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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of LS Power Grid California, LLC (U247E) for a Certificate of Public Convenience and Necessity Authorizing Construction of the Power Santa Clara Valley Project.

Application 24-04-017

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This scoping memo and ruling (scoping memo) identifies the issues to be considered in this proceeding and the anticipated timetable for resolution. It also directs parties who intend to offer evidence or comment on issues that will be addressed in the anticipated environmental document to submit them by public comment under the California Environmental Quality Act (CEQA),¹ as explained in Section 3.1 below. A prehearing conference (PHC) will be set as soon as practicable after the issuance of the environmental document to identify any additional issues to be considered and the schedule for the remainder of the formal proceeding.

1. Procedural Background

On April 29, 2024, LS Power Grid California, LLC (LS Power) filed Application (A.) 24-04-017 for a CPCN authorizing the construction of the Power Santa Clara Valley Project (Proposed Project). LS Power's application also requests determinations regarding the rebuttable presumption described in Public Utilities (Pub. Util.) Code Section 1001.1; the Project's compliance with

¹ Public Resources Code §§ 21000, *et seq.*

CEQA; the Proposed Project's maximum reasonable and prudent cost; and exemptions from certain rules and reporting requirements.²

In the 2021-2022 Transmission Plan, the California Independent Systems Operator Corporation (CAISO) identified a system reliability need for a high-voltage direct current (HVDC) connection from the Metcalf 500 kilovolt (kV) substation to the San Jose B 115 kV substation. Through CAISO's competitive solicitation process, CAISO selected LS Power as the approved project sponsor to finance, construct, own, operate, and maintain the Proposed Project.³ However, LS Power states that Pacific Gas and Electric Company (PG&E) will undertake the interconnection facilities and distribution upgrades necessary to implement the Proposed Project.⁴ At this time, PG&E is not a party to the proceeding. However, they have committed to participating actively in the CEQA process for this Proposed Project.

The application seeks a CPCN for only the LS Power portion of the Proposed Project. The key elements of the Proposed Project include (1) two new HVDC terminals; (2) one approximately 13-mile 320 kV direct current (DC) underground transmission line connecting Skyline terminal to Grove terminal; (3) one approximately 100-foot overhead Skyline to San Jose B 115 kV alternating current (AC) station tie line connecting the new Skyline terminal to PG&E's San Jose B substation; and 4) one approximately 1.2-mile Metcalf to Grove 500 kV AC underground transmission line connecting the new Grove terminal to the existing PG&E Metcalf substation.

² Application at 44-45.

³ *Id.* at 7.

⁴ *Id.* at 1-2, 10.

According to the Approved Project Sponsor Agreement (APSA), dated August 28, 2023, between the CAISO and LS Power, the Proposed Project will have an energization date no later than June 1, 2028.⁵ LS Power estimates a total project cost of \$1.22 billion, as proposed.⁶

On June 3, 2024, Santa Clara Valley Open Space Authority (OSA) and the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) filed protests to A.24-04-017. Both OSA and Cal Advocates identified CEQA concerns with the Proposed Project. According to OSA, the Grove terminal increases the risk of wildlife population isolation, forecloses opportunities for connectivity, and may create spillover effects on the surrounding environment.⁷ OSA asked that the Commission evaluate both the direct and cumulative significance of the Proposed Project on wildlife movement and consider alternative locations for the Grove Terminal.⁸ Cal Advocates requested that the Commission consider whether the Proposed Project will have a significant wildfire risk.⁹

Cal Advocates' protest raised two additional issues. First, Cal Advocates questioned whether the Proposed Project qualifies for the rebuttable presumption in favor of the CAISO's needs analysis.¹⁰ Under Pub. Util. Code Section 1001.1(d), application of the rebuttable presumption relies, in part, on whether there is a "no substantial change to the...estimated cost" of the

⁵ *Id.* at 7 and Appendix A.

⁶ *Id.* at Appendix D.

⁷ Santa Clara Valley Open Space Authority (OSA) Protest at 7.

⁸ *Id.* at 4-11.

⁹ The Public Advocates Office at the California Public Utilities Commission (Cal Advocates) Protest at 3, 4.

¹⁰ *Id.* at 3.

