



PUBLIC UTILITIES COMMISSION

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SAN FRANCISCO, CA 94102-3298

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TO PARTIES OF RECORD IN RULEMAKING 23-05-018:

This is the proposed decision of Commissioner Douglas. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's November 30, 2023 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:mph

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER DOUGLAS**
(Mailed 10/26/2023)**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
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DECISION ADDRESSING PHASE 1 ISSUES**Summary**

This decision adopts modifications to Commission General Order 131-D to conform it to the requirements of Senate Bill 529 (Hertzberg; Stats. 2022, ch. 357) and to correct outdated references.

This proceeding remains open.

1. Factual Background

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

1. Pursuant to Section III.A¹ and Public Utilities (Pub. Util.) Code Section 1001, a utility must file an application to obtain a Certificate of Public Convenience and Necessity (CPCN) prior to constructing electric generating plant with an aggregate net capacity over 50 megawatts or major electric transmission line facilities over 200 kilovolts (kV). To issue a CPCN, the Commission must find that the

¹ All section references are to GO 131-D unless otherwise specified.

- facilities are necessary to promote the safety, health, comfort and convenience of the public, and are required by the public convenience and necessity. In a CPCN application, the Commission considers the environmental impacts of the project pursuant to the California Environmental Quality Act (CEQA),² as well as project need and cost.
2. Pursuant to Section III.B., a utility must file an application to obtain a permit to construct (PTC) prior to constructing substations with a high-side voltage over 50kV and power lines between 50kV and 200kV. The PTC process focuses primarily on environmental review pursuant to CEQA.
 3. For projects that qualify for an exemption under either the CPCN (Section III.A) or PTC (Section III.B) rules, a utility may use a notice and advice letter process that requires acceptance or resolution by the Commission.
 4. Projects that are statutorily or categorically exempt under CEQA Guidelines (California Code of Regulations, Title 14, § 15000 et seq.) are exempt from the permitting and noticing requirements under GO 131-D.³

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.

² Pub. Resources Code § 21000 *et seq.*

³ Section III.B.1, Section III.B.1.h.

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.

2. Procedural Background

On May 23, 2023, the Commission issued an Order Instituting Rulemaking (OIR) 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.

To begin the Commission's examination of these updates to GO 131-D, the OIR set forth questions and solicited comments from stakeholders on two draft versions of a proposed GO 131-E and other potential changes to GO 131-D.⁴ The first version, Attachment A of the OIR (OIR Attachment A),⁵ proposed amendments to GO 131-D solely to conform the GO to the requirements of SB 529. The second version, Attachment B of the OIR,⁶ included additional proposed amendments beyond those reflect in Attachment A to also:

- Reflect changes in Commission Rules and other regulations that have occurred since GO 131-D was last modified in 1995;

⁴ OIR at 5-6.

⁵ Attachment A to the OIR showed redlines of the proposed modifications. A clean version of Attachment A was provided as Attachment C to the OIR.

⁶ Attachment B to the OIR showed redlines of the proposed modifications. A clean version of Attachment B was provided as Attachment D to the OIR.

- Provide the Commission with better cost information for electrical infrastructure projects;
- Create a process for the permitting of battery storage projects;
- Respond to requests from resource agencies for the Commission to serve as the lead agency pursuant to CEQA for all electric infrastructure projects requiring discretionary permits;
- Increase cost transparency for all projects subject to GO 131;
- Provide better notice to local governments of projects in their locality; and
- Better align GO 131 with GO 96-B.

Opening comments on the OIR were filed on June 21 and June 22, 2023, by: Rural County Representatives of California (RCRC); the Acton Town Council; Clean Coalition; American Clean Power – California (American Clean Power); Pacific Gas and Electric Company (PG&E); California Farm Bureau Federation (Farm Bureau); the Protect Our Communities Foundation (POCF); Coalition of California Utility Employees (CUE); Environmental Defense Fund (EDF); California Energy Storage Alliance; Trans Bay Cable LLC, Horizon West Transmission, LLC, and GridLiance West LLC (jointly) (collectively, Transmission Owners); San Diego Gas & Electric Company (SDG&E); Defenders of Wildlife; the Public Advocates Office (Cal Advocates); Southern California Edison Company (SCE); Large-Scale Solar Association; LS Power Grid California, LLC (LS Power Grid); 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) (collectively, California Association of Small and Multi-Jurisdictional Utilities (CASMU)); and the City of Long Beach, California (Long Beach).⁷

Reply comments were filed on July 7, 2023, by: LS Power Grid; Cal Advocates; PG&E; American Clean Power; the Acton Town Council; EDF; SDG&E; Farm Bureau; CEERT; CAISO; SCE; Large-Scale Solar Association; Transmission Owners; and IEP.

