

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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

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**OPENING COMMENTS OF THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON
THE PHASE 1 PROPOSED DECISION OF COMMISSIONER DOUGLAS**

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Rulemaking 23-05-018

**OPENING COMMENTS OF THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES ON
THE PHASE 1 PROPOSED DECISION OF COMMISSIONER DOUGLAS**

The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Opening Comments on the Proposed Decision of Commissioner Douglas Addressing Phase 1 Issues (Proposed Decision or PD) in R.23-05-018 (General Order (GO) 131-D Update) mailed on October 26, 2023. CEERT’s Opening Comments on the Proposed Decision are timely filed and served pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Assigned Commissioner’s Scoping Memo and Ruling issued on July 31, 2023 (Scoping Memo), and the instructions accompanying the Proposed Decision.

I.

THE PROPOSED DECISION ERRS IN FAILING TO ACKNOWLEDGE THE APPROPRIATELY FILED AND BROADLY SUPPORTED PHASE 1 JOINT SETTLEMENT AGREEMENT AND MUST BE MODIFIED TO DIRECT THE AMENDMENT OF THE SCOPING MEMO TO TIMELY CONSIDER THE JOINT SETTLEMENT AGREEMENT CONSISTENT WITH RULE 12 IN A PHASE 1b.

A. Applicable Facts and Law

1. January 1 – July 31, 2023

On January 1, 2023, SB 529 went into effect to require the Commission to update GO 131-D as follows: (1) to authorize the Utilities to use the “permit-to-construct” (PTC) process or claim an identified GO 131-D exemption to seek approval to construct an extension or modification of its “existing electric transmission facilities” irrespective of voltage level (PU Code Section 564) and (2) to state that such modification does not require a certificate that the

present or future public convenience and necessity (CPCN) requires or will require its construction (PU Code Section 1001(b)). The clear intent of SB 529 was to streamline the Commission's permitting process in the face of continuing delays in approving much needed transmission infrastructure, especially to meet the State's clean energy and greenhouse gas emission reduction goals. Yet, it was not until more than five (5) months later that the Commission issued an Order Instituting Rulemaking (OIR) (R.23-05-018) to implement SB 529 on May 23, 2023.¹ The OIR also broadened that scope to undertake other changes to GO 131-D, that were generally defined as including cost, environmental, and transparency issues.

In response to the OIR, multiple parties, including CEERT, the Utilities, and environmental organizations, filed Opening and Reply Comments on the OIR on June 22 and July 7, 2023, respectively. These Comments underscored that the purpose of SB 529 was to accelerate transmission permitting by the Commission where it had been bogged down for years and where the necessity for increased transmission infrastructure had grown. Procedural recommendations to appropriately and promptly achieve that goal were provided by many parties, including CEERT, which recommended a phased proceeding that would focus on SB 529 implementation in a manner that would account for revisions needed to the PTC and CPCN to actually improve their efficiency. For CEERT, that Phase 1 implementation of SB 529 was not and is not just a matter of simply giving the Utilities a choice between PTC and CPCN processes to seek Commission approval of modifications or additions to their existing transmission facilities, especially where both processes require streamlining to eliminate unnecessary delays and duplication of environmental documentation.²

¹ Proposed Decision, at p. 3.

² CEERT Reply Comments on OIR (July 7, 2023), at pp. 1-6, as also supported by and with citation to Opening Comments of Southern California Edison Company (SCE) Opening Comments on OIR, California Independent System Operator (CAISO) Opening Comments on OIR, San Diego Gas and

On July 31, 2023, now 7 months after the effective date of SB 529, Commissioner Douglas issued a Scoping Memo in R.23-05-018, which did in fact divide this proceeding into two phases: (1) Phase 1 was to consider changes to GO 131-D to “conform to the requirements of SB 529 and to update outdated references”³ and (2) Phase 2 was to consider all other changes to GO 131-D that fit within a list of issues included within the scope that ranged from cost considerations to CEQA review or “other changes to GO 131-D as needed.”⁴ As to Phase 1, the Scoping Memo determined that (1) the parties’ comments on the OIR were a sufficient record to timely implement SB 529 by the required date of January 1, 2024; (2) “Phase 1 is deemed submitted;” and (3) a Proposed Decision on Phase 1 would issue in 90 days from the date of the Scoping Memo.⁵ The Scoping Memo also directed that Phase 2 would not start until a “Staff Proposal” was issued in “Q1 2024”⁶ and that legislation “passed during the current legislative session” requiring “any resulting changes” to GO 131-D were to be “considered during Phase 2.”⁷