Proposed Project. Cal Advocates identified a legal question as to whether the change in the cost of the Proposed Project from “up to \$615 million” in the CAISO board-approved Transmission Plan to \$1.2 billion in the APSA is “substantial.”¹¹

Second, Cal Advocates recommended that the Commission set the PHC and determine the need for evidentiary hearings after the Energy Division completes the Commission’s CEQA review.¹² According to Cal Advocates, the CEQA review “may identify any additional issues, and inform the need for evidentiary hearings and the schedule.”¹³ Cal Advocates proposed a schedule where the Commission would issue a final decision in April 2026.¹⁴

On June 13, 2024, LS Power filed a reply to Cal Advocates’ and OSA’s protests. LS Power recommended that Cal Advocates and OSA participate in the Commission’s CEQA review process.¹⁵ LS Power also agreed with Cal Advocates that the rebuttable presumption should be an issue in the scope of this proceeding.¹⁶

However, LS Power opposed Cal Advocates’ recommendation to postpone the PHC and evidentiary hearings until after the Energy Division completes its CEQA review.¹⁷ According to LS Power, “Cal Advocates’ proposal will result in an unnecessary delay of the Commission’s approval of the [Proposed] Project by

¹¹ *Ibid.*

¹² *Id.* at 4.

¹³ *Ibid.*

¹⁴ *Id.* at 5.

¹⁵ LS Power Reply at 3-4.

¹⁶ *Id.* at 2-3.

¹⁷ *Id.* at 4-5.

at least eight months and would result in increased costs for the [Proposed] Project.”¹⁸ LS Power asked the Commission to issue a final decision no later than December 31, 2025.¹⁹

I find that the rebuttable presumption issue should be examined in this proceeding. I also find that OSA, Cal Advocates, and other stakeholders and members of the public will have various opportunities to raise their concerns about the Proposed Project’s environmental impacts during the environmental review process required by CEQA and General Order (GO) 131-D.

The Proposed Project is subject to environmental review pursuant to CEQA. As such, the Commission will provide various opportunities for public participation in the CEQA process. CEQA requires the lead agency (the Commission in this case) to conduct a review to identify the environmental impacts of a project and ways to avoid or lessen environmental impacts.²⁰ If the initial study shows there is no substantial evidence that the Proposed Project may have a significant impact on the environment or LS Power revises the Proposed Project to reduce all environmental impacts to a less-than-significant level, the Commission may prepare a Negative Declaration or a Mitigated Negative Declaration (MND) to that effect.²¹

Otherwise, the Commission must prepare an environmental impact report (EIR) that identifies the environmental impacts of the Proposed Project, a reasonable range of alternatives, a recommended mitigation program, and the

¹⁸ *Id.* at 4.

¹⁹ Application at 7.

²⁰ Cal. Code Regs., tit. 14 § 15063 (CEQA Guidelines).

²¹ *Id.* at §§ 15063, 15070.

environmentally superior alternative.²² If an EIR is prepared, the Commission may not approve the Proposed Project unless it reviews and certifies the EIR, requires the environmentally superior project alternative and all of the identified mitigation measures (unless they are found to be infeasible), and determines that there are overriding considerations that merit project approval despite any unavoidable significant impacts.²³

In addition, pursuant to GO 131-D and Decision (D.) 06-01-042, the Commission will not approve a project unless its design complies with the Commission's policies governing the mitigation of electric and magnetic fields (EMF) using low-cost and no-cost measures.²⁴

Information on the Proposed Project, including how to participate in the CEQA process and how to contact the assigned Commission Energy Division Staff, is included in Section 3.1 below. I have considered the filings in this proceeding to date. My determinations on the scope, evidentiary hearings, and schedule are set forth in Sections 2 and 3 below.

2. Issues

The issues in this proceeding are:

1. Does the Proposed Project serve a present or future need that meets the requirements of Pub. Util. Code Sections 1001, *et seq.*?
2. Does the Proposed Project qualify for the rebuttable presumption under Pub. Util. Code Section 1001.1 in favor of the CAISO's needs evaluation?
3. If the CEQA Process results in an EIR:

²² *Id.* at § 15120.

²³ *Id.* at § 15093.

²⁴ General Order 131-D, Section X; D.06-01-042, Ordering Paragraph 2.

- a. What are the significant environmental impacts of the Proposed Project, if any?
 - b. Are there potentially feasible mitigation measures that will avoid or lessen the identified significant environmental impacts?
 - c. As between the Proposed Project and the project alternatives, which is environmentally superior?
 - d. Are the mitigation measures or environmentally superior project alternatives infeasible for economic, social, legal, technological, or other considerations?
 - e. To the extent that the Proposed Project and/or project alternatives result in significant and unavoidable impacts, are there overriding considerations that nevertheless merit Commission approval of the Proposed Project or project alternative, including reliability, economic, public policy, and other benefits?
4. If the CEQA process results in an MND:
 - a. Is there no substantial evidence, in light of the whole record before the Commission, that the project as proposed or revised (to avoid or mitigate the effects to a point where clearly no significant effects would occur) may have a significant effect on the environment?
 - b. What are the mitigation measures/alternatives that will eliminate or lessen the impacts?
5. Did the Commission review and consider the environmental document (EIR or MND), was the environmental document completed in compliance with CEQA, and does it reflect the Commission's independent judgment?
6. Is the Proposed Project and/or environmentally superior alternative designed in compliance with the Commission's policies governing the mitigation of EMF using low-cost and no-cost measures?
7. What, if any, are the community values affected by the Proposed Project under Pub. Util. Code Section 1002(a)(1)?