On July 31, 2023, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo) setting forth the issues to be considered and a schedule for the proceeding. The Scoping Memo determined that the issues in the proceeding should be bifurcated into two phases.⁸ Phase 1 includes consideration of changes to GO 131-D necessary to conform it to the requirements of SB 529 and the updating of outdated references. Phase 2 includes consideration of all other changes to GO 131-D, including changes proposed in attachments to the OIR and by parties.

Phase 1 was to be considered on an expedited basis to ensure compliance with the SB 529 deadline. The Scoping Memo found that opening and reply comments on the OIR sufficiently addressed the issues identified for Phase 1 and that no further events for Phase 1 were required. The Scoping Memo also set a schedule for Phase 2, that includes the issuance of a Staff Proposal in the first quarter (Q1) of 2024.

2.1. Submission Date

Phase 1 of this proceeding was submitted on July 31, 2023, upon issuance of the Scoping Memo.

⁷ All references to opening comments are to opening comments on the OIR.

⁸ Scoping Memo at 4-5.

3. Issues Before the Commission

As relates to Phase 1, the OIR sought comment regarding whether the proposed modifications set forth in OIR Attachment A comply with the requirements of SB 529 and should be adopted.

The Acton Town Council, Transmission Owners, Long Beach, Large-Scale Solar Association, and CASMU expressed support for the modifications proposed in OIR Attachment A. Many other parties opposed adoption of OIR Attachment A without some amendments, arguing that Attachment A included proposed modifications, which were not required by or consistent with SB 529.

As discussed below, based on review of parties' comments, this decision finds that the proposed modifications to GO 131-D, as set forth in OIR Attachment A, should not be adopted without some amendments. The modifications to GO 131-D we find necessary to implement SB 529 and corrections to outdated references are set forth in Attachment A to this decision and are adopted.⁹

Several parties recommended additional modifications to GO 131-D, which are not required to implement SB 529. This decision is limited to addressing issues that are within the scope of Phase 1. Parties' additional recommendations shall be further considered during Phase 2.

3.1. Modifications to Section III.A

Section III.A of GO 131-D addresses proposed construction that requires a CPCN. In order to implement SB 529, OIR Attachment A proposed to add the following language to the end of Section III.A:

Compliance with Section III.A is not required for: an extension, expansion, upgrade, or other modification to

⁹ Attachment B to this decision shows redlines of the adopted changes to GO 131-D.

existing electrical transmission facilities, including electric transmission lines and substations. Compliance with Section III.B, herein, is required for these facilities. A utility may file a permit to construct application or claim an exemption under Section III.B for these facilities.

PG&E and SDG&E oppose the proposed language requiring compliance with Section III.B. PG&E and SDG&E argue that the intent of SB 529 is to provide a utility with the option to file a PTC application or claim an exemption under Section III.B for proposed construction to existing electrical transmission facilities that require a CPCN under the current version of GO 131-D.¹⁰ PG&E and SDG&E argue that the proposed language in OIR Attachment A requiring a utility to file a PTC application or claim a Section III.B exemption would remove needed permitting flexibility and result in projects requiring a formal PTC or notice process when none is currently required¹¹ or when the utility would prefer to proceed under the CPCN process.

Cal Advocates and the Farm Bureau oppose the proposed language that a utility “may file a PTC application or claim an exemption under Section III.B.” Cal Advocates argues that use of the voluntary “may” rather than the mandatory “shall” creates ambiguity as to whether a permit is required at all.¹² Farm

¹⁰ PG&E Opening Comments at 8-9; SDG&E Opening Comments at 14.

¹¹ Pursuant to Section III.A, a CPCN is not required for the following modifications, alterations, or additions of major electric transmission line facilities: the replacement of existing power line facilities or supporting structures with equivalent facilities or structures; the minor relocation of existing power line facilities; the conversion of existing overhead lines to underground; or the placing of new or additional conductors, insulators, or their accessories on or replacement of supporting structures already built.

¹² Cal Advocates Opening Comments at 5.