2. August 1, 2023 – September 29, 2023: Phase 1 Joint Settlement Agreement

Promptly after the issuance of the Scoping Memo, CEERT, along with multiple parties, engaged in discussions on the revisions needed to GO 131-D that would appropriately and adequately implement the terms and achieve the intent of SB 529, including addressing shortcomings and unnecessary duplication affecting both the current PTC and CPCN processes. Those concerted efforts yielded a Phase 1 Joint Settlement Agreement in compliance with Article 12 of the Commission’s Rules of Practice and Procedure governing Settlements. That is,

Electric Company (SDG&E) Opening Comments on OIR, and Pacific Gas and Electric Company (PG&E) Opening Comments on OIR.

³ Scoping Memo, at p. 3.

⁴ *Id.*, at p. 4.

⁵ *Id.*, at p. 6.

⁶ *Id.*, at p. 7.

⁷ *Id.*, at p. 6.

the Settling Parties, before signing the settlement agreement, held an appropriately noticed Settlement Conference with all parties to R.23-05-018 on September 20, 2023; incorporated input from that meeting to a final Phase 1 Settlement Agreement signed by multiple parties, including CEERT, and representing a broad spectrum of stakeholders; and filed a Joint Motion for its adoption on September 29, 2023.

This Joint Settlement Agreement represents multiple, holistic changes to GO 131-D that will improve the efficiency of the Commission’s permitting processes and avoid unnecessary duplication by accelerating that process without sacrificing any of its required environmental review and documentation. By its terms, the Joint Settlement Agreement fully complies with the requirements for proposed settlements pursuant to Rule 12.1(a) and certainly, as emphasized by the Joint Motion for its Adoption, is consistent with “Commission decisions on settlements, which express the strong public policy favoring settlement of disputes if they are fair and reasonable in light of the whole record.”⁸

Notably, the Settling Parties also simultaneously filed a second Joint Motion (Joint Motion 2) to modify the Scoping Memo, set aside submittal of Phase 1 to consider the Joint Settlement Agreement, and shorten the time for comments on the settlement proposal was also filed on September 29, 2023. Joint Motion 2 states, among other things: “The Moving Parties seek this relief so that the Commission may consider a Phase 1 settlement agreement that would implement significant streamlining of the Commission’s GO131-D permitting processes beginning January 1, 2024, and thus advance construction of electric infrastructure needed to meet California’s energy transition goals and reduce ratepayer costs.”⁹

⁸ Joint Motion for Adoption of Settlement Agreement, at p. 16, citing D.88-12-083 (30 CPUC 2d 189, 221-223) and D.91-05-029 (40 CPUC 2d, 301, 326).

⁹ Joint Motion to Set Aside Submission, et al., at p. 1.

3. September 30, 2023 – November 14, 2023

No Ruling was issued or has been issued on either of these Joint Motions since their filing in September. Instead, on October 10, 2023, Assigned ALJ Park responded to a “procedural request” on comment due dates by stating: “Pursuant to Rule 12.2 of the Commission’s Rules of Practice and Procedure, comments on proposed settlements are due within 30 days of the date the motion for adoption of settlement was served and reply comments are due within 15 days after the last day for filing comments...[with] no modifications to the Rule 12.2 deadlines in this proceeding.” A later procedural email was sent on October 30, 2023, addressing the treatment of confidential information in such comments, but made no ruling, again, on either motion.

To that end, Comments and Reply Comments on the Joint Settlement Agreement were filed on October 30 and November 14, 2023, respectively. As of November 14, 2023, pursuant to Rule 12, the Joint Settlement Agreement, which also demonstrated timing urgency for its consideration,¹⁰ is now before the Commission to determine “whether the settlement is reasonable in light of the whole record, consistent with law, and in the public interest”¹¹ and whether material issues of contested facts exist requiring that a hearing should first be held in doing so.¹²

4. Phase 1 Proposed Decision

On October 26, 2023, the Proposed Decision of Commissioner Douglas was issued. While issued before Comments on the Joint Settlement Agreement were filed, the due dates of October 30 and November 14, 2023, would have been known at that time by application of the Commission rules and the procedural direction given by ALJ Parks.

