

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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**REPLY COMMENTS OF THE
CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES
ON THE ADMINISTRATIVE LAW JUDGES' RULING OF DECEMBER 18, 2023**

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For: CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES

February 26, 2024

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OF THE STATE OF CALIFORNIA

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Rulemaking 23-05-018

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ON THE ADMINISTRATIVE LAW JUDGES' RULING OF DECEMBER 18, 2023**

The Center for Energy Efficiency and Renewable Technologies (CEERT) respectfully submits these Reply Comments pursuant to the Administrative Law Judges' Ruling on Phase 2 Issues issued in R.23-05-018 (General Order (GO) 131-D Update) on December 18, 2023 (12-18-2023 ALJs' Ruling). CEERT's Reply Comments are timely filed and served pursuant to the Commission's Rules of Practice and Procedure, the 12-18-2023 ALJs' Ruling, and the ALJ's Ruling issued on January 10, 2024, which granted a Joint Motion for an extension of time to file these Reply Comments to today, February 26, 2024 (1-10-2024 ALJ's Ruling).

I.

**THE MAJORITY OF THE PARTIES FILING OPENING COMMENTS
ON THE 12-18-2023 ALJ'S RULING SUPPORT CONSIDERATION AND
ADOPTION OF THE JOINT SETTLEMENT AGREEMENT IN PHASE 2.**

In its Opening Comments on the 12-18-2023 ALJ's Ruling, CEERT urged prioritized consideration in Phase 2 of the Joint Settlement Agreement reached by a broad spectrum of 18 parties, including CEERT, the Utilities, other electric service utilities and providers, environmental interests, industry, and communities. The Joint Settlement Agreement fully complies with Article 12 ("Settlements") of the Commission's Rules of Practice and Procedure, was filed by Joint Motion for Adoption on September 29, 2023, and was the subject of party opening and reply comments filed on October 30, 2023, and November 14, 2023, respectively.

It remains CEERT’s position that this thorough and thoughtful agreement best achieves the purpose of Senate Bill (SB) 529¹ to accelerate transmission permitting by the Commission where it has been bogged down for years, but where the necessity for increased transmission infrastructure has grown.² For CEERT, as detailed in its Opening Comments on the 12-18-2023 ALJ’s Ruling, full implementation of SB 529 requires not only giving the Utilities a choice between the GO 131-D permit to construct (PTC) and certificate of public convenience and necessity (CPCN) processes in seeking Commission approval of transmission modifications or additions as authorized by the Phase 1 Decision (D.23-12-025), but also streamlining both processes to eliminate unnecessary delays and duplicative documentation while preserving environmental protections.³

Like CEERT, the majority of parties filing Opening Comments in response to the 12-18-2023 ALJ’s Ruling also support consideration of the Joint Settlement Agreement in Phase 2. Thus, of the 12 parties filing Opening Comments, 9 parties, including CEERT, San Diego Gas and Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), Environmental Defense Fund (EDF), Coalition of California Utilities Employees (CUE), Large-Scale Solar Association (LSA), American Clean Power-California (ACP), and the City of Long Beach (through its Board of Harbor Commissioners)

¹ SB 529 (Hertzberg; Stats. 2022, ch. 357) added Public Utilities (PU) Code Section 564, which, among other things, required the Commission to update GO 131-D (governing energy infrastructure permitting) 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.” (D.23-12-035, Conclusion of Law 1, at p. 19.)

² See, e.g., 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 Electric Company (SDG&E) Opening Comments on OIR, and Pacific Gas and Electric Company (PG&E) Opening Comments on OIR.

³ CEERT Opening Comments on 12-18-2023 ALJ’s Ruling, at pp. 2-7.