Bureau also recommends this proposed language be deleted because it could confuse the options available.¹³

SB 529 requires the Commission to authorize utilities to use the PTC process or claim an exemption under Section III.B for all extensions, expansions, upgrades, or modifications to existing electrical transmission facilities. SB 529 does not require utilities to obtain a CPCN for such facilities but also does not preclude the utilities from electing to use the existing processes set forth in Section III.A in lieu of the processes set forth in Section III.B. To reflect this choice in compliance options and be consistent with SB 529, Section III.A is modified to add the following language to the end of the section:

In lieu of complying with Section III.A, an electric public utility is authorized to file a permit to construct application or claim an exemption under Section III.B to construct an extension, expansion, upgrade, or other modification to an electric public utility's 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-kV voltage level.

3.2. Definition of "Existing Electrical Transmission Facilities"

OIR Attachment A proposed to add the following definition to Section I: "An 'existing electrical transmission facility' means existing, operational electrical infrastructure and does not include property under utility control upon which no electrical infrastructure is currently located."

PG&E, SCE, SDG&E, CUE, and LS Power Grid oppose the proposed definition. These parties argue that including the word "operational" in the definition is not consistent with SB 529 because the permitting processes

¹³ Farm Bureau Opening Comments at 2-3.

authorized by SB 529 apply to extensions, expansions, upgrades, or other modifications to existing electrical transmission facilities without limitation to facilities that are operational.¹⁴ PG&E and SDG&E note that an existing transmission facility may be deenergized and not operational for a variety of reasons, including for maintenance work and upgrades.¹⁵

SDG&E also argues that the definition's exclusion of utility-owned property upon which no electrical infrastructure is currently located could exclude areas of an existing substation property that do not currently have equipment located on it or land over which a transmission line passes and is inconsistent with SB 529.¹⁶ LS Power Grid also argues that SB 529 applies to all utility transmission infrastructure, regardless of whether it is located on property that is not currently occupied by electric infrastructure.¹⁷

SB 529 does not require an existing electrical transmission facility to be operational for SB 529 to apply. Moreover, there may be circumstances under which an extension, expansion, upgrade, or other modification to an existing electrical transmission facility occurs on property under utility control where there is currently no electrical infrastructure located.

Therefore, we decline to adopt OIR Attachment A's definition of "existing electrical transmission facility." In order for the processes authorized by SB 529 to apply, the extension, expansion, upgrade or other modification must be to an

¹⁴ SCE Opening Comments at 10; PG&E Opening Comments at 12; SDG&E Opening Comments at 19; CUE Opening Comments at 4; LS Power Grid Opening Comments at 4.

¹⁵ PG&E Opening Comments at 12; SDG&E Opening Comments at 19.

¹⁶ SDG&E Opening Comments at 19.

¹⁷ LS Power Grid Opening Comments at 4.

existing electrical transmission facility (*i.e.*, a transmission facility that has previously been authorized).

3.3. Removal of Section III.B Exemption

GO 131-D, Section III.B requires utilities to obtain a PTC in accordance with GO 131-D, Sections IX.B, X, and XI.B for the construction of any electric power line facilities or substations which are designed for immediate or eventual operation at any voltage between 50kV and 200kV or new or upgraded substations with high side voltage exceeding 50kV. Section III.B.1 exempts certain projects from needing to comply with the requirements of Section IX.B. Section III.B.1.h provides an exemption for:

the construction of projects that are statutorily or categorically exempt pursuant to § 15260 et seq. of the Guidelines adopted to implement the CEQA, 14 Code of California Regulations § 15000 et seq. (CEQA Guidelines).

All projects exempt pursuant to Section III.B.1, with the exception of projects that fall under Section III.B.1.h, must still comply with the notice requirements of Section IX.B.

OIR Attachment A proposed to delete the exemption found in Section III.B.1.h for projects that are statutorily or categorically exempt from CEQA, as well as the notice exception for these projects.¹⁸

PG&E, SCE, SDG&E, CUE, American Clean Power, LS Power Grid, and RCRC oppose the proposed deletion of Section III.B.1.h. These parties argue that the proposed deletion is not justified, is not required by SB 529, and would

¹⁸ The deletion of the notice requirement was not reflected in Attachment C of the OIR, which was presented as the clean version of Attachment A of the OIR.

conflict with the legislative intent of SB 529 to accelerate the review of upgrades to existing transmission facilities.¹⁹

The scope of Phase 1 is limited to implementing changes required by SB 529 and updating outdated references.²⁰ The proposed deletion of Section III.B.1.h is not required to implement SB 529 and does not fall within the scope of Phase 1. Therefore, consideration of the deletion of Section III.B.1.h and notice exception will be deferred to Phase 2.

