



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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

Rulemaking 23-05-018  
(Filed May 18, 2023)

**REPLY COMMENTS OF RURAL COUNTY REPRESENTATIVES OF CALIFORNIA  
ON PHASE 2 ISSUES**

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Dated: February 26, 2024

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**I. Introduction**

Pursuant to Rule 6.2 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, the Rural County Representatives of California (“RCRC”) submits comments to the *Administrative Law Judge’s Ruling Inviting Comment on Phase 2 Issues* (“Ruling”) issued on December 18, 2023 and revised on January 10, 2024 to extend time for parties to file comment. RCRC is an association of forty rural California counties, and our Board of Directors is comprised of an elected Supervisor from each of our member counties.

**II. Comments**

RCRC is pleased to offer these Reply Comments. We share the overarching objectives of many parties interested in updating GO 131-D to bring utility infrastructure online faster to meet existing and projected energy needs. We agree with the City of Long Beach that electrification efforts could increase system vulnerability to power outages, thereby reinforcing the overwhelming need to ensure energy reliability.<sup>1</sup> Updating GO 131-D is one important component to meet those needs. We agree with Environmental Defense Fund (EDF) that the Commission should continue its phased approach to updating

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<sup>1</sup> R.23-05-018, *Opening Comments of The City of Long Beach, California, a Municipal Corporation, Acting By and Through Its Board of Harbor Commissioners, on Administrative Law Judges’ Ruling Inviting Comments on Phase 2 Issues in Order Instituting Rulemaking to Update and Amend Commission General Order 131-D*, page 4.

GO 131-D to act quickly on some of the simpler, straightforward issues while taking time for a more deliberative approach on the more complex or controversial topics.<sup>2</sup>

While RCRC generally agrees with many of the parties on how certain terms should be defined and on one provision included in the Settlement Agreement, we strongly object to several additional suggestions raised by the utilities for inclusion in the GO 131-D update.

Given the newness of the technology, proximity to sensitive populations and fuel sources, and significant risks in the event of an emergency, RCRC has very serious concerns about the Commission's efforts to preempt local authority over utility battery energy storage facilities. RCRC even more strongly objects to utility suggestions that facilities under 50MW or 100MW do not need any review by the Commission. Before continuing discussions about preempting local regulation of utility battery storage facilities, we believe that much more work is needed to protect public safety through updating GO 167, integrating the requirements of last year's SB 38 (Laird), and establishing safety planning and review protocols for facilities that are not subject to the Permit to Construct process.

Regarding the utility suggestion to preempt local regulation of communications infrastructure, it is not clear that changes to GO 131-D would bring about the relief from local regulation of aesthetics and height restrictions they are seeking. RCRC is concerned the proposal is broader in scope than utilities suggest and seeks greater preemption of local authority than currently exists for local regulation of communications providers. RCRC objects to any efforts to treat utility communications infrastructure differently than what is already the framework for regulating wireless communications providers, especially in the public right of way.

RCRC strongly opposes SCE's proposed preemption of utility vegetation management activities because that proposal is overly broad and could exacerbate serious public safety issues many counties have faced over the last several years. That being said, we have included an alternative to SCE's proposal that addresses their underlying concerns and look forward to working toward a more refined approach to resolving the issues they face. If the Commission is inclined to address this issue, RCRC strongly suggests that it conduct a multi-agency, multi-stakeholder workshop to thoroughly discuss these issues and resolve concerns.

Finally, RCRC objects to the scope of relief suggested by SCE to resolve local disputes over utility operations and maintenance activities, including vegetation management. While SCE attempted to

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<sup>2</sup> R.23-05-018, *Comments of Environmental Defense Fund on Phase 2 Issues*, February 5, 2024, pages 1-2.

combine its suggestions with a previous proposal by the Commission, the result is a poor fit and ultimately leaves local agencies with no opportunity for redress of significant public safety issues.

**A. Definitions of Terms**

California must significantly increase the pace and scale of infrastructure upgrades to meet anticipated demand and to address the existing system capacity limitation that constrain local population growth and economic development. RCRC generally agrees with many parties<sup>3</sup> that the Legislature used common, plain-language terms in Senate Bill 529 and its overarching goal was to increase the pace and scale with which cost-effective, environmentally responsible transmission projects are brought online.

