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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Update and Amend Commission
General Order 131-D.

Rulemaking 23-05-018

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 California Public Utilities Commission's (Commission) Rules of Practice and Procedure (Rules).

1. Procedural Background

The Commission's General Order (GO) 131-D sets forth rules relating to the planning and construction of electric generation plant; transmission, power, or distribution lines; and substations located in California.

On January 1, 2023, Senate Bill (SB) 529 (Hertzberg; Stats. 2022, Ch. 357) went into effect and added Pub. Util. Code Section 564, which reads as follows:

By January 1, 2024, the commission shall update General Order 131-D to authorize each public utility electrical corporation to use the permit-to-construct process or claim an exemption under Section III(B) of that general order to seek approval to construct an extension, expansion, upgrade, or other modification to its existing electrical transmission facilities, including electric transmission lines and substations within existing transmission easements, rights of way, or franchise agreements, irrespective of whether the electrical transmission facility is above a 200-kilovolt voltage level.

SB 529 also amended subsection (b) of Pub. Util. Code Section 1001 to read as follows:

The extension, expansion, upgrade, or other modification of an existing electrical transmission facility, including transmission lines and substations, does not require a certificate that the present or future public convenience and necessity requires or will require its construction.

On May 23, 2023, the Commission issued an order instituting this rulemaking to update and amend GO 131-D pursuant to SB 529 and to consider other changes to GO 131-D to better address the needs of the State of California and its residents; be consistent with other applicable laws, policies, and Federal Energy Regulatory Commission orders; and provide a clearer, more efficient, and consistent process. The Order Instituting Rulemaking (OIR) set forth questions and solicited comments from respondents to the OIR and others concerning potential changes to GO 131-D.¹

¹ OIR at 5-6.

Opening comments on the OIR were filed on June 21 and June 22, 2023.²

Reply comments were filed on July 7, 2023.³

After considering the opening and reply comments on the OIR, I have determined the issues and initial schedule of the proceeding to be set forth in this scoping memo.

2. Issues

The OIR set forth a preliminary scoping memo identifying a list of potential issues to be considered in this rulemaking:⁴

1. What changes should be adopted to GO 131-D to conform it to the requirements of SB 529 (Hertzberg), 2022?
2. Should the Commission modify GO 131-D to:
 - a. Reflect changes in Commission Rules and other regulations that have occurred since GO 131-D was last modified in 1995?
 - b. Provide the Commission with better cost information for electrical infrastructure projects?

² Opening comments were filed by: Rural County Representatives of California (RCRC); the Acton Town Council; Clean Coalition; American Clean Power – California; Pacific Gas and Electric Company (PG&E); California Farm Bureau Federation; the Protect Our Communities Foundation (POCF); Coalition of California Utility Employees (CUE); Environmental Defense Fund (EDF); California Energy Storage Alliance (CESA); Trans Bay Cable LLC, Horizon West Transmission, LLC, and GridLiance West LLC (jointly); San Diego Gas & Electric Company (SDG&E); Defenders of Wildlife; the Public Advocates Office at the California Public Utilities Commission (Cal Advocates); Southern California Edison Company (SCE); Large-Scale Solar Association; LS Power Grid California, LLC; California Independent System Operator Corporation (CAISO); Center for Energy Efficiency and Renewable Technologies (CEERT); REV Renewables; Independent Energy Producers Association (IEP); Liberty Utilities (CalPeco Electric) LLC, PacifiCorp, and Bear Valley Electric Service, Inc. (jointly); and the City of Long Beach, California. All references to opening comments are to opening comments on the OIR.

³ Reply comments were filed by: LS Power Grid California, LLC; Cal Advocates; PG&E; American Clean Power – California; the Acton Town Council; EDF; SDG&E; California Farm Bureau Federation; CEERT; CAISO; SCE; Large-Scale Solar Association; GridLiance West LLC, Trans Bay Cable LLC, and Horizon West Transmission, LLC (jointly); and IEP.

⁴ OIR at 4-5.

