

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

**RESOLUTION E-4434
September 14, 2011**

R E S O L U T I O N

Resolution E--4434. Executive Director's order dismissing the protest by Kern Minority Contractors Association to the Pacific Gas and Electric Company (PG&E) claim of exemption from General Order 131-D permitting requirements for construction of the Carrizo-Midway 230kV Reconductoring Project (Kern County and San Luis Obispo County); Caliente Switching Station Project (San Luis Obispos County); and Solar Switching Station Project (San Luis Obispo County). This Resolution approves PG&E's Advice Letter 3842-E.

By Advice Letter 3842-E. Filed May 5, 2011.

SUMMARY

This Resolution dismisses as invalid a protest from the Kern Minority Contractors Association and approves PG&E's Advice Letter 3842-E with an effective date of today. Pursuant to this advice letter, PG&E proposes to construct the Carrizo-Midway 230kV Reconductoring Project (Kern County and San Luis Obispo County); the Caliente Switching Station Project (San Luis Obispo County); and the Solar Switching Station Project (San Luis Obispo County) - hereafter referred to as the "Solar Projects." The County of San Luis Obispo conducted an environmental review that included the proposed construction of PG&E's facilities (Topaz Solar Farm Project - SCH No. 2009021009) and found no significant unavoidable environmental impacts associated with those facilities.

The Commission's General Order (GO) 131-D governs the planning and construction of electric generation, transmission/power/distribution line facilities and substations. This project falls within and qualifies for the exemptions cited by PG&E in their Advice Letter 3842-E. None of the concerns raised by the protestant fits within the specific exceptions to the exemptions of

GO 131-D, nor do 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 May 5, 2011, PG&E filed Advice Letter 3842-E claiming an exemption from the requirements of GO 131-D for construction of the Solar Projects. PG&E proposes to construct the Carrizo-Midway 230kV Reconductoring Project (Kern County and San Luis Obispo County); the Caliente Switching Station Project (San Luis Obispos County); and the Solar Switching Station Project (San Luis Obispo County). The County of San Luis Obispo conducted an environmental review that included the proposed construction of PG&E's facilities (Topaz Solar Farm Project - SCH No. 2009021009) and found no significant unavoidable environmental impacts associated with those facilities.

PG&E has claimed 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 was based on two Sections of the GO: (1) Section III.A., which

exempts “the placing of new or additional conductors . . . on or replacement of supporting structures already built;” and (2) Section III.B.1.(f), 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.”

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. 3842-E in accordance with Section III of GO 96-A.

PROTESTS

The 20-day protest period for Advice Letter 3842-E closed on May 25, 2011. The Commission has received one protest to Advice Letter 3842-E on May 23, 2011, from the Kern Minority Contractors Association. The protestant raised concerns regarding issues of local employment associated with the Solar Projects.

PG&E responded to the above protest on September 2, 2011, via letter to the Director of the Energy Division. PG&E’s response argues that the protest should be dismissed because none of the protestant’s arguments are relevant to any issue that may properly be raised in a protest pursuant to GO 131-D, Section XIII – i.e., that PG&E has either incorrectly applied for an exemption, or that one of the three special conditions outlined in GO 131-D Section III.B.2 exist. PG&E asserts that the protestant’s arguments fail to address, much less establish, how the claimed exemption to GO 131-D fails to apply to the project outlined in Advice Letter 3842-E. PG&E asserts that the protestant has also failed to establish that the project area involves any “unusual circumstances” that would trigger any exception to an exemption as specified in GO 131-D Section III.B.2.

PG&E asserts that the protest fails to state a valid reason for denying PG&E’s claim to an exemption from the requirements of GO 131-D for a Permit To Construct for this project. PG&E also asserts that the protestant fails to state why PG&E has incorrectly applied the exemptions from the permit requirements provided in Section III.B.1 of the GO. In summary, PG&E asserts that the protestant has failed to meet their burden of showing that PG&E’s claim for

exemptions from the permit requirements of GO 131-D are invalid and should therefore be dismissed for failure to state a valid reason.

DISCUSSION

In its response to the protest, PG&E states (in letters to the Director of the Energy Division dated July 15, 2011 and September 2, 2011) that the Company was not served with a copy of the protest and has been unable to obtain a copy of it despite four separate attempts to do so by telephone conversation with Mr. Marvin Dean of the Kern Minority Contractors Association. PG&E correctly states that a lack of service for the instant protest renders it invalid on its face.

Nonetheless, PG&E has addressed each of the areas of concern expressed by the protestant. PG&E correctly argues that the Solar Projects fall squarely within the context for an exemption from GO 131-D PTC requirements and do not broach the exceptions-to-exemptions clause specified in GO 131-D, Section III.B.2. Furthermore, PG&E correctly argues that the noticing requirements of GO 131-D, Section IX.B were properly followed by the Company for Advice Letter 3842-E. PG&E correctly argues that the Solar Projects were fully and adequately reviewed by the County of San Luis Obispo pursuant to the California Environmental Quality Act in its Final Environmental Impact Report (EIR) for the Solar Projects (SCH No. 2009021009). The EIR included the entirety of the Solar Projects in the environmental review and found no significant unavoidable environmental impacts associated with constructing those facilities.

In its response to the protest, PG&E stated that in addition to the lack of service, the protestant fails to raise a valid protest because they fail 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 131-D, Sections III.A. and III.B.1.(f).

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. Nor has the protestant shown that any of the conditions specified in GO 131-D, Section III.2. exist. Because these are the only three valid reasons for sustaining a protest, the protest should be denied.

FINDINGS

1. PG&E filed Advice Letter 3842-E on May 5, 2011.
2. PG&E proposes to construct the Carrizo-Midway 230kV Reconductoring Project (Kern County and San Luis Obispo County); the Caliente Switching Station Project (San Luis Obispo County); and the Solar Switching Station Project (San Luis Obispo County).
3. The County of San Luis Obispo conducted an environmental review that included the proposed construction of PG&E's facilities (Topaz Solar Farm Project - SCH No. 2009021009) and found no significant unavoidable environmental impacts associated with those facilities.
4. PG&E requests an exemption from a Permit to Construct, under GO 131-D, Sections III.A. and III.B.1.(f).
5. 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. 3842-E in accordance with Section III of GO 96-A.
6. A protest to Advice Letter 3842-E was received from the Kern Minority Contractors Association on May 23, 2011.
7. The protestant raised concerns regarding local employment associated with the Solar Projects.
8. PG&E responded to the protests to Advice Letter 3842-E on July 15, 2011, and September 2, 2011, via letter to the Director of the Energy Division. PG&E contends that the protest should be denied because it fails 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 exemptions from the PTC application requirement provided for in GO 131-D.
9. PG&E correctly followed the notification procedures required in GO 131-D for this project.

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10. GO 131-D provides that any person or entity may protest a claim of exemption for one of three reasons: 1) that the utility failed to provide proper notice, 2) that the utility incorrectly applied a GO 131-D exemption, or 3) 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 failed to provide notice or 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 correctly applied for a GO 131-D exemption in Advice Letter 3842-E.

THEREFORE IT IS ORDERED THAT:

1. PG&E's Advice Letter No. 3842-E is approved.
2. The protest of the Kern Minority Contractors Association is denied.

This Resolution is effective today.

I certify the foregoing under the authority of General Order 131-D. Dated September 14, 2011, at San Francisco, California.



Paul Clanon
Executive Director