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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, CENTER FOR BIOLOGICAL
DIVERSITY, ACTON TOWN COUNCIL, CALIFORNIA FARM BUREAU
FEDERATION, ANZA BORREGO FOUNDATION, AND DEFENDERS OF WILDLIFE
APPLICATION FOR REHEARING OF D.25-01-055, DECISION ADOPTING
GENERAL ORDER 131-E**

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APPLICATION FOR REHEARING OF D.25-01-055, DECISION ADOPTING
GENERAL ORDER 131-E**

Pursuant to California Public Utilities Code section 1731(b)(1)¹ and Rule 16.1(c)² of the California Public Utilities Commission (Commission) Rules of Practice and Procedure (Rules), The Protect Our Communities Foundation, Center for Biological Diversity, Acton Town Council, California Farm Bureau Federation, Anza Borrego Foundation, and Defenders of Wildlife (collectively, Joint Applicants) timely submit this application for rehearing of Commission Decision 25-01-055, Decision Adopting General Order 131-E (Decision). This application for rehearing (Application) is timely filed within 30 days of February 7, 2025, when the Commission issued the Decision.

¹ Pub. Util. Code, § 1731, subd. (b).

² Cal. Code Regs., tit. 20, § 16.1, subd. (c)

I. INTRODUCTION

The legislation that initiated this proceeding, Senate Bill (SB) 529, did not authorize the Commission to all but eliminate Certificates of Public Convenience and Necessity (CPCNs) for electrical projects. Yet the Commission's Decision adopting General Order (GO) 131-E adopts definitions so broad and ambiguous that the utilities and transmission line developers could characterize almost all new electrical projects as requiring only permits to construct (PTCs), or no permits at all.

Given the high costs of electric transmission and distribution projects, the Commission must include cost considerations in the PTC process in order to meet its statutory obligations to supervise the utilities, and to ensure that electric rates are as low as possible and that ratepayers are paying for only cost-effective electric projects which are necessary to safely and reliably provide electric service. The utilities' financial incentives to spend on capital projects requires the Commission to closely supervise the utilities' electric project spending, but GO 131-E improperly reduces or eliminates Commission oversight over the costs of electric projects.

The Commission's adoption of GO 131-E violates the California Environmental Quality Act (CEQA) by circumventing CEQA's statement of objectives requirements and the Commission's mandate to consider environmentally superior alternatives, and by exempting certain electric projects from permit requirements entirely. The Commission lacks any power to abdicate its CEQA duties or to outsource them to the California Independent System Operator (CAISO). In limiting the projects that will receive environmental review under CEQA, and the scope of that environmental review, the Commission's adoption of GO 131-E itself constitutes a CEQA project.

Moreover, GO 131-E fails to conform its preemption provisions to the law and thus violates the rights and duties of local agencies to protect their constituents.

II. STANDARD OF REVIEW

Rule 16.1(c) 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.”³ The purpose of an application for rehearing “is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.”⁴

Joint Applicants submit this application on the grounds that the Commission failed to proceed in the manner required by law and acted in excess of its powers and jurisdiction. The Decision was an abuse of discretion, is not supported by the findings, and violates Joint Applicants’ rights of access to information under the California Constitution.⁵

The Commission fails to proceed in the manner required by law when it takes actions which contradict Legislative directives⁶ by “failing to comply with required procedures, applying an incorrect legal standard, or committing some other error of law,”⁷ including its own procedural rules.⁸ The Commission abuses its discretion when the Commission exceeds the bounds of reason.⁹ Findings are required by Section 1705.¹⁰ The California Constitution requires that public business be conducted in public, and grants the people the right to access and scrutinize information concerning the people’s business.¹¹

³ Cal. Code Regs., tit. 20, § 16.1, subd. (c).

⁴ Cal. Code Regs., tit. 20, § 16.1, subd. (c).

⁵ Pub. Util. Code, § 1757.1, subds. (a)(1)-(4), (6).

⁶ *Southern California Gas Co. v. Public Utilities Com.* (1979) 24 Cal.3d 653, 659 (Commission lacks authority to contradict or disregard specific legislative directives).

⁷ *Pedro v. City of Los Angeles* (2014) 229 Cal.App.4th 87, 99.

⁸ *Southern California Edison Co. v. Public Utilities Com.* (2006) 140 Cal.App.4th 1085, 1106.

⁹ *San Pablo Bay Pipeline Co. LLC v. Public Utilities Com.* (2013) 221 Cal.App.4th 1436, 1460 (“The abuse of discretion standard can be restated as whether the Commission exceeded the bounds of reason.”).

¹⁰ 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, § 1757.1, subd. (a)(4); *California Manufacturers Assn. v. Public Utilities Com.* (1979) 24 Cal.3d 251, 258-259.

¹¹ Cal. Const. art. 1, § 3.

III. THE DEFINITIONS IN GO 131-E ARE OVERBROAD AND AMBIGUOUS, RENDERING THE COMMISSION'S CPCN PROCESS VIRTUALLY MEANINGLESS.

SB 529 amended the Public Utilities Code by adding subsection (b) to Section 1001.¹² As amended, Section 1001(b) reads as follows:

The extension, expansion, upgrade, or other modification of an existing electrical transmission facility, including transmission lines and substations, does not require a certificate that the present or future public convenience and necessity requires or will require its construction.¹³

In addition to amending Section 1001 (b), SB 529 added Section 564 which required the Commission to update General Order 131-D to authorize the electrical utilities “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...irrespective of whether the electrical transmission facility is above a 200-kilovolt voltage level.”¹⁴

In adopting SB 529, the Legislature was well aware that existing law establishes the Commission’s regulatory and supervisory responsibilities over the utilities, and recognized that the Commission must consider potential impacts on communities and ecosystems.¹⁵ SB 529 was intended to expedite approvals of “environmentally responsible transmission projects” that are “least likely to pose rate concerns.”¹⁶

¹² R.23-05-018, *Order Instituting Rulemaking* (May 18, 2023), p. 2.

¹³ Pub. Util. Code, § 1001, subd. (b).

¹⁴ SB 529, Legislative Counsel’s Digest; Pub. Util. Code, § 564.

¹⁵ SB 529, Senate Floor Analysis of SB 529 (August 31, 2022), p. 2, 4 (“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.”), available at file:///C:/Users/malin/Downloads/202120220SB529_Senate%20Floor%20Analyses-3.pdf

¹⁶ SB 529, Assembly Committee on Utilities and Energy Analysis (June 28, 2022), p. 2 (bill “ensures CEQA is complied with”), available at <https://autl.assembly.ca.gov/sites/autl.assembly.ca.gov/files/SB%20529%20%28Hertzberg%29.pdf>.

However, contrary to the letter and spirit of SB 529, the Commission adopted definitions in GO 131-E that are so broad and ambiguous as to render the Commission’s CPCN process practically meaningless. For example, the definitions for “extension,” “expansion,” and “upgrade” could be interpreted as encompassing every conceivable type of transmission project and as authorizing all future transmission projects to use a PTC application or claim a PTC exception.¹⁷

GO 131-E defines “extension” as including unlimited increases “in the length of an existing electrical transmission facility within existing transmission easements, rights-of-way, or franchise agreements,” “[g]eneration tie-line (gen-tie) segments, i.e., the construction of a new transmission or power line from an existing electrical transmission facility to connect to a new electric generation facility,” and “[s]ubstation loop-ins, i.e., looping one or more existing transmission lines into and out of a new or existing substation or switchyard.”¹⁸ This broad definition enables utilities to create new transmission lines without CPCN review by either connecting to a new generation facility or leveraging existing transmission lines to “loop in” a new or existing substation or switchyard, thus facilitating the approval of many hundreds of miles of new transmission lines without “cost” or “need” reviews.¹⁹

GO 131-E defines “upgrade” as “the replacement or alteration of existing electrical transmission facilities, or components thereof, to enhance the rating, voltage, capacity, capability, or quality of those facilities,” it defines “expansion” as “an increase in the width, capacity, or capability of an existing electrical transmission facility,”²⁰ and it defines “modification” as a “change” that does not constitute an extension or expansion but that could

¹⁷ Decision, Attachment A (GO 131-E Redline), p. 4-5.

¹⁸ Decision, Attachment A (GO 131-E Redline), p. 2.

¹⁹ See, also, Section V, *supra* (PTC process must be revised to address cost-considerations)

²⁰ Decision, Attachment A (GO 131-E Redline), p. 2.

constitute an upgrade.²¹ In other words, under the broad categories of replacing, changing, uprating, and/or increasing the width, capacity, or capability of an existing electrical transmission or subtransmission facility (of which there are more than 54,000 miles in California²²), developers can construct new transmission lines in new transmission corridors with only a PTC, and without any “need” or “cost” review.

This lack of scrutiny hinges on GO 131-E’s extremely broad definition of “existing electrical transmission facility” as “an electrical transmission line, power line, substation, or switchyard that has been constructed for operation at or above 50 kV.”²³ This overbroad definition does not comport with CEQA,²⁴ which necessarily includes only those existing facilities that are actually in use,²⁵ and makes it impossible for lead agencies to determine whether there is an expansion of use and identify potentially significant project impacts or cumulative impacts.

To illustrate the extent to which these definitions will obviate future CPCN requirements, Joint Applicants have analyzed major CPCN projects proposed over the last two decades through the “lens” of the Decision and GO 131-E, detailed in Table 1, below. As Table 1 shows, *all* of the proposed projects would have been eligible for only PTC review if GO 131-E had been in effect at the time the projects were considered by the Commission. This conclusively demonstrates that the many billions of dollars in transmission facilities that were subject to CPCN review would have been eligible for PTC approval and thus sidestepped “need” and

²¹ Decision, Attachment A (GO 131-E Redline), p. 3.

²² R.23-05-018. Opening Comments Of The Acton Town Council On The Administrative Law Judges’ Ruling Inviting Comment On The Phase 2 Staff Proposal And Noticing Workshop (July 1, 2024), p. 5-6.

²³ Decision, Attachment A (GO 131-E Redline), p. 2.

²⁴ CEQA comprises Division 13 of the Public Resources Code. Pub. Res. Code, §§ 21050, 21000 et seq.

