

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

COMMISSION ADVISORY AND
COMPLIANCE DIVISION
Environmental and
Energy Advisory Branch

RESOLUTION E-3433
Date November 13, 1995

R E S O L U T I O N

RESOLUTION E-3433. EXECUTIVE ORDER REQUIRING SAN DIEGO GAS AND ELECTRIC COMPANY TO FILE AN APPLICATION FOR A PERMIT-TO-CONSTRUCT THE PROPOSED BATIQUITOS 138kV UNDERGROUND TRANSMISSION LINE.

BY ADVICE LETTER NO. 956-E FILED ON SEPTEMBER 14, 1995.

SUMMARY

San Diego Gas and Electric Company (SDG&E) proposes to construct a 138 kilovolt (kV), underground transmission line between its existing Batiquitos substation and an existing 138kV line situated in a transmission corridor.

The project is governed by General Order (GO) 131-D which requires an application for a Permit-to-Construct, or an informational advice letter if the project is exempt. Accordingly, SDG&E filed informational Advice Letter No. 956-E. Four protests were submitted. SDG&E responded to each. Two protestants replied.

SDG&E's Advice Letter is based on the provision of GO 131-D that exempts power line projects to be located in an existing franchise. The protests adequately demonstrate that the exemption does not apply. We will require a Permit-to-Construct.

BACKGROUND

Electric utilities proposing to construct new power lines of 50kV to 200kV, or to upgrade or relocate existing power lines in that range, 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, one of which is for facilities to be located in an existing franchise (Section III. B. 1. g.).

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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 there exists under CEQA a certain exception to a categorical exemption. If a timely protest is filed, GO 131-D provides that construction shall not commence until the Executive Director has issued an Executive Resolution either requiring the utility to file a Permit-to-Construct application or dismissing the protest.

SDG&E proposes to construct the Batiquitos 138kV Underground Transmission Line Project between its existing Batiquitos substation and an existing transmission line situated in a transmission corridor. One cable is to be installed in each of three ducts of a 12-duct, concrete duct bank which is to be constructed beneath city streets. SDG&E's franchise permits such construction. In addition to 3,200 feet beneath city streets, the line will include 600 feet in SDG&E rights-of-way at the terminals. The project includes a new steel riser pole and two replacement poles in the transmission corridor. SDG&E's plans include certain low cost and no cost measures to reduce electromagnetic fields (EMFs) pursuant to Decision (D.) 93-011-013 which established EMF policy for power utilities.

The purpose of the project is to improve system reliability by connecting the Batiquitos substation with another source of power. Although the cable to be utilized has a normal rating of 895 amps and an emergency rating of 997 amps, SDG&E anticipates that "the maximum current that would flow in the proposed transmission line is 125 amps for a few hours a day on the hottest days during the summer of 1997," and for 1997, "we project that the maximum current that could flow during the emergency operating condition (two other lines out of service) is 534 amps." (SDG&E letter to A. David Puzo, dated June 8, 1995.)

NOTICE

SDG&E distributed a Notice of Proposed Construction in accordance with Section XI of GO 131-D, and the Advice Letter was noticed in accordance with Section III of GO 96-A.

PROTESTS

a) Protests

Protests were filed by A. David Puzo, Victoria Syage Whittington, Karen Johanson on behalf of California Alliance for Utility Safety and Education CAUSE, and Michael R. Wells on behalf of Utility Consumers' Action Network (UCAN). The first three were filed pursuant to Section XIII of GO 131-D, while the fourth (UCAN) was filed pursuant to Rule 8.1. All four protestants request hearings.

Three protestants (UCAN excluded) hold that SDG&E incorrectly claims an exemption from the need to file an application for a Permit-to-Construct. Noting that the typical underground circuit in the vicinity is 12kV, Puzo argues that the exemption "should not be applied in cases where a utility seeks to substantially upgrade the load and function ... from a small neighborhood distribution line to a relatively large power line," because "any utility could upgrade or augment its entire transmission system by simply utilizing its existing network of small neighborhood distribution line easements, escaping all active CPUC regulation." Also concerned about precedent, Whittington adds that "If allowed to be exempt from General Order 131-D, SDG&E will be making a mockery of the spirit of that order."

