

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on policies and practices for the Commission's transmission assessment process.

FILED  
PUBLIC UTILITIES COMMISSION  
JANUARY 22, 2004  
SAN FRANCISCO OFFICE  
RULEMAKING 04-01-026

**ORDER INSTITUTING RULEMAKING**

**I Summary**

We open this Rulemaking to consider proposals to streamline the transmission planning process for Investor Owned Utilities (IOUs) in a manner that upholds environmental standards, meets the Commission's statutory obligations under PU Code Section 1001, and ensures consumer benefits. At the same time, in recognition of industry, marketplace, and legislative changes the Commission intends to address claims that the existing transmission review process promotes inefficiencies and unnecessary redundancies in the current transmission review process. To this end, the Commission proposes changes to General Order 131-D. The changes would allow the Commission to apply a universal economic methodology for economic transmission projects, once it is adopted, in a way that eliminates duplicative transmission need determinations that currently exist at the California Independent System Operator (CAISO or ISO) and the Commission. Under the proposal the Commission would utilize the ISO's need determination for reliability projects to the degree there is an

agreed upon standard and the ISO applies that standard. The Commission therefore asks the ISO to propose a standard for determining need for a transmission project to maintain or enhance system reliability so that parties have the opportunity to comment. The Commission believes that the new framework for transmission planning outlined in this Rulemaking is an improvement over historic practices and processes in that it leverages existing expertise at the Commission and the CAISO, and facilitates an improved, streamlined, and more comprehensive approach toward transmission planning.

Section III below outlines the issues we expect to address in the course of the rulemaking.

## **II. Background**

Electric utilities, under PU Code § 1001, are prohibited from constructing or expanding transmission lines without first obtaining from the Commission a certificate that the public convenience and necessity require such construction. This Commission “CPCN” process begins when the utility files an application, and includes review of the project under the California Environmental Quality Act.<sup>1</sup> Assembly Bill 1890 (Ch. 854, 1996, Brulte), the electric restructuring law, created the Independent System Operator (CAISO), a non-profit public benefit corporation. The CAISO is responsible for ensuring the efficient use and reliable operation of the transmission grid. (PU Code § 345.) At present, the CAISO is the first entity to review a proposed transmission project. Once it finds a project needed in accordance with its PU Code § 345 responsibilities, and that project is sponsored by a utility, the utility then files an application for a CPCN at the

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<sup>1</sup> In filing its application, the utility must comply with CPUC General Order 131.

Commission. In accordance with our PU Code § 1001 responsibilities, the Commission reviews the need for the project, its impacts on utility capital structure and costs, ratepayer impacts, and performs CEQA review.

In May 2003, this Commission, the California Energy Resources Conservation and Development Commission (CEC), and the California Power and Conservation Financing Authority (CPA) adopted the Energy Action Plan (EAP). The EAP established shared goals and proposed specific actions to ensure that adequate, reliable, and reasonably priced electrical power and natural gas supplies are achieved and provided through policies, strategies, and actions that are cost-effective and environmentally sound for California's consumers and taxpayers. The EAP recognized the need to update and review current practices and processes for transmission planning in California. It states in relevant part:

The Public Utilities Commission will issue an Order Instituting Rulemaking to propose changes to its Certificate of Public Convenience and Necessity process, required under Public Utilities Code § 1001 et seq., in recognition of industry, marketplace, and legislative changes, like the creation of the CAISO and the directives of SB 1389. The Rulemaking will, among other things, propose to use the results of the Energy Commission's collaborative transmission assessment process to guide and fund IOU-sponsored transmission expansion or upgrade projects without having the PUC revisit questions of need for individual projects in certifying transmission improvements.

Acting upon the guidance provided in the EAP, the Commission's Division of Strategic Planning has undertaken a comprehensive assessment of the current transmission planning process, what is driving it, and the various factors that require coordination and improvement to achieve effective infrastructure planning. The analysis involved identifying the key problems impacting the current infrastructure landscape and making recommendations to

remedy the inefficiencies and deficiencies in the current process. The Staff's report serves as the foundation for this Rulemaking and is attached for reference (see Attachment B).

