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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

JOINT RESPONSE TO 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

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Dated: March 25, 2025

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BEFORE THE PUBLIC UTILITIES COMMISSION
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Order Instituting Rulemaking to Update and Amend Commission General Order 131-D.	Rulemaking 23-05-018

JOINT RESPFONSE TO 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

Pursuant to California Public Utilities Commission ("CPUC" or "Commission") Rules of Practice and Procedure, Rule 16.1(d), Pacific Gas and Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E"), and Southern California Edison Company ("SCE") (collectively the "IOUs") respectfully submit this Response to the Protect Our Communities Foundation ("PCF"), Center For Biological Diversity ("CBD"), Acton Town Council ("ATC"), California Farm Bureau Federation ("CFBF"), Anza Borrego Foundation ("ABF"), and Defenders of Wildlife ("DOW") (collectively the "Applicants") Application For Rehearing ("AFR") of D.25-01-055, Decision Adopting General Order ("GO") 131-E (the "Decision").

I. INTRODUCTION

Despite charges of multiple California Environmental Quality Act ("CEQA")[1] and other statutory violations by the Commission, Applicants have failed to establish legal error. Decision 25-01-055 ("D.25-01-055" or "Decision") is the product of a multi-year proceeding, which included more than 20 parties zealously advocating their respective positions. That process created an extensive record for the Commission to consider, including a robust staff proposal and hundreds of pages of comments and replies. The Commission thoroughly and thoughtfully considered the entirety of this extensive record before reaching a deliberate and well-reasoned Decision that not only complies with statutory mandates but also expedites the permitting process for electric transmission projects. A review of the AFR indicates that Applicants are disheartened by the Decision and seek an outcome more in line with the positions they

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

vigorously advocated for during the proceeding. However, disappointment with the ultimate Decision does not provide sufficient grounds for requesting and receiving a rehearing.

At the heart of the AFR is Applicant's fundamental disagreement with the CPUC over which utility construction projects should require a CPCN,[2] how those projects are chosen, and when the Commission should consider costs in approving such projects. These are broad policy issues over which the CPUC has wide discretion[3] and over which CEQA has no sway.[4] While Applicants may disagree with the CPUC's decisions on such issues as how terms are defined in GO 131-E and the appropriate weight to be given to California Independent Systems Operator ("CAISO") findings and conclusions, those decisions are well within the Commission's authority and are fueled by recent legislative directives. An AFR is not "a vehicle for relitigation of policy positions or to reweigh evidence,"[5] which is precisely what Applicants seek to do in this instance.

As such, the IOUs respectfully request that the AFR be denied.

II. APPLICANTS HAVE FAILED TO DEMONSTRATE LEGAL ERROR WITH THE DECISION ADOPTING GO 131-E

An AFR must demonstrate legal error, setting forth "specifically" the ground or grounds for why the decision is unlawful.[6] An AFR cannot simply re-argue policy issues presented

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[2] Certificate of Public Convenience and Necessity ("CPCN"), the largest formal permit required under GO 131-E. (See GO 131-E, Section III.A.)

[3] The California Constitution vests in the Commission exclusive power and authority with respect to "all matters cognate and germane to the regulation of public utilities." (Cal. Const., art. XII, §§ 5, 8; see also Pub. Util. Code, §§ 701, et seq.; *Town of Woodside v. PG&E* (1978) 83 Cal.P.U.C. 418, 422 (Dec. No. 88462) (construction of electrical transmission lines and facilities has been held to be expressly within the CPUC's exclusive jurisdiction).

[4] *See* 14 Cal. Code Regs. §§ 15000 et. seq. ("CEQA Guidelines"), § 15040, subd. (a) (CEQA is intended to be used in connection with discretionary powers *granted to public agencies by other laws*) and (b) (CEQA does not grant new powers independent of powers granted by other laws).

[5] D.21-08-022 at 2 (citation omitted); D.18-06-036 at 11-12, n.27 ("[T]he purpose of a rehearing application is to specify legal error, not to relitigate issues."). *See also* D.21-09-045 at 4, ("PCF raises many of the same arguments in its application for rehearing of D.21-02- 028, which is now a final and conclusive decision.").