The protestants further contend that the claimed exemption (based on Section III. B. 1. g.) is superceded by the exception of "cumulative impact of successive projects of the same type in the same place, over time, is significant" (Section III. B. 2. b.). Whittington cites a letter from SDG&E to A. David Puzo dated June 8, 1995 to support her statement that "the planned underground infrastructure will be designed to support a total of four (4) 138kV power lines, not just the one SDG&E publicly disclosed." SDG&E's letter stated, "Three wires are required for each transmission circuit so there could be up to 4 circuits in a 12 duct bank," and "although there are currently no plans for any additional circuits, it is possible that the 4 circuits may be operated as two large circuits."

Puzo adds, among other things, that the "cumulative impact" will destroy or impair view and open space and increase electromagnetic fields (EMFs).

All four protestants are concerned about the increase in EMFs, especially, but not necessarily, if circuits are added in the future. They hold that increased EMFs are sufficient reason for an exception to the exemption, because, as CAUSE asserts, "there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (Section XIII. B. 2. c.) Noting discrepancies between the opinions of SDG&E and her consultant regarding no cost and low cost measures to reduce EMFs, Whittington contends, "Evidentiary hearings are going to be necessary to resolve this issue."

UCAN believes the project should be authorized only if "the Commission determines that the health and safety of SDG&E's customers would not be negatively affected by the increase in EMFs." It requests hearing at which it "expects to produce evidence" that the project would increase EMFs such that residents may be harmed, and to recommend measures to reduce EMFs. UCAN argues that the Commission has the power under PU Code Section 762 and 762.5 to order changes to the project to promote the security of the public.

Whittington also asserts that SDG&E did not include comparisons of alternative routes and locations as required for Permit-to-

Construct applications and that information about the project has not been free flowing.

b) Responses

SDG&E succinctly articulated its its position in its first response, and essentially reiterated it in each succeeding response. Responding to Puzo, SDG&E states:

The narrow issue to be decided by the Executive Director is whether the Puzo protest states a valid reason to believe either: (1) that SDG&E has incorrectly applied for an exemption pursuant to Section III of GO 131-D, or (2) that the conditions described in Section III. B. 2. of GO 131-D exist."

Point by point, it argues that the protestants failed to cite a valid reason to believe that it has incorrectly claimed an exemption. For example, regarding Puzo's concern about upgrading the load and function of existing underground facilities, SDG&E asserts that it "is not only lacking a factual basis (the Project description includes no "upgrade" of existing facilities), but is in any event irrelevant to the issue of whether the claimed exemption applies."

Similarly regarding Puzo's protest that "cumulative impacts" are cause for an exception to the exemption, SDG&E, citing CEQA Guidelines, states, "It is well understood that a cumulative impacts analysis is an analysis of a particular project viewed over time and in conjunction with other related past, present, and reasonably anticipated future projects whose impacts might compound or interrelate with those of the project at hand." Moreover, SDG&E asserts that Puzo's concern about future activity is speculative; that he has been advised "that SDG&E has no present intention of installing additional circuits in the near future;" and consequently that concerns about successive projects of the same type in the same place (a condition of the Section III. B. 2. b. exception) are groundless.

SDG&E also holds that Puzo fails to state a valid reason that "unusual circumstances," another cause for an exception to the exemption, would be significant. In this instance, SDG&E cites the concern about EMFs and the degradation of open space views.

Expanding on the issue of EMFs, SDG&E in its response to Whittington notes that:

SDG&E stated in its "Notice of Proposed Construction" the "no cost" and "low cost" measures it will employ to reduce public exposure to magnetic fields. Those measures are just a small part of SDG&E's comprehensive "Magnetic Field Management Plan" prepared specifically for this project.