Given the significant backlog in construction of vital grid improvements, we disagree with Sierra Club’s suggestion that the term “existing electrical transmission facilities” should be limited to those facilities that have been operational for at least five years.”<sup>4</sup> We fear such a restriction will put Californians even further away from where our grid needs to be to meet the state’s clean energy and reliability goals. Similarly, we urge the Commission to take great care in setting any distance thresholds for what constitutes a transmission line expansion or extension.<sup>5</sup> Too short of a threshold will slow the development of vital transmission projects. On the other hand, the Public Advocates Office (Cal Advocates) appropriately cautions against lessened scrutiny under the Permit to Construct (PTC) process for major transmission line projects that are several dozen to over one hundred miles long.<sup>6</sup> It is less clear just what distance limits will facilitate system growth while adequately protecting ratepayers.

**B. Settlement Agreement**

RCRC is not a signatory to the Settlement Agreement; however, we appreciate the thought that went into it and agree with Environmental Defense Fund (EDF) that it would be prudent for the Commission to thoroughly consider the Settlement Agreement proposals in updating GO 131-D.<sup>7</sup> RCRC appreciates that the Settling Parties summarized and laid out the justifications for why each change in the Settlement Agreement was needed. We reiterate our previous concerns that the OIR in this proceeding

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<sup>3</sup> R. 23-05-018, *Comments of the Environmental Defense Fund on Phase 2 Issues*, page 5; *Comments of the Coalition of California Utility Employees on Phase 2 Issues*, page 1; *Opening Comments of Pacific Gas and Electric Company (U 39-E) on the Administrative Law Judges’ Ruling Inviting Comment on Phase 2 Issues*, page 3; *Opening Comments of San Diego Gas and Electric (U 902 E) on Phase 2 Issues*, page 2.

<sup>4</sup> R.23-05-018, *Sierra Club Opening Comments on Ruling Inviting Comment on Phase 2 Issues*, February 5, 2024, page 2.

<sup>5</sup> See R.23-05-018, *Public Advocates Office Opening Comments on the Administrative Law Judges’ Ruling Inviting Comment on Phase 2 Issues*, February 5, 2024, pages 7-10.

<sup>6</sup> *Id.*

<sup>7</sup> EDF, page 1.

failed to include any explanation of the changes proposed by Commission staff in Attachment B.<sup>8</sup> We strongly suggest that any future staff proposals issued in this proceeding (including those that integrate suggestions made in the Settlement Agreement or in this Phase 2 process) should be accompanied by clear summaries and explanations for each change. We anticipate that more stakeholders will be interested in this proceeding and this extra step will help inform them and facilitate more nuanced and intelligent discussions.

RCRC agrees with Southern California Edison (SCE) that Phase 2 should consider the Settlement Agreement’s proposal to allow utilities to submit draft CEQA documents instead of a Proponent’s Environmental Assessment.<sup>9</sup> We believe this modest change could help avoid unnecessary duplication and project delays and agree with SCE that it “should be considered on an expedited basis during Phase 2 to enable utilities to quickly incorporate CEQA document rafting into any project application efforts that may be ongoing.”<sup>10</sup>

### **C. Additional Issues**

#### ***1. Party Requests for Modifications to Section XIV.B Local Preemption Language***

Southern California Edison, San Diego Gas and Electric (SDG&E), and Pacific Gas and Electric (PG&E) have suggested additional modifications to GO 131-D’s Section XIV.B to “clarify” the scope of the CPUC’s pre-emption of local government permitting authority. In some cases, those IOU suggestions are blended with an earlier Commission proposal to update GO 131-D (OIR Attachment B), resulting in poorly structured remedies that undermine the ability for local governments to seek redress for serious issues.

RCRC remains deeply concerned about efforts to preempt local authority over battery storage facilities because of the risks those facilities pose and the ongoing nature of multi-agency efforts to mitigate those risks.

RCRC strongly objects to the draft revisions to Section XIV.B provided by SCE<sup>11</sup> because it is overbroad, effectively provides local governments with no opportunity for relief, and will likely result in serious public safety and financial consequences for many Californians who are least able to bear those risks and costs. We understand some of the underlying motivations that prompted SCE’s suggestion, offer

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<sup>8</sup> R.23-05-018, *Opening Comments of Rural County Representatives of California on Order Instituting Rulemaking to Update and Amend Commission General Order 131-D*, June 22, 2023, page 3.