8. Does the application meet the requirements of GO 131-D and Rule 3.1 to obtain a CPCN?
9. What is the maximum reasonable and prudent cost for the Proposed Project and/or environmentally superior project alternative, if approved, including what contingency should the Commission adopt to account for route or scope changes, final engineering design, final environmental mitigation requirements, and other factors?
10. Should the Commission grant LS Power exemptions from certain affiliate transaction rules and reporting requirements?
11. What impacts, if any, will the Proposed Project or the environmentally superior alternative have on environmental and social justice communities and the achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan?

3. Evidentiary Hearing and Schedule

As the first phase for the Commission's review of the Proposed Project, the Commission's Energy Division has initiated the environmental review process under CEQA for the Proposed Project, which will culminate in the issuance of an environmental document (EIR or MND). Many issues in the scope of this proceeding will be affected by the outcome of the CEQA process. For example, LS Power's estimated cost for the Proposed Project may change if the Commission's Energy Division finds that an alternate route or design will reduce or avoid the Proposed Project's significant environmental impacts. This change, in turn, may impact whether we establish a rebuttable presumption (Issue no. 2) and the amount we set for the maximum reasonable and prudent cost (Issue no. 9).

Because the CEQA process and outcome would be foundational to our consideration of issues we must resolve in this proceeding as scoped, it is

imprudent and premature to assess the need for an evidentiary hearing and develop a proceeding schedule now as we do not know all the material facts in dispute and what potential disputes will arise or remain following the CEQA process. As such, I determine an evidentiary hearing will be needed in this proceeding after the CEQA process, but I will revisit this determination once the Energy Division has made additional progress on the environmental document. At that time, the Administrative Law Judge (ALJ) will set a PHC to identify any additional issues, if any, the need for an evidentiary hearing, and the schedule for the remainder of the proceeding.

As for Issue 2 (rebuttable presumption issues), because Pub. Util. Code Section 1001.1 only took effect in October 2023 and parties identified a legal dispute regarding the applicability of the rebuttable presumption, those issues will need to be briefed in this proceeding and the briefing schedule on those issues will later be ordered by the assigned ALJ.

While we will endeavor to issue a final decision by December 31, 2025, as LS Power requests, the CEQA process to examine the Proposed Project, including ways to reduce or avoid the Proposed Project's environmental impacts (*i.e.*, potential impacts to the Coyote Valley mitigation corridor), will likely take a year or longer to complete. Therefore, I determine that the Commission requires additional time beyond the 18-month statutory deadline to complete the CEQA review, conduct the PHC, take evidence and argument (as needed), prepare a proposed decision, and circulate it for public review and comment. Accordingly, I approve a resolution date of April 30, 2026, as permitted by Pub. Util. Code Section 1701.5(b).

Parties and members of the public should refer to the information in Section 3.1 below to participate in or follow our CEQA process. The

Commission's Energy Division has initiated the Proposed Project's CEQA review process and anticipates issuing an EIR. The EIR will identify the Proposed Project's significant environmental impacts if any (Issue 3a), potentially feasible mitigation measures that will avoid or lessen the significant environmental impacts (Issue 3b), and the environmentally superior alternative (Issue 3c).

Any person or party who wishes to present evidence or comment on these issues (Issues 3a-3c) must do so through participation in the CEQA review process (*i.e.*, public review and comment on the draft environmental document). As CEQA requires, the Commission's Energy Division will address any such comment in the final environmental document. The Commission will not take evidence regarding these CEQA issues outside the final environmental document.²⁵

Stakeholders and interested members of the public who would like to be added to the CEQA review service list, or receive other information regarding the environmental review, should email PowerSCV@esassoc.com, call (408) 450-7233, visit the Project website at LS Power's Santa Clara Valley Project,²⁶ or contact the Energy Division Project Management at:

Tharon Wright
California Public Utilities Commission
Infrastructure Planning and CEQA, Energy Division
300 Capitol Mall
Sacramento, CA 95814
E-mail: tharon.wright@cpuc.ca.gov

²⁵ The Commission will take evidence on Issues 3d and 3e if an EIR is issued as a result of the environmental review process or on Issues 4a and 4b if an MND is issued, in the course of the formal proceeding, as necessary.

²⁶ <https://ia.cpuc.ca.gov/environment/info/esa/pscv/index.html>.

4. Alternative Dispute Resolution (ADR) Program and Settlements

The Commission's ADR program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs trained as neutrals. At the parties' request, the assigned ALJ can refer this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.²⁷

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Commission's Rules of Practice and Procedure (Rules) and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law, and in the public interest. The proposing parties bear the burden of proof as to whether the Commission should adopt the settlement.

