STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

July 18, 2003 Agenda ID #2492

TO: PARTIES OF RECORD IN CASE 03-04-001

This is the draft decision of Administrative Law Judge (ALJ) Bemesderfer. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:tcg

Attachment

Decision **DRAFT DECISION OF ALJ BEMESDERFER (Mailed 7/18/2003)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CITY OF SANTEE, Complainant, vs. SAN DIEGO GAS & ELECTRIC COMPANY, Defendant.	Case 03-04-001 (Filed April 1, 2003)

DECISION DISMISSING COMPLAINT

Background

On April 1, 2003, the City of Santee (City) filed the complaint that initiated this adjudicatory proceeding. The complaint alleged that San Diego Gas & Electric Company (SDG&E) was proceeding to increase the voltage of an existing substation and transmission line located in the City from 69 kilovolt (kV) to 138 kV without first obtaining a Permit to Construct (PTC) from the Commission or providing advance notice of the changes to the line and substation as required by Commission General Order (GO) 131-D Section XI.B.[1] On April 7, 2003, the

[1] The relevant portion of Subsection B of GO 131-D, Section XI.B, reads as follows: "The utility shall give notice of the construction of any power line facilities or substations between 50 kV and 200 kV deemed exempt pursuant to Section III herein, not less than 30 days before the date construction is intended to begin. …"

Footnote continued on next page

City filed its motion for a stop work order. The motion generally restated the allegations of the complaint. On April 9, 2003, assigned Administrative Law Judge (ALJ) Karl J. Bemesderfer issued a ruling setting a prehearing conference (PHC) for May 14, 2003 and directing the parties to meet and confer in advance of the PHC. In compliance with that ruling, the parties met and conferred on April 29, 2003. On May 7, 2003, the parties filed a joint PHC statement.

In his April 9th ruling, ALJ Bemesderfer directed the City to come to the PHC prepared to demonstrate that it had met the usual requirements for injunctive relief, namely, irreparable injury, likelihood of success on the merits of the case, and lack of an adequate alternative remedy. On May 14, 2003, the PHC was held in San Diego. Both parties appeared through counsel and a number of Santee residents also attended. For the reasons set out below, we dismiss the complaint.

Discussion

The substantive arguments made by the City in support of its motion for a stop work order are essentially identical to the arguments made in support of the complaint. For that reason, we have consolidated consideration of the motion and reply with consideration of the complaint and answer. The parties agree there are no disputed issues of fact and the matter may be dealt with as a question of law without the need for evidentiary hearings.

In order to succeed, the City has to show that SDG&E acted without authority when it commenced making changes to the transmission line and the substation. Both parties acknowledge that GO 131-D is the governing body of

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The balance of the Subsection specifies how and where the notice is to be given.

law with respect to transmission line and substation alterations. The operation of the GO in this regard may be summarized as follows:

1. New construction or upgrading of facilities designed to operate between 50 kV and 200 kV requires a PTC.[2]

2. Modifying an existing facility does not require a PTC.[3]

3. If the project is a modification of an existing facility, and therefore exempt from the PTC requirement, the utility must still give notice of its intent to modify. The form and content of the required notice are outlined in the GO.[4]

4. Notice is not required for projects that are categorically exempt from California Environmental Quality Act (CEQA) review.[5]

The changes to the substation and the transmission line made by SDG&E include replacement of certain equipment in the substation; reconductoring of the transmission lines; and removal or trimming of trees around substation and transmission line. The City argues that these changes constitute an "upgrade" rather than a "modification" and therefore require a PTC. We do not agree. The substation and the transmission lines were designed to operate at 138 kV. Making internal changes at the substation to permit operation at the designed voltage is explicitly designated a "modification" in GO 131-D Section III-B:

> "Activities which increase the voltage of a substation to the voltage for which the substation has previously been rated are

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[2] GO 131-D Section III.B

[3] GO 131-D Section III.B.1(g)

[4] GO 131-D Section XI.B

[5] GO 131-D Section III.B.1

> deemed to be substation modification projects and not substation upgrade projects."

Similarly, reconductoring the transmission lines without first obtaining a PTC is specifically authorized in Section III.B.1.e:

> "1. Compliance with Section XI.B [the PTC requirement] is not required for….
>
> e. the placing of new or additional conductors, insulators, or their accessories on supporting structures already built."

Removal and trimming of trees adjacent to power lines are routine maintenance projects that we require utilities to carry out. Therefore, we conclude that SDG&E did not require a PTC in order to make the modifications necessary to increase line voltage to 138 kV.