<sup>9</sup> SCE, page 12.

<sup>10</sup> *Id.*

<sup>11</sup> R. 23-05-018, *Southern California Edison Company’s (U 338-E) Opening Comments on the Ruling Inviting Comment on Phase 2 Issues*, February 5, 2024, page 18.

changes to SCE’s proposal to address those issues, and look forward to working with the CPUC and utilities on more precise language that accomplishes those objectives.

*a. Battery Storage Facilities*

Attachment B to the OIR proposed to preempt local land use regulation of battery storage facilities and require a Permit to Construct (PTC) only for those facilities over 50MW.<sup>12</sup> We continue to assume that these proposals only apply to utility owned and operated battery storage facilities and would not extend to facilities constructed and owned by third parties and leased or under contract to those utilities.

In our Opening Comments, RCRC acknowledged the need to significantly increase the permitted capacity of battery storage facilities in the state. At the same time, we also expressed serious concerns about preempting local authority given the unique and emerging risks that battery storage facilities pose to host jurisdictions.<sup>13</sup>

SCE suggests that the Commission “should confirm its preemptive jurisdictional authority over energy storage issues, including battery facility siting and permitting” and suggests exploring alternative thresholds for when a PTC is required for those facilities.<sup>14</sup> While we support the increased deployment of battery storage facilities to improve grid reliability and resiliency, the potential fire and public safety risks they create are very real for local communities – many of which are in unincorporated, high fire risk areas and have experienced numerous utility-related wildfires. A fire at a battery storage facility could have very severe consequences depending on where the facility is located, distance from fuel loads and structures, proximity and capabilities of emergency responders, weather patterns, and whether local mitigation measures are integrated into those projects to reduce the risk of a fire spreading. The stakes are high: lax inspection and maintenance practices by regulated utilities have already resulted in the destruction of subdivisions and communities – we must ensure that adequate safeguards put in place at the beginning of the planning and construction process to avoid similar catastrophes.

We disagree with SCE’s contention that battery storage facilities are just like substations and that “environmental considerations under CEQA are the only issues that need to be reviewed by the Commission.”<sup>15</sup> SDG&E expresses similar opinions.<sup>16</sup> While the two types of facilities may have similar

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<sup>12</sup> *OIR Attachment B, Sections III.B, and XIV.*

<sup>13</sup> R. 23-05-018, *Opening Comments of Rural County Representatives of California on Order Instituting Rulemaking to Update and Amend Commission General Order 131-D*, June 22, 2023, page 6.

<sup>14</sup> *SCE*, pages 16-17.

<sup>15</sup> *SCE*, page 17.

<sup>16</sup> R.23-05-018, *Opening Comments of San Diego Gas & Electric Company (U 902 E) on Phase 2 Issues*, February 5, 2024, page 24.

footprints, they pose very different risks for, and demand different emergency responses from, the host community. The risks posed by and methods of responding to fires at battery storage facilities are very different from the traditional strategies to contain and extinguish fires caused by other types of utility infrastructure, including substations. While environmental impacts of those facilities certainly warrant Commission review, the mitigation of safety related risks is just as - if not more - important. This need is even more pressing considering that the capacity of local emergency responders to respond to incidents at battery storage facilities may vary significantly from jurisdiction to jurisdiction. In some counties, fire protection services are performed by CAL FIRE, while other counties are served by special districts or volunteer fire departments (both of which often have severe resource and staff constraints).

The Commission has not articulated how these factors and concerns will be addressed, or how utilities will coordinate and consult with local governments and emergency responders and integrate their suggested mitigation measures into the construction and operation of those facilities. We understand that the Commission will soon begin soliciting public input on its efforts to update General Order 167 to address these safety-related issues in accordance with SB 1383 (Hueso, Chapter 725, Statutes of 2022) and SB 38 (Laird, Chapter 377, Statutes of 2023). It is unclear how long this process will take; however, it is imperative that it be completed, include local consultation, and integrate local mitigation measures before modifying GO 131-D.

RCRC objects to SCE's suggestion that no Commission permit or review should be required for battery storage facilities under 50MW or for facilities located on (or adjacent to) property that is owned by a utility where an existing substation is located.<sup>17</sup> Given the safety risks and local concerns about these facilities, the Commission should review all projects to ensure their consistency with the yet-to-be-determined SB 1383/SB 38 standards.