Meanwhile, the CEC published its first Integrated Energy Policy Report, pursuant to SB 1389 (Ch. 568, 2002, Bowen). In this first CEC assessment of the major energy trends and issues facing the state, the CEC recommended that the state should consolidate the permitting process for all new bulk electricity transmission lines within the CEC, using the CEC's power plant siting process as the model.<sup>2</sup>

### **III. Preliminary Scoping Memo**

Developing a comprehensive approach to transmission planning will require coordination among issues that are being addressed in various Commission proceedings as well as federal forums. To that end, the Staff's report identifies these issues and makes recommendations for a comprehensive approach for coordinating infrastructure development. While Staff puts forth 5 recommendations to foster a more effective transmission planning process, the focus of this Rulemaking is a proposed revision to General Order 131-D, which is intended to eliminate duplicative transmission need assessments that currently exist at the CAISO and the Commission<sup>3</sup>.

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<sup>2</sup> This Commission responded negatively to this proposal in its comments on the Draft IEPR. (Letter to Members of the Integrated Energy Policy Report Ad Hoc Committee, October 20, 2003.) It is unclear from the IEPR what the CEC includes in its use of the term "bulk" electricity transmission lines.

<sup>3</sup> For discussion of how the Commission and CAISO transmission planning processes are duplicative see the attached staff report.

This Rulemaking provides a vehicle for the Commission to apply the universal economic methodology, which is being developed in the Commission's Transmission Investigation, for economic transmission projects, once it is adopted, in a way that eliminates duplicative transmission need determinations. To this end, the Commission proposes a revision to General Order 131-D intended to result in a more streamlined and efficient transmission assessment process. The cornerstone of this approach is adopting an economic methodology that the CAISO and utilities will apply to projects that come before the Commission for a CPCN application. The application of a Commission-approved economic methodology would allow the Commission to defer to the CAISO's assessment of need. That is, to the extent that the CAISO uses a Commission-approved methodology for determining need, the Commission will not revisit the question of need. The Commission would validate that the methodology was applied.

For context, Section IV of this Rulemaking outlines the framework of the new transmission planning and assessment process that the Commission believes will result in enhanced efficiencies and an overall improved process<sup>4</sup>. That is, the Commission highlights the basis for the proposed revision to the General Order that will implement this new approach. In the interest of facilitating a focused dialogue on the key issue of eliminating duplicative transmission need determinations, the Commission requests that parties focus responses to this Rulemaking on the proposed revision to General Order 131-D.

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<sup>4</sup> This Rulemaking does not pre-judge and in no way affects the Commission's determination in the Commission's procurement docket, R.01-10-024, or the Transmission Investigation, I.00-11-001.

We ask that parties that disagree with this approach and the specific proposed changes to G.O. 131-D, explain the points of disagreement and describe an alternative approach.

#### **IV The Framework for an Improved Transmission Planning Process**

In order to achieve a comprehensive, coordinated infrastructure plan for California, Staff builds upon the guidance and direction provided in D.02-10-062 and recommends linking the procurement and transmission planning processes.

D.02-10-062 states:

In modifying their procurement plans, the utilities should undertake a resource planning effort to include procurement from a mixture of different sources with various environmental, cost, and risk characteristics. Utilities fully responsible for meeting their customers' resource needs should plan among all of the following options: conventional generation sources (with a variety of types of ownership structures), renewable generation (including renewable self-generation), distributed and self-generation, demand-side resources, and transmission.

Staff suggests that the Commission's transmission determination made as part of its review of the IOUs long-term procurement plans should be reflected in the CAISO's transmission planning process. In short, the starting point for infrastructure planning should be a comprehensive analysis of how to meet need in a cost-effective, efficient, and environmentally sensitive manner. That starting point should be the comprehensive analysis that takes place in the proceeding that examines the IOUs long-term procurement plans.

