

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



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R2305018

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

R. 23-05-018
(Filed May 18, 2023)

**RESPONSE OF LS POWER GRID CALIFORNIA, LLC (U-247-E) TO THE
APPLICATION FOR REHEARING OF DECISION 25-01-055**

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March 25, 2025

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The Application for Rehearing of Decision (D.) 25-01-055 (Application),¹ filed by six parties, is grounded in part on misunderstandings of the processes the California Independent System Operator Corporation (CAISO) undertakes in its Transmission Planning Process (TPP) and how the Transmission Plan adopted as part of the TPP interacts with the Commission's review of applications for either a Certificate of Public Convenience and Necessity (CPCN) or Permit to Construct (PTC) under the recent revision of General Order (GO) 131, adopted by D.25-01-055 (Decision) as GO 131-E. Once those misunderstandings are corrected, it becomes clear that in adopting the Decision the Commission did not commit the legal errors that the Application alleges.

LS Power Grid California, LLC (LSPGC) offers this response to the Application to make those corrections. LSPGC is well-positioned in that regard. LSPGC has been selected in competitive solicitations conducted by the CAISO to construct six regional transmission projects, all of which have undergone or are undergoing environmental review in connection with

¹ *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*, filed on March 10, 2025.

applications for either a CPCN or PTC—the authorizations that are the subject of GO 131-E.² In the context of the Application’s repeated assertion that GO 131-E will allow developers of transmission and substation project to skirt the environmental review required by the California Environmental Quality Act (CEQA),³ it is worth noting that all six of LSPGC’s projects were or are subject to the environmental review of CEQA, conducted by the Commission’s Energy Division and an independent consultant overseen by the Energy Division. Although review of LSPGC’s projects was initiated under the provisions of GO 131-D, the previous version of GO 131, LSPGC believes that, contrary to the Application’s assertions, none of LSPGC’s six projects would have been exempted under the provisions of GO 131-E from filing an application seeking the Commission’s approval or from undergoing the environmental review required by CEQA.

LSPGC’s response will focus on the Application’s assertions that GO 131-E allows project developers to evade CEQA review, assertions that flow from a misunderstanding of the interaction between the CAISO’s and the Commission’s processes.

I. THE DECISION AND GENERAL ORDER 131-E ARE CONSISTENT WITH CEQA

The bulk of the Application argues that GO 131-E is an attempt by the Commission to evade CEQA or to outsource its CEQA obligations to the CAISO.⁴ These accusations are unfounded. In GO 131-E, instead of shirking its responsibilities under CEQA, the Commission is appropriately seeking to avoid unnecessary duplication of the analyses the CAISO performs as

² PTCs for two projects have been approved by the Commission—the Orchard Substation (D.22-12-048) and the Fern Road Substation (D.24-01-011). Applications for CPCNs are pending for the Power Santa Clara Valley transmission project (A.24-04-017), the Power the South Bay transmission project (A.24-05-014), the Manning Substation (A.24-06-017), and the Collinsville Substation (A.24-07-018).

³ Pub. Resources Code, §§ 21000-21189.91.

⁴ Application, pp. 13-32.

part of its TPP. Nothing in CEQA requires an agency to ignore the technical studies and other information prepared by other entities. To the contrary, the CEQA Guidelines⁵ encourage consideration of the work of other agencies and entities in the environmental review.⁶

A. The CAISO Could Not Assume the Commission’s CEQA Obligations

The Application’s accusation that the Commission is attempting to “outsource” its CEQA obligations⁷ is not based on any factual or legal reality. The Application argues against a problem that does not exist: the CAISO does not and could not assume the Commission’s CEQA responsibilities for a number of reasons.

1. The CAISO is not a “public agency”

CEQA applies to “to discretionary projects proposed to be carried out or approved by public agencies.”⁸ “Public agency” is defined as “ any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.”⁹ The CAISO is a nonprofit, public benefit corporation,¹⁰ not a state agency, and thus the CAISO is not a public agency under CEQA.