It is undisputed that SDG&E did not provide notice in the form and manner required by Section XI.B, which requires mail notification to the city and county and the Executive Director of the Energy Commission; advertisement beginning not less than 45 days in advance of the planned commencement of construction in a newspaper of general circulation at least once a week for two consecutive weeks; posting on-site and off-site notices where the project would be located; and filing an advice letter with the Commission. It is equally undisputed that SDG&E provided individual written notice to adjacent property owners, held two public meetings with residents of the City, answered individual questions in writing, delayed commencement of the modifications by more than 60 days, and has not yet begun operating the line at 138 kV. It is also undisputed that the City has initiated this proceeding in order to obtain Commission review of the project. Even if it should be determined that no exemption from the notice requirement was available to SDG&E, it is clear from

the record that the City, adjacent property owners, other City residents and the Commission have had effective notice.

But in fact, no notice was required. Section III.B.1 of the GO exempts from the notice requirement "projects that are categorically or statutorily exempt pursuant to CEQA Guidelines." CEQA Guidelines 14 CCR Section 15302 (c) exempts from CEQA review and therefore from the notice requirement,

> "replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:...
>
> (c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity..."

In this case, the substation and transmission lines were designed to operate at 138 kV. SDG&E argues that modifications necessary to permit operation at the designed voltage do not increase the facility's capacity. The City argues that because the modifications are necessary to operate at 138 kV, they constitute an increase in capacity.

We believe SDG&E's reading of the GO is correct. First, as noted above, the GO makes it clear that alterations designed to permit a substation to increase its operating voltage to its designed maximum capacity are to be treated as "modifications" rather than "upgrades" for purposes of the PTC requirement. By doing so, the GO implicitly treats the voltage "capacity" of the facility as its designed maximum voltage rather than its current operating voltage. Second, the explicit purpose of the exemptions for modifications of 50 kV to 200 kV facilities is to permit the utility to make necessary or desirable changes to those facilities without coming to the Commission for approval. A narrow reading of

the notion of "capacity" in the CEQA Guidelines is inconsistent with the broader purpose of the exemptions in the GO and would potentially lead to unlimited reconsideration of routine power line maintenance practices.

In reaching this conclusion, we are mindful that under CEQA Guidelines Section 15300.2, the categorical exemptions do not apply under certain conditions. These conditions include but are not limited to:

1. if the project may impact an environmental resource of hazardous or critical concern;
2. when the cumulative impact of successive projects of the same type in the same place, over time is significant;
3. where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances;
4. where a project may result in damage to a scenic resource within a highway officially designated as a state scenic highway; or
5. where the activity may cause a substantial adverse change in the significance of a historical resource.

However, none of these conditions apply in this case, and accordingly the utility's actions are exempt from CEQA review.

To summarize, GO 131-D neither requires SDG&E to obtain a PTC before modifying the substation and transmission lines nor does it require SDG&E to mail, post, publish or file notice of the modifications.

Although the complaint in this case addresses the utility's alleged failure to follow our rules, it is clear from the record that the underlying concern of the residents of Santee is with potential electromagnetic field (EMF) exposure. The complaint recites that the power line passes within a few feet of homes located on Ramsgate Drive and the Hill Creek Elementary School. The residents are

concerned that people living adjacent to the power line and children attending the school may be exposed to increased levels of EMFs as a result of the voltage increase.

In prior proceedings we have studied the EMF issue in considerable detail and have been unable to reach a definitive conclusion regarding the potential harm associated with EMF exposure. But we believe that it is in the interest of the public to be informed about EMF levels, especially when providing such information imposes minimal burdens on the utility. For that reason, as a condition of dismissing this complaint, we will order SDG&E to measure EMF field strength before and after the increase in line voltage and provide that information to the City. Measurements should be made along Ramsgate Drive and within the boundaries of Hill Creek Elementary School, at such times and places as are mutually agreeable to the City and SDG&E.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Karl J. Bemesderfer is the assigned ALJ in this proceeding.

Findings of Fact

1. An existing transmission line and an associated substation, (together, the Facility) abutting Ramsgate Drive in the City is designed to operate at 138 kV.
2. The Facility currently operates at 69 kV.

3. SDG&E is in the process of modifying the Facility to increase the line voltage to 138 kV (Modification).

4. The Modification does not increase the designed capacity of the Facility.

5. SDG&E did not apply for a PTC for the Facility prior to starting the Modification.

6. SDG&E did not give notice to the City and adjacent property owners prior to starting the Modification.

Conclusions of Law

1. The Modification is exempt from the permit requirements of GO 131-D Section XI.B.

2. The Modification is categorically exempt from CEQA review pursuant to CEQA Guidelines 14 CCR Section 15302 (c).

3. The Modification is exempt from the notice requirements of GO 131-D Section XI.B.

O R D E R

IT IS ORDERED that:

1. The complaint of the City of Santee is dismissed with prejudice.

2. San Diego Gas and Electric Company shall measure electromagnetic field levels before and after the line voltage increase along Ramsgate Drive and within the boundaries of Hill Creek Elementary School at such times and places as are mutually agreeable to itself and the City of Santee, and shall promptly thereafter provide the results of such measurements to the City of Santee.

This order is effective today.

Dated _____, at San Francisco, California.