Once the Commission determines that transmission is needed after balancing competing options such as generation and demand side alternatives, that determination would be reflected in the CAISO's planning process, where a

detailed analysis occurs for specific transmission projects<sup>5</sup>. The Commission's upfront determination on transmission need in the procurement process would accomplish two objectives: 1) a comprehensive analysis of the alternatives available to meet customer resource requirements; and 2) an upfront determination that transmission is needed and fits within the comprehensive infrastructure plan that can be recognized once a specific project has been developed in the CAISO planning process and, if required, is before the Commission for a CPCN.

Staff also suggests that transmission and generation can be linked in the Commission's procurement policy if deliverability is a criteria for a resource to qualify as a capacity resource and transmission related costs are reflected in bilateral contracts. We anticipate that the procurement related issues outlined here and in the staff report will be resolved when the Commission issues another decision on the IOUs long-term procurement plans in R.01-10-024. Following a comprehensive review at the Commission determining the required resource mix (e.g. generation, transmission, demand-side options), the IOUs would incorporate the transmission components into the CAISO transmission planning process. The CAISO would then analyze the economics and reliability criteria of transmission projects utilizing an agreed upon economic and reliability assessment for IOU projects. That is, the CAISO would conduct a need determination using a Commission adopted methodology. If a project requires a CPCN, the Commission would not revisit the question of need as it already

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<sup>5</sup> The process would be rolling in nature and the utilities would incorporate already approved projects, or projects currently being analyzed in the CAISO transmission planning process, in their long-term procurement filings.

would have been determined by the CAISO using a Commission adopted methodology. We note that by deferring to the CAISO's determination of need, the Commission necessarily must accept the CAISO planning horizon, which is typically 10 years<sup>6</sup>. This longer-term outlook would replace the 5-year time horizon that the Commission has typically used to assess when and whether a project is needed.

The recommended approach would eliminate the existing redundancy in the transmission need assessment. It would accomplish this by having the CAISO responsible for assessing whether a project is needed for reliability and economic reasons, and the CPUC responsible for reviewing the application of the approved economic methodology to affirm project need as required by law, conducting CEQA review, and implementing overall comprehensive planning through the IOU's long-term plans. The Commission is not proposing any changes to the CEQA process.

This approach to transmission planning is an improvement over historic processes and practices for several key reasons: 1) the ISO planning process allows for public participation and discussion of alternatives before the IOU has selected a project and submitted it to the CPUC for approval; 2) the ISO facilitates a more comprehensive approach to grid-wide planning as opposed to control area by control area planning; and 3) the ISO is able to analyze and capture a wider range of factors that impact the economics of a particular project (e.g. the ISO is able to incorporate changes to adjoining control areas

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<sup>6</sup> The CAISO conducts conceptual transmission planning beyond a 10-year time horizon depending on the nature of the project. Likewise, shorter-term time horizons may be appropriate depending on the specifics of a project (e.g. size, location, complexity).

transmission facilities that impact the benefits that accrue to a particular project). This revised transmission planning approach also has the advantage of leveraging existing expertise at the CAISO and the Commission.

## **V Implementing the Proposed Transmission Planning Approach**

We intend to address a fundamental inefficiency in the current process. As the Staff's report highlights, there exists a redundant review of need for a transmission project, either to meet reliability criteria or for economic reasons, by the CAISO and the Commission.

The Commission recognizes its statutory obligation to assess whether a project is needed. PU Code Section 1001 states:

“no . . . gas . . . [or] electric corporation . . . shall begin the construction of a street railroad, or of a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction.”

The Commission believes that by adopting an economic methodology that the CAISO and IOUs will apply to transmission projects, the Commission would be fulfilling its statutory mandate under Section 1001, which places on the Commission the responsibility to determine that a utility project is needed. The advantage of this approach is that it permits the Commission to rely on the CAISO's determination of need in a manner that eliminates a redundant review and streamlines the transmission evaluation process. The Commission, after validating the CAISO's application of the methodology would make a finding of need in the CPCN consistent with the CAISO need assessment.