(Long Beach) recommend action by the Commission to address and adopt terms of the Joint Settlement Agreement without modification.⁴

The three remaining parties filing Opening Comments on the 12-18-2023 ALJ's Ruling include Sierra Club, Public Advocates Office (Cal Advocates), and Acton Town Council. In its Opening Comments, Sierra Club states only that it "previously filed comments" on the Joint Settlement Agreement on October 30, 2023, and offers "no further comment related to the proposed settlement agreement at this time."⁵ Public Advocates Office, while it had the opportunity to comment fully on the Joint Settlement Agreement, now states that it "limited its comments regarding the settlement to Phase 1 issues" and that "non-Phase 1 issues" are "still live and should be considered in Phase 2."⁶ Of the three, only the Acton Town Council asks that the Joint Settlement Agreement "should be set aside and accorded no weight."⁷

Clearly, the Joint Settlement Agreement continues to represent a broad consensus by parties as to the revisions to GO 131-D needed that can accomplish the Commission's priority goals for Phase 2 identified in D.23-12-035 as being to "streamline the permitting process" in a manner that "can be quickly implemented to enable the rapid deployment of transmission infrastructure projects need to achieve the state's clean energy goals and ensure reliability."⁸ To that end, CEERT also continues to strongly recommend that any path forward in this proceeding be based on a transparent and "fair public process applicable to parties and staff" needed to

⁴ CEERT Opening Comments on 12-18-2023 ALJ's Ruling, at pp. 1-7; SDG&E Opening Comments on 12-18-2023 ALJ's Ruling, at pp. 1-2; PG&E Opening Comments on 12-18-2023 ALJ's Ruling, at pp. 8-9; SCE Opening Comments on 12-18-2023 ALJ's Ruling, at pp. 10-11; EDF Opening Comments on 12-18-2023 ALJ's Ruling, at pp. 1-3; CUE Opening Comments on 12-18-2023 ALJ's Ruling, at pp. 3-4; LSA Opening Comments on 12-18-2023 ALJ's Ruling, at pp. 4-5; ACP Opening Comments on 12-18-2023 ALJ's Ruling, at pp. 4-5; Long Beach Opening Comments on 12-18-2023 ALJ's Ruling, at pp. 4-5.

⁵ Sierra Club Opening Comments on 12-18-2023 ALJ's Ruling, at p. 8.

⁶ Cal Advocates Opening Comments on 12-18-2023 ALJ's Ruling, at pp. 11-12.

⁷ Acton Town Council Opening Comments on 12-18-2023 ALJ's Ruling, at p. 16.

⁸ D.23-12-035, at p. 18.

achieve a “fully developed” Phase 2 “record” well before the issuance of the “Staff Proposal” in the “Second Quarter of 2024.”⁹

The need to adopt such a process has now been underscored by Cal Advocates’ Opening Comments on the 12-18-2023 ALJ’s Ruling that recommend adoption of wholly “new processes” claimed to “accelerate the transmission project development process” that have not been previously disclosed in this proceeding and that also require a wholesale revision of the Assigned Commissioner’s Scoping Memo and Ruling issued in this proceeding on July 31, 2023. CEERT’s concerns and issues with this new development are addressed in the following section.

II.
**CAL ADVOCATES’ OPENING COMMENTS PROPOSE SWEEPING REVISIONS
TO BOTH THE SCOPE OF THIS PROCEEDING AND THE
COMMISSION’S TRANSMISSION PERMITTING PROCESSES.**

The 12-18-2023 ALJ’s Ruling invited comments on questions intended to “inform the Staff Proposal and develop a record on Phase 2 issues.”¹⁰ The questions were limited to definitions of specific terms in GO 131-D, modifications to the Joint Settlement Agreement, and “any additional issues or proposals that the Commission should consider in Phase 2 that have not already been raised in the settlement agreement or other party comments.”¹¹

As to “additional issues or proposals,” most comments addressed that question narrowly and in keeping with the Scoping Memo and D.23-12-035, except for Cal Advocates. Instead, in Cal Advocates’ Opening Comments, from pages 12 through 20 and further detailed in a 13-page single-spaced Attachment A, Cal Advocates unveils a “Proposal for the Prioritization and Streamlining of Policy-Driven Transmission Projects in R.23-05-018” that is then embedded in extension revisions to GO 131-D in an Attachment B.

⁹ D.23-12-035, at p. 17; 1-10-2024 ALJ’s Ruling, at p. 3.

¹⁰ 12-17-2023 ALJ’s Ruling, at p. 1.

¹¹ *Id.*, at pp. 2-3.