²⁵ Cal. Code Regs., tit. 14, § 15301 (“The key consideration is whether the project involves negligible or no expansion of use.”).

“cost” reviews if the definitions of “extension,” “upgrade,” “expansion,” and “modification” established by the Decision had been part of GO 131-D.

Table 1: Applicability of the Decision and GO 131-E to Major CPCN Projects Proposed Over the Last Two Decades.

Project	Details of Project	How GO 131-E Obviates CPCN Review
TRTP Segment 4	Part 1 was a new double circuit 220 kV line from the new Whirlwind substation to new generation resources; Part 2 was a new 500 kV line adjacent to the existing Midway-Vincent #3 500 kV line between the new Whirlwind Substation and the existing Antelope Substation. ²⁶	Part 1 would avoid CPCN review because it constitutes a gen-tie “extension” to connect to new wind resources. Part 2 could avoid CPCN review by “Expanding” the existing Midway-Vincent #3 500 kV line to a double circuit configuration.
TRTP Segment 5	Construct a 500 kV transmission line between the existing Antelope Substation and the existing Vincent Substation using existing 220 kV ROW. ²⁷	Segment 5 would avoid CPCN review because it “upgrades” the existing Antelope-Vincent and Antelope-Mesa 220 kV lines to construct a new 500 kV line between the Antelope and Vincent Substations.
TRTP Segment 6	Construct a 500 kV line between the existing Vincent and Mira Loma Substations and a 500 kV line between the existing Vincent and Rio Hondo Substations using existing 220 kV ROW. ²⁸	Segment 6 would avoid CPCN review because it “upgrades” existing 220 kV lines to operate at 500 kV between the existing Vincent, Mesa, and Rio Hondo Substations.
TRTP Segment 7	Construct a new 500 kV line between the existing Rio Hondo Substation and the existing Mesa Substation using existing 220 kV ROW. ²⁹	Segment 7 would avoid CPCN review because it “upgrades” existing 220 kV lines to operate at 500 kV between the existing Rio Hondo and Mesa Substations.
TRTP Segment 8	Construct a new 500 kV line between the existing Mesa Substation and the existing Mira Loma Substation in	Segment 8 could avoid CPCN review by “upgrading” and “expanding” existing 220 kV lines to accommodate a new 500 kV line and “expanding” existing 500 kV

²⁶ A.07-06-031, Final EIR for the Tehachapi Renewable Transmission Project, Section 2.2.7.1., available at <https://file.lacounty.gov/SDSInter/bos/supdocs/58826.pdf>.

²⁷ A.07-06-031, Final EIR for the Tehachapi Renewable Transmission Project, Section 2.2.8.1., available at <https://file.lacounty.gov/SDSInter/bos/supdocs/58826.pdf>.

²⁸ A.07-06-031, Final EIR for the Tehachapi Renewable Transmission Project, Section 2.2.9.1., available at <https://file.lacounty.gov/SDSInter/bos/supdocs/58826.pdf>.

²⁹ A.07-06-031, Final EIR for the Tehachapi Renewable Transmission Project, Section 2.2.10.1., available at <https://file.lacounty.gov/SDSInter/bos/supdocs/58826.pdf>.

	existing and expanded 220 kV and 500 kV ROWs. ³⁰	lines to a double circuit configuration between the existing Rio Hondo and Mira Loma Substations.
TRTP Segment 9	Construct new and expanded substations. ³¹	Substation construction and modifications are not subject to CPCN requirements.
TRTP Segment 10	Construct a new 500 kV line between the existing Windhub substation to the new Whirlwind station partly in new ROW and partly in expanded existing ROW. ³²	Segment 10 could avoid CPCN review by "extending" the existing Windhub-Antelope 500 kV line to "Loop in" the new Whirlwind Substation from a point adjacent to the Windhub 500 kV switchrack and subsequently reconfigure the Windhub switchrack to terminate the Whirlwind 500 kV "loop" in lines at new positions on the 500 kV bus OR by "upgrading" and "expanding" existing 220 kV and 66 kV lines to accommodate a 500 kV line. ³³
TRTP Segment 11	Construct a new 500 kV line between the existing Vincent Substation and the existing Gould substation in existing and expanded 220 kV ROW. ³⁴	Segment 11 would avoid CPCN review because it "upgrades" and "expands" existing 220 kV facilities to operate at 500 kV between the Vincent and Gould Substations.
SOCREP	Upgrade the existing Capistrano Substation to 230 kV, expand the existing Talega Substation, and connect these substations with a new double circuit 230 kV line that replaces an existing 138 kV line. ³⁵	SOCREP would avoid CPCN review because it "upgrades" an existing 138 kV line between the existing Talega and Capistrano substations to operate at 230 kV (upgrades to Capistrano substation do not require a CPCN).

³⁰ A.07-06-031, Final EIR for the Tehachapi Renewable Transmission Project, Section 2.2.3.1., available at <https://file.lacounty.gov/SDSInter/bos/supdocs/58826.pdf>.

³¹ The Electrical System Mapping Platform maintained by the California Energy Commission Indicates multiple 220 kV and 66 kV lines between the Whirlwind and Windhub substations that can be "Upgraded" and "Expanded". See California Energy Commission, California Electric Transmission Lines Map, available at <https://cecgis-caenergy.opendata.arcgis.com/datasets/CAEnergy::california-electric-transmission-lines-1/explore?location=34.819616%2C-118.098808%2C10.12>.

³² A.07-06-031, Final EIR for the Tehachapi Renewable Transmission Project, Section 2.2.6.1., available at <https://file.lacounty.gov/SDSInter/bos/supdocs/58826.pdf>.

³³ A.12-05-020, Final EIR for the South Orange County Reliability Enhancement Project at ES-1, available at <https://ia.cpuc.ca.gov/environment/info/ene/socre/socrefinalEIR.html>.

³⁴ A.09-09-022, Final EIR for the Alberhill Project, Section 2.1.2. (2012), available at <https://ia.cpuc.ca.gov/environment/info/ene/alberhill/Alberhill.html>.

³⁵ A.10-07-001, PEA for the LEAPS TE/VS Project, Section 3.1, available at https://ia.cpuc.ca.gov/environment/info/aspen/nevadahydro/pea/03_PD_part1of8.pdf

Alberhill Project	"Loop in" a new 500 kV Transmission Substation to the existing Valley-Serrano 500 kV Transmission Line. ³⁶	Alberhill would avoid CPCN review because it "extends" the existing 500 kV Valley-Serrano Line to "loop in" the new Alberhill Substation.
LEAPS Project	Connect a new pumped storage project to SCE's 500 kV system and SDGE's 230 kV system via a new Talega-Escondido/ Valley-Serrano (TE/VS) 230 kV & 500 kV interconnection. ³⁷	LEAPS would avoid CPCN review because the new 230 kV and 500 kV lines comprising the TE-VS lines would qualify as gen-tie "extensions" to interconnect a new generation resource.
Sunrise Project	The Sunrise Project had 2 parts. Part 1 was a new 500 kV Transmission Line from the existing Imperial Valley Substation to a new "Central East" 500 kV/230 kV substation located near Alpine. Part 2 was a new 230 kV transmission line extending from the new "Central East" substation to the existing Penasquitos 230 kV Substation. ³⁸	Sunrise Part 1 could avoid CPCN review by "looping" the existing Southwest Powerlink (SWPL) into the new Central East substation from a point adjacent to the Imperial Valley switchrake and subsequently reconfiguring the Imperial Valley switchrake after construction to terminate the Central East "loop" lines at new positions on the 500 kV bus OR it could "expand" the SWPL to a double circuit configuration and "upgrade" and "expand" 69 kV facilities between the Miguel Substation and Alpine to accommodate a new 500 kV line. Sunrise Part 2 could avoid CPCN review by "upgrading" and "expanding" the numerous 69 kV, 138 kV, and 230 kV lines between the Central East and Penasquitos substations. ³⁹
Valley Rainbow Project	Construct a new "Rainbow" 230 kV/500 kV substation south of Temecula, connect it to SCE's existing Valley	Valley Rainbow could avoid CPCN review by "looping" the existing Valley-Serrano 500 kV line into the new

³⁶ A.06-08-010, Final EIR for the Sunrise Powerlink Project, Section ES 2 and Figure ES-10, available at <https://ia.cpuc.ca.gov/environment/info/aspen/sunrise/toc-feir.htm>.

³⁷ The Electrical System Mapping Platform maintained by the California Energy Commission demonstrates there are numerous and extensive 69 kV, 138 kV, and 230 kV lines between the Central East and Penasquitos substations that can be "Upgraded" and "Expanded". See California Energy Commission, California Electric Transmission Lines Map, available at <https://cecgis-caenergy.opendata.arcgis.com/datasets/CAEnergy::california-electric-transmission-lines-1/explore?location=33.212294%2C-116.906934%2C9.43>.

³⁸ A.01-03-036, Valley Rainbow Alternatives Screening Report Section ES-2., available at <https://ia.cpuc.ca.gov/Environment/Info/dudek/vallerrainbow/vallerrainbow.htm>.

³⁹ The Electrical System Mapping Platform maintained by the California Energy Commission indicates there are numerous and extensive 69 kV, 138 kV, and 230 kV lines between the Central East and Penasquitos substations that can be "Upgraded" and "Expanded". See California Energy Commission, California Electric Transmission Lines Map, available at <https://cecgis-caenergy.opendata.arcgis.com/datasets/CAEnergy::california-electric-transmission-lines-1/explore?location=33.212294%2C-116.906934%2C9.43>.

	Substation via a new 500 kV line, and add a new 230 kV circuit on the vacant side of the existing double circuit Talega-Escondido 230 kV line. ⁴⁰	Rainbow substation from a point adjacent to the Valley 500 kV switchrack and subsequently reconfigure the Valley Substation switchrack after construction to terminate the Rainbow "loop" lines at new positions on the 500 kV bus and "expanding" the existing Talega-Escondido 230 kV line.
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A similar assessment of major (greater than \$50 million) transmission projects approved by CAISO over the last two years is provided in Table 2. Table 2 further demonstrates that the definitions established by the Decision will allow billions of dollars in future transmission projects to sidestep "need" and "cost" reviews by rendering them eligible for only PTC approval.