- c. Create a process for permitting battery storage projects?
- d. Respond to requests from resource agencies for the Commission to serve as the lead agency pursuant to the California Environmental Quality Act (CEQA)⁵ for all electric infrastructure projects requiring discretionary permits?
- e. Increase cost transparency for projects subject to GO 131-D?
- f. Provide better notice to local governments of projects in their locality?
- g. Better align GO 131-D with GO 96-B?⁶
- h. Adopt other changes to GO 131-D as needed?

This scoping memo confirms that the issues identified in the preliminary scoping memo are to be determined or otherwise considered in this rulemaking. Given the need to implement the requirements of SB 529 by January 1, 2024, I find that consideration of the above issues should be bifurcated into two phases.⁷

Phase 1 shall consider what changes to GO 131-D are necessary to conform it to the requirements of SB 529 and to update outdated references. Phase 1 shall be considered on an expedited basis to ensure compliance with the SB 529 deadline.

Phase 2 shall consider all other changes to GO 131-D, including the changes proposed in attachments to the OIR, changes proposed by parties in

⁵ Public Resources Code, § 21000 et seq.

⁶ GO 96-B governs advice letters and information-only submittals to the Commission by public utilities and certain non-utilities subject to limited regulation by the Commission.

⁷ In opening comments, many parties, including RCRC, American Clean Power – California, California Farm Bureau Federation, CUE, EDF, SCE, Large-Scale Solar Association, CEERT, REV Renewables, IEP, and the City of Long Beach, expressed the urgent need to initially focus on implementing the requirements of SB 529 to meet the statutory deadline.

comments on the OIR, and any additional changes that may be proposed by Commission staff or parties during the course of this proceeding.

Although parties raised questions and objections regarding the modifications to GO 131-D proposed in the OIR that are unrelated to SB 529, many parties were supportive of considering additional changes beyond those required by SB 529.⁸ The current version of GO 131-D was adopted in 1994 in Decision (D.) 94-06-014 and modified in 1995 in D.95-08-038. As acknowledged in the OIR and in many party comments, there have been significant changes in the physical configuration of the electric grid, the market structure for electricity, and the transmission planning process in California since GO 131-D was adopted.

Moreover, as evidenced by CAISO's 2022-2023 Transmission Plan, it is expected that a larger number of energy infrastructure projects compared to past years must be rapidly deployed over the next decade for California to achieve its clean energy goals and ensure electrical reliability.⁹ Therefore, the time is ripe for a comprehensive examination of the processes set forth in the GO.

Given the expedited timeframe in which the changes required by SB 529 must be considered, a separate phase is required to give due consideration to other potential changes. Parties also commented that there is pending legislation, which if passed, may impact the processes set forth in GO 131-D.¹⁰ If

⁸ See, e.g., Opening Comments of the Acton Town Council; Clean Coalition; POCF; CUE; Trans Bay Cable LLC, Horizon West Transmission, LLC, and GridLiance West LLC (jointly); SDG&E, Cal Advocates, SCE, Large-Scale Solar Association; LS Power Grid California, LLC; and CAISO.

⁹ CAISO Opening Comments at 2; CEERT Opening Comments at 7-9.

¹⁰ See, e.g., CUE Opening Comments at 8; EDF Opening Comments at 3; SCE Opening Comments at 20.

such legislation is passed during the current legislative session, any resulting changes that will be required to GO 131-D can also be considered during Phase 2.

3. Need for Evidentiary Hearing

The OIR preliminarily determined that evidentiary hearings will not be needed because this rulemaking will be examining policy and legal issues, rather than factual controversies.¹¹ Nearly all the parties that commented on this issue agree that evidentiary hearings are not needed. One party, POCF, contends that evidentiary hearings are necessary because there are likely disputed factual issues.¹² POCF, however, does not specifically identify any issues of material disputed fact that would warrant an evidentiary hearing. Accordingly, I confirm the preliminary determination that evidentiary hearings are not needed.

4. Schedule

Opening and reply comments on the OIR have already addressed the issues identified for Phase 1. No further events for Phase 1 are scheduled and Phase 1 is deemed submitted.¹³ Unless the Administrative Law Judges (ALJs) require further evidence or argument, the proposed decision addressing Phase 1 issues is expected to be filed no later than 90 days from today for public review and comment pursuant to Public Utilities Code Section 311(d).