The Commission acknowledged in its decision regarding additional transmission to the Southwest<sup>7</sup>, D.01-10-070, that traditional methods for evaluating economic transmission projects are inadequate, especially in capturing market dynamics that impact the analysis of project benefits. For this reason, the Commission asked the CAISO and IOUs to develop a more robust methodology to capture and evaluate the dynamics of the market. The methodology is intended to consider market power, strategic bidding, and other complicated factors that bear on the price of power and therefore the benefits that can accrue to consumers from new transmission projects. On December 15, 2003, the Administrative Law Judge in that proceeding issued a ruling proposing a schedule whereby the Commission will assess and validate the economic methodology that the CAISO has developed pursuant to D.01-10-070<sup>8</sup>. A decision is anticipated in the fall of 2004.

This Rulemaking is intended to facilitate the application of the Commission's determination on the economic methodology in the Commission overarching transmission planning process. In incorporating the CAISO's determination of need into the Commission's CPCN process, the Commission intends to comply fully with its statutory obligation under PU Code Section 1822, which provides parties with access to computer models that are used in Commission proceedings. PU Code Section 1822 (a) states:

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<sup>7</sup> The Commission determined in D.01-10-070, issued in its investigation implementing Assembly Bill 970,, I.00-11-001, that additional transmission to the Southwest is not needed until 2008.

<sup>8</sup> See. I. 00-11-001. Administrative Law Judge's Ruling Proposing a Phase 5 Schedule and Setting Further Prehearing Conference, dated December 15, 2003.

Any computer model that is the basis for any testimony or exhibit in a hearing or proceeding before the commission shall be available to, and subject to verification by, the commission and parties to the hearing or proceedings to the extent necessary for cross-examination or rebuttal, subject to applicable rules of evidence...

Therefore, with the intention of improving the transmission assessment process, the Commission proposes to add the following language to General Order 131-D, Section III. A.:

The Commission will utilize the CAISO's determination of whether a transmission facility is required for economic reasons to the extent that the CAISO has analyzed the need for the proposed transmission facility using a Commission-adopted economic methodology. Once the transmission facility is before the Commission for a CPCN, the Commission will assess the application of the adopted economic methodology to the project without revisiting the question of need. The Commission will implement this provision consistent with PU Code 1822 and CPUC Rules of Practice and Procedure Article 17.1.

The Commission is willing to consider using the CAISO's need determination for reliability projects to the extent there is an agreed upon standard. Therefore, the Commission requests that the CAISO propose the standard that it intends to use in determining whether a transmission project is required to maintain or enhance system reliability.

The Commission requests comments from all interested parties regarding this proposed change to the General Order. In particular, we encourage the CAISO to participate actively in this proceeding to further existing cooperative efforts to streamline and improve the transmission planning process. We are

aware that the California Energy Commission has undertaken efforts to incorporate transmission planning into its Integrated Energy Policy Report. We invite the CEC and any other involved or interested State agency to collaborate fully in this proceeding.

## **VI Category of Proceeding**

Rule 6(c)(2) of our Rules of Practice and Procedure provides that an order instituting rulemaking “shall preliminarily determine the category” of the proceeding. This rulemaking is preliminarily determined to be “quasi-legislative” as that term is defined in Rule 5(d). At this time we do not anticipate the need to hold evidentiary hearings, but recognize that parties’ comments may identify the need for evidentiary hearings.

As provided in Rule 6(c) (2), any person who objects to the initial categorization of this rulemaking as “quasi-legislative” or to the preliminary hearing determination noted above, shall state its objections in its responsive comments to this OIR.