On a procedural basis, while the questions posed by the 12-18-2023 ALJ’s Ruling did not rule out new Phase 2 “proposals,” that ruling certainly did not amend the Scoping Memo in a manner that is advocated by Cal Advocates to accomplish adoption and implementation of its complex proposal. Specifically, Cal Advocates’ proposes a “prioritization and expedited permitting process” that would apply to “only” 27 transmission projects approved by CAISO in its 2021-2022 and 2022-2023 Transmission Plans that must meet Cal Advocates’ definition of being “policy-driven projects” and can only include a “project” identified by a utility if it is “needed to support the policy-driven projects.”¹²

In a clear recognition of its novel definitions, complex administration, selective approach to transmission projects to be prioritized, and its very different approach to present permitting practices and rules, Cal Advocates also proposes a whole new procedural approach for this proceeding to implement its proposal that is certainly not part of the Scoping Memo. Instead, as recommended by Cal Advocates, the Commission would need to hold a pre-hearing conference followed by party comments and then issue a “ruling to establish the scope of Phase 2.”¹³ Then this different “scoping memo would create two tracks for Phase 2,” the first of which (“Track A”) would address “[d]evelopment and adopting of a methodology to prioritize policy-drive transmission projects (Prioritization Framework)” and identify “a set of CAISO-approved policy drive transmission projects” eligible for this treatment, with “reliability transmission projects” only to be included in this prioritization process if the electric utility can establish that such a project “supports the prioritized policy-driven project.”¹⁴

A Track B would then be established by the “scoping memo” to address a myriad of complex issues to facilitate this prioritization process, which include multiple steps that require

¹² Cal Advocates Opening Comments on 12-18-2023 ALJ’s Ruling, Attachment A, at pp. A-1 – A-2.

¹³ *Id.*, at p. A-3.

¹⁴ *Id.*, at p. A-3.

over 4 pages to describe. Track B will further require three Commission decisions to complete from one that first approves “a Prioritization Framework to rank and identify projects for prioritization,” to one designating “a list of Prioritized Projects,” and concluding with one that “certifies the environmental documents and issues a PTC for each of the Prioritized Projects.”¹⁵ Cal Advocates’ proposal also includes Cal Advocates’ ”Suggested Framework for Track A” and a timetable to accomplish all of these steps that covers nearly 3 years.¹⁶ Nowhere in Cal Advocates’ proposal is there any mention of the Phase 2 “Staff Proposal,” which is called for in the Scoping Memo and D.23-12-018, which is to be “better inform[ed]” by the comments requested by the 12-18-2023 ALJ’s Ruling, and which is now due in the “second quarter” of 2024.¹⁷

CEERT is still in the process of seeking to understand Cal Advocates’ proposal, but can confirm that, as a party to this proceeding, no outreach was ever made by Cal Advocates to CEERT to discuss or explain the Cal Advocates’ proposal described in its Opening Comments and contained in Attachment A before being filed on February 3, 2024. Further, CEERT received no notice of any meeting, like the Settlement Conference for the Joint Settlement Agreement, where all parties could participate and provide input on Cal Advocates’ proposal.

Of note, the Settling Parties in filing the Motion for Adoption of the Joint Settlement Agreement also filed a motion for a minor amendment of the Scoping Memo to permit a timetable to allow for consideration of that agreement that was never addressed by the Commission despite the broad support for an agreement that met all of the Commission’s settlement rules. No such motion has even been filed by Cal Advocates to support its complete

¹⁵ Cal Advocates Opening Comments on 12-18-2023 ALJ’s Ruling, Attachment A, at pp. A-5 – A-8.

¹⁶ *Id.*, at p. A-9.

¹⁷ Scoping Memo, at p. 8; D.23-12-035, at pp. 5, 18; 12-18-2023 ALJ’s Ruling, at p. 1; 1-10-2024 ALJ’s Ruling, at p. 1.

re-write of this proceeding's scope and schedule established for this proceeding in the Scoping Memo issued on July 31, 2023, which has not been altered by any Commission decision or ruling since.

It is also wholly unclear to CEERT, just based on all the "steps" and time required to undertake Cal Advocates' proposal, how that proposal meets any of the streamlining goals for transmission permitting set by statute and the Commission. Instead, Cal Advocates' proposal could be counterproductive to reducing project permitting delays if it were to be adopted.