¹⁰ Rule 12.1(c).

¹¹ Rule 12.1(d).

¹² Rule 12.3.

Yet, neither the Joint Settlement Agreement nor either of its accompanying motions is referenced at all in the Proposed Decision, despite the fact that all of these documents were expressly directed to the issues scoped in Phase 1 – namely, the implementation of SB 529 and its intent to accelerate the Commission’s transmission permitting process. Instead, the Proposed Decision determines that Phase 1 was “submitted” as of the issuance of the Scoping Memo on July 31, 2023, that comments on the OIR “sufficiently addressed the issues identified for Phase 1,” that those issues only included “changes to GO 131-D necessary to conform it to the requirements of SB 529 and the updating of outdated references,” and that Phase 2 would start with “the issuance of a Staff Proposal in the first quarter (Q1) of 2024.”¹³ Asserting that Phase 1 was to be considered on an “expedited basis” to comply with the SB 529 deadline of January 1, 2024, the Proposed Decision acts to revise GO 131-D only to (1) authorize utilities to use the PTC process or claim an exemption for all modifications to existing electrical transmission facilities, (2) but not to preclude utilities to use the “existing processes” (i.e., CPCN) for approval, (3) not to require an existing transmission facility to be operational for SB 529 to apply, and (4) to correct some outdated references or typographical errors in GO 131-D.

B. Needed Modifications to Proposed Decision

While there may have been a deadline to the implementation of SB 529 of January 1, 2024, the Commission has not acted on an “expedited basis” to do so. First, the Commission waited nearly 5 months after the law went into effect on January 1, 2023, to initiate any rulemaking to implement its terms. Second, the Commission has waited more than 3 months additionally after the “record” on which the Scoping Memo indicated it would rely to implement those terms were filed - namely, Opening and Reply Comments on the OIR -- to issue a Proposed Decision that ignores not only those comments, but the broad, holistic efforts of

¹³ Proposed Decision, at p. 5.

multiple parties to affect meaningful reform of GO 131-D consistent with the intent of SB 529 through a Joint Settlement Agreement filed a month before its issuance.

By the accompanying motions, it is clear that the Joint Settling Parties understood the time constraints of implementing SB 529, but also understood the need to ensure reform of GO 131-D that could accelerate the Commission’s transmission permitting process while preserving all necessary assessments of need and environmental review and documentation. As the California Independent System Operator (CAISO) states in its Comments on the Joint Settlement Agreement:

“The CAISO appreciates the initiative taken by the parties to the Joint Motion (Settling Parties) to develop a proposal to update General Order 131 (GO 131-D) to expedite the transmission permitting process. The CAISO strongly supports the reforms suggested in the settlement proposal as a means to meaningfully expedite transmission development while maintaining opportunities for appropriate environmental review.”¹⁴

Yet, the Proposed Decision has elected to ignore the need for such reform and those efforts by failing to undertake any analysis of the legislative history and purpose of SB 529. Further, the Proposed Decision suggests that the Commission does not intend to address the Joint Settlement Agreement pursuant to Rule 12 in concluding that “[p]roposals to modify GO 131-D, which are not within the scope of Phase 1, should be considered in Phase 2”¹⁵ without identifying what those are and, again, by only referencing that Phase 2 will start with a “Staff proposal” to be issued in Q1 2024 with no reference to the Phase 1 Settlement Agreement.¹⁶

The failure of the Proposed Decision to recognize the Joint Settlement Agreement or identify any schedule for its consideration violates Rule 12, with which the Settling Parties, again, have fully complied. That is, by Rule 12, once a compliant Settlement Agreement and

¹⁴ CAISO Comments on Joint Motion for Adoption of Settlement Agreement, at p. 1.

¹⁵ Proposed Decision, Conclusion of Law 7, at p. 14.

¹⁶ Proposed Decision, at p. 5.

responsive comments have been filed, the Commission is obligated to determine whether or not hearings are required to consider the Settlement Agreement if there are material issues of contested fact and, after that hearing, or by law if no hearing is required, determine whether or not the Settlement Agreement should be adopted in the public interest. No schedule to do so is included in the Proposed Decision in Phase 2, which, again, will be based on an unknown “Staff Proposal” that has yet to issue and is not anticipated for many months.