## **VII Schedule**

The CAISO will file and serve its proposed standard to determine whether a project is needed to maintain or enhance reliability and its comments on the proposed changes to G.O. 131-D within 25 days from the date of mailing. Within 45 days from the date of mailing all other parties shall file and serve comments on the ISO’s proposed standard for determining whether a transmission project is needed to maintain reliability and the proposed changes to G.O. 131-D (or an alternative approach). Parties shall file and serve responses to comments within 25 days of the date comments are filed. Once comments are received, the Assigned Commissioner will provide guidance with regard to the next steps. We intend to conclude this proceeding in 8 months. We recognize that such an

aggressive schedule may be unrealistic and will be responsive to relaxing this intention if it is warranted. In any event, we expect to conclude this proceeding within the 18-month statutory deadline.

### **VIII Parties And Service List**

Parties will have 20 days from the date of mailing to submit a request to be added to the service list for this proceeding. We name the three largest investor-owned electric utilities as respondents in this rulemaking: PG&E, SDG&E and Edison.

We will serve this OIR on members of the service lists for two related proceeding:

- R.01-10-024, the “procurement” rulemaking, and
- I.00-11-001, the “AB 970” proceeding
- I.83-04-03, the proceeding that resulted in the last changes to G.O. 131-D [64 CPUC 2d 642. D.94-06-014 & D.95-08-038]

Within 20 days of the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking should send a request to the Commission’s Process Office, 505 Van Ness Avenue, San Francisco, California, 94102 (or ALJ\_Process@cpuc.ca.gov) asking that his or her name be placed on the service list. The service list shall be posted on the Commission’s web site, [www.cpuc.ca.gov](http://www.cpuc.ca.gov), as soon as it is practical.

Any party interested in participating in this investigation who is unfamiliar with the Commission’s procedures should contact the Commission’s Public Advisor’s Office in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-2074, (866) 836-7875 (TTY – toll free) or (415) 703-5282 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

We also intend to utilize the electronic service protocols given in Appendix A in this proceeding. Any party requiring paper service of documents in this case should so note that requirement in its request to be added to the service list.

## **IX Ex Parte Communications**

This proceeding is subject to Rule 7(d) of the Commission's Rules of Practice and Procedure, which specifies standards for engaging in *ex parte* communications and the reporting of such communications in quasi-legislative proceedings.

### **O R D E R**

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission's own motion to examine the Commission's process and practice for determining the need for new transmission facilities that require a CPCN as defined in General Order 131-D.
2. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E) are Respondents to this proceeding.
3. The Executive Director shall cause this Order Instituting Rulemaking (OIR) to be mailed to Respondents, the California Energy Commission, the California Power Authority, the California Independent System Operator, and to the service lists for the following Commission proceedings: I.00-11-001, R.01-10-024 and I.83-04-03.

4. Within 20 days from the date of mailing of this order, any person or representative of an entity interested in monitoring or participating in this rulemaking should send a letter to the Commission's Process Office, 505 Van Ness Avenue, San Francisco, California 94102, or [ALJ\\_Process@cpuc.ca.gov](mailto:ALJ_Process@cpuc.ca.gov) asking that his or her name be placed on the service list.

5. The category of this rulemaking is preliminarily determined to be "quasi-legislative" as that term is defined in Rule 5 (d) of the Commission's Rules of Practice and Procedure.

6. Any person who objects to the preliminary categorization of this rulemaking or to its preliminary hearing designation shall include such objection in its comments filed pursuant to this order.

7. The ISO will file and serve its proposed standard for determining whether a transmission project is required to maintain or enhance system reliability and comment on the proposed revision to G.O. 131-D within 25 days from the date of mailing.

8. Parties shall file and serve comments within 45 days from the date of mailing on the ISO's proposed standard for determining whether a transmission project is required to maintain or enhance reliability and the proposed revision to G.O. 131-D (or alternative approach). Parties shall file and serve responses to comments 25 days thereafter. Once comments are received, the Assigned Commissioner will provide guidance with regard to the next steps.

9. The scope and schedule set forth in this order may be modified by the Assigned Commissioner or Administrative Law Judge, as necessary.

This order is effective today.