SDG&E dismisses Whittington's concern about location as "entirely irrelevant," because "the exemption doesn't require SDG&E to address the reasons why it chose the location it did." SDG&E adds, "Disagreement with SDG&E's selection of measures is not a valid reason to believe the exemption does not apply."

SDG&E argues that CAUSE has no standing to protest because it is "a single purpose 'unincorporated association' claiming no members in the project area."

SDG&E holds that "UCAN's protest does not comport with the Commission's general orders," having been filed pursuant to Rule 8; that its sole purpose is to argue issues already dealt with in the EMF proceeding (D.93-11-013; that it fails to state a valid reason to believe SDG&E incorrectly claims an exemption pursuant to GO 131-D; and that the request for hearing should be dismissed. SDG&E reiterates that it has adopted a comprehensive EMF management plan for this project.

c) Replies

CAUSE replies that "it represents a consumer interest not otherwise adequately represented. ... because the outcome ... in this matter will have a direct effect on residential consumers ... beyond the Alga Hills Community." Moreover, CAUSE shows that it assisted Alga Hill residents in voicing their concerns about the project in meetings with SDG&E. CAUSE adds:

This project and the Commission's proceeding in this matter will be one of the first to examine both the "prudent avoidance" criteria established by the California Public Utilities Commission (Commission) in D.93-11-013 in a "real world" application and Decision 94-06-014 which established the "permit to construct" criteria for between 50kV and 200kV.

CAUSE reiterates the Commission prudent avoidance policy established by D.93-11-013 which it had quoted in its protest to argue that SDG&E's "request for exemption makes a mockery of the intent and spirit of General Order 131-D by attempting to avoid the disclosures and scrutiny required by CPUC Decision 93-11-013." Specifically, D.93-11-013 states:

For new and upgraded facilities (facilities requiring certification as contemplated in General Order (G.O.) 131) we direct that low-cost options shall be implemented to the extent approved through the certification process; no cost mitigation measures should be undertaken until further notice. Absent testimony which conclusively demonstrates that exposure from electric utility EMF causes health risks, we will continue the EMF policy established in the Kramer-Victor transmission line decision. That policy provided that

remedies applied to reduce human exposure to EMF must be determined within the constraints of each new construction project. (D.93-11-013 in I.91-01-012, mimeo p. 10.)

CAUSE counters SDG&E's contention that it failed to state valid reasons for believing that both "cumulative impact" and "unusual circumstances" cause "exceptions to the claimed exemption," focusing on EMF issues for support.

Puzo also counters SDG&E's similar contention regarding his protest. With reference to both "cumulative impacts" and "unusual circumstances," he notes, among other things, "with the addition of this project, our neighborhood will become almost completely surrounded by power lines."

Arguing against SDG&E's literal interpretation of GO 131-D, Section III. B. 1. g., which is the basis for its claim of exemption, Puzo asks "that the CPUC examine this project on a more analytical basis and apply the spirit and intent of this section to this project." SDG&E's "liberal interpretation" was in response to Puzo's view that the exemption should not be allowed where the utility proposes to upgrade the load and function of its facilities in an existing franchise, in this case installing a 138kV line in a franchise currently carrying 12kV.

DISCUSSION

SDG&E's claim that a Permit-to-Construct is not required because the project meets the conditions for exemption under GO 131-D, Section III. B. 1. g. (for power line facilities to be located entirely within an existing franchise) is true literally; however we agree with Puzo and Whittington that a literal interpretation in this instance violates the intent and spirit of GO 131-D. One purpose of the GO is to be responsive to the need for public notice and to provide the opportunity for affected parties to be heard by the Commission (Section II). SDG&E has provided notice and affected parties have commented; however, as will be explained, we believe that the concerns of protestants are sufficient to warrant an application for a Permit-to-Construct.