Table 2: Applicability of the Decision and GO 131-E to Major Transmission Projects Approved by CAISO Over the Last Two Years

Project	Project Description	How GO 131-E Obviates CPCN Review
French Camp Reinforcement Project	Upgrade the existing French Camp 60 kV Substation to 230 kV and "loop in" the existing 230 kV Ballota-Tesla #2 line. ⁴¹	French Camp avoids CPCN review because it "extends" the existing 230 kV Bellota-Tesla #2 line to "loop in" the new French Camp 230 kV Substation.
Humboldt-Collinsville Transmission Project	Construct a new 500 kV Humboldt transmission substation and a new 500 kV transmission line to connect Humboldt to the existing Collinsville substation. ⁴²	Humboldt-Collinsville could avoid CPCN review by "extending" the 500 kV Vaca Dixon-Collinsville line to "Loop in" the new Humboldt substation from a point adjacent to the Collinsville switchrack and subsequently reconfigure the Collinsville switchrack after construction to terminate the Humboldt "loop" lines at new positions on the 500 kV bus OR by "expanding" and "upgrading" existing 60 kV, 115 kV, and 230 kV lines to accommodate an additional 500 kV line and "expanding" existing 500 kV lines to a double circuit configuration. ⁴³

⁴⁰ A.01-03-036, Valley-Rainbow Alternatives Screening Report Section ES-2, available at <https://ia.cpuc.ca.gov/Environment/Info/dudek/vallerrainbow/vallerrainbow.htm>.

⁴¹ CAISO Transmission Plan 2024 at 54, available at <https://www.caiso.com/documents/iso-board-approved-2023-2024-transmission-plan.pdf>.

⁴² CAISO Transmission Plan 2024 at 72, available at <https://www.caiso.com/documents/iso-board-approved-2023-2024-transmission-plan.pdf>.

⁴³ The Electrical System Mapping Platform maintained by the California Energy Commission indicates numerous 60 kV, 115 kV, 230 kV, and 500 kV lines between the Humboldt area and Collinsville. See

Fern-Humboldt Transmission Line Project	Construct a new 500 kV transmission line to connect the new Humboldt transmission substation to the Fern substation. ⁴⁴	Fern-Humboldt could avoid CPCN review by "extending" the 500 kV Fern-Table Mountain line to "loop in" the Humboldt substation from a point adjacent to the Fern switchrack and subsequently reconfigure the Fern switchrack after construction to terminate the Humboldt "loop" lines at new positions on the 500 kV bus OR by "expanding" and "upgrading" existing 60 kV and 115 kV lines to accommodate an additional 500 kV line. ⁴⁵
Miguel-Sycamore Canyon 230 kV Loop in	Connect the existing Suncrest Substation to the existing Miguel-Sycamore Canyon 230 kV Line. ⁴⁶	Miguel-Sycamore avoids CPCN review because it "extends" the existing 500 kV Miguel-Sycamore 230 kV Line to "loop in" the Suncrest Substation.
The Beatty Project	Part 1 is a new Johnnie Corner 230 kV Substation "looped" into the existing Pahrump-Innovation 230 kV line; Part 2 upgrades several 138 kV substations to 230 kV; Part 3 constructs a new Beatty-Lathrop 230 kV line; Part 4 constructs a new Johnnie Corner-Valley Switch-Lathrop 230 kV line. ⁴⁷	Part 1 avoids CPCN review because it "extends" the existing Pahrump-Innovation 230 kV line to "loop in" the new Johnnie Corner 230 kV Substation. Part 2 avoids CPCN review because substation upgrades are not subject to CPCN requirements. Parts 3 and 4 could avoid CPCN review by "upgrading" and "expanding" existing 138 kV lines to accommodate new 230 kV lines.
The Imperial Valley- North of SONGS 500 kV Project	Construct a new 500 kV substation north of the San Onofre Nuclear Generating Station (SONGS) and construct a new 500 kV transmission line to connect the new North of SONGS	The Imperial Valley-North of SONGS line could avoid CPCN review by "extending" the existing Sunrise or SWPL 500 kV lines to "loop in" the new North of SONGS substation from a point adjacent to the Imperial Valley switchrack and subsequently reconfigure the switchrack after construction to terminate the North of SONGS "loop" lines at new

California Energy Commission, California Electric Transmission Lines Map, available at <https://cecgis-caenergy.opendata.arcgis.com/datasets/CAEnergy::california-electric-transmission-lines-1/explore?location=38.753322%2C-121.896761%2C7.18>.

⁴⁴ CAISO Transmission Plan 2024 at 72, available at <https://www.caiso.com/documents/iso-board-approved-2023-2024-transmission-plan.pdf>.

⁴⁵ The Electrical System Mapping Platform maintained by the California Energy Commission indicates numerous 60 kV and 115 kV lines between the Humboldt area and the Fern Substation. See California Energy Commission, California Electric Transmission Lines Map, available at <https://cecgis-caenergy.opendata.arcgis.com/datasets/CAEnergy::california-electric-transmission-lines-1/explore?location=40.252330%2C-122.703290%2C8.69>

⁴⁶ CAISO Transmission Plan 2023 at 51, available at <https://www.caiso.com/documents/iso-board-approved-2022-2023-transmission-plan.pdf>.

⁴⁷ CAISO Transmission Plan 2023 at 80-81, available at <https://www.caiso.com/documents/iso-board-approved-2022-2023-transmission-plan.pdf>.

	500 kV Substation to the existing Imperial Valley 500 kV Substation. ⁴⁸	positions on the Imperial Valley 500 kV bus OR by "upgrading" and "expanding" existing 69 kV lines to accommodate a new 500 kV line and "expanding" existing 500 kV lines as double circuit. ⁴⁹
The North of SONGS-Serrano 500 kV Project	Construct a new 500 kV line between the new North of SONGS Substation and the existing Serrano 500 kV Substation. ⁵⁰	The North of SONGS-Serrano line could avoid CPCN review by "extending" the existing Valley-Serrano 500 kV line to "loop in" the North of SONGS substation from a point adjacent to the Serrano switchrack and subsequently reconfigure the switchrack to terminate the North of SONGS "loop" lines at new positions on the Serrano 500 kV bus OR by "upgrading" and "expanding" existing 66 kV, 69 kV, 138 kV, and 230 kV lines to accommodate an additional 500 kV line. ⁵¹
The Serrano-Del Amo-Mesa 500 kV Transmission Project	The Serrano-Del Amo-Mesa Project has 3 parts: Part 1 is to upgrade the existing Del Amo 230 kV Substation to 500 kV operation; Part 2 is to "loop" the existing Mesa-Mira Loma 500 kV line into the new Del Amo 500 kV switchrack; Part 4 is to construct a new 500 kV line between the existing Serrano 500 kV Substation and the upgraded Del Amo 500 kV Substation. ⁵²	The first part of the Serrano-Del Amo-Mesa Project would avoid CPCN because substation "upgrades" are not subject to CPCN requirements. The second part avoids CPCN review because it "extends" the existing Mesa-Mira Loma 500 kV line to "loop in" the Del Amo substation. The third part could avoid CPCN review by "extending" the existing Serrano-Mira Loma 500 kV line to "Loop in" the Del Amo Substation from a point adjacent to the Serrano switchrack and subsequently reconfigure the switchrack to terminate the Del Amo 500 kV "loop" lines at new positions on the Serrano 500 kV bus OR by "upgrading" and "expanding" existing 66 kV lines to accommodate a new 500 kV line. ⁵³

⁴⁸ CAISO Transmission Plan 2023 at 99, available at <https://www.caiso.com/documents/iso-board-approved-2022-2023-transmission-plan.pdf>.

⁴⁹ The Electrical System Mapping Platform maintained by the California Energy Commission indicates numerous 69 kV and 500 kV lines between North of SONGS area and the Imperial Valley Substation. See California Energy Commission, California Electric Transmission Lines Map, available at <https://cecgis-caenergy.opendata.arcgis.com/datasets/CAEnergy::california-electric-transmission-lines-1/explore?location=32.818727%2C-116.462452%2C9.43>.

⁵⁰ CAISO Transmission Plan 2023 at 99, available at <https://www.caiso.com/documents/iso-board-approved-2022-2023-transmission-plan.pdf>.

⁵¹ The Electrical System Mapping Platform maintained by the California Energy Commission indicates numerous 66 kV, 69 kV, 138 kV, and 220 kV lines between the North of SONGS area and Serrano. See California Energy Commission, California Electric Transmission Lines Map, available at <https://cecgis-caenergy.opendata.arcgis.com/datasets/CAEnergy::california-electric-transmission-lines-1/explore?location=33.628568%2C-117.548378%2C10.11>

⁵² CAISO Transmission Plan 2023 at 99, available at <https://www.caiso.com/documents/iso-board-approved-2022-2023-transmission-plan.pdf>.

⁵³ The Electrical System Mapping Platform maintained by the California Energy Commission indicates numerous 66 kV lines between the Serrano and Del Amo Substations. See California Energy

The North Gila-Imperial Valley 500 kV Transmission Project	Construct a new 500 kV line between the existing North Gila and Imperial Valley Substations. ⁵⁴	The North Gila-Imperial Valley 500 kV Transmission Project could avoid CPCN review by "Upgrading" the existing North Gila-Imperial Valley 500 kV line to a double circuit configuration.
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The record is clear that the Legislature did not intend for such sweeping reforms and lack of oversight in passing SB 529.

IV. ADOPTION OF GO 131-E CONSTITUTES AN IMPROPER ATTEMPT TO EVADE CEQA.

CEQA requires every state agency, including the Commission, "to perform their duties 'so that major consideration is given to preventing environmental damage'" whenever it "undertakes, approves, or funds a project."⁵⁵ CEQA was enacted to "(1) inform the government and public about a proposed activity's potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through alternatives or mitigation measures when feasible; and (4) disclose the government's rationale for approving a project."⁵⁶ Failing to comply with CEQA "subverts the purposes of CEQA if it omits material necessary to informed decision-making and informed public participation."⁵⁷

Here, while claiming to adopt "requirements with the recognition that the Commission has duties under CEQA and Pub. Util. Code which cannot be compromised" and recognizing the Commission's CEQA obligations,⁵⁸ the Decision adopts changes that violate CEQA by limiting

Commission, California Electric Transmission Lines Map, available at <https://cecgis-caenergy.opendata.arcgis.com/datasets/CAEnergy::california-electric-transmission-lines-1/explore?location=33.865745%2C-117.997901%2C11.64>.