RCRC even more strongly opposes SDG&E's suggestion that the threshold for PTC review of battery storage facilities should be set at 100MW.<sup>18</sup> While we support increasing battery storage deployment, we also agree with The Acton Town Council's previously highlighted concerns that this proposal could lead to massive deployments of battery storage projects without any oversight or review by the Commission.<sup>19</sup> We are further concerned that SDG&E's suggestion could lead to inadequate mitigation of safety risks or assurances that local first responders will be able to appropriately respond in

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<sup>17</sup> *Southern California Edison*, page 17.

<sup>18</sup> *San Diego Gas and Electric*, page 24.

<sup>19</sup> R.23-05-018, *Reply Comments of The Acton Town Council on the Order Instituting Rulemaking to Update and Amend Commission General Order 131-D*, July 7, 2023, pages 14-15.

the event of an emergency. This lack of meaningful Commission review or role for local governments and first responders will provoke even greater negative public reactions to these facilities, have spillover impacts that complicate local permitting of non-utility battery storage facilities, and create future public safety risks.

We appreciate SDG&E's comments on how they seek to address local concerns about battery storage fire risks and their openness to the CPUC requiring "public utilities and other battery developers to adhere to applicable safety standards."<sup>20</sup> However, we are troubled that this statement seems to indicate the Commission has sole jurisdiction and can preempt local government permitting for non-utility-owned battery storage projects.<sup>21</sup> RCRC strongly disagrees with any such inference. We note that existing standards may not always keep pace with the current state of technology or recognize the vastly different capabilities and local challenges to responding to battery fires.<sup>22</sup> While we appreciate that SDG&E reviews emergency action plans and emergency response plans with local first responders and jurisdictions, it is less clear what their formal process is for fully integrating and addressing concerns raised by those entities.

It should also be noted that some local governments are starting to question what decommissioning and reclamation protocols apply to battery storage facilities (including utility-owned facilities), as there are extensive existing protocols for wind and solar generation.

Addressing and mitigating these risks is key to assuaging public concerns. Comprehensive treatment of these issues by the CPUC and by local governments/first responders will also go a long way to facilitating the increased deployment of battery storage systems by non-utility private developers, as the public is generally not aware of the different permitting regimes and authority that may apply to regulated utilities compared to private developers.

Finally, we appreciate EDF's suggestion that the Commission hold workshops on battery storage facilities.<sup>23</sup> We agree with EDF that there are many different permitting procedures and considerations in siting battery storage facilities and believe that developing collaborative, consensus-based solutions will help facilitate the rapid and successful deployment of those technologies. RCRC looks forward to participating in workshops on battery energy storage systems, especially with respect to best practices for

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<sup>20</sup> *SDG&E*, page 26.

<sup>21</sup> *R.23-05-018, Reply Comments of The Acton Town Council on the Order Instituting Rulemaking to Update and Amend Commission General Order 131-D, July 7, 2023, page 17.*

<sup>22</sup> Statements were made to this effect in a recent Battery Energy Storage Workshop hosted by the California Energy Commission, February 23, 2024, CEC Docket 24-BSS-01.

<sup>23</sup> *R.23-05-018, Comments of Environmental Defense Fund on Phase 2 Issues, February 5, 2024, pages 13-14.*



permitting those facilities, methods to address safety concerns, and identification of obligations for reclamation upon decommissioning of those facilities.

*b. Utility Communications Infrastructure*

SDG&E and SCE both suggest modifying GO 131-D to specifically preempt local regulation of “communications infrastructure constructed to provide services to a public utility’s electric system.”<sup>24</sup>

We appreciate that SDG&E suggests in its comments that the preemption would only apply to communications infrastructure “used exclusively by utilities to provide services to a public utility’s system;”<sup>25</sup> however, the modifications suggested to GO 131-D by SCE do not reflect that exclusivity of use. We are concerned that SCE’s proposal could be used by utilities to try to preempt local authority over communications systems that are ultimately leased (at least in part) to other entities for general communications purposes.