5. Category of Proceeding and Ex Parte Restrictions

This ruling confirms the Commission's preliminary determination that this is a ratesetting proceeding.²⁸ Accordingly, *ex parte* communications are restricted and must be reported according to Article 8 of the Rules.

6. Public Outreach

Under Pub. Util. Code Section 1711(a), where feasible and appropriate, before determining the scope of the proceeding, the Commission sought the participation of those likely to be affected, including those likely to derive benefit from, and those potentially subject to, a decision in this proceeding. This matter was noticed on the Commission's daily calendar. Where feasible and

²⁷ <https://www.cpuc.ca.gov/PUC/adr/>.

²⁸ Resolution ALJ 176-3546.

appropriate, this matter was incorporated into engagements conducted by the Commission's External Affairs Division with local governments and other interested parties.

In addition, as required by GO 131-D, Section XI(A), LS Power provided public notice of this matter as follows:

- By direct mail to the planning commission and the legislative body for each county or city in which the proposed facility would be located, the California Energy Commission, the State Department of Transportation and its Division of Aeronautics, the Secretary of the Resources Agency, the Department of Fish and Wildlife, the Department of Health Care Services, the State Water Resources Control Board, and other interested parties. In addition, the following agencies and subdivisions in whose jurisdiction the Project would be located: the Air Pollution Control District, the California Regional Water Quality Control Board, the State Department of Transportation's District Office, and any other State or Federal agency, which would have jurisdiction over the proposed construction.
- By direct mail to all owners of land on which the proposed facility would be located and owners of property within 300 feet of the right-of-way, as determined by the most recent local assessor's parcel roll available to the utility at the time notice is sent.
- By advertisement, not less than once a week, two weeks successively, in a newspaper or newspapers of general circulation that serves the county or counties in which the proposed facilities will be located, the first publication to be not later than ten days after filing of the application.
- By posting a notice on-site and off-site where the project would be located.

7. Intervenor Compensation

Under Pub. Util. Code Section 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation within 30 days of the PHC.

8. Response to Public Comments

Parties may, but are not required to, respond to written comments received from the public. Parties may post such a response using the “Add Public Comment” button on the “Public Comment” tab of the online docket card for the proceeding.

9. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission’s Public Advisor at 866-849-8390 or 866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

10. Filing, Service, and Service List

The official service list has been created and is on the Commission’s website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission’s Process Office, the service list, and the ALJ. Interested stakeholders and individuals may become a party if they follow the process and meet the requirements in Rule 1.4.²⁹

When serving any document, each party must use the current official service list on the Commission’s website.

²⁹ The form to request additions and changes to the Service list may be found at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/administrative-law-judge-division/documents/additiontoservicelisttranscriptordercompliant.pdf>

This proceeding will follow the electronic service protocol in Rule 1.10, with one exception, such that all parties are excused from the Rule 1.10 requirement to serve on the ALJ both an electronic and a paper copy of filed or serviced documents. Therefore, when serving documents on Commissioners, their personal advisors, and the ALJ, whether they are on the official service list or not, parties must only provide electronic service, unless otherwise instructed by the ALJ. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request that they be added to the “Information Only” category of the official service list pursuant to Rule 1.9(f).

The Commission encourages those who seek information-only status on the service list to consider the Commission’s subscription service as an alternative. The subscription service sends individual notifications to each subscriber of formal e-filings tendered and accepted by the Commission. Notices sent through a subscription service are less likely to be flagged by spam or other filters. Notifications can be for a specific proceeding, a range of documents, and daily or weekly digests.

11. Receiving Electronic Service from the Commission

Parties and other persons on the service list are advised that it is the responsibility of each person or entity on the service list for Commission proceedings to ensure their ability to receive e-mails from the Commission. Please add “@cpuc.ca.gov” to your e-mail safe sender list and update your e-mail

screening practices, settings, and filters to ensure receipt of e-mails from the Commission.

12. Assignment of Proceeding

Karen Douglas is the assigned commissioner and Robyn Purchia is the assigned ALJ and presiding officer for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is described above in Section 2 and is adopted.
2. The schedule of this proceeding is set forth above in Section 3 and is adopted.
3. Parties who wish to present information on the Proposed Project's significant environmental impacts, alternatives, and mitigation measures, and the environmentally superior alternative must do so through participation in the California Environmental Quality Act review process as discussed in this ruling.
4. Hearings are needed.
5. The resolution deadline for this proceeding is April 30, 2026.
6. The presiding officer is Administrative Law Judge Robyn Purchia.
7. The category of the proceeding is ratesetting.

Dated October 7, 2024, at San Francisco, California.

/s/ KAREN DOUGLAS

Karen Douglas
Assigned Commissioner