⁵⁴ CAISO Transmission Plan 2023 at 99. <https://www.caiso.com/documents/iso-board-approved-2022-2023-transmission-plan.pdf>.

⁵⁵ *Protecting Our Water & Environmental Resources v. County of Stanislaus* ("POWER") (2020) 10 Cal.5th 479, 488; Pub. Res. Code, § 21006.

⁵⁶ *POWER*, 10 Cal. 5th at 488.

⁵⁷ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515.

⁵⁸ Decision, p. 65; *id.* at 15 ("CEQA generally requires California state and local agencies (public agencies), including the Commission, to inform decision makers and the public about potential environmental impacts

CEQA's requirements regarding statements of objectives, consideration of environmentally superior alternatives, and by exceeding the scope of CEQA's exemptions. In adopting a general order which limits public participation and environmental review for projects that would typically be required to mitigate or avoid adverse environmental impacts, the Commission's adoption of GO 131-E itself constitutes a project subject to environmental review under CEQA.

The changes to GO 131-E also conflict with AB 1373 and AB 2292. AB 1373 establishes a *rebuttable* presumption in CPCN proceedings in favor of CAISO need evaluations when certain circumstances are met, but Section VII.C.2.a. of GO 131-E requires the Commission to blindly adopt the "project need" from CAISO as the basis for the statement of objectives under CEQA. AB 2292 repealed former Public Utilities Code section 1002.3 (regarding CPCNs) without amending CEQA in any way, and in no way prohibits the Commission from considering cost-effective alternatives to transmission facilities under CEQA,⁵⁹ but Section VII.C.2.c. of GO 131-E limits consideration of alternatives to "alternative routes or locations" or the "no action" alternative.⁶⁰ The Commission cannot lawfully abdicate its CEQA obligations; nor can it outsource them to CAISO.

A. GO 131-E Violates CEQA's Mandates that Agencies Must Consider Environmentally Superior Alternatives.

The Decision acknowledges that CEQA requires consideration of alternatives which can "avoid or substantially lessen any of the significant effects of the project."⁶¹

attributed to proposed projects, and to reduce those impacts to the extent feasible. Under CEQA, public agencies must not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant environmental effects of such a project.") (footnotes omitted).

⁵⁹ AB 2292 (repealing Pub. Util. Code, § 1002.3).

⁶⁰ Decision, p. 64 (claiming to adopt modifications to Section VII.C.2 to "adhere to AB 2292").

⁶¹ Cal. Code Regs., tit. 14, § 15126.6; Decision, p. 15 ("Under CEQA, public agencies must not approve a project as proposed if there are feasible alternatives or mitigation measures available that would

However, the Decision then violates CEQA in adopting Section VII.C.2.c.⁶² of GO 131-E. Section VII.C.2.c. authorizes the Commission to limit CEQA’s alternatives analysis to only alternative *routes or locations* of any proposed electric project and the “no action” alternative,⁶³ and thus erroneously allows the Commission to ignore solutions like energy efficiency, rooftop and community solar and virtual power plants as alternatives.

The Decision claims to “preserve Staff’s discretion” to consider additional alternatives if staff so chooses.⁶⁴ But staff does not have any “discretion” to violate CEQA, and CEQA does not authorize lead agencies to “choose” to truncate the range of alternatives or to refuse to consider alternatives other than routes for the proposed project and “no project.” Determining *a priori* that the Commission may ignore environmentally superior alternatives violates the very heart of CEQA’s informational and environmental protection purposes.⁶⁵ The Commission lacks any power to amend CEQA or the CEQA Guidelines and cannot lawfully adopt a general order that authorizes it to surrender its police power obligations under CEQA or otherwise.⁶⁶

substantially lessen any significant environmental effects...”), p. 64 (“...we find that the Settling Parties’ proposed language limits the range of reasonable and acceptable alternatives considered in an initial draft EIR per requirements in the CEQA Guidelines.”);

⁶² Decision, p. 64-65.

⁶³ Decision, Attachment A (GO 131-E Redline), p. 21 (“The range of reasonable alternatives to the proposed project in an initial draft EIR circulated for public comment may be limited to alternative routes or locations for construction of the relevant CAISO transmission plan-approved electric project and the ‘no action’ alternative.”)

⁶⁴ Decision, p. 65.

⁶⁵ *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal. 4th 105, 123 (CEQA “requires the public agency to consider feasible alternatives to the project which would lessen any significant adverse environmental impact.”); *POWER*, 10 Cal. 5th at 488 (CEQA “was enacted to (1) inform the government and public about a proposed activity’s potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through alternatives or mitigation measures when feasible; and (4) disclose the government’s rationale for approving a project.”).

⁶⁶ *Southern California Gas Co. v. Los Angeles* (1958) 50 Cal. 2d 713, 718; Cal. Const. art. 12, § 5; Pub. Res. Code, § 21000, subd. (g) (“It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage...”); Pub. Res. Code, § 21083, subd. (a) (“The Office of Planning and

Because Section VII.C.2.c authorizes Commission staff to limit consideration of alternatives, it artificially limits public participation and participation by other public agencies with respect to other alternatives – such as projects that are smaller in scope or offer non-wires approaches for delivering equivalent electrical service – until *after* the draft Environmental Impact Report (EIR) is issued and the scope of the EIR has already been determined.

CEQA, in contrast, requires lead agencies to identify project alternatives which would reduce the significant effects of a project “at the earliest possible time in the environmental review process” and to provide relevant information “as soon as possible.”⁶⁷ CEQA also requires “scoping meetings” for projects of areawide significance⁶⁸ such as transmission projects. Scoping meetings must occur early in the project review process, before a draft EIR is prepared, to provide the public with the opportunity to participate in the process of “identifying the range of actions, *alternatives*, mitigation measures, and significant effects to be analyzed in depth in an EIR.”⁶⁹

By authorizing staff to exclude project alternatives from a draft EIR that significantly differ from the transmission project which CAISO approved (without any environmental analysis whatsoever), and by authorizing the Commission to ignore alternatives recommended by the public and other public agencies during scoping meetings, Section VII.C.2.c. of GO-131-E thwarts not only CEQA’s environmental protection purposes, but CEQA’s fundamental public information and participation mandates.

Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies...”); *see also* <https://www.lci.ca.gov/> (Office of Planning and Research “renamed the Governor’s Office of Land Use and Climate Innovation” effective July 1, 2024).

⁶⁷ Cal. Pub. Res. Code, § 21003.1, subds. (a), (b).

⁶⁸ Cal. Pub. Res. Code, § 21083.9.

⁶⁹ Cal. Code Regs., tit. 14, § 15083 (emphasis added).

1. The Decision Improperly Authorizes Exclusion of Non-Wires Alternatives and Conflicts with AB 2292.

The recent wildfires in Los Angeles serve as a tragic reminder that non-wires alternatives present environmentally superior alternatives that must be assessed under CEQA.⁷⁰ In addition to avoiding fire danger inherent in electricity transmission infrastructure, maximizing an alternative like rooftop solar plus storage mitigates climate change impacts because it can be deployed quickly.⁷¹ In order to avoid increasingly severe climate change impacts, climate science requires greenhouse gas emissions reductions as quickly as possible.⁷² Maximizing deployment of rooftop solar also avoids other environmental impacts (including land use conflicts, and impacts to biodiversity, species and habitats) caused by transmission lines.⁷³

The suggestion in the Decision that AB 2292 somehow allows the Commission to ignore cost-effective alternatives to transmission facilities under CEQA⁷⁴ is not supported by the findings of facts and conclusions of law in this regard.⁷⁵

⁷⁰ See e.g. Liz Baker, *Lawsuits allege power company involvement in LA wildfires* (January 13, 2025), NPR, available at <https://www.npr.org/2025/01/13/g-s1-42603/lawsuits-allege-power-company-involvement-in-la-wildfires>; see also California Public Utilities Commission, *CPUC Staff Propose \$45 Million Penalty for PGE Over Dixie Fire* (October 9, 2023), available at [https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-staff-propose-\\$45-million-penalty-for-pge-over-dixie-fire](https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-staff-propose-$45-million-penalty-for-pge-over-dixie-fire).

⁷¹ A.22-05-015, 016, Exhibit PCF-01: Prepared Direct Testimony of Bill Powers, P.E. on Behalf of The Protect Our Communities Foundation (March 27, 2023), p. 1-20, available at <https://docs.cpuc.ca.gov/PublishedDocs/SupDoc/A2205015;A2205016/5870/504801388.pdf>.

⁷² See e.g. IPCC, 2021: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [MassonDelmotte, V. et al.]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, 2391, p. 63 (“It is virtually certain that global surface temperature rise and associated changes can be limited through rapid and substantial reductions in global GHG emissions” and “[c]ontinued GHG emissions greatly increase the likelihood of potentially irreversible changes in the global climate system.”); *id.* at p. v (“The science is unequivocal, the changes are unprecedented, and there is no more time for delay.” “With each additional increment of warming, these changes will become larger, resulting in long-lasting, irreversible implications.”).

⁷³ A.22-05-015, 016, Exhibit PCF-01: Prepared Direct Testimony of Bill Powers, P.E. on Behalf of The Protect Our Communities Foundation (March 27, 2023), p. 1-20.

⁷⁴ Decision, p. 64 (adopting modifications to Section VII.C.2 to “adhere to AB 2292”); compare AB 2292 (repealing Pub. Util. Code, § 1002.3).

⁷⁵ Pub. Util. Code, § 1757.1, subd. (4); see, e.g. Decision, p. 140 (Finding of Fact No. 11 does not purport to link AB 2292’s repeal of Public Utilities Code section 1002.3 to Section VII.C.2.c. in any way).