RCRC is also concerned that the proposal may be an attempt by electrical utilities to get around the exercise of local police powers related to the siting and placement of communications infrastructure. SDG&E suggests that local governments have objected to communications system height and aesthetic impacts.<sup>26</sup> We note that the California Supreme Court has upheld local police power authority to regulate the aesthetic impacts of wireless communications systems in the local right-of-way.<sup>27</sup> Similarly, to the extent that electrical utilities seek to preempt local authority over permitting of related facilities within the public right-of-way, they should have to abide by the same rules and regulations that apply to the telecommunications industry. At a minimum, this is a far more complex issue than may appear to be immediately apparent and necessitates broader input by a diverse group of city and county governments.

*c. Utility Vegetation Management*

RCRC believes utility vegetation management is a crucial tool to reduce wildfire risk and we are interested in facilitating those efforts while establishing durable expectations for utilities and impacted landowners. SCE suggests that GO 131-D’s Section XIV.B should expressly preempt local authority over utility vegetation management activities, except for applicable non-discretionary local permits.<sup>28</sup> PG&E supports this request and urges the CPUC to “affirm existing CPUC preemption of vegetation management

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<sup>24</sup> SDG&E, pages 26-27; SCE pages 17-18.

<sup>25</sup> SD&E, page 26.

<sup>26</sup> R. 23-05-018, *Declaration of Elaine Allyn in Support of Opening Comments of San Diego Gas & Electric Company (U 902 E) on Phase 2 Issues*, page 5.

<sup>27</sup> *T-Mobile West LLC v. City and County of San Francisco* (2019), 6<sup>th</sup> Cal. 5<sup>th</sup> 1107.

<sup>28</sup> SCE, pages 17-18.

activities” to avoid disputes with local agencies.<sup>29</sup> RCRC objects to SCE’s overly-broad proposal because of the serious public safety risks created by PG&E’s utility vegetation management operations over the last several years. RCRC believes the over-broad nature of SCE’s suggestion will exacerbate many of the widespread public safety issues related to utility vegetation management practices our counties have struggled with over the last several years. We offer suggested modifications to SCE’s proposal below to address SCE’s concerns and avoid those larger problems.

Based on our understanding, SCE appears to seek greater clarification in GO 131-D to address local tree removal permitting processes and related issues. This is not immediately apparent from the scope of the proposal and RCRC is willing to work with utilities to develop a more tailored, nuanced modification to Section XIV.B to address this specific issue. Our immediate concern is that these proposed changes to GO 131-D may be construed by utilities to diminish their responsibility for management and removal of felled wood and slash upon completion of vegetation management projects.

Our counties have been struggling with public safety impacts caused by poorly conducted utility vegetation management operations since 2020. Since then, the specific nature and circumstances of the problems have changed, but the overarching concern has been the hesitancy and/or unwillingness of a regulated utility to remove trees and branches cut during utility vegetation management operations. Most of the “disputes with local agencies” over vegetation management referenced by PG&E<sup>30</sup> have not been related to the authority to perform vegetation management, but have instead been focused on the widespread public safety hazards created by *HOW* those operations were conducted – specifically the failure to manage felled wood and slash upon completion of vegetation management activities.

We first requested relief from the CPUC in 2021 to address felled wood left in place after utility post-fire vegetation management operations.<sup>31</sup> We sincerely appreciated the CPUC’s direction that PG&E take steps to remove felled wood relating to 2020 and 2021 post-wildfire utility restoration work<sup>32</sup>, but that relief failed to anticipate what became an even greater problem. Preventative utility vegetation

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<sup>29</sup> PG&E, pages 9-10.

<sup>30</sup> Id.

<sup>31</sup> *Letter from Rural County Representatives to California Public Utilities Commission President Marybel Batjer Regarding PG&E’s Wildfire Wood Management Program*, April 20, 2021.

<sup>32</sup> CITATIONCPUC Executive Director Rachel Peterson letter to PG&E Senior Vice President Sumeet Singh regarding “Management and removal of burned and felled wood following wildfires,” August 24, 2001.

management work massively increased in pace and scale to reduce the risk of utility caused wildfire.<sup>33</sup> Unfortunately, our counties experienced widespread refusals by the utility to remove felled wood and slash. As we noted in our October 2022 letter requesting action by PG&E and submitted to the CPUC:

*“Felled logs left in place can create a host of safety risks for property owners, firefighting personnel, and communities. As felled trees dry out, they increase the fuel load, thereby exacerbating the risk and severity of wildfires. These concerns are heightened when the trees are felled and left within the 100’ defensible space perimeter that property owners are required to maintain. In some cases, property owners who passed defensible space inspections reportedly failed subsequent inspections as a result of trees cut down and left in place by PG&E vegetation management crews. Other risks include trees rolling down slopes into roads, thereby impeding emergency access and egress as well as normal traffic flow. Furthermore, the scattered distribution of felled trees can impede future firefighting efforts.”<sup>34</sup>*

