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

Application of Energy Center San Francisco LLC (U909H), Clearway Energy Operating LLC, Clearway Energy, Inc., and KKR Thor Bidco, LLC for Authority to Sell and Transfer Indirect Control of Energy Center San Francisco LLC to KKR Thor Bidco, LLC.

Application 21-11-011

**ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This scoping memo and ruling sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

**1. Procedural Background**

**1.1. The Application**

Applicants Energy Center San Francisco LLC (U909H) (Energy Center SF), Clearway Energy Operating LLC, Clearway Energy, Inc., and KKR Thor Bidco, LLC filed this application for the authority required by Pub. Util. Code Sections §§ 851 and 854(a) to sell and transfer indirect control of Energy Center SF to KKR Thor Bidco, LLC. If approved by the Commission, the acquisition of Energy Center SF by KKR Thor Bidco, LLC would occur pursuant to the Membership Interest Purchase Agreement dated October 22, 2021, and would result in KKR Thor Bidco, LLC indirectly taking control of Energy Center SF's operations and public utility obligations through a transfer of the membership interests of Energy Center SF's indirect parent company. The proposed transfer

of indirect control of Energy Center SF would take place as part of a larger transfer of membership interests of certain subsidiaries of Clearway Energy Operating LLC from Clearway Energy Operating LLC to KKR Thor Bidco, LLC.

The transfer of the California Jurisdictional Utility Energy Center SF is only one small part of the bigger transaction, valued at \$1.9 billion, but there is no separate valuation or price defined for Energy Center SF. (Application at 14.)

### **1.2. Prior Regulatory Actions**

Energy Center SF was previously known as San Francisco Thermal, Limited Partnership (SF Thermal) and was authorized to provide steam heating service to commercial customers using market-based rates. (Resolution (Res)) G-3227, dated November 19, 1997.) In Decision (D.) 00-06-055, the Commission authorized the transfer of ownership and control of SF Thermal whereby SF Thermal merged into NRG Energy Center and continued to operate and serve with market-based rates. In D.18-07-015 the Commission approved a transfer of indirect control of NRG Energy Center to Clearway Energy, Inc., and NRG Energy Center was renamed Energy Center San Francisco, LLC.

### **1.3. Procedural Steps**

A prehearing conference (PHC) was held on December 28, 2021, to address the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters as necessary. After discussion at the PHC, I have determined the issues and initial schedule of the proceeding to be set forth in this scoping memo.

## **2. Issues**

The issues to be considered are:

1. Whether the Application meets all the requirements of Pub. Util. Code § 854(a) which requires any “person or corporation” to obtain the Commission's approval before

acquiring direct or indirect control of a public utility. The purpose of Section 854(a) is to allow the Commission to review and evaluate a proposed transaction and to impose any conditions that the public interest requires before a transfer of public utility authority is consummated, and the primary issue is whether the proposed transfer is contrary to the public interest.<sup>1</sup>

2. Whether the Application complies with Pub. Util. Code § 854(b), (c) and (d).<sup>2</sup>
3. Whether the proposed transfer of indirect control requires environmental review pursuant to the California Environmental Quality Act (CEQA). Commission Rules of Practice and Procedure Rule 24.<sup>3</sup>
4. Whether the proposed transfer of indirect control affects the achievement of the Commission's Environmental and Social Justice Action Plan.<sup>4</sup>
5. Whether the proposed transfer of indirect control will likely have any safety issues to be addressed.

### **3. Need for Evidentiary Hearing**

There are no disputed issues of material fact and therefore evidentiary hearings are not needed.

### **4. Schedule**

The following schedule is adopted here and may be modified by the assigned Administrative Law Judge (ALJ) as required to promote the efficient and fair resolution of the application:

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<sup>1</sup> [Law Section \(ca.gov\)](#)

<sup>2</sup> [Law Section \(ca.gov\)](#)

<sup>3</sup> The Commission has previously ruled that a transfer of indirect control of a utility was exempt from CEQA review pursuant to Section § 15061(b)(3) of the CEQA Guidelines in D. 18-07-015. Nevertheless, we must independently consider this issue here.

<sup>4</sup> [Microsoft Word - Env and Social Justice Action Plan\\_2019-02-21.docx \(ca.gov\)](#).

Event	Date
Prehearing Conference	December 28, 2021
Scoping Memo	January 26, 2022
Proposed Decision	February 2022
Comments on Proposed Decision	5 business days after issuance

There is no need for a status conference pursuant to Rule 13.8(c), where the parties could stipulate to the receipt of prepared testimony into evidence without direct or cross examination or other need to convene an evidentiary hearing or, in the alternative, the parties’ resources, readiness and needs for the effective remote conduct of an evidentiary hearing.

The proceeding will stand submitted five business days after the issuance of this scoping memorandum unless the assigned ALJ requires further evidence or argument. Based on this schedule, the proceeding will be resolved within 18 months as required by Pub. Util. Code Section 1701.5.

Pursuant to Pub. Util. Code Section 311(d) if the proposed decision grants the uncontested requested relief, public review and comment can be waived pursuant to Rule 14.6(c)(2). At the PHC parties the assigned ALJ offered, and parties agreed to a reduced comment period of five business days to identify and correct any unintended errors or omissions in the proposed decision.

**5. Alternative Dispute Resolution (ADR) Program and Settlements**

There are no disputed issues, and no party opposes the transaction, therefore the Commission’s ADR program is not relevant here.

## **6. Category of Proceeding and Ex Parte Restrictions**

This ruling confirms the Commission's preliminary determination<sup>5</sup> that this is a ratesetting proceeding. Accordingly, ex parte communications are restricted and must be reported pursuant to Article 8 of the Rules.

## **7. Public Outreach**

Pursuant to Pub. Util. Code Section 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and business that subscribe to it and posted on the Commission's website.

## **8. Intervenor Compensation**

No customer has filed a Notice of Intent to seek intervenor compensation.

## **9. Response to Public Comments**

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the "Add Public Comment" button on the "Public Comment" tab of the online docket card for the proceeding. [Proceedings Tab5 - Public Comments \(ca.gov\)](#)

## **10. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 1-866-849-8390 or 1-866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

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<sup>5</sup> Res ALJ-176-3498.

## **11. Filing, Service, and Service List**

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.<sup>6</sup>

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Rule 1.10 requires service on the ALJ of both an electronic and a paper copy of filed or served documents, however the paper service of documents is waived for this proceeding.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

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<sup>6</sup> The form to request additions and changes to the service list may be found at <https://www.cpsc.ca.gov/-/media/cpsc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

The Commission encourages those who seek information-only status on the service list to consider the Commission's subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents and daily or weekly digests.

### **12. Receiving Electronic Service from the Commission**

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive emails from the Commission. Please add "[@cpuc.ca.gov](mailto:@cpuc.ca.gov)" to your email safe sender list and update your email screening practices, settings and filters to ensure receipt of emails from the Commission.

### **13. Assignment of Proceeding**

Clifford Rechtschaffen is the assigned Commissioner and Douglas M. Long is the assigned Administrative Law Judge.

**IT IS RULED** that:

1. The scope of this proceeding is described above and is adopted.
2. The schedule of this proceeding is set forth above and is adopted.
3. An evidentiary hearing is not needed.

4. The proceeding is categorized as ratesetting.

This order is effective today.

Dated January 26, 2022, at San Francisco, California.

/s/ CLIFFORD RECHTSCHAFFEN

Clifford Rechtshaffen  
Assigned Commissioner