Contrary to the suggestion in the Decision, AB 2292 merely repealed Public Utilities Code section 1002.3, which formerly explicitly required the Commission to consider cost-effective and non-wires alternatives to transmission facilities in deciding whether to approve a *CPCN*. As the legislative analysis for AB 2292 clarifies, consideration of alternatives in determining whether to approve a CPCN, is not a replacement for, but *in addition to* the Commission’s obligations to assess alternatives under CEQA.⁷⁶ Moreover, section VII.C.2.c. of GO 131-E violates CEQA by limiting alternatives not only when the Commission considers CPCNs, but also when it considers PTCs. The Legislature simply did not repeal Section 1002.3 to allow the Commission to avoid considering non-wires alternatives under CEQA. While the CEQA process does not require the consideration of every alternative, it must consider feasible alternatives, in particular to allow for informed decision-making.⁷⁷ Certainly, “the mitigation and alternatives discussion forms the core of the EIR,”⁷⁸ and removing whole categories of feasible alternatives from consideration stifles informed decision-making.

2. Commission Staff and Legislative Staff Both Recommended Against Artificially Limiting CEQA’s Alternatives Requirements.

Commission staff correctly explained that “analysis of project alternatives from the CAISO TPP should be considered in the context of the Commission’s own independent analysis of project alternatives” and that “limiting the range of reasonable alternatives...may be inconsistent with the extent of alternatives analysis that must be performed by the Commission

⁷⁶ See e.g. AB 2292, Senate Floor Bill Analyses (August 7, 2024), p. 8 (Argument in Support), *available at* file:///C:/Users/malin/Downloads/202320240AB2292_Senate%20Floor%20Analyses-3.pdf.

⁷⁷ Cal. Code Regs., tit. 14, § 15126.6

⁷⁸ *Friends of the Eel River v. North Coast Railroad Authority* (2017) 3 Cal.5th 677, 713; *see also* CAISO 2017-2018 Transmission Plan Press Release (March 23, 2018) (CAISO recommending the cancellation of 21 transmission projects amounting to \$2.6 billion, on account of energy efficiency programs and increasing levels of residential, rooftop solar generation alternatives), *available at* https://www.caiso.com/Documents/BoardApproves2017-18TransmissionPlan_CRRRuleChanges.pdf.

pursuant to CEQA.”⁷⁹ Staff continued to correctly explain that “constraining the alternatives analysis...would hinder the Commission’s ability to comply with CEQA; would be inconsistent with the robust alternatives analysis required by NEPA for projects with Federal involvement; and would constrain the Commission’s ability to evaluate non-wires alternatives to proposed transmission projects.”⁸⁰

Recent legislation in California, AB 3238, was proposed with almost identical language to the improperly adopted language in GO 131-E, but AB 3238 did not become law.⁸¹ California Legislative Staff, like Commission staff here, appropriately recommended against artificially limiting alternatives in order to adhere to CEQA mandates.⁸² Like AB 3238, Section VII.C.2.c. of GO 131-E should not have been adopted.

⁷⁹ Decision, p. 60, 62.

⁸⁰ Decision, p. 62 (“If the proposed Settlement Agreement provisions were adopted...the Commission’s ability to fully evaluate the required alternatives including non-wires alternatives would be constrained.”).

⁸¹ See AB 3238 (2023-2024), status, available at

https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=202320240AB3238. Then-proposed section 2845.14(b): “In addition to a no-project alternative, the commission may limit the range of reasonable alternatives considered as required by Section 21081 of the Public Resources Code and Section 15124 of Title 14 of the California Code of Regulations to alternative routes or locations for the construction of the project approved in the relevant Independent System Operator’s approved transmission plan...”

⁸² See AB 3238, Senate Environment Committee Bill Analysis dated July 2, 2024, p. 11, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB3238

file:///C:/Users/malin/Downloads/202320240AB3238_Senate%20Environmental%20Quality-8.pdf (“5) Alternatives analysis in CEQA. One important portion of an EIR is a consideration of alternatives to the proposed project. The alternatives analysis asks if a different project could achieve the same goals as the proposed project while being less impactful on the environment. Allowing the commission to limit the range of reasonable alternatives considered for certain transmission projects may undercut the objective of the alternatives analysis in CEQA, which is to encourage public agencies to think outside the box of what a given project developer may consider. In the context of transmission lines, alternative analysis may include consideration of ‘Non-wire alternatives.’ These are technologies intended to reduce grid congestion and manage peak demand to offset the need for more transmission infrastructure. The technologies can include distributed energy resources, such as microgrids or batteries, and practices and programs that focus on optimizing load management, demand response, or energy efficiency instead of building new infrastructure. **To ensure that some important alternative solutions are considered, the author and committee may wish to specify that the commission cannot limit alternatives to preclude consideration of non-wire alternatives to transmission projects.** 6) Committee amendments. Staff recommends the committee adopt the bolded amendments contained in comments 3, 4 and 5 above.”) (emphasis in original)).

B. GO 131-E Violates CEQA's Requirements Regarding Statements of Objectives.

Section VII.2.a. of GO 131-E violates CEQA because it mandates that the “project need from the CAISO transmission plan shall form the basis of the statement of objectives required by 14 Cal. Code Regs., § 15124(b) in a CEQA document.”⁸³ Limiting the statement of objectives required by CEQA constrains both the alternatives analysis and the contents of potential statements of overriding considerations that are made to proceed with projects despite significant environmental impacts.⁸⁴ By limiting the statement of objectives to just CAISO’s perspective of “project need”, the Commission has improperly constrained the scope and extent of all future EIRs prepared for electrical project CPCNs and PTCs.

1. Using CAISO’s “Project Need” as the Basis for Statements of Objectives Violates CEQA.

The statement of objectives lays the foundation of every EIR: it establishes the purpose of the project and justification for the project; it also dictates the configuration of the project and determines which project alternatives and mitigation measures are analyzed in the EIR.⁸⁵

Tethering the statement of objectives in a Commission EIR to the project need from a CAISO transmission plan ensures that the only project alternatives which are considered in future EIRs are those that have characteristics which meet the project configuration that CAISO approves without any consideration of environmental impact.⁸⁶ CAISO’s “need” determinations are prescriptive and result in specific project configurations that contemplate specific types of infrastructure located in specific places. Accordingly, by constraining EIR statements of

⁸³ Decision, Attachment A (GO 131-E Redline, p. 21).

⁸⁴ Cal. Code Regs., tit. 14, §15124, subd. (b).

⁸⁵ Cal. Code Regs., tit. 14, § 15124, subd. (b) (Statement of Objectives must include the project purpose and drives the project alternatives that are considered in the EIR); Cal. Code Regs., tit. 14, § 15126.6, subd. (c) (alternatives may be rejected if they fail “to meet most of the basic project objectives”).

⁸⁶ See Section IV.C., *infra*.

objectives to reflect CAISO’s limited determination of “need,” the project alternatives that are considered in future Commission EIRs will be limited to only configurations that provide the electrical facilities which CAISO approves in the general location that CAISO approves them. In essence, the alternatives will be virtually the same as the proposed project with only minor variation. Because CAISO does not perform CEQA review or possess field staff to review the proposals, they do not investigate the field locations of the projects and are thus unable to fully engage in a process to evaluate reasonable alternatives. This approach stifles informed decision-making especially in regards to alternatives, rendering approval of the project proposal a basically foregone conclusion under CEQA.

By contrast, CEQA requires EIR statements of objectives to be sufficiently broad and robust to engender a reasonable range of project alternatives and not just minor variations of the proposed project.⁸⁷ Project objectives cannot be so narrow as to preclude any alternative other than the project itself.⁸⁸

In *We Advocate Thorough Environmental Review v. County of Siskiyou* (“*We Advocate*”), the court found that the lead agency had “largely defined the project objectives as operating the project as proposed” and thereby “ensured that the results of its alternatives analysis would be a foregone conclusion” because all alternatives other than the project itself “would simply be defined out of consideration.”⁸⁹ The court held that taking an “artificially narrow approach for describing the project objectives” and dismissively rejecting “anything

⁸⁷ *North Coast Rivers Alliance, et al. v. Kawamura* (2015) 243 Cal.App.4th 647, 667-671; *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1163-1165.

⁸⁸ *We Advocate Thorough Environmental Review v. County of Siskiyou* (“*We Advocate*”) (2022) 78 Cal.App.5th 683, 692 (“if the principal project objective is simply pursuing the proposed project, then no alternative other than the proposed project would do”).

⁸⁹ *We Advocate*, 78 Cal.App.5th at 692.

other than the proposed project” “prejudicially prevented informed decision making and public participation.”⁹⁰

Like *We Advocate*, the requirement in GO 131-E that statements of project objectives be based on CAISO’s transmission plan “project need” impermissibly narrows the project objectives. CAISO’s evaluations of “need” are based on a limited analysis that cannot be used as the basis for a statement of objectives under CEQA; and will foreclose project alternatives other than the project which CAISO specifically approved. Furthermore, GO 131-E ensures that the Commission will never again give adequate consideration to any non-CAISO alternative because there is simply no circumstance under which a non-CAISO⁹¹ alternative could ever meet a predetermined project need from the CAISO transmission plan.

2. Using CAISO’s Limited and Predetermined Project Need as the Basis for CEQA Statements of Objectives Conflicts with AB 1373.

The Decision’s finding and conclusion that rely on AB 1373⁹² to adopt section VII.C.2.a. of GO 131-E constitute a failure to proceed in the manner required by CEQA and AB 1373 itself. AB 1373 in no way amends CEQA or CEQA’s requirements regarding project objectives. Rather, AB 1373 added section 1001.1 to the Public Utilities Code,⁹³ which specifies that in CPCN proceedings the Commission must establish a “rebuttable presumption with regard to

⁹⁰ *We Advocate*, 78 Cal.App.5th at 692-693.

⁹¹ One example of a non-CAISO alternative consists of alternative transmission grid configurations, which utilize transmission facilities other than those identified by CAISO. For example, in SDG&E’s South Orange County Reliability Enhancement Project approved in 2017, the Commission considered several alternatives for bringing 220 kV power into Capistrano other than building the transmission line and substation that CAISO said was “needed” such as the less expensive and lower impact alternative which looped in SCE transmission facilities. *See A.12-05-020, Recirculated Draft Environmental Impact Report South Orange County Reliability Enhancement Project SCH No. 2013011011 (August 2015)*, p. 1-3, 2-22-23, 2-171-74 (discussing Alternative J, the Trabuco alternative), available at <https://ia.cpuc.ca.gov/environment/info/ene/socre/attachment/Recirculated%20Draft%20SOCRE%20EIR.pdf>.