2. The CAISO does not carry out or approve “projects,” as defined by CEQA

CEQA defines “project” as activities that are undertaken by a public agency, that are supported by a public agency, or that receive permits or other entitlements for use from a public agency.¹¹ The TPP performs technical studies and analyses to identify “transmission

⁵ Cal. Code Regs., tit. 14, §§ 15000-15387.

⁶ See CEQA Guidelines, §§ 15142 (Interdisciplinary Approach), 15147 (Technical Detail), 15150 (Incorporation by Reference).

⁷ Application, pp. 24-28.

⁸ Pub. Resources Code, § 21080(a).

⁹ Pub. Resources Code, § 21063.

¹⁰ Pub. Util. Code, 345.5(a).

¹¹ Pub. Resources Code, § 21065.

solutions.”¹² For the competitive solicitation of sponsors for Regional Transmission Projects like the ones being constructed by LSPGC, the CAISO posts qualification criteria, selection factors, and key selection criteria that help the competing entities develop their proposals for specific projects.¹³ Thus, at the time the CAISO approves a Transmission Plan, there is no “project” or project site that could be evaluated for environmental impacts. That is precisely why the obligation to conduct the CEQA review falls on the Commission, a public agency, when an applicant presents a specific, tangible project for the Commission’s consideration.

B. The CAISO’s and Commission’s Consideration of Alternatives

Because the CAISO identifies only transmission planning solutions and does not approve “projects,” it also does not consider alternatives to any particular “project.” The Application nevertheless faults both the CAISO and the Commission for an alleged failure to consider certain alternatives. The Application states that “CAISO does not consider environmentally superior non-wires alternatives like behind-the-meter (BTM) solar plus storage.”¹⁴ Similarly, the Application alleges that Section VII.C.2.c of GO 131-E “erroneously allows the Commission to ignore solutions like energy efficiency, rooftop and community solar and virtual power plants as alternatives.”¹⁵ Those statements are misleading at best.

The CAISO’s summary of its TPP includes this explanation:

As part of its transmission planning process, the ISO examines wires and non-wires alternatives that include conventional generation, preferred resources (e.g., energy efficiency, demand response, renewable generating resources), and market-based energy storage solutions as a means to meet local transmission system needs. The ISO may also identify transmission solutions needed to maintain the feasibility of long-term congestion revenue

¹² See, e.g., CAISO Tariff, § 24.4.6.2, available at <https://www.caiso.com/documents/section24-comprehensivetransmissionplanningprocess-asof-dec21-2023.pdf>.

¹³ CAISO Tariff, § 24.5.1.

¹⁴ Application, p. 25.

¹⁵ Application, p. 15.

rights, provide a funding mechanism for location-constrained generation projects, or provide for merchant transmission projects.¹⁶

The CAISO's Draft *2025-2026 Transmission Planning Process Unified Planning*

Assumptions and Study Plan provided a more detailed explanation of how non-wire resources are considered:

As in the previous planning cycles, reliability assessments in the current planning cycle will consider a range of existing demand response amounts as potential mitigations to transmission constraints. The reliability studies will also incorporate the incremental uncommitted energy efficiency and fuel substitution amounts as projected by the CEC and a mix of preferred resources including energy storage based on the CPUC authorization. These incremental preferred resource amounts are in addition to the base amounts of energy efficiency, demand response and “behind the meter” distributed or self-generation that is embedded in the CEC load forecast.¹⁷

Similarly, the Commission, in the most recent base case and sensitivity resource portfolios conveyed to the CAISO for use in the 2025-2026 TPP, included significant quantities of solar, wind, and storage resources.¹⁸

The Application criticizes the CAISO and the Commission more specifically for not considering behind-the-meter resources like rooftop solar and storage as alternatives to transmission solutions. However, the CAISO and the Commission do not consider BTM resources as non-wires alternatives because the load forecast provided to the TPP by the California Energy Commission (CEC) accounts for these BTM alternatives as reductions in

¹⁶ <https://www.caiso.com/documents/transmission-planning-process-overview.pdf>.

¹⁷ CAISO, 2025-2026 Transmission Planning Process Unified Planning Assumptions And Study Plan, DRAFT (February 19, 2025), p. 47, available at <https://stakeholdercenter.caiso.com/InitiativeDocuments/2025-2026-Transmission-Planning-Process-Unified-Planning-Assumptions-and-Draft-Study-Plan.pdf>.