Dated January 22, 2004, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEORGE F. BROWN  
SUSAN P. KENNEDY  
Commissioners

I reserve the right to file an explanation of my abstention.

/s/ LORETTA M. LYNCH  
Commissioner

I will file a dissent.

/s/ CARL WOOD  
Commissioner

**APPENDIX A**  
**ELECTRONIC SERVICE PROTOCOLS**

**(Page 1)**

**Party Status in Commission Proceedings**

These electronic service protocols are applicable to all “appearances, interested parties,” And other members of the service list. In accordance with Commission practice, by entering an appearance at a prehearing conference or by other appropriate means, an interested party or protestant gains “party” status. A party to a Commission proceeding has certain rights that non-parties (those in “state service” and “information only” service categories) do not have. For example, a party has the right to participate in evidentiary hearings, file comments on a proposed decision, and appeal a final decision. A party also has the ability to consent to waive or reduce a comment period, and to challenge the assignment of an Administrative Law Judge (ALJ). Non-parties do not have these rights, even though they are included on the service list for the proceeding and receive copies of some or all documents.

**Service of Documents by Electronic Mail**

For the purposes of this proceeding, all appearances shall serve documents by electronic mail, and in turn, shall accept service by electronic mail.

Usual Commission practice requires appearances to serve documents not only on all other appearances but also on all non-parties in the state service category of the service list. For the purposes of this proceeding, appearances shall serve the information only category electronically as well since electronic service minimizes the financial burden that broader service might otherwise entail.

**APPENDIX A**  
**ELECTRONIC SERVICE PROTOCOLS**

**(Page 2)**

**Filing of Documents**

These electronic service protocols govern service of documents only, and do not change the rules regarding the tendering of documents for filing. Documents for filing must be tendered in paper form, as described in Rule 2, *et seq.*, of the Commission's Rules of Practice and Procedure. Moreover, all filings shall be served in hard copy (as well as e-mail) on the assigned Commissioner's office and the assigned ALJ. All e-mails shall be sent by 5:00 pm on the due date.

**Electronic Service Standards**

As an aid to review of documents served electronically, appearances should follow these procedures:

- Merge into a single electronic file the entire document to be served (*e.g.* title page, table of contents, text, attachments, service list).
- Attach the document file to an electronic note.
- In the subject line of the note, identify the proceeding number; the party sending the document; and the abbreviated title of the document.
- Within the body of the note, identify the word processing program used to create the document. (Commission experience indicates that most recipients can open readily documents sent in Microsoft Word or PDF formats).

If the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for alternative service (paper mail shall be the default, unless another means is mutually agreed upon).

**APPENDIX A**  
**ELECTRONIC SERVICE PROTOCOLS**  
**(Page 3)**

**Obtaining Up-to-Date Electronic Mail Addresses**

The current service lists for active proceedings are available on the Commission's web page, [www.cpuc.ca.gov](http://www.cpuc.ca.gov). To obtain an up-to-date service list of e-mail addresses:

- Choose "Proceedings" then "Service Lists."
- Scroll through the "Index of Service Lists" to the number for this proceeding.
- To view and copy the electronic addresses for a service list, download the comma-delimited file, and copy the column containing the electronic addresses.

The Commission's Process Office periodically updates service lists to correct errors or to make changes at the request of parties and non-parties on the list. Appearances should copy the current service list from the web page (or obtain paper copy from the Process Office) before serving a document.

**Pagination Discrepancies in Documents Served Electronically**

Differences among word-processing software can cause pagination differences between documents served electronically and print outs of the original. (If documents are served electronically in PDF format, these differences do not occur.) For the purposes of reference and/or citation in cross-examination and briefing, all parties should use the pagination found in the original document.

**(END OF APPENDIX A)**

**Transmission OIR Dissent of Carl Wood (Item 29, 1/22/04)**

My concerns with this new rulemaking exist on two levels. *First*, I object to the way the majority opinion jumps to conclusions about both the presumed problem and the preferred solution. It is one thing to include proposed new rules in a rulemaking order. It is another thing entirely to reach conclusions without a stitch of formal input from the public. It is neither necessary nor useful to prejudge the issues in order to undertake a focused, efficient rulemaking process, but that is what this order does.