⁹² Decision, p. 144 (Finding of Fact 24); Decision, p. 148-49 (Conclusion of Law 9).

⁹³ AB 1373.

need for the proposed transmission project” in favor of CAISO’s “board-approved need evaluation” subject to certain conditions.⁹⁴ In addition to conflicting with CEQA, the Decision conflicts with AB 1373 because it requires that CAISO’s project “need” determination provide the sole basis for the CEQA statement of objectives.⁹⁵

Under section 1001.1, if during a CPCN proceeding it is shown that CAISO’s project need evaluation determination is insubstantial or deficient, then the Commission must refrain from relying on CAISO’s “need” determination in *both* the CPCN proceeding and its associated CEQA review. The Commission’s obligation to overrule CAISO “need” determinations that are insubstantial or deficient is a fundamental element of the “rebuttable presumption” established by AB 1373. GO 131-E, however, fails to adhere to the rebuttable presumption mandate by requiring the Commission to use CAISO’s project “need” determinations as the *sole* basis for CEQA statements of objectives. In other words, the Decision in adopting GO 131-E conflicts with the statutory mandate established by AB 1373 because it renders CAISO’s project need determination fixed and permanent, rather than “rebuttable” as required. As set forth below, the Commission cannot lawfully outsource its “need” determinations to CAISO.

The Decision lacks any legal basis for adopting GO 131-E in violation of Section 1001.1 and CEQA. The Commission does not have power to *a priori* narrow the project objectives required by CEQA, or to impermissibly foreclose project alternatives.

⁹⁴ Pub. Util. Code, § 1001.1.

⁹⁵ Decision, Attachment A (GO 131-E Redline), p. 21.

C. The Commission Cannot Lawfully Outsource its CEQA Obligations to CAISO.

CEQA review for siting of all electrical line facilities, irrespective of voltage, falls squarely within the purview of this Commission and not CAISO.⁹⁶ When CAISO recommends a transmission project, CAISO does not undertake any environmental review whatsoever, nor does it even claim to analyze environmentally beneficial non-transmission alternatives to transmission projects.⁹⁷ By outsourcing the project description and consideration of alternatives to CAISO—an entity which does not perform any kind of CEQA analysis—proposed sections VII.C.2.a. and VII.C.2.c. of GO 131-E conflict with CEQA.

The Decision lacks any findings⁹⁸ to support the claim that the “recent CAISO Transmission Plans demonstrate the evident need for transmission project development to support California’s energy transition.”⁹⁹ And no legal basis exists for the Commission to limit the project description or alternatives analysis required by CEQA¹⁰⁰ to a CAISO transmission plan “project need” and to alternative routes or locations.¹⁰¹

As the Decision itself correctly acknowledges, “the Commission has the principal responsibility, discretionary authority, and obligation to approve projects while avoiding or mitigating any potentially significant effects on the environment per CEQA and the CEQA

⁹⁶ 16 U.S.C. § 824, subd. (a) (“...such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.”); 61 Fed. Reg. 21540-10 (May 10, 1996), p. 21626 (FERC Order No. 888: in exercising state “authority over the service of delivering energy to end users...state regulatory commissions and state legislatures have traditionally developed social and environmental programs suited to the circumstances of their states,” the “vast majority of generation asset costs,” and “the siting and maintenance of generation facilities and transmission lines”); *id.* at p. 21627 (“fundamental state authorities” include state authority to regulate “the siting and maintenance of generation facilities and transmission lines”).

⁹⁷ See e.g. CAISO Board-Approved Transmission Plan 2023-2024, p. 17 (“the ISO cannot specifically approve non-transmission alternatives as projects or elements in the comprehensive transmission plan”).

⁹⁸ Pub. Util. Code, §§ 1705, 1757.1, subd. (a)(4).

⁹⁹ Decision, p. 57.

¹⁰⁰ Cal. Code Regs., tit 14, § 15126.6 (alternatives requirement); Cal. Code Regs., tit. 14, § 15124 (project description statement of objectives intended to assist in consideration of alternatives).

¹⁰¹ Decision, Attachment A (GO 131-E Redline), p. 21.

Guidelines.”¹⁰² Under CEQA, the Commission as lead agency must itself consider alternatives and cannot shortcut that required analysis by automatically accepting the CAISO’s TPP assumptions.

Importantly, CAISO’s analysis cannot replace the alternatives analysis required under CEQA because CAISO does not consider environmentally superior non-wires alternatives like behind-the-meter (BTM) solar plus storage. The Decision itself admits that CAISO relies on the generation resource portfolios from the Commission’s Integrated Resource Planning proceeding (IRP) to “identify the purpose, need, expected cost and cost range, and engineering alternatives for each approved project in CAISO’s Transmission Plan.”¹⁰³ As the Commission has explained, the RESOLVE model that the Commission uses in the IRP does **not** optimize BTM solar resources.¹⁰⁴ Moreover, although BTM solar minimizes the need for construction of new transmission lines, RESOLVE “does not capture any transmission and distribution (T&D) benefits of customer-sited resources.”¹⁰⁵ Nor does the Commission use the busbar mapping process to determine the optimal locations to site BTM solar.¹⁰⁶ Thus, by relying on the generation resource portfolios from the IRP, CAISO necessarily does not consider whether and where BTM solar and BTM solar plus storage infrastructure could reduce the need for expensive

¹⁰² Decision, p. 57.

¹⁰³ Decision, p. 56.

¹⁰⁴ CPUC, Inputs & Assumptions 2022-2023 Integrated Resource Planning (IRP) (October 2023), p. 54 (“**Customer solar** (‘Customer_PV’) represents behind-the-meter (BTM) rooftop solar and is a mix of mostly residential and some commercial solar resources that benefit from net energy metering (NEM). ‘Customer_PV’ is not modeled as a candidate resource, meaning that its capacity is not optimized by RESOLVE...”); *id.* at p. 6 (RESOLVE is formulated as a linear optimization problem.”), available at https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltp/2023-irp-cycle-events-and-materials/inputs-assumptions-2022-2023_final_document_10052023.pdf.

¹⁰⁵ *Ibid.*

¹⁰⁶ R.20-05-003, Methodology for Resource-to-Busbar Mapping for the Annual TPP (September 2024), p. 16 (mapping only in-front of the meter solar).

transmission and distribution upgrades.¹⁰⁷ CAISO's determination of "need" for a transmission line thus does not take into account major elements that would be necessary to form any accurate conclusion that only a transmission line would suffice.

Moreover, CAISO's process lacks the transparency to which Californians are entitled under the California Constitution¹⁰⁸ and CEQA.¹⁰⁹ While "[p]ublic participation is an essential part of the CEQA process,"¹¹⁰ the CAISO process for approving new projects allows only a minimal amount of stakeholder involvement. In fact, stakeholders who participated in the 2023 TPP consisted almost entirely of utilities, energy providers, transmission facility owners, and entities representing energy providers and transmission facility owners who will arguably benefit from transmission expansion projects, with very few "general public interest" organizations.¹¹¹

¹⁰⁷ See e.g. Vibrant Clean Energy, Why Solar for All Costs Less: A New Roadmap for the Lowest Cost Grid (December 1, 2020), p. 1-2, available at https://www.vibrantcleanenergy.com/wp-content/uploads/2020/12/WhyDERs_TR_Final.pdf.

¹⁰⁸ Cal. Const. art. 1, § 3 ("(a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good. (b)(1) The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. (2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.")

¹⁰⁹ *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 392 ("If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. The EIR process protects not only the environment, but informed self-government.")(citations omitted).

¹¹⁰ Cal. Code Regs., tit. 14, § 15201.

¹¹¹ See R.23-05-018, Acton Town Council, Reply Comments on Joint Motion for Adoption of Phase 1 Settlement Agreement (November 14, 2023) p. 7-11 ("of the 25 sets of comments that were submitted in response to CAISO's 2023 draft Study Plan . . . [o]nly four sets of comments came from what could be considered general public interest groups; they consisted of the Commission, the Public Advocates Office, and two small groups that offered non-transmission related comments pertaining to Idaho forests and "behind the meter" issues.")

Notably, no records or minutes are generated from regular stakeholder meetings.¹¹² Only limited written comments are allowed and responded to. The typical CAISO transmission plan approval process involves:

1. A draft study plan, with one round of comments, a web meeting, and ISO responses, followed by a final study plan;
2. Preliminary reliability assessments published by the CAISO;
3. Project proposals from utilities and others, followed by a web meeting and one round of comments;
4. Final reliability assessments published by the CAISO, followed less than two weeks later by a web meeting and the one round of comments;
5. A draft transmission plan published by the CAISO, followed two weeks later by a web meeting and one round of comments two weeks after that; and finally,
6. Adoption of a final transmission plan by the CAISO Board of Governors.¹¹³

Thus, stakeholders have only four opportunities to submit comments, of which the first is about the study process itself and not about the actual analysis or conclusions, and none of which involve any CEQA process or analysis. Additionally, CAISO requires stakeholders to undergo a complicated application process before they can gain access to relevant system information; this limits the public's ability to properly review CAISO approvals and "need" determinations.

¹¹² See e.g CAISO 2024-2025 Transmission Planning Process - Policy & Economic Preliminary Assessment and Study Updates, Stakeholder Meeting Slides (November 13, 2024), slide 2, available at <https://stakeholdercenter.caiso.com/InitiativeDocuments/Presentation-2024-2025TransmissionPlanningProcess-Nov13-2024.pdf>.

¹¹³ See e.g. CAISO 2024-2025 Transmission Planning Process, available at <https://stakeholdercenter.caiso.com/RecurringStakeholderProcesses/2024-2025-Transmission-planning-process>.

There is no opportunity for parties to provide expert testimony to the CAISO, there is no cross-examination, there are no sworn witnesses, there is no environmental analysis and little if any economic analysis, and there is no obligation for CAISO to consider alternatives proposed by stakeholders. Overall, by improperly limiting the alternatives to be presented by the lead agency in a draft EIR, and then further constraining the project objective to mirror that established by CAISO, the Commission has wholly impaired consideration of a reasonable range of alternatives and adequate informed decision-making.