¹⁸ D.25-02-026, pp. 19, 31.

demand.¹⁹ If BTM solar and storage resources have reduced the demand forecast by 100 MW, that 100 MW cannot be reduced a second time to serve as an alternative to a transmission solution needed to meet the forecasted level of load. It would be double-counting, with potentially serious consequences for grid reliability, if the CAISO or the Commission were to consider BTM non-wire resources as alternatives to transmission solutions that are needed to accommodate a level of load that has already been reduced to reflect the contribution of those resources.

II. THE DECISION’S TREATMENT OF ALTERNATIVES DOES NOT CONFLICT WITH AB 2292

Citing a report from the legislative history, the Application asserts that the Decision’s alleged exclusion of consideration of non-wires alternatives (an allegation refuted above) conflicts with Assembly Bill (AB) 2292.²⁰ However, California courts avoid relying on legislative history because “reading the tea leaves of legislative history is often no easy matter,” and courts must evaluate “a motley collection of authors’ statements, committee reports, internal memoranda, and lobbyist letters.”²¹ For that reason, courts avoid relying on legislative history unless the statute in question is ambiguous: “First look at the text; if it's plain and unambiguous, stop there. . . .”²²

¹⁹ See CEC, *2023 Integrated Energy Policy Report* (March 2024), p. 104; CAISO, *2024-2025 Transmission Planning Process Unified Planning Assumptions and Study Plan* (June 25, 2024) p. 45 (available at <https://stakeholdercenter.caiso.com/InitiativeDocuments/Final-Study-Plan-2024-2025-Transmission-Planning-Process.pdf> ; D.25-02-026, p. 84 (“We decline to make these changes [adding more distributed energy and storage resources], noting that many DERs are accounted for in the load forecast”) To be clear, the CAISO considers energy efficiency, demand response, and BTM resources in excess of the amounts embedded in the CEC load forecast as possible solutions to local area needs. CAISO, *2024-2025 Transmission Planning Process Unified Planning Assumptions and Study Plan* (June 25, 2024) pp. 45-47.

²⁰ Application, pp. 17-18.

²¹ *J.A. Jones Construction Co. v. Superior Court* (1994) 27 Cal.App.4th 1568, 1578–1579.

²² *Busse v. United PanAm Financial Corp.* (2014) 222 Cal.App.4th 1028, 1038.

It is hard to imagine a bill that would be less ambiguous than AB 2292, which consists of a single sentence: “Section 1002.3 of the Public Utilities Code is repealed.” Section 1002.3 previously required the Commission, when evaluating a CPCN application for a transmission facility, to consider cost-effective alternatives to transmission facilities, including demand-side alternatives, such as targeted energy efficiency, ultraclean distributed generation, and other demand reduction resources. The repeal of that requirement does not in any way compel the Commission to consider the alternatives that were the subject of repeal in SB 2292.

III. THE COMMISSION SHOULD NOT BE REQUIRED TO DUPLICATE THE CAISO’S WORK

A. The CAISO’s Need Determination Is an Appropriate Basis for the Statement of Objectives

Every year, the CAISO commences a new two-year process, the TPP, to identify the transmission solutions that are needed to maintain the reliability of the transmission grid, to meet public policy goals, or to create economic benefits. Section VII.C.2 of GO 131-E refers to this process:

Where the electric project proposed in a CPCN or PTC application has been evaluated and approved by the CAISO in a transmission plan prepared in accordance with the CAISO tariff approved by FERC, the following will occur:

- a. 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.

The Application objects that the provision “requires the Commission to blindly adopt the ‘project need’ from CAISO as the basis for the statement of objectives under CEQA.”²³ This objection ignores that the statement of objectives concerns the objectives “**sought by the proposed project**” and “**the underlying purpose of the project.**”²⁴ There should be little

²³ Application, p. 14.