[6] Public Utility (Pub. Util.) Code, § 1732; CPUC Rule 16.1(c).

earlier in the proceeding."[7] "It is within the [Commission's] discretion to determine what factors are material to its decision based on the issues before it."[8]

Rule 16.1 clearly states that "[t]he purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously."[9] Challenges to the weight given a particular piece of evidence, or the validity of specific evidence do not constitute a claim of legal error, as long as the Commission's conclusions are supported by substantial evidence in light of the whole record.[10] Disagreement with the Commission's conclusion is not sufficient to show legal error.[11] As the Commission stated when it denied rehearing in Decision 06-01-045, "By this assertion, TURN is attempting to relitigate issues, asking the Commission to reweigh evidence in the record, and reach a different policy determination on whether to give PG&E pre-deployment funding. TURN has offered no legal basis to require such a reweighing of the evidence."[12]

Here, Applicants' AFR merely reflects their disagreement with the Decision. Nothing in the AFR establishes legal error justifying a reopening of the rulemaking proceeding.

A. BROAD DEFINITIONS DO NOT CONSTITUTE LEGAL ERROR

Applicants seem to be under the misimpression that the Commission cannot legally narrow the number of projects required to obtain a formal permit, or choose the type of projects that qualify for certain permits. That is not the case. The Commission has broad legal authority to determine which projects will require CPCNs and it has violated no laws in following the legislative mandate to make GO 131-E permitting more efficient. Whether the interested parties

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[7] D.13-01-041 at 7 ("The purpose of a rehearing application is not to relitigate policy determinations.")

[8] *Clean Energy Fuels Corp. v. Pub. Utils. Comm'n* (2014) 227 Cal.App.4th 641, 659.

[9] CPUC Rules of Practice and Procedure, Cal. Code Regs., tit. 20, ("Rules"), Rule 16.1(c).

[10] *See* Pub. Util. Code, § 1757; see also D. 14-10-027 at 2; D.09-07-052 at 10 ("DRA's arguments regarding the three specific criteria addressed in D.08-11-057 reveal disagreement with the Decision's ultimate outcome, but not error in these individual determinations.").

[11] D.06-06-071 at 29, "While AReM may disagree with our conclusions, disagreement does not constitute legal error."

[12] D.06-01-045, at 3.

believe the new definitions are too broad or too narrow,"[13] the Commission has authority to establish the permitting rules.[14]

1. The New Definitions in GO 131-E Do Not Violate Public Utilities Code 1001

Public Utilities Code Section 1001, recently amended by Senate Bill ("SB") 529, does not prevent the CPUC from exercising its broad discretion to determine which projects within its jurisdiction must obtain discretionary permits. The California Legislature clearly recognized this when in amended Section 1001 by adopting SB 529, which provides the Commission with a clear directive:

> [T]he commission shall update General Order 131-D to authorize each public utility electrical corporation 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, including electric transmission lines and substations within existing transmission easements, rights of way, or franchise agreements, irrespective of whether the electrical transmission facility is above a 200-kilovolt voltage level.

The Commission's interpretation of the Public Utilities Code is afforded deference and "should not be disturbed unless it fails to bear a reasonable relation to the statutory purposes and language."[15] The statutory purpose of allowing projects to utilize Permits to Construct ("PTCs") or exemptions is to relieve projects from the CPCN process, which "hampers the ability of deploying necessary transmission projects in a timely fashion to support deployment of necessary zero-carbon and renewable energy resources."[16] SB 529 does not provide definitions for terms such as extension, expansion, upgrade or other modification, leaving it to the expertise of the Commission to set these terms as appropriate to meet the goals of the statute. Both the

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[13] The parties disagreed on that issue. See Part II.A.3 below.

[14] *See* fn. 3, *supra*. For this reason, the projects listed in several pages of tables in the AFR that Applicants claim "could avoid CPCN review" are not relevant to any legal error. Even if they were, the attempt to introduce new evidence in an AFR, when the record has been closed, is untimely and unjustified. *See* D. 91-03-069.

[15] *Greyhound Lines, Inc. v. Pub. Utilities Comm'n* (1968).68 Cal. 2d 406, 410–11.