D. The Commission Lacks Jurisdiction to Create or Enlarge CEQA Exemptions.

Although SB 529 was intended to “ensure CEQA is complied with through the PTC process,”¹¹⁴ and although the Decision arbitrarily claims not to alter or otherwise modify any CEQA requirements,¹¹⁵ the exemptions in GO 131-E improperly expand the scope of CEQA exemptions. The Commission lacks any power to expand CEQA exemptions beyond those established in the CEQA Guidelines.¹¹⁶ Only the Legislature, and the Governor’s Office of Land Use and Climate Innovation acting pursuant to authority delegated by the Legislature, have authority to limit the reach of CEQA.¹¹⁷

¹¹⁴ SB 529, Assembly Committee on Utilities and Energy Analysis (June 28, 2022), p. 2 (transmission expansion must be “environmentally responsible” and expedited projects under the bill should still ensure “CEQA is complied with”), *available at*

<https://autl.assembly.ca.gov/sites/autl.assembly.ca.gov/files/SB%20529%20%28Hertzberg%29.pdf>

¹¹⁵ Decision, p. 15 (“This decision does not alter or otherwise modify any CEQA requirements.”).

¹¹⁶ See, e.g., Pub. Res. Code, § 21000, subd. (g) (“It is the intent of the Legislature that **all agencies of the state government** which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.”) (emphasis added); Cal. Code Regs., tit. 14, § 15000; *POWER*, 10 Cal.5th at 488 (CEQA “was enacted to (1) inform the government and public about a proposed activity’s potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through alternatives or mitigation measures when feasible; and (4) disclose the government’s rationale for approving a project.”).

¹¹⁷ Pub. Res. Code, § 21083, subd. (a) (“The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall

The Commission, in adopting PTC exceptions that exceed the scope of duly adopted CEQA exemptions, has failed to proceed in the manner required by CEQA.¹¹⁸

Exceptions III.B.2.a. and b. exempt from PTC requirements the “replacement” and “minor relocation” of existing power line facilities, and exception III.B.2.c. exempts from PTC requirements the “conversion of existing overhead lines to underground.”¹¹⁹ Exceptions III.B.2.a., b., and c. conflict with CEQA Guideline section 15301, which limits the CEQA exemption for the repair, maintenance, and minor alteration of existing facilities to only those projects where there is “negligible or no expansion of use.”¹²⁰

Exceptions III.B.2.a-c also conflict with CEQA Guidelines section 15302, which limits the CEQA exemption for replacement or reconstruction of existing facilities to only those projects “where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced,” including “[r]eplacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity,” and “conversion of overhead electric utility distribution system facilities to underground...where the surface is restored to the condition existing prior to undergrounding.”¹²¹

include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.); *see also* <https://www.lci.ca.gov/> (Office of Planning and Research “renamed the Governor’s Office of Land Use and Climate Innovation” effective July 1, 2024).

¹¹⁸ Pub. Util. Code, § 1757.1, subd. (a)(2).

¹¹⁹ Decision, Attachment A (GO 131-E Redline), p. 5-6.

¹²⁰ Cal. Code Regs., tit. 14, § 15301 (“Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, **involving negligible or no expansion of existing or former use. ...The key consideration is whether the project involves negligible or no expansion of use.**”) (emphasis added).

¹²¹ Cal. Code Regs., tit 14, § 15302 (“Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have **substantially the same purpose and capacity as the structure replaced**, including but

Exception III.B.2.e. exempts from PTC requirements for power line, substation, switchyard construction and relocations “which have undergone environmental review pursuant to CEQA as part of a larger project.”¹²² The exemption deletes the previous language in GO 131-D which included the qualifier that required findings of “no significant unavoidable environmental impacts caused by the proposed line or substation.”¹²³ Exemption III.B.2.e. violates CEQA because it sidesteps the streamlined analysis required when environmental review has been undergone for a larger project,¹²⁴ which requires the Commission to prepare an initial study when considering later activities that are part of a larger project,¹²⁵ and overall precludes the Commission from determining whether the project presents significant impacts.

Indeed, despite claiming to seek a “streamlined approach” to permitting,¹²⁶ the Decision nowhere even mentions the well-established streamlining process in the CEQA concept of tiering.¹²⁷

Exception III.B.2.f. exempts from PTC requirements power lines, substations, or switchyards located in an existing franchise, road-widening setback easement, public utility easement, “existing right-of-way (ROW), fee-owned property, or other property on which a

not limited to: …(b) Replacement of a **commercial structure** with a new structure of **substantially the same size, purpose, and capacity.** (c) **Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.** (d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines **where the surface is restored to the condition existing prior to the undergrounding.**” (emphasis added).

¹²² Decision, Attachment A (GO 131-E Redline), p. 6.

¹²³ *Ibid.*

¹²⁴ Pub. Res. Code, §§ 21093, 21094; Cal. Code Regs., tit. 14, § 15152.

¹²⁵ Pub. Res. Code, §21094, subd. (c); *Friends of College of San Mateo Gardens v. San Mateo Community College Dist.* (2016) 1 Cal. 5th 937, 960.

¹²⁶ Decision, p. 22.

¹²⁷ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 429 (CEQA “permits the environmental analysis for long-term, multipart projects to be ‘tiered,’ so that the broad overall impacts analyzed in an EIR at the first-tier programmatic level need not be reassessed as each of the project’s subsequent, narrower phases is approved.”).

public utility has a legal right to operate existing transmission or power line facilities, substations, or switchyards,” and in “a utility corridor designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.”¹²⁸ The exemption deletes the qualifier in GO 131-D which required findings of “no significant unavoidable impacts.”¹²⁹ No CEQA exemption authorizes exemptions for power line facilities, substations or switchyards that may have adverse environmental impacts, simply because they are located in the listed locations.

Section III.B.3 states that the PTC exemptions cited in III.B.2.a.-d., f., and g. do not apply when “the activity may impact an environmental resource of hazardous or critical concern pursuant to §15300.2(a) of the CEQA Guidelines where designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies.”¹³⁰ GO 131-E deletes the previous references in GO 131-D to cumulative impacts and unusual circumstances.¹³¹ Section III.B.3 of GO 131-E conflicts with CEQA Guideline 15300.2 because it omits the rest of the exceptions to the categorical exemptions under CEQA, including the cumulative impact, significant effect, scenic highways, hazardous waste site, and historical resources exceptions.¹³²

¹²⁸ Decision, Attachment A (GO 131-E Redline), p. 6.

¹²⁹ *Ibid.*

¹³⁰ Decision, Attachment A (GO 131-E Redline), p. 7.

¹³¹ Decision, Attachment A (GO 131-E Redline), p. 7 (“~~The foregoing exemptions shall not apply when any of the conditions specified in CEQA Guidelines § 15300.2 exist: · there is reasonable possibility that the activity may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies; or · the cumulative impact of successive projects of the same type in the same place, over time, is significant; or · there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”~~”).

¹³² Cal. Code Regs., tit. 14, § 15300.2, subd. (b)-(f) (“(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant. (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees,

Section III.C. exempts from CPCN and PTC requirements all facilities designed to operate under 50kV.¹³³ No CEQA exemption authorizes exemptions based on kilovolt levels.¹³⁴ Under CEQA, the relevant inquiry is whether a project may adversely impact the environment. The Decision has no basis to conclude that facilities designed to operate under 50kV present no potential significant impacts.

E. GO 131-E Itself Constitutes a Project Subject to Environmental Review.

CEQA defines “project” as the whole of “an activity (1) undertaken or funded by or requiring the approval of a public agency that (2) ‘may cause either a direct change in the environment, or a reasonably foreseeable indirect physical change in the environment.’”¹³⁵ Agency approvals comprise one of the various types of governmental activities that have long been considered to satisfy the governmental activities prong of the definition of “project” under CEQA.¹³⁶ Adoption of GO 131-E satisfies the governmental activities prong of the definition of “project” under CEQA because the Commission formally approved GO 131-E.¹³⁷

The Commission’s approval of GO 131-E also satisfies the environmental effects prong of the definition of “project” under CEQA. An activity satisfies the environmental effects prong of the definition of “project” under CEQA when the activity, “by its general nature” would result

historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR. (e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code. (f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.”).

¹³³ Decision, Attachment A (GO 131-E Redline), p. 1 (defining distribution line); p. 7-8 (III.C.1.).

¹³⁴ See e.g. Cal. Code Regs., tit. 14, § 15273, subd. (b) (“Rate increases to fund capital projects for the expansion of a system remain subject to CEQA.”).

¹³⁵ *Union of Medical Marijuana Patients, Inc. v. City of San Diego (“Medical Marijuana Patients”)* (2019) 7 Cal. 5th 1171, 1187, citing Pub. Res. Code, § 21065; Cal. Code Regs., tit. 14, § 15378, subd. (a).

¹³⁶ *Medical Marijuana Patients*, 7 Cal. 5th at 1187.

¹³⁷ *Ibid.*; Cal. Code Regs., tit. 14, § 15378, subd. (a).

in a change to the environment.¹³⁸ The inquiry is limited to whether the activity “is the sort that is capable of causing direct or reasonably foreseeable indirect effects on the environment.”¹³⁹ The “somewhat abstract nature” of determining whether an activity meets the environmental effects prong of the definition of “project” under CEQA “is appropriate to its preliminary role in CEQA’s three-tiered decision tree” because it should occur “at the inception of agency action.”¹⁴⁰

In artificially constraining the statement of objectives, in limiting consideration of environmentally superior alternatives, and by exempting from permit requirements projects that would otherwise be subject to environmental review under CEQA, GO 131-E meets the environmental effects prong of the definition of “project” under CEQA. Adopting a general order that precludes environmental review where environmental review is otherwise required constitutes activity of “the sort that is capable of causing direct or reasonably foreseeable indirect effects on the environment”¹⁴¹ because, as the Decision acknowledges, CEQA review results in the adoption of alternatives or mitigation measures that minimize or avoid significant adverse environmental impacts of a project.¹⁴² CEQA’s objectives are to “(1) inform the government and the public about a proposed activity’s potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through alternatives or mitigation measures when feasible; and (4) disclose the government’s rationale for approving a project.”¹⁴³ Without CEQA compliance, CEQA’s important objectives will not be met. Adoption of GO 131-E itself thus constitutes a project subject to environmental review.