²⁴ CEQA Guidelines, § 15124(b).

question that the objectives and underlying purpose of a transmission solution authorized in the CAISO's Transmission Plan that requires the Commission's approval is to construct the facility that provides the solution to the need identified in the Transmission Plan. Why else would a project developer go through the expensive and lengthy process of obtaining a CPCN or PTC from the Commission? Thus, it is appropriate for the CAISO's transmission solution to form the basis for the statement of objectives for a facility that has been "evaluated and approved by the CAISO."

The Application's objection to Section VII.C.2.a is also grounded in a misperception of the nature of the CAISO's need determination. The Application states, without citation, that "CAISO's 'need' determinations are prescriptive and result in specific project configurations that contemplate specific types of infrastructure located in specific places."²⁵ The Application is wrong on this point, as can be demonstrated by LSPGC's experience.

For LSPGC's Orchard and Fern Road substations, the 2018-2019 Transmission Plan's need determination was brief and non-specific:

To address voltage issues identified in central and northern PG&E bulk system two projects are recommended for approval.

- Gates 500 kV Dynamic Voltage Support
- Round Mountain 500 kV Dynamic Voltage Support.²⁶

(The Orchard Substation provides the Gates 500 kV Dynamic Voltage Support, and the Fern Road Substation provides the Round Mountain 500 kV Dynamic Voltage Support.)

The CAISO's support for this recommendation summarizes extensive electrical and engineering studies and provides a technical explanation of why these projects are needed,²⁷ but

²⁵ Application, p. 20.

²⁶ CAISO, *2018-2019 Transmission Plan* (March 29, 2019), p. 93, available at https://www.caiso.com/documents/iso_boardapproved-2018-2019_transmission_plan.pdf.

²⁷ See CAISO, *2018-2019 Transmission Plan* (March 29, 2019), pp. 81-84 and Appendix B.

nothing resembling “specific project configurations,” “specific types of infrastructure located in specific places,” or descriptions of the physical projects was included in the Transmission Plan.

The specifications that were provided at the commencement of the competitive solicitations for the two projects are only slightly more specific. For the Gates project, the project’s interconnection “can enter the [existing PG&E] Gates substation from either the north or the south side.”²⁸ The specifications for the Round Mountain project presented two alternatives. In Alternative 1, the reactive power support project was to loop into the two 500 kV Round Mountain-Table Mountain transmission lines “approximately half way (40% to 60% of the distance) between Round Mountain to Table Mountain 500 kV substations,”²⁹ or somewhere within a roughly a 20-mile linear distance, with no lateral limitations. Alternative 2 proposed connections to both the Round Mountain and Table Mountain substations, with no other geographical restrictions.³⁰

These two examples demonstrate that the keystone element of the Application’s argument against Section VII.C.2.a—that the CAISO’s need determinations result in “specific project configurations that contemplate specific types of infrastructure located in specific places”—is wrong. The CAISO’s need determination focuses on the *functions* that a proposed transmission solution will provide, not on the physical structure or specific location.³¹

A specific project configuration and location will eventually emerge, and the environmental impacts of that specific proposal are what the Commission will evaluate in the

²⁸ CAISO, *Gates 500kV Dynamic Reactive Support Description and Functional Specifications for Competitive Solicitation* (March 29, 2019), unpaginated, p. 3 of 4.

²⁹ CAISO, *Round Mountain 500 kV Area Dynamic Reactive Support Description and Functional Specifications for Competitive Solicitation, Revision 1* (May 14, 2019), unpaginated, p. 3 of 7.

³⁰ *Ibid.*, p. 4 of 7.

³¹ A proposed project’s location can be considered when the CAISO evaluates the competing proposals in its competitive solicitation, but the CAISO’s need determination does not required “specific types of infrastructure located in specific places,” as the Application asserts.