[16] SB 529, Senate Floor Analysis, August 31, 2022.

language and statutory purpose of SB 529 provide a clear directive to expedite the deployment of energy transmission projects. With the adoption of GO 131-E, and the included definitions, the Commission has complied with that clear directive and has done so without committing legal error.

2. The New Definition for "Existing Transmission Line Facilities" in GO 131-E Does Not Violate CEQA

The AFR alleges that GO 131-E's "lack of scrutiny" in its definitions "hinges on GO 131-E's extremely broad definition of 'existing electrical transmission facilities,'" which violates CEQA.[17] Apparently this claim is based on a misreading of the CEQA Guidelines.[18] Applicants contend that GO 131-E's definition of an existing electrical transmission facility "does not comport with CEQA" because CEQA's "existing facilities" exemption includes "only those existing facilities that are actually *in use*."[19] This is factually incorrect; CEQA Guidelines Section 15301 requires "negligible or no expansion of existing *or former* use,"[20] which is in line with the Commission's requirement that the existing utility facility "has been constructed."[21]

Nevertheless, although the CEQA and GO 131-E definitions are aligned, they need not be. There is nothing in CEQA that would dictate how an agency defines the terms in its regulations for a completely different purpose than CEQA review. CEQA does not dictate which agency decisions are subject to discretionary review, but "is intended to be used in conjunction with discretionary powers granted to public agencies by other laws."[22] To the extent defined terms assist in determining whether a discretionary permit is required under GO 131-E, the definition of those terms is within the sole purview of the CPUC and the California Legislature –

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[17] AFR at 6.

[18] *See* CEQA Guidelines, § 15301.

[19] *Id.*, emphasis supplied.

[20] *Id.*

[21] GO 131-E, § I.E. The definition also requires that the facility be at or over 50 kV, since those are the facilities actively regulated under GO 131-E.

[22] CEQA Guidelines, § 15040, subd. (a).

not CEQA.

3. The New Definitions in GO 131-E are the Valid Result of a Robust Proceeding before the CPUC

Applicants raise no other new arguments related to the Commission's GO 131-E definitions. Instead, they simply rehash their prior arguments, which were expressly rejected by the Commission in the Decision.

For example, Applicants argue in the AFR that "the Commission adopted definitions in GO 131-E that are so broad and ambiguous as to render the Commission's CPCN process practically meaningless."[23] They contended that "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."[24]

This is not the first, second, or even third time this argument has been made in this proceeding. ATC extensively argued this point in its Comments on the Phase 2 Staff Proposal, stating that "one outcome of the Staff Proposal is that it effectively renders all new transmission lines projects eligible for PTC permitting and obviates existing COCN [sic] requirements."[25] PCF and DOW echoed these arguments in their Replies to the Phase 2 Staff Proposal.[26] However, this view was not universal, and other parties to the proceeding were vigorously arguing the opposite (i.e. that the staff's proposed definitions were not broad enough).[27]

After the proposed decision was issued, largely accepting the Staff's proposed definitions, Applicants again raised this same argument, with DOW further proposing to add an

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[23] AFR at 5.

[24] *Id.*

[25] ATC Comments on the Staff Proposal at 4. *See generally id*. at 2-15 (providing extensive argument by ATC related to this point).

[26] PCF and DOW Reply Comments on Phase 2 Staff Proposal at 3 ("ATC correctly explains that staff's proposed definitions of 'extension,' 'expansion,' 'upgrade,' 'modification,' 'equivalent facilities or structures,' and 'accessories' would encompass *all* transmission projects.") (emphasis in original).