The Proposed Decision must be modified to comply with the law. To do so, at the least, requires the Proposed Decision to be revised to direct that the Scoping Memo for R.23-05-018 is to be amended to adopt a Phase 1b of this proceeding, to be completed in advance of Phase 2, that will consider the Joint Settlement Agreement. Pursuant to Rule 12, that schedule may require evidentiary hearings pursuant to Rule 12.3, if the Commission determines that there are material contested issues of fact. Whether such hearings are needed or not, the Commission must also set a briefing schedule and a date for a Proposed Decision and then final decision on the issue of whether the Joint Settlement Agreement is to be adopted as reasonable and in the public interest pursuant to Rule 12.1(d). Because of the importance of accelerating the Commission’s transmission permitting process through needed reforms to GO 131-D and the urgency of increasing this State’s transmission infrastructure, Phase 1b should be scheduled to conclude with a final decision to be issued no later than Q1 of 2024.

II. CONCLUSION

For the reasons stated above, CEERT strongly urges the Commission to adopt CEERT’s proposed modifications of the Proposed Decision to recognize the Joint Settlement Agreement and the accompanying motions and, at the least, set a schedule to address the Phase 1 Joint Settlement Agreement, which is aimed at achieving the streamlining of the Commission’s

transmission permitting process consistent with the purpose and goal of SB 529, in a Phase 1b of this proceeding to be concluded by Q1 of 2024. These recommendations are included in CEERT's Appendix A (Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs for the Phase 1 Proposed Decision), attached and incorporated by reference hereto.

Dated: November 14, 2023

Respectfully submitted,

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APPENDIX A
**CEERT PROPOSED MODIFICATIONS OF THE FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS
OF THE PHASE 1 PROPOSED DECISION OF COMMISSIONER DOUGLAS**

The Center for Energy Efficiency and Renewable Technologies (CEERT) proposes the following modifications to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs of the Phase 1 Proposed Decision of Commissioner Douglas mailed in R.23-05-018 (GO 131-D Update) on October 26, 2023 (Proposed Decision).

Please note the following:

- A page citation to the Proposed Decision is provided in brackets for any Finding of Fact, Conclusion of Law, or Ordering Paragraph for which a modification is proposed.
- Added language is indicated by **bold type**; removed language is indicated by **bold strike-through**.
- A new or added Finding of Fact, Conclusion of Law, or Ordering Paragraph is labeled as “**NEW**” in **bold underscored** capital letters.

PROPOSED FINDINGS OF FACT

NEW FINDING OF FACT: On September 29, 2023, a Joint Motion for Adoption of Phase 1 Settlement Agreement was filed. The Joint Motion and the Settlement Agreement, which has been signed by multiple and diverse parties, complies with Article 12 (Settlements) of the Commission’s Rules of Practice and Procedure.

NEW FINDING OF FACT: Comments and Reply Comments on the Phase 1 Settlement Agreement have been timely filed and the Phase 1 Settlement Agreement is now before the Commission for approval if it is determined to be reasonable in light of the whole record, consistent with law, and in the public interest.

PROPOSED CONCLUSIONS OF LAW

NEW CONCLUSION OF LAW: Because the Phase 1 Settlement Agreement fully complies with Article 12 and is directed to reforms of GO 131-D to accelerate and streamline the Commission’s transmission permitting processes consistent with the intent

of SB 529, it should be considered in a Phase 1b of this proceeding prior to the start of Phase 2.

7. [14] **Other p**Proposals to modify GO 131-D, which are not within the scope of Phase 1, should be considered during Phase 2.

PROPOSED ORDERING PARAGRAPHS:

NEW ORDERING PARAGRAPH: The Phase 1 Settlement Agreement, filed by Joint Motion for Adoption on September 29, 2023, is fully compliant with Article 12 and is now before the Commission for disposition with the filing of Opening Comments on October 30, 2023, and Reply Comments on November 14, 2023. To that end, an Amended Scoping Memo shall be issued within 15 days of the effective date of this decision to add a Phase 1b to this proceeding with a schedule for any required hearings or briefs to be completed with the issuance of a final decision by Q1 2024. Phase 2 of this proceeding shall commence after the issuance of the final decision in Phase 1b.