained that it will install steel poles at heights that are required to meet GO 95 standards.

Although the protestants may have a valid dispute with PG&E concerning the company's easements on their properties and the affect the reconstructed line will have on their property values, this is a matter which should be referred to a court of competent jurisdiction for redress. While the Commission may construe

the existing property rights of a regulated utility for purposes of exercising its regulatory and ratemaking authority, the Commission's functions do not include determining interests in or title to property, those being questions for the courts. (Camp Meeker Water System, Inc. vs. California Public Utilities Commission (1990) 51 Cal.3d 845.) Even if the Commission were to deny the GO 131-D exemption for this project and order PG&E to file for a Permit to Construct which would result in an environmental review of the project, the protestants' property rights and property values are not issues the Commission would address as part of the environmental review in subsequent hearings.

None of the protestants have shown that PG&E incorrectly applied a GO 131-D exemption. Nor have any of the protestants shown that any of the conditions specified in GO 131-D, Section III.B.2 exist. Because those are the only two valid reasons for sustaining a protest, the protests should be dismissed.

FINDINGS

1. PG&E proposes to reconstruct 4.5 miles of the existing 85 mile Coalinga-San Luis Obispo 70 kV power line constructed in 1913 and construct ½ mile of new LDSP line within an existing utility easement from the Templeton Substation to the Templeton Junction. This reconstruction will help improve PG&E's electrical deficiency in San Luis Obispo County. Replacement of wood poles using LDSP's will improve reliability, reduce maintenance costs, and reduce the risk of damage by fire and woodpeckers. Substation modifications will also be made at both Paso Robles and Templeton Substations as part of the project.
2. As its grounds for an exemption from a Permit to Construct, PG&E cites GO131-D, Section III.B.1.g, which exempts the construction of "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."
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. 1791-E in accordance with Section III of GO 96-A.
4. The 20 day protest period ended August 26, 1998. Bert Westburg filed a protest dated August 23, 1998. Robert Finley along with five individuals filed a protest on August 25, 1998; Mike Zappas filed a protest on August 25, 1998; Judith Chetaud and J. C. Mitchell filed protests on August 26, 1998; Howard and Sharon Hyde filed a protest on August 27, 1998, and Steven Hall filed a protest dated September 9, 1998. The City of Paso Robles filed a protest on October 26, 1998.
5. The protestants are concerned about the notification procedures PG&E employed, the heights of the poles to be installed and the line configuration,

PG&E's lack of recorded easements, their property rights and property values, the pole heights and line configuration, EMF exposure, earthquake hazards, and aesthetic concerns.

6. PG&E responded to Mike Zappas' protest on September 2, 1998, separately to J.C. Mitchell's and Howard and Sharon Hyde's protests on September 4, 1998, to Judith Chetaud's protest on September 8, 1998, to Robert Finley's protest on September 9, 1998, to Bert Westburg's protest on September 18, 1998 and to Steven Hall's protest on September 21, 1998. PG&E's responses argue that all of the protests should be dismissed because they fail to state a valid reason why PG&E should be required to apply for a permit to construct the proposed transmission line project or why PG&E has incorrectly applied the exemption from the permit requirement provided in GO 131-D, Section III.B.1.g.
7. Additional letters were received from Mike and William Zappas, Sharon and Howard Hyde, and Robert Finley after PG&E responded to their original protests. These more recent letters emphasized the protestants' concerns over issues addressed in their original letters of protests. The protestants argue that the reconstructed line will reduce the value of their properties and will expose them to dangerous levels of EMF. The Zappas and Robert Finley argue that PG&E has no right to reconstruct the line because there is no valid easement and the PG&E project will constitute a violation of their property rights. Sharon and Howard Hyde requested that PG&E underground the line. The City of Paso Robles filed a protest October 26, 1998 arguing that PG&E had not provided enough information on the height of the poles and configuration of the line, that EMF and other safety issues had not been adequately addressed, that alternative routes should be explored, and that the project may not qualify for a GO 131-D exemption due to its potentially negative impacts on the environment. PG&E indicated that it has been in communication with the City of Paso Robles, but no written response from PG&E to the City's protest has been received by the Commission at this time.
8. PG&E followed the notification procedures required in GO 131-D for this project. PG&E has addressed the issue of EMF exposure and its Commission-ordered procedures for reducing EMF exposure. PG&E has also addressed the need for the tubular steel poles as a necessary improvement in its facilities that will enhance safety. PG&E stated that it will install the steel poles in conformance with GO 95 and will maintain required clearances. Although the protestants may have a valid dispute with PG&E concerning the company's easements on their properties and the affect the reconstructed line will have on their property values, this is a matter that should be referred to a court of competent jurisdiction for redress. While the Commission may construe the existing property rights of a regulated utility for purposes of exercising its regulatory and ratemaking authority, the Commission's functions do not include determining interests in or title to property, those being questions for the courts. Even if the Commission were to deny the GO 131-D exemption for this project and order PG&E to file for a

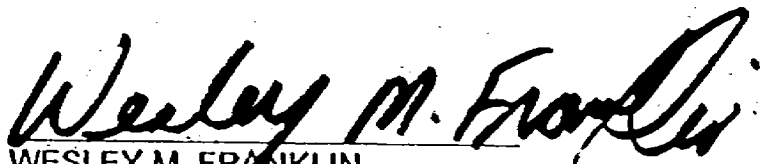
Permit to Construct which would result in an environmental review of the project, the protestants' property rights and property values are not issues the Commission would address as part of the environmental review in subsequent hearings.

9. 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.
10. None of the protestants have shown that PG&E incorrectly applied a GO 131-D exemption. Nor have any of the protestants shown that any of the conditions specified in GO 131-D, Section III.B.2 exist.

THEREFORE, IT IS ORDERED that:

1. The protests of Robert Finley et al., Mike and William Zappas; Judith Chetaud; J. C. Mitchell, Howard and Sharon Hyde, Bert Westburg, Steven Hall and the City of Paso Robles to Pacific Gas and Electric Company's Advice Letter No. 1791-E are dismissed.
2. This Resolution is effective today.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA


WESLEY M. FRANKLIN
Executive Director