CEQA process. That specific proposal will give rise to alternative routes or locations that will also be evaluated as part of the CEQA review, as required by GO 131-E.³²

B. The Commission Is Correct to Consider the CAISO's Need Determination

The Application's objections to the Commission's acceptance of the CAISO's need determination are confusing. The Application seems to suggest that CEQA requires the Commission to ignore the CAISO's need determination and to conduct its own process to identify transmission problems and potential solutions. The Application does not explain why the Commission should ignore the fact that the CAISO has the expertise, personnel, information, and computing power to perform the complicated analyses of the transmission grid needed to identify the most pressing problems that require solutions. A more logical response would be to ask why should the Commission do anything other than use the CAISO's need determination as the basis for the statement of objectives for the CEQA review. The CAISO, as the operator of about 80% of California's grid for over 20 years, has a detailed understanding of the grid that would be nearly impossible for the Commission or any other entity to duplicate.

An example cited by the Application illustrates how complications can result in a deficient analysis and ultimately a waste of time and resources. The Application refers to SDG&E's South Orange County Reliability Enhancement Project (A.12-05-020) to demonstrate how the Commission has considered "alternative grid configurations" that use facilities other than those identified by the CAISO.³³ However, and unfortunately for this example, in that case the Commission concluded that the alternate grid configuration cited by the Application, even though it was the environmentally superior alternative, was infeasible because the alternative

³² See Sections VII.A.2.a, e, VII.B.2.c, VII.C.1.

³³ Application, p. 22, fn.91.

could not comply with reliability and safety standards, among other practical considerations.³⁴

As the grid operator, the CAISO is intensely concerned about the reliability and safety of the grid, and its proposed transmission solutions are unlikely to run up against an inability to meet reliability and safety standards.

IV. THE APPLICATION MISUNDERSTANDS THE REBUTTABLE PRESUMPTION CREATED BY SECTION 1001.1

The Application also argues against relying on the CAISO's need determination by misreading Public Utilities Code section 1001.1, added by AB 1373 (Stats. 2023, Ch. 367, Sec. 10). In a CPCN proceeding, section 1001.1 establishes a rebuttable presumption of need "in favor of an Independent System Operator governing board-approved need evaluation" if certain conditions are met. The Application misapplies this straightforward statute. The Application contends that if 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."³⁵

That conclusion, however, misunderstands the purpose of a rebuttable presumption. When a rebuttable presumption applies, burden of proof shifts to the party against whom the burden of proof operates, who must then prove that the presumed fact does not exist.³⁶ If the rebuttable presumption does not apply, the party asserting the claim, *i.e.*, the applicant in a CPCN proceeding, retains the burden of proof.³⁷ If the prerequisite conditions for the rebuttable presumption of section 1001.1 are not shown, then the presumption does not apply and the burden to show that the project is needed reverts to the applicant. The inapplicability of the

³⁴ D.16-12-064, pp. 26-28.

³⁵ Application, p. 23.

³⁶ Evid. Code, § 606.

³⁷ Evid. Code, § 500.

presumption does not, as the Application claims, automatically mean that the basis for the CAISO's determination must be entirely rejected. If the presumption does not apply, the applicant can still present evidence, including the CAISO's studies and conclusions, to support its argument in favor of a finding of need.

AB 1373 was part of the Legislature's effort to speed up the Commission's approval of needed transmission and storage projects. The Commission should give no credence to the Application's attempt to thwart the Legislature's goal.

V. CONCLUSION

The need for California to upgrade and expand its transmission grid to maintain reliability and to bring the clean energy needed to meet California's climate goals has been apparent for several years. In 2023, AB 1373 established a rebuttable presumption in favor of the CAISO's finding of need in applications for a CPCN. In 2022, Senate Bill (SB) 529 directed the Commission to update GO 131-D to allow more types of transmission and storage projects to qualify for approval under the PTC process, which focuses on the environmental review of a proposed project and generally proceeds more quickly than a CPCN proceeding. The Commission responded to both SB 529 and the need to accelerate the review of transmission and energy storage projects by revising GO 131 and adopting GO 131-E, which included several significant reforms that will substantially shorten the review period.

The Application seeks to halt this progress by alleging, with some difficulty, that the adoption of GO 131-D violates CEQA. In this response, LSPGC has shown that GO 131-E does not violate CEQA and that the Application has failed to show that the Commission committed any legal error when it adopted D.25-01-055.

For the reasons presented in this response, LS Power Grid California respectfully urges the Commission to deny the Application for Rehearing of Decision 25-01-055.

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