3.4. Updating Outdated References

OIR Attachment A proposed to update outdated references. No party opposed the updating of these references. Therefore, we update GO 131-D, as set forth in Attachment A to this decision, to correct outdated references to the Commission's Advisory and Compliance Division, Rules of Practice and Procedure, and GO 96-A.

SCE and LS Power Grid recommend the Commission remove requirements to submit multiple hard copies of documents and instead permit electronic submission of one copy.²¹ The Commission no longer has a need for multiple hard copies of submitted documents. We modify GO 131-D to require service of electronic copies of various documents on the Commission's Executive Director and Commission staff.

LS Power Grid also recommends Section X.B be deleted since the Electric and Magnetic Fields (EMF) education program referenced in the section ended

¹⁹ PG&E Opening Comments at 9; SCE Opening Comments at 10; SDG&E Opening Comments at 16; CUE Opening Comments at 4; American Clean Power Opening Comments at 3; LS Power Grid Opening Comments at 10; RCRC Opening Comments at 3-4.

²⁰ Scoping Memo at 4.

²¹ SCE Opening Comments at 21; LS Power Grid Opening Comments at 12.

on March 1, 1999.²² With the removal of Section X.B, LS Power Grid recommends the heading for the remaining paragraph be deleted as unnecessary. LS Power Grid correctly notes the end of the EMF education program. Therefore, we adopt LS Power Grid's recommended modifications to Section X.

In addition, we correct other non-substantive typographical errors to GO 131-D as set forth in Attachment A to this decision.

4. Summary of Public Comment

Rule 1.18 of the Commission's Rules of Practice and Procedure allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding. No public comments for this proceeding were submitted on the Docket Card.

5. Comments on Proposed Decision

The proposed decision of Commissioner Karen Douglas in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

6. Assignment of Proceeding

Karen Douglas is the assigned Commissioner and Sophia Park and Rajan Mutialu are the assigned Administrative Law Judges in this proceeding.

²² LS Power Grid Opening Comments at 14 citing D.97-12-027, 77 CPUC.2d 91, 98 (Ordering Paragraph 4).

Findings of Fact

1. The scope of Phase 1 of this proceeding is limited to implementing changes to GO 131-D required by SB 529 and updating outdated references.
2. There may be circumstances under which an extension, expansion, upgrade, or other modification to an existing electrical transmission facility occurs on property under utility control where there is currently no electrical infrastructure located.
3. GO 131-D contains outdated references to the Commission's Advisory and Compliance Division, Rules of Practice and Procedure, and GO 96-A.
4. The Commission no longer has a need for multiple hard copies of documents submitted pursuant to GO 131-D.
5. The EMF education program referenced in Section X.B ended on March 1, 1999.

Conclusions of Law

1. SB 529 requires the Commission to update GO 131-D by January 1, 2024, to authorize utilities to use the PTC process or claim an exemption under Section III.B for all extensions, expansions, upgrades, or modifications to existing electrical transmission facilities.
2. SB 529 does not require utilities to obtain a CPCN for extensions, expansions, upgrades, or modifications to existing electrical transmission facilities but also does not preclude the utilities from electing to use the existing processes set forth in Section III.A in lieu of the processes set forth in Section III.B.
3. To reflect a utility's choice in compliance options and to be consistent with SB 529, Section III.A should be modified to add the following language:

In lieu of complying with Section III.A, an electric public utility is authorized to file a permit to construct application or

claim an exemption under Section III.B to construct an extension, expansion, upgrade, or other modification to an electric public utility's 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-kV voltage level.

4. SB 529 does not require an existing electrical transmission facility to be operational for SB 529 to apply.

5. OIR Attachment A's proposed definition of "existing electrical transmission facility" is not consistent with SB 529 and should not be adopted.

6. OIR Attachment A's proposed deletion of the exemption found in Section III.B.1.h for projects that are statutorily or categorically exempt from CEQA, as well as the notice exception for these projects, is not required to implement SB 529 and is not within the scope of Phase 1.

7. Proposals to modify GO 131-D, which are not within the scope of Phase 1, should be considered during Phase 2.

8. GO 131-D should be updated to correct outdated references and typographical errors as set forth in Attachment A of this decision.

9. This proceeding should remain open.

O R D E R

IT IS ORDERED that:

1. General Order 131-D is modified as set forth in Attachment A of this decision.

2. Rulemaking 23-05-018 remains open.

This order is effective today.

Dated _____, at Sacramento, California

ATTACHMENT A
and
ATTACHMENT B