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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  
(Filed May 18, 2023)

**THE PROTECT OUR COMMUNITIES FOUNDATION  
APPLICATION FOR REHEARING OF D.23-12-035**

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Pursuant to California Public Utilities Code<sup>1</sup> section 1731, subdivision (b)(1) and Rule 16.1 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure (Rules), The Protect Our Communities Foundation (PCF) submits this Application for Rehearing of Commission Decision D.23-12-035, *Decision Addressing Phase 1 Issues* (Decision).<sup>2</sup> This application is timely filed within 30 days of December 18, 2023, the date the Commission issued the Decision.<sup>3</sup>

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<sup>1</sup> All statutory references are to the Public Utilities Code unless otherwise specified.

<sup>2</sup> D.23-12-024, *Decision Addressing Phase 1 Issues* (December 14, 2023).

<sup>3</sup> Pub. Util. Code, § 1731, subd. (b); *see also* Cal. Code Regs., tit. 20, § 16.1, subd. (a).

## I. INTRODUCTION

In an attempt to implement changes to General Order 131-D (GO 131) required by Senate Bill (SB) 529,<sup>4</sup> the Decision inserts a clause that guts the requirements of SB 529 and therefore constitutes legal error. Instead of complying with SB 529, the Decision authorized the permit to construct (PTC) process only “in lieu of complying with Section III.A”<sup>5</sup>- which constitute the Certificate of Public Convenience and Necessity (CPCN) requirements applicable to “major electric transmission line facilities which are designed for immediate or eventual operation at 200kV or more.”<sup>6</sup> The PTC process may not be limited to only Section III(A) projects, but rather it must be authorized for all extensions, expansions, upgrades, or other modifications of existing electrical transmission facilities “irrespective of whether the electrical transmission facility is above a 200-kilovolt voltage level.”<sup>7</sup>

Moreover, no reason exists to grant authorization to the Utilities to use a PTC process “in lieu of complying” with a CPCN requirement that has been eliminated. Here, the very same bill that required the PTC process to be authorized “irrespective of voltage,” exempted “[t]he

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<sup>4</sup> 2021 Bill Text CA S.B. 529.

<sup>5</sup> D.23-12-035, Attachment B, p. 2 (“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.”).

<sup>6</sup> GO 131, Section III.A (first paragraph).

<sup>7</sup> SB 529, Legislative Counsel’s Digest; Pub. Util. Code, § 564 (“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.”).

extension, expansion, upgrade, or other modification of an existing electrical transmission facility, including transmission lines and substations” from CPCN requirements.<sup>8</sup>

To render the Decision and GO 131 consistent with SB 529, this application for rehearing should be granted and the clause “In lieu of complying with Section III.A” should be deleted from the Decision and from GO 131.

## II. STANDARD OF REVIEW

Rule 16.1 requires an application for rehearing to “set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous,” and its purpose “is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.”<sup>9</sup> The Commission fails to proceed in the manner required by law when it takes actions which contradict Legislative directives,<sup>10</sup> by “failing to comply with required procedures, applying an incorrect legal standard, or committing some other error of law.”<sup>11</sup> Findings are required by Section 1705 and by decisional law,<sup>12</sup> and must be supported by substantial evidence in the record.<sup>13</sup>

The application of the above-referenced legal requirements requires that D.23-12-035 be corrected to faithfully implement the changes required by SB 529 by deleting the clause “In lieu of complying with Section III.A” and authorizing the PTC process for extensions, expansions, upgrades, or other modifications of existing electrical transmission facilities irrespective of

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<sup>8</sup> Cal. Pub. Util. Code § 1001(b).

<sup>9</sup> Rule 16.1, subd. (c); Cal. Code Regs., tit. 20, § 16.1, subd. (c).

<sup>10</sup> *Southern California Gas Co. v. Public Utilities Com.* (1979) 24 Cal.3d 653, 659 (Commission lacks authority to contradict or disregard specific legislative directives).

<sup>11</sup> *Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 99.

<sup>12</sup> Pub. Util. Code, § 1705 (“the decision shall contain, separately stated, findings of fact and conclusions of law by the Commission on all issues material to the order or decision”); Pub. Util. Code, § 1757, subd. (a)(3); *California Manufacturers Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 251, 258-259.

<sup>13</sup> Pub. Util. Code, § 1757, subd. (a)(4).

voltage level. The Decision constitutes legal error because it is inconsistent with SB 529 and sections 564 and 1001(b).

**III. THE DECISION VIOLATES SB 529 MANDATES BECAUSE THE OPENING CLAUSE OF THE ADDED PARAGRAPH LIMITS APPLICATION OF THE PTC PROCESS TO PROJECTS OF 200KV OR MORE THAT REQUIRE A CPCN.**

The Decision erroneously and arbitrarily includes the opening clause “In lieu of complying with Section III.A,” which creates significant potential to cause confusion about whether and when the Commission will exercise its duty to regulate the Utilities. To render D.23-12-035 consistent with SB 529 and sections 564 and 1001(b), the Decision should be corrected to remove the unnecessary and erroneous clause.

