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R2202002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Implement Resolution E-5076 and
Review of Tribal Policies.

Rulemaking 22-02-002

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 Code Section 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

1. Procedural Background

On February 10, 2022, the California Public Utilities Commission (Commission) adopted an order instituting the instant rulemaking to consider revisions to the Tribal Land Transfer Policy (TLTP) and its Implementation Guidelines, including assessment of data and information exchange, capacity building needs, and other issues identified by stakeholders. The preliminary scoping memo also identified review and update of the Tribal Consultation Policy (TCP), consideration of other mechanisms and processes to assist with capacity building and access for Tribal participation in Commission proceedings and programs as within scope of this rulemaking. The Commission held two regional Tribal consultations, a virtual tribal consultation, and a number of individual tribal consultations following its adoption of the order instituting rulemaking; summaries of those Tribal consultations are included as an

attachment to the assigned Administrative Law Judge's (ALJ) ruling dated January 25, 2023.

A prehearing conference (PHC) was held on October 11, 2022 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 considering the Tribal consultations, party comments and 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 determined or otherwise considered are:

1. Should the Commission modify the Tribal Land Transfer Policy and associated Implementation Guidelines to effectively facilitate Native American Tribes' efforts to regain lands within their ancestral territory that are currently owned by Commission jurisdictional utilities?
2. Should the Commission modify the Tribal Consultation Policy to ensure meaningful consideration of Tribal interests on matters within the Commission's jurisdiction?
3. As part of the Commission's review of the Tribal Consultation policy, how should the Commission examine the application of tribal law to investor-owned utilities when conducting work on tribal trust lands, and implement mechanisms for ensuring sufficient information exchange and updating of tribal easements and rights of way?
4. What mechanisms and processes, if any, should the Commission establish or modify to assist with capacity building and improve access for Tribal participation in Commission proceedings and programs?
5. What are the impacts on environmental and social justice communities, including the extent to which the Commission's tribal policies impact achievement of any of

the nine goals of the Commission’s Environmental and Social Justice Action Plan?

With respect to the Tribal Land Transfer Policy and associated Implementation Guidelines (Issue 1), Commission staff have prepared a proposal (staff proposal), included with this scoping memo as Attachment 1, for potential modifications to the policy and associated guidelines. Parties will be invited to provide comments on the staff proposal via ruling, following the workshops on the Tribal Land Transfer Policy.

3. Need for Evidentiary Hearing

There are no issues of material disputed fact. Accordingly, no evidentiary hearing is needed.

4. Schedule

The following schedule is adopted here and may be modified by the assigned Commissioner or ALJ as required to promote the efficient and fair resolution of the rulemaking:

Event	Date
Opening Tribal consultation(s) regarding broadband, held	February 28, 2023
Opening Tribal consultation(s) regarding energy, held	March 1, 2023
In-person Workshop and Tribal consultations on Tribal Land Transfer Policy and Implementation Guidelines, and Tribal Consultation Policy – Southern California, held	3Q 2023 (date and location to be provided via ruling)
In-person Workshop and Tribal consultations on Tribal Land Transfer Policy and Implementation Guidelines,	3Q 2023 (date and location to be provided via ruling)

and Tribal Consultation Policy – Central/Northern California, held	
In-person Workshop and Tribal consultations on issues within Commission purview; addressing concerns raised through Tribal Consultations, held	3/4Q (date and location to be provided via ruling)
Joint in-person workshop with Bureau of Indian Affairs, Environmental Protection Agency and Tribal consultations on rights of way, easements, held	3/4Q (date and location to be provided via ruling)
Release of any revisions to staff proposal on TLTP	4Q 2023
Release of staff proposal on updates to Tribal Council Consultation Policy	4Q 2023
Comments on Staff Proposal TLTP and Staff Proposal Tribal Consultation Policy	4Q 2023
Reply Comments on Staff Proposal TLTP and Staff Proposal Tribal Consultation Policy	4Q 2023
Virtual workshop to take comment on Staff Proposal TLTP and Staff Proposal Tribal Consultation Policy	1Q 2024
Final date to request briefing on any legal issues that may be raised by parties	1Q 2024
Party comments on staff proposal(s), filed and served	Dates to be provided via ruling
Reply comments, filed and served [<i>matter submitted</i>]	
Proposed decision, issued	2Q 2024

Two consecutive days will be reserved for each workshop, with the first day featuring an all-day workshop on the specified issue(s) and the second day

providing time for further workshop discussion on the specified issue(s), if needed, and for individual tribal consultations.

The proceeding will stand submitted upon the filing of reply comments, unless the assigned Commissioner or ALJ requires further evidence, comment, or argument. Based on this schedule, the proceeding will be resolved within 24 months after the issue date of this scoping memo as required by Public Utilities (Pub. Util.) Code Section 1701.5. The proceeding may require additional time to complete, as we aim to ensure that every opportunity is provided to consult with California tribes. A number of tribal consultations have been set up, as described above, prior to issuance of this scoping memo and there will be a number of tribal consultations and workshops scheduled after issuance of this scoping memo to vet each of the issues presented above with California tribes, parties, and the public.

5. Category of Proceeding and Ex Parte Restrictions

This ruling confirms the Commission's preliminary determination¹ that this is a quasi-legislative proceeding. Accordingly, ex parte communications are permitted without restriction or reporting requirement pursuant to Article 8 of the Rules.

6. 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.

¹ Order Instituting Rulemaking at 13-14.

In addition, the Commission served the Order Instituting Rulemaking on the official service list for Resolution E-5076 and the list of Tribes maintained by the Native American Heritage Commission.

The Commission has established a permanent Tribal Advisor's office, which oversees and ensures that targeted outreach to Tribes is conducted for this and other proceedings impacting Tribes.

7. Intervenor Compensation

In accordance with Pub. Util. Code Section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation within 30 days after the issue date of this scoping memo.

8. 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.

9. 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 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

10. 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 1.4.²

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, unless the ALJ orders otherwise. The assigned ALJ orders that parties only serve an electronic copy of filed or served documents on the ALJ.

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 to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

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

² The form to request additions and changes to the Service list may be found at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

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.

11. 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” to your email safe sender list and update your email screening practices, settings and filters to ensure receipt of emails from the Commission.

12. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Valerie U. Kao is the assigned ALJ for the proceeding.

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. Evidentiary Hearing is not needed.
4. The category of the proceeding is Quasi-Legislative.

Dated July 28, 2023, at Sacramento, California.

/s/ DARCIE L HOUCK

Darcie L. Houck
Assigned Commissioner