We strongly objected to this externalization of the risks, costs, and mitigation obligations to property owners for actions undertaken by utilities to deliver safe power. After months of discussions and involvement by several state regulatory agencies, we were pleased that PG&E agreed to remove felled wood associated with its Enhanced Vegetation Management (EVM) Program, upon request by the landowner. PG&E made considerable efforts to address the backlog of felled wood associated with that EVM Program. It then came as a surprise to many that PG&E replaced its EVM Program with an alternative program and stopped referencing wood management procedures in its most recent three-year, comprehensive Wildfire Mitigation Plan.<sup>35</sup> Far less clear is whether PG&E will continue to remove felled wood and slash associated with the newer program or whether it will again attempt to shift those safety risks, costs, and burdens to landowners (many of whom are elderly, low income, or retired and on fixed incomes). This concern is heightened by a proposal currently being contemplated by the California Board of Forestry and Fire Protection (Board of Forestry).

We recognize that the CPUC does not have exclusive regulatory authority over the scope and conduct of utility vegetation management, as similar requirements are included in the Public Resources Code and implemented by the Board of Forestry. The Board of Forestry has developed an extensive set of Forest Practice Rules that govern vegetation management activities, including those performed by regulated utilities. At the request of PG&E<sup>36</sup>, the Board of Forestry is also considering revisions to the

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<sup>33</sup> RCRC never disputed the need for PG&E’s vegetation management efforts to reduce wildfire risk - our concerns were related to the manner in which those activities were conducted.

<sup>34</sup> *Letter from Rural County Representatives of California and the California State Association of Counties to Patricia K. Poppe on PG&E Vegetation Management Practices*, October 31, 2022, page 2.

<sup>35</sup> PG&E 2023-2025 Wildfire Mitigation Plan, filed March 27, 2023.

<sup>36</sup> PG&E Letter to Board of Forestry, *2023 Annual Call for Regulatory Review*, dated October 13, 2023.

Forest Practice Rules concerning utility powerline clearances. As currently drafted<sup>37</sup>, proposed amendments would allow utilities to leave felled wood in a landowner's defensible space perimeter – thereby again shifting the costs and burdens of those public benefit projects to the very residents who are the least able to shoulder those burdens or mitigate risks created by utilities. While RCRC is engaging in that process at the Board of Forestry, we fear the Board of Forestry proposal, combined with the proposed changes to GO 131-D, will leave landowners and local governments with even fewer pathways to avoid and mitigate the serious public safety risks resulting from poorly-executed vegetation management projects.

Given this long track record of major public safety challenges related to utility vegetation management and the uncertainty about what the future may hold, we strongly object to any changes to Section XIV.B that would infer any diminished responsibility for utilities to manage felled wood and slash. That being said, we are willing to engage in further discussions and find a mutually agreeable solution to address SCE's concerns. In light of these issues, concerns, and recent local experiences with vegetation management practices, we suggest ***replacing*** SCE's proposed Section XIV.B language with the following:

*“This General Order further clarifies that local jurisdictions acting pursuant to local authority are preempted from regulating utility operation and maintenance activities with respect to the foregoing electric facilities, including vegetation management activities. However, the utility must obtain any applicable, non-discretionary local permits required for its operation and maintenance activities.”—This General Order further provides that local jurisdictions acting pursuant to local authority are preempted from regulating the selection of trees or other vegetation to be cut, pruned, or removed as part utility vegetation management activities, or the prescription for such cutting, pruning, or removal established by the utility's arborist, provided that local jurisdictions are not preempted from regulating other aspects of utility vegetation management activities including, but not limited to, the removal of debris resulting from such activities.*

RCRC believes that regulated utilities (monopolies that are entitled to exercise the sweeping powers of eminent domain) cannot be allowed to sidestep accountability and create significant public safety and wildfire hazards for individual landowners in the process of providing electricity to the general public. We believe our alternative strikes the appropriate balance of addressing SCE's legitimate issues with local tree removal ordinances without creating additional wildfire and public safety risks for residents.