It is also not clear to CEERT what the costs of undertaking this process will be, with those costs combined with the cost of delay in building needed transmission resources ultimately being borne by ratepayers. Cal Advocates' proposal also does not take into account whether the Commission has the resources to undertake the requirements that would be imposed by Cal Advocates' proposal, including any simultaneous CEQA review of individual projects.

Questions regarding Cal Advocates' proposal also certainly exist as to the disparate and selective treatment of "policy-driven projects" versus "reliability projects," including whether and to what extent Cal Advocates analyzed and took into account what it may mean for various regions of the State, including the Central Valley or San Jose, to delay consideration of "reliability projects" needed in those areas. From CEERT's perspective, these projects should be prioritized as much as, or even more than, projects limited to those that meet Cal Advocates' definition of "policy-driven" or that support Cal Advocates' defined "policy driven projects." It, therefore, remains CEERT's position that adoption now of the direct streamlining proposals made by the Joint Settlement Agreement are going to do far more to address the *immediate need* to permit transmission projects that have already been approved by CAISO as a whole rather

than embarking on the time-consuming, unilaterally selective path that Cal Advocates has proposed.

Finally, in its Opening Comments on the 12-18-2023 ALJ's Ruling, CEERT had already raised concerns about the development of a Phase 2 "record" based on both the Scoping Memo and D.23-12-035. That is, by D.23-12-035, the Commission states that a "record on Phase 2 issues has not yet been fully developed" and uses that as a basis to deferring consideration of the Joint Settlement Agreement "proposals" to the Phase 2 "Staff Proposal," now delayed to "second quarter of 2024."¹⁸ While all Comments filed to date in R.23-05-018 may be part of the "record" on which the Staff may rely in the "Staff Proposal," it is not clear what other "data and information" outside of formal filings that Commission Staff intends to or will rely on in its Staff Proposal, where the development of that proposal by Staff is not transparent or subject to party discovery pursuant to Rule 10.1 of the Commission's Rules of Practice and Procedure.¹⁹

That concern now extends to how Cal Advocates' proposal will be treated or possibly will even displace the Staff Proposal if adopted. For these reasons, especially to preserve the due process rights of all parties to the proceeding, CEERT continues to recommend, without altering the proceeding's scope and with only one addition to the schedule that is not intended to delay a Phase 2 Proposed Decision, that, if the Joint Settlement Agreement is not first considered and adopted in Phase 2, then:

"[A]t the very least, the Assigned Commissioner should issue a ruling (1) identifying the present 'record' on which Phase 2 issues will be decided, (2) authorizing data requests to be posed to Staff by any party to R.23-05-018 regarding the Staff Proposal, including data on the Commission's administration of its PTC and CPCN permitting processes pursuant to GO 131-D or for any data requests issued and responses received by Staff for that purpose, and (3) scheduling a Workshop, no later than 60 days from today, to fully inform all parties of the 'record' that the Staff has developed or is or will be relying on to

¹⁸ D.23-12-035, at pp. 17-18; 1-10-2024 ALJ's Ruling, at p. 3.

¹⁹ CEERT Opening Comments on 12-18-2023 ALJ's Ruling, at pp. 7-9.

address Phase 2 issues and any preliminary revisions to GO 131-D that Staff is considering and to permit input by all parties in response to resolve questions or aid in the development of that Phase 2 record.”²⁰

In contrast, Cal Advocates’ proposal will result in a wholesale alteration of the scope, timing, and manner in which R.23-05-018 will move forward that is dependent wholly on one party’s (Cal Advocates’) new, novel, and time-consuming proposal that appears to eliminate the “Staff Proposal.” If that radical change in this proceeding is going to be considered by the Commission, such a step should only be taken *after* a full *en banc* hearing is held before all 5 Commissioners to permit all parties to present their positions on how best to streamline transmission permitting to yield the robust transmission infrastructure needed by California now to advance both its climate change goals and achieve system reliability, inclusive of consideration of the Joint Settlement Agreement.

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Respectfully submitted,

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²⁰ CEERT Opening Comments on 12-18-2023 ALJ’s Ruling, at p. 10.