In numerous places, the order talks about “inefficiency and redundancy” in the current transmission review process without identifying the nature of the inefficiency or pointing to the redundancy. Without either proving the existence of duplication, or addressing the pluses or minuses of any duplication that might actually exist, the order presumes a problem and then declares the solution – the order declares that the Commission should defer to the ISO for some or all of the determination of the need for a particular transmission project. I would have supported an order that presented the Staff’s findings and then offered the Staff proposal for comments. This order, however, skips to the conclusion and adopts the Staff’s characterization of the “problem” without scrutiny.

The order adopts, without question, the prevailing folklore that there is something wrong about allowing a constitutionally-established economic regulatory agency to question the needs assessment of a non-profit transmission operating company. There is no discussion of the hundreds of millions of dollars at stake, or the tremendous environmental implications of approving unneeded new lines, and the fact that it is this agency, not the ISO, that is responsible to define and protect the public interest.

Is there something wrong about the present relationship between this Commission and the ISO? That would be an interesting issue for the Commission to explore. As written, however, this order does not waiver from its dedication to the principle that there is a problem with the current system and that it must be changed and that the Commission should defer to the ISO in some manner. I can imagine that just as the order cites the Energy Action Plan, the Commission in future decisions will be tempted to cite this order as proof that a problem exists. This type of bootstrap policymaking is not well-informed and can lead to dangerous results. I ask everyone to remember that the conclusions offered in this order are not supported by a record.

My second level of concern is more substantive. I disagree with the statement of the problem and I vigorously disagree with the characterization of the proposed solution.

It has not been established that there is any redundancy in the transmission review process. The ISO and utilities can propose transmission projects and both are obligated to develop such proposals in a responsible and thorough manner. This Commission can approve or reject utility participation in such projects. The ISO might conclude that a new line is needed, but it is our obligation to decide whether that conclusion of need passes legal scrutiny and whether such a need dictates utility ratepayer support for the project. Put simply, this Commission is the regulator, the ISO is the operator. Although there are multiple decisions involved in siting a new line, that fact does not make the decisions necessarily redundant. And a Commission decision denying an unproven transmission project is not a sign of institutional failure.

There is no reason for the analysis underlying our needs assessments to be either inefficient or duplicative. If a utility or the ISO prepares a thorough and credible analysis, there is no need for our staff to duplicate the effort. But analysis is different from oversight and review. Those are necessary parts of public accountability.

Even if the division of labor that comprises the ISO and Commission processes could be characterized as duplicative, it does not necessarily follow that such duplication would be unproductive or inefficient. The law envisions the roles that the ISO and this Commission each fulfill during the siting process. When the Legislature enacted AB 1890, it preserved this agency's transmission siting responsibilities in total, including the determination of project need.

*Finally*, I strongly disagree that the Commission should defer to the ISO on any aspect of our responsibilities under Section 1001 and its related provisions. I have seen no sufficient justification for further disaggregating the certification process. This, in itself, could create inefficiency, weaken accountability, and sacrifice legal protections. No matter what anyone might think or wish, the ISO is not a governmental agency. Its decisions in matters of this nature are not subject to appeal or court review. A deferral to the ISO could come at the expense of due process and the substantive rights of parties. The law does not allow us to assign the agency's obligations to others. We shouldn't do it, and we shouldn't even claim that we are doing it.

This Commission has no reason to apologize for fulfilling its obligations. The order reads like a confession when, in fact, there is no wrongdoing. I cannot support this order.

/s/ CARL W. WOOD  
Carl W. Wood

**R.04-01-026**

Commissioner

January 22, 2004  
San Francisco, California

[R0401025 Attachment B Electric Transmission CPCN Reform Rulemaking](#)