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<sup>37</sup> Board of Forestry, *Utility and Public Agency ROW Exemption Amendments*, accessed February 23, 2024.

Considering the complexity of the issue, the risks involved, and the different entities that have roles and responsibilities related to utility vegetation management operations, we strongly suggest that the Commission conduct a multi-agency, multi-stakeholder workshop with the Board of Forestry, CAL FIRE, Office of Energy Infrastructure Safety, local governments, and local fire protection agencies to discuss, evaluate, and establish best management practices for utility vegetation management operations. We agree with utilities that greater certainty and clearer expectations are needed for utility vegetation management – especially in high fire risk areas of the state.

*d. The Remedy Suggested to Resolve Disputes with Local Agencies is Illusory and Fails to Address Legitimate Concerns about Public Safety*

RCRC is deeply concerned by the suggested dispute resolution changes to Section XIV.B. SCE suggests significantly broadening the scope of local preemption and combines those changes with a previous suggestion by CPUC staff that would force local agencies to resolve any differences with the utility by filing a complaint with the CPUC.<sup>38</sup> This drastically limits the scope of (and sometimes eliminates the prospect for) available relief.

It is unclear what impact SCE’s expansion of Section XIV.B to include “utility operation and maintenance activities” will have on the ability for local governments and their residents to seek relief for nuisances and violations of the law that related to actions. This uncertainty causes serious concerns given the potential gravity of the underlying problems.

RCRC strongly objects to increasing reliance on the CPUC’s complaint process to resolve utility disputes with local governments. The CPUC’s complaint process is often criticized as inadequate because it is overly complex, the scope of relief is limited, and it often leads to Catch-22 situations that preclude redress for legitimate grievances. With respect to vegetation management and other issues, the injured party can get trapped in a Catch-22: injured parties have been told they cannot sue in Superior Courts because the Court of Appeal has said a particular issue must be resolved through the Commission’s complaint process, but nearly identical claims have been dismissed during the CPUC complaint process as being outside the jurisdiction of the CPUC.<sup>39</sup>

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<sup>38</sup> SCE, page 18.

<sup>39</sup> See, for example, *Sarale v. Pacific Gas & Electric Co.* (2010) 189 Cal.App.4th 225, which said plaintiffs must seek relief for excessive tree trimming by filing a complaint with the CPUC, compared with other situations in which similar complaints were rejected by CPUC staff as being outside of Commission authority, including *Morgan v. PG&E* (1987) 25 Cal.P.U.C.2d 393 where the CPUC rejected a complaint after determining that “[e]xcessive trimming, if proven, would not violate any Commission order” and *Bereczky v. Southern California Edison Co.* (1996) 65 Cal.P.U.C.2d 145.

RCRC further objects to the scope of relief included in SCE’s Comments, which is limited to “seeking specific changes to the proposed facilities.”<sup>40</sup> While that relief may be appropriate for some disputes related to the construction of *new facilities*, it is wholly inadequate and effectively provides no relief for other types of disputes (particularly those involving operation and maintenance of existing facilities). Many of the most contentious local disputes with regulated utilities in the last few years have involved the *methods* used by utilities in their vegetation management operations – particularly utility decisions to leave felled wood and slash in place (including within customers’ defensible space perimeters). These practices have created serious public safety and fuel accumulation risks, but local objections are not related to the *location* of those facilities. In those cases, local agencies were not seeking changes to utility facilities, but merely insisting that utilities clean up the safety hazards they created. SCE’s proposed preemption of all utility operation and maintenance actions (including vegetation management), when combined with the narrow remedy, would effectively provide locals with no hope of successfully resolving disputes through the complaint process and equally dim prospects for any relief outside of that process.

### III. Conclusion

RCRC looks forward to continued efforts to improve the efficiency and effectiveness of the Commission’s permitting processes to align GO 131-D with SB 529 and update it to better meet the state’s energy infrastructure needs. RCRC appreciates your consideration of our comments and the recommendations contained herein.

Respectfully submitted,

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<sup>40</sup> We understand that SCE was adding its suggested changes to XIV.B to modifications previously proposed by CPUC staff in the Order Instituting Rulemaking’s Attachment B proposal. While we objected to the Appendix B proposal earlier in this proceeding, pairing that proposal with SCE’s changes is even more objectionable because it will make obtaining relief for certain types of utility actions unobtainable, as noted below.