The following schedule is adopted for Phase 2 and may be modified by the ALJs as required to promote the efficient and fair resolution of the rulemaking:

¹¹ OIR at 7.

¹² POCF Opening Comments at 8.

¹³ The preliminary schedule set forth in the OIR included a prehearing conference for the purpose of taking appearances, discussing schedule and process, and informing the scoping memo. (OIR at 8.) The opening and reply comments on the OIR adequately address these issues. Therefore, pursuant to Rule 7.2(b), I do not find it necessary to set a prehearing conference in this proceeding.

Event	Date
Staff Proposal issued	Q1 2024
Opening Comments on Staff Proposal filed and served	30 days from issuance of Staff Proposal
Reply Comments on Staff Proposal filed and served (matter submitted)	15 days from deadline for Opening Comments on Staff Proposal
Proposed decision issued	Within 90 days after submission
Commission decision adopted	No sooner than 30 days after proposed decision

Phase 2 of the proceeding will stand submitted upon the filing of reply comments on the staff proposal unless the ALJs require further evidence or argument. Given the number of issues and bifurcation of this proceeding into two phases, pursuant to Pub. Util. Code Section 1701.5(b), the proceeding will be resolved within 18 months of the issuance of this scoping memo.

5. Category of Proceeding and Ex Parte Restrictions

The OIR preliminarily determined that the category of this proceeding is quasi-legislative because the Commission's consideration and approval of a modified GO 131 would establish policy or rules affecting a class of regulated utilities.¹⁴ With the exception of POCF, all parties that commented on this issue agree with the preliminary categorization. POCF recommends the proceeding be categorized as ratesetting because it may establish a mechanism that will impact rates and because the proceeding may have more than an incidental effect on ratepayer costs.¹⁵

¹⁴ OIR at 6-7.

¹⁵ POCF Opening Comments at 7.

A ratesetting proceeding is a proceeding that sets or investigates rates for a specifically named utility or utilities, or establishes a mechanism that in turn sets the rates for a specifically named utility or utilities.¹⁶ This proceeding will not be setting or investigating rates or establishing a mechanism that sets rates for a specifically named utility or utilities. Since this proceeding will result in modifications to a Commission GO, which contains rules affecting a class of regulated utilities, this ruling confirms the preliminary determination that this is a quasi-legislative proceeding.¹⁷ Accordingly, ex parte communications are allowed without restriction or reporting requirement pursuant to Rule 8.2(a).

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 June 2023 edition of the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website.

In addition, the Commission served the OIR on all named respondents (all investor-owned electric utilities and merchant transmission owners operating in the State of California) and the service lists for:

- Rulemaking (R.) 17-05-010, Rulemaking to Consider Revisions to Electric Rule 20 and Related Matters;
- R.18-12-005, Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions;
- R.18-07-003, Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program;

¹⁶ Rule 1.3(g).

¹⁷ Rule 1.3(f).

- R.20-01-007, Rulemaking to Establish Policies, Processes, and Rules to Ensure Safe and Reliable Gas Systems in California and Perform Long-Term Gas System Planning;
- R.20-05-003, Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes;
- R.20-11-003, Rulemaking to Establish Policies, Processes, and Rules to Ensure Reliability Electric Service in California in the Event of an Extreme Weather Event in 2021; and
- R.21-06-017, Rulemaking to Modernize the Electric Grid for a High Distributed Energy Resources Future.

7. Intervenor Compensation

Pursuant to Pub. Util. Code Section 1804(a)(1) and Rule 17.1(a)(2), 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 issuance 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/>, 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 ALJs. Persons may become a party pursuant to Rule 1.4.¹⁸

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. Notwithstanding Rule 1.10, parties are not required to serve a paper copy of filed or served documents on the assigned ALJs unless specifically instructed to do so.

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

¹⁸ 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>

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.

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

Commissioner Karen Douglas is the assigned commissioner and ALJs Rajan Mutialu and Sophia Park are the assigned ALJs 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 31, 2023, at San Francisco, California.

/s/ KAREN DOUGLAS

Karen Douglas
Assigned Commissioner