¹³⁸ *Medical Marijuana Patients*, 7 Cal. 5th at 1197-1198.

¹³⁹ *Id.* at 1198.

¹⁴⁰ *Id.* at 1197-1198.

¹⁴¹ *Id.* at 1198.

¹⁴² Decision, p. 15.

¹⁴³ *POWER*, 10 Cal. 5th at 488.

V. GO 131-E ABDICATES THE COMMISSION’S STATUTORY DUTIES TO SUPERVISE AND REGULATE THE UTILITIES, TO CONSIDER COST AND RATE IMPACTS OF THE UTILITIES’ PROJECTS ON RATEPAYERS, AND TO ENSURE ELECTRIC RATES ARE AS LOW AS POSSIBLE.

The Commission’s obligation to supervise the utilities, to ensure that the charges the Utilities demand for any product, commodity, or service rendered shall be just and reasonable, and to reduce rates to as low as possible, necessitates the inclusion of cost considerations in the PTC process (particularly since the definitions adopted in GO 131-E essentially render all transmission projects eligible for PTC review).¹⁴⁴ The Commission cannot lawfully evade its obligations to supervise the utilities and consider the costs and rate impacts of electric projects,¹⁴⁵ and alternatives thereto,¹⁴⁶ by adopting a general order that allows for environmental review in a manner wholly disconnected from cost and other characteristics of the project, and only for a limited subset of projects.¹⁴⁷

Although the Commission failed to proceed in the manner required by law by failing to hold a hearing before adopting GO 131-E,¹⁴⁸ the record in this proceeding establishes that projects under 200 kV constitute some of the most expensive projects undertaken by the

¹⁴⁴ Cal. Const. art. 12, § 3; Pub. Util. Code, §§ 451, 701, 747 (“It is the intent of the Legislature that the commission reduce rates for electricity and natural gas to the lowest amount possible.”).

¹⁴⁵ *Ibid.*; Cal. Const. art. 12, § 2 (Commission’s authority to establish “its own procedures” remains “[s]ubject to statute and due process”); Cal. Const. art. 12, § 5 (Legislature’s plenary power “to confer additional authority & jurisdiction upon the commission...”); *Southern California Gas Co. v. Public Utilities Com.* (1979) 24 Cal. 3d 653, 659 (Commission lacks authority to contradict specific legislative directives).

¹⁴⁶ See e.g. *United States Steel Corp. v. Public Utilities Com.* (1981) 29 Cal.3d 603, 608 (“The commission must consider alternatives presented and factors warranting adoption of those alternatives.”); *City & County of San Francisco v. Public Utilities Com.* (1971) 6 Cal.3d 119, 130 (Commission decision annulled “[f]or failure to consider lawful alternatives in calculation of federal income tax expense”).

¹⁴⁷ *Poet LLC v. State Air Resources Board* (2013) 218 Cal.App.4th 681, 731 (“CEQA is violated when the authority to approve or disapprove the project is separated from the responsibility to complete the environmental review.”)

¹⁴⁸ Pub. Util. Code, §§ 729, 761, 762, 768, 770.

utilities,¹⁴⁹ and thus pose significant rate concerns that the Commission cannot ignore while fulfilling its statutory obligations to ratepayers.

Nor can the Commission evade responsibility for considering cost impacts of projects over 200 kV. The Federal Power Act (FPA) authorizes federal regulation of “the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce...which are not subject to regulation by the States.”¹⁵⁰ The FPA reserves to the states authority over retail electric energy sales, “facilities used for the generation of electric energy,” “facilities used in local distribution or only for the transmission of electric energy in intrastate commerce,” and “facilities for the transmission of electric energy consumed wholly by the transmitter.”¹⁵¹ The definitions in GO 131-E of “transmission line,” “power line,” and “distribution line”¹⁵² do not track the distinction between “transmission” and “distribution” according to the Federal Energy Regulatory Commission (FERC). Rather than view “transmission” as above 200 kV and distribution as below 50 kV, FERC adopted a 7-factor test to determine whether a facility is used in “local distribution,”¹⁵³ and leaves to the states “the service of delivering energy to end users,” “regulation of most power production and virtually all distribution and consumption of electric energy,” the “vast majority of generation asset costs,” and “the siting and maintenance of generation facilities and transmission lines.”¹⁵⁴

¹⁴⁹ See R.23-05-018, Center for Biological Diversity, Clean Coalition, and The Protect Our Communities Foundation Opening Comments on Phase 2 Issues (February 5, 2024), p. 23-25 (giving numerous examples and citing to SDG&E’s January 2nd 2024 TPR Process Project Spreadsheet – Public Version (Jan 2, 2024) available at <https://www.sdge.com/sdge-tpr-process>); R.23-05-018, The Protect Our Communities Foundation Comments on OIR (June 22, 2023), p. 3-4, 9.

¹⁵⁰ 16 U.S.C. § 824, subd. (a).

¹⁵¹ 16 U.S.C. § 824, subd. (b)(1).

¹⁵² Decision, Attachment A (GO 131-E Redline), p. 1.

¹⁵³ 61 Fed. Reg. 21540-10 (May 10, 1996), p. 21620-21, 2162 (FERC Order No. 888).

¹⁵⁴ 61 Fed. Reg. 21540-10 (May 10, 1996), p. 21626-27 (FERC Order No. 888).

The Commission's adoption of GO 131-E constitutes an abdication of its duties to supervise the utilities and protect ratepayers. This Application should be granted and, when this matter is reconsidered and set for hearing, the Commission should incorporate cost review in the PTC process in order to comply with the Commission's obligations to supervise and regulate the utilities, protect the public, and ensure the utilities are only charging ratepayers for just and reasonable electric projects.

VI. GO 131-E'S PREEMPTION PARAGRAPH FAILS TO COMPORT WITH LAW AND ERRONEOUSLY INFRINGES ON THE RIGHTS AND DUTIES OF LOCAL AGENCIES.

The Commission in the Decision claims to be unsure about the Commission's duty to avoid infringing on the jurisdiction of local agencies¹⁵⁵ and does not propose changes to Section XIV of GO 131-D.¹⁵⁶ Section XI.B. of GO 131-E¹⁵⁷ should be deleted because it conflicts with the California Constitution, Public Utilities Code section 2902, and the preemption analysis required by law.¹⁵⁸

¹⁵⁵ See Decision, p. 146 (FOF 33) 33 ("At this time, there is insufficient record on how to develop GO 131-E rules for BESS permitting and related definitions, including the extent of the Commission's jurisdiction over permitting BESS projects, that may entail preemption of local agency jurisdiction.").

¹⁵⁶ See Decision, Attachment A (GO 131-E Redline), p. 25 ("Section XI. Complaints and Preemption of Local Authority").

¹⁵⁷ Decision, Attachment A (GO 131-E Redline), p. 25 (Section XI.B.: "This General Order clarifies that local jurisdictions acting pursuant to local authority are preempted from regulating electric power line projects, distribution lines, substations, or electric facilities constructed by public utilities subject to the Commission's jurisdiction. However, in locating such projects, the public utilities shall consult with local agencies regarding land use matters. In instances where the public utilities and local agencies are unable to resolve their differences, the Commission shall set a hearing no later than 30 days after the utility or local agency has notified the Commission of the inability to reach agreement on land use matters.").

¹⁵⁸ *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal. 5th 1107, 1120-1124; Pub. Util. Code, § 2902 ("This chapter shall not be construed to authorize any municipal corporation to surrender to the commission its powers of control to supervise and regulate the relationship between a public utility and the general public in matters affecting the health, convenience, and safety of the general public, including matters such as the use and repair of public streets by any public utility, the location of the poles, wires, mains, or conduits of any public utility, on, under, or above any public streets, and the speed of common carriers operating within the limits of the municipal corporation.").

The California Constitution “vests principal regulatory authority over utilities with the Commission PUC, but carves out an ongoing area of municipal control.”¹⁵⁹ Notably, the California Constitution makes clear that the Commission has no regulatory authority to interfere with a charter city’s “making and enforcement of police, sanitary, and other regulations concerning municipal affairs” or with any city’s right to grant gas and electric franchises.¹⁶⁰

Moreover, local agencies must protect the public from the adverse impacts of utility operations, and they lack authority to yield their police powers to the Commission.¹⁶¹ Section XI.B. of GO 131-E fails to account for these constitutional and statutory limitations on the Commission’s power and thus cannot be readopted without modifications to conform to the law.

VII. REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 16.3 of the Commission’s Rules of Practice and Procedure, Joint Applicants request oral argument on this application for rehearing. The Decision, in adopting new GO 131-E, on its face “adopts new Commission precedent” and departs from existing GO 131-D without adequately explaining how the Commission will meet its duties under CEQA and the Public Utilities Code to consider the environment and ratepayer cost in regulating the utilities.

¹⁵⁹ *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1124 (“...a utility will still be subject to local control in carrying out the construction”).

¹⁶⁰ Cal. Const. art. 12, § 8 (“A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission. This section does not affect power over public utilities relating to the making and enforcement of police, sanitary, and other regulations concerning municipal affairs pursuant to a city charter existing on October 10, 1911, unless that power has been revoked by the city’s electors, or the right of any city to grant franchises for public utilities or other businesses on terms, conditions, and in the manner prescribed by law.”).

¹⁶¹ *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1124 (“Municipalities may surrender to the PUC regulation of a utility’s relations with its customers (§ 2901), but they are forbidden from yielding to the PUC their police powers to protect the public from the adverse impacts of utilities operations (§ 2902.”); *see also Avco Community Developers, Inc. v. South Coast Regional Center* (1976) 17 Cal.3d 785, 801 (land use regulations involve the exercise of the police power and cannot be surrendered).

Given the deficiencies in the Decision and GO 131-E that present legal issues of exceptional controversy, complexity and public importance, as detailed in this application, oral argument will materially assist the Commission in resolving the application.

VIII. CONCLUSION

Joint Applicants request that the Commission grant this Application for Rehearing and set aside the Commission's approval of GO 131-E.

Respectfully Submitted,

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