While we are requiring an application for a Permit-to Construct, we also put interested parties on notice that we intend to limit the scope of our review to the development of EMF issues and the comparison of alternatives to the extent it is germane to the EMF issue. This will be explained, but first it is necessary to say that we are sympathetic to SDG&E's literal interpretation of GO 131-D, and we agree in part. There is no denying that the proposed project is to be entirely within utility rights-of-way and franchise areas. We reject "cumulative impacts" arguments relating vaguely to future growth. We also reject arguments relating to degradation of open space by, for example, the installation of a riser pole in the existing transmission corridor.

We reject SDG&E's view that the narrow issue to be decided by the Executive Director is whether a protestant states a valid reason to believe the utility incorrectly applied for an exemption. Our first objection is that it implies that the Executive Director rather than the protestant is the first judge of validity. The subtle error is that this interpretation places an undue burden of proof on a protestant. A protest could too easily be dismissed for failure to meet that burden; this tendency is seen in SDG&E's responses to protests. Such burden is not the Commission's intent under Section XIII. In fact, all that is required is that protestants "have valid reason to believe ... the utility has incorrectly applied an exemption" (Section XIII). The validity is in the mind of the protestant, and it is reasonable to accept that the act of filing a protest is based on assumed validity. We recognize that a protest may be dismissed for "failure to state a valid reason" (Section XIII); however, SDG&E's interpretation would place an undue and unintended burden on a protestant.

We also point out that SDG&E applied a claim of exemption and informed us of that act by the filing of informational Advice Letter 956-E. It has not applied for an exemption. We cannot approve a claim for exemption by an Executive Director's resolution pursuant to GO 131-D. All we can do is require the filing of an application for a Permit-to-Construct and/or dismiss protests.

The protestants cite various reasons for believing that there are exceptions to the exemption under Section III. B. 2. b. and c., which generally are referred to as the "cumulative Impacts" and "unusual circumstances" exceptions. It is not necessary to examine each and to make fine distinctions among the reasons. It is sufficient to say that we agree with Whittington that the construction of a 12-duct bank with only three to be used for this project is suggestive of "cumulative impacts," particularly when joined with Puzo's concern about the "cumulative impacts" of increased EMFs.

SDG&E and the protestants differ in their opinions on the potential for increases in EMFs and the appropriateness of SDG&E's measures to reduce EMFs. We do not have sufficient information to decide between them. We agree with CAUSE that this project is sufficiently unique that EMF issues should be resolved for it specifically based on our EMF policy set forth in D.93-11-013. The uniqueness will be discussed later.

Our recognition of the uniqueness and the consequent need for scrutinizing project specific measures is not to say we reject outright SDG&E's Magnetic Field Management Plan for this project. We simply believe that the particular measures adopted for this project should be chosen carefully because of potentially far reaching consequences. It may be prudent to specify measures to reduce EMFs more precisely. For example, a mitigation alternative adopted by SDG&E is to increase "the underground depth by 14 inches," carries the qualification that "there will be short portions when the additional 14-inch trench depth will not be attainable." Clearly this qualification could

render the measure meaningless. We agree in part with Whittington; evidentiary hearings may be useful to examine the EMF issue.

We expect SDG&E to file an application for a Permit-to-Construct, and we expect it to cover EMFs in the Proponent's Environmental Assessment to be included pursuant to CEQA and Rule 17.1. We anticipate requests for hearings pursuant to GO 131-D. As several protestants have already stated that they are prepared to present evidence on EMFs, we expect to receive evidence in accordance with our Rules of Practice and Procedure. We will consider the record in the preparation of CEQA documents, but will not issue a final decision on the Permit-to-Construct application before due time in the CEQA process. Our intent in holding hearings early on is to expedite this matter. As we said earlier, we agree in part with SDG&E's claim of exemption and we intend to limit our review to EMF issues.

There are several things which make this project unique. Foremost is the undergrounding of a 138kV power line in a residential area. Another is the potential for other high voltage power lines in the same duct bank, even though SDG&E plans no additions at this time. The concentration of transmission lines in the vicinity also makes the project unique, although we recognize that the transmission corridors preceded the residential development. Another unique feature is the availability of alternative locations.