Conclusion of Law 3<sup>14</sup> explains that Section III.A is being modified “[t]o reflect a utility’s choice in compliance options and be consistent with SB 529,”<sup>15</sup> but the paragraph, as written, thwarts both of these goals. Instead, the opening clause states that the PTC process applies only in lieu of complying with the section of GO 131 that on its face applies to “major electric transmission line facilities which are designed for immediate or eventual operation at 200kV or more.”<sup>16</sup> Far from applying to projects “irrespective of whether the electrical transmission facility is above a 200-kilovolt voltage level” as legally mandated,<sup>17</sup> the opening clause renders the changes applicable only to 200kV + facilities and thus renders the remainder of the added paragraph meaningless.

Moreover, no reason exists to grant authorization to the Utilities to use a PTC process “in lieu of complying” with a non-existent CPCN requirement. In SB 529, the Legislature exempted

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<sup>14</sup> D.23-12-035, p. 19 (Conclusion of Law 3).

<sup>15</sup> D.23-12-035, p. 19 (Conclusion of Law 3).

<sup>16</sup> GO 131, Section III.A (first paragraph).

<sup>17</sup> Pub. Util. Code, § 564.

“[t]he extension, expansion, upgrade, or other modification of an existing electrical transmission facility, including transmission lines and substations” from requiring a CPCN.<sup>18</sup>

While the added paragraph may have been intended to authorize the Utilities to utilize the PTC process for more projects, the opening clause of the added paragraph limits its application to only those projects which would otherwise require a CPCN and are 200 kV or more. Section 1001(b) exempts certain projects from requiring a CPCN, and Section 564 requires the PTC process to apply to those projects irrespective of voltage. The changes made to Section III.A are not consistent with Sections 564 and 1001(b) because the opening clause limits its application to projects of 200 kV or more where compliance with CPCN requirements is necessary. To render GO 131 consistent with SB 529’s legal mandates, the erroneous and arbitrary limiting clause should be removed.<sup>19</sup>

Removing the opening clause of the added paragraph would not substantively change the meaning of the paragraph added to Section III.A. Much of the language added by the Decision is found in Section 564.<sup>20</sup> In contrast, the added clause is found nowhere in SB 529, section 564, or section 1001(b). Without the erroneous and unnecessary clause, the new paragraph would maintain its meaning, and the paragraph would read as follows: “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

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<sup>18</sup> Pub. Util. Code § 1001(b).

<sup>19</sup> *S. Cal. Gas Co. v. Pub. Util. Com.* (1979) 24 Cal.3d 653, 659 (Commission lacks authority to disregard specific provisions in legislation); *N. California Power Agency v. Pub. Util. Com.* (1971) 5 Cal.3d 370, 380 (“The Commission may and should consider *sua sponte* every element of public interest affected by facilities which it is called upon to approve. It should not be necessary for any private party to rouse the Commission to perform its duty, and where a private party has so clearly demonstrated the adverse impact of the proposed facilities, the Commission certainly cannot ignore the problem...”).

<sup>20</sup> 2021 Bill Text CA S.B. 529.



within existing transmission easements, rights of way, or franchise agreements, irrespective of whether the electrical transmission facility is above a 200-kV voltage level.”

#### **IV. THE COMMISSION MUST ADHERE TO LEGISLATIVE DIRECTIVES AND MUST OVERSEE THE UTILITIES’ CONSTRUCTION PROJECTS.**

The Legislature in adopting SB 529 did not intend to expedite and eliminate the Commission’s regulatory authority over the large swaths of projects.<sup>21</sup> In addition to the plain language of SB 529 requiring the Commission to acknowledge and exercise its regulatory authority over projects irrespective of voltage, the August 31, 2022 Senate Floor analysis of SB 529 further demonstrates that the Legislature included protections within SB 529 to ensure that the Commission exercised its regulatory authority over the Utilities’ construction projects:

Nonetheless, the need to ensure adequate review of transmission projects, including upgrades, extensions, expansions, or modifications to existing approved transmission lines must be done with considerable consideration of the potential impacts, including those to landowners, communities, and ecosystems.<sup>22</sup>

Moreover, when adopting SB 529, the Legislature was well aware that existing law “[e]stablishes the CPUC has regulatory authority over public utilities, including electrical corporations.”<sup>23</sup> SB 529 did not purport to amend any of the provisions of the Public Utilities Code which require the Commission to supervise public utilities and to ensure rates are just and reasonable.<sup>24</sup> Rather, the Legislature’s desire to shorten the time to review the Utilities’ projects was accompanied by clear direction that the Commission must exercise its authority over projects irrespective of voltage via the PTC process; and the Legislature made explicit that the

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<sup>21</sup> See e.g. Pub. Util. Code, § 701.

<sup>22</sup> Senate Floor Analysis of SB 529 (August 31, 2022), p. 4 (available at [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=202120220SB529](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB529)).

<sup>23</sup> Senate Committee on Energy, Utilities and Communications analysis, p. 1 (available at [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=202120220SB529](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB529)).

<sup>24</sup> Pub. Util. Code, §§451, 454, 701, 747.

Commission was to authorize the PTC process for projects “irrespective of whether the electrical transmission facility is above a 200-kilovolt voltage level.”<sup>25</sup>

## V. CONCLUSION

PCF respectfully requests this application for rehearing be granted. The opening clause “In lieu of complying with Section III.A” renders the decision inconsistent with Legislative mandates in sections 564 and 1001(b) and SB 529. The clause should be deleted and the PTC process should be authorized for all extensions, expansions, upgrades, and other modifications of existing electrical transmission facilities irrespective of voltage.

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<sup>25</sup> SB 529, Legislative Counsel’s Digest; Pub. Util. Code, § 564.