Given the current concern regarding EMFs and in light of D.93-11-013, it is reasonable to interpret the intent of GO 131-D to require a Permit-to-Construct under the specific facts of this situation. It is not necessary to decide whether or not the protestants stated valid reasons to believe that there are "exceptions to the exemption" under Section III. B. 2. b. and c.

UCAN's protest is deficient in that it prematurely invokes Rule 8.1 et seq. (UCAN inadvertently referenced Rule 8.) Section XIII of GO 131-D specifies the procedure for protesting an informational advice letter. The goal of a Section XIII protest is to require the utility to file an application for a Permit-to-Construct, as is clearly seen in the section's title. A protest pursuant to Article 2.5 of the Commission's Rules of Practice and Procedure (Rule 8.1 et seq.) is reserved, under Section XII of GO 131-D, for a protest of an application for a Permit-to-Construct, a higher level than an informational advice letter in the GO 131-D process.

CAUSE's protest was signed and submitted by an individual person and conforms with Section XIII of the GO. We reject SDG&E's contention that it has no standing.

The Commission's Advisory and Compliance Division (CACD) reviewed Advice Letter No. 956-E, reviewed protests, responses and replies, and visited the site.

FINDINGS

1. SDG&E proposes to install an approximately 3,800-foot long 138kV power line between the existing Batiquitos substation and an existing transmission line.
2. The proposed power line is to occupy three ducts in a 12-duct, underground, concrete bank to be constructed as part of the transmission line project.
3. The proposed power line is to be located wholly within utility rights-of-way and franchise areas.
4. SDG&E filed informational Advice Letter No. 956-E on September 14, 1995.
5. The filing and noticing were done pursuant to GO 131-D and GO 96-A.
6. Four protests were submitted, one each by Puzo, Whittington, CAUSE, and UCAN. The last protest, by UCAN, is dated October 2, 1995.
7. The protests, excepting that of UCAN, were submitted pursuant to Section XIII of GO 131-D. UCAN's protest was filed pursuant to Rule 8.1 of the Commission's Rules of Practice and Procedure.
8. SDG&E responded to each protest, with the last response (to UCAN) dated October 12, 1995.
9. Puzo and CAUSE replied to SDG&E's responses.
10. SDG&E asserts that the project is exempt from the provisions of GO 131-D for filing a Permit-to-Construct application.
11. The protestants disagree with SDG&E's claim of exemption for various reasons.
12. The proposed project is unique for several reasons, one of which is the relatively high capacity in comparison with typical undergrounding projects.
13. Because the project is unique, the spirit and intent of GO 131-D, namely, to provide the opportunity for affected parties to be heard by the Commission, is sufficient reason to require an application for a Permit-to-Construct.
14. The project's uniqueness also justifies consideration of EMFs pursuant to D.93-11-013 specifically for the project.
15. SDG&E and protestants differ in their opinions on the potential for increases in EMFs and the appropriateness of SDG&E's measures to reduce EMFs.
16. We lack sufficient information to decide between competing EMF claims.

17. It is not necessary to decide whether or not the protestants stated valid reasons to believe that there are "exceptions to the exemption" under Section III. B. 2. b. and c.

18. UCAN's protest should be dismissed because it was not filed pursuant to Section XIII of GO 131-D.

19. CAUSE's protest was signed and submitted by an individual person and conforms with Section XIII of the GO, and therefore it is procedurally valid.

20. The Commission's Advisory and Compliance Division (CACD) reviewed Advice Letter No. 956-E, reviewed protests, responses and replies, and visited the site.

THEREFORE, IT IS ORDERED that:

1. San Diego Gas and Electric Company is required to file an application for a Permit-to-Construct for the Batiquitos 138kV underground transmission line project.

PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA


Wesley M. Franklin
Executive Director