[27] *See, e.g*. PG&E Opening Comments on Phase 2 Staff Proposal at 5 (suggesting that "extension" should be even more broadly defined).

explicit 30-mile limitation to the definition of "extension."[28] ATC even acknowledged that it was simply repeating its prior arguments, noting that "[p]erhaps our concerns regarding the devastating implications of Staff's proposed definitions for 'extension' and 'expansion' were accorded little weight because we were the only ones to point them out."[29] ATC admitted its "concerns were disregarded because the PD adopts Staff's proposed definitions almost verbatim and with only minor revisions," that ATC found it "frustrating to perceive that our warnings have gone unnoticed and unheeded by the Commission" but that "if the Commission moves forward with adopting the PD as written, then it does so with full knowledge" of its impacts.[30] Yet again, other parties to the proceeding, including the IOUs, argued that the definitions were not broad enough.[31]

Ultimately, the Commission did move forward with adopting the definitions in the PD (largely as written), based upon its "full knowledge" of the record, which considered the points raised by all the parties to the proceeding, including Applicants. While the Commission is not required to make specific findings on issues that are not material to the decision or respond to every argument raised by each party,[32] the Commission specifically noted that, in reaching its decision, it had considered "several parties (*e.g.*, PG&E, SCE, SDG&E, LSPGC, CUE, CBD, DOW) express concerns with or opposition to Staff Proposal Section 3.1, Proposal 2, Option 1 [which was largely adopted by the PD]"[33] The decision also specifically referenced DOW's

[28] DOW Comments on PD at 3.

[29] ATC Comments on the PD at 11.

[30] *Id. See also* DOW Comments on PD at 3 ("The proposed definition for "extension" lacks limits for the length of an expansion. Thus, an innocuous sounding "extension" could, in reality, be new transmission lines extending for hundreds of miles that can be constructed without being subject to a Certificate of Public Convenience and Necessity simply because it is located within an existing transmission easement, right of way (ROW), or franchise agreement."); CFPB Comments on PD at 5-7; PCF & CBD Comments at 9-10.

[31] *See, e.g.,* SDG&E Comments on PD at 8-10, PG&E Comments on PD at 8-9.

[32] Pub. Util. Code § 1705; D.06-01-045 at 2 & n.4; D.06-06-071 at 27.

[33] D. 25-01-055 at 73.

proposed milage limitation.[34]

As such, it is clear that Commission's Decision was based on the full record. While the Applicants may be unhappy with the Decision, "disagreement does not constitute legal error."[35] For the above reasons, reopening the proceeding would not serve any valid purpose, and it is certainly not required or warranted under the law.

B. NO CEQA VIOLATIONS EXIST TO SUPPORT LEGAL ERROR

Applicants couch their disagreement with the changes to GO 131-E as CEQA violations in an apparent attempt to establish legal error. They mistakenly assert, as they have previously in this proceeding, that GO 131-E violates CEQA by providing that the need for a project developed in a CAISO transmission plan shall form the basis of the CEQA statement of objectives[36] and that the Commission "may" adopt the alternatives developed by CAISO in a transmission plan.[37] They further argue, as they have previously, that establishing definitions in GO 131-E that do not match CEQA definitions also violates CEQA.[38] Applicants have raised these issues before, and the AFR offers few new arguments concerning these points. In a final attempt to demonstrate legal error, however, Applicants assert that adoption of GO 131-E itself is a project subject to CEQA review. Each of these contentions is without merit and none of them support legal error.

1. The Decision Is Consistent With CEQA's Requirements Regarding Alternatives

Applicants incorrectly assert that GO 131-E, Sections VII.C.2.a and VII.C.2.c violate CEQA by restricting the Commission's alternatives analysis in its environmental reviews.[39]

Section VII.C.2.a provides that the project need assessment developed by CAISO in a

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[34] *Id.*

[35] D.06-06-071 at 29.

[36] GO 131-E, Section VII.C.2.a.

[37] GO 131-E, Section VII.C.2.c.

[38] AFR at 28-32.

[39] Acton Town Council Opening Comments on Proposed Decision at 2-5.

transmission plan, prepared in conformance with a CAISO tariff approved by FERC, shall form the basis for the CEQA statement of objectives adopted by the CPUC. The California Supreme Court has found that "A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings."[40] CEQA does not limit the sources of information where the lead agency can look to develop its statement of objectives. It only requires that the statement of objectives must not be so narrow that it precludes evaluation of any alternative other than the proposed project.[41] In fact, given the importance of the statement of objectives, it makes sense that the CPUC rely on CAISO's findings because the CAISO is in the best position to identify the needs of the State's electric system. As SDG&E previously stated during these proceedings, "The effort to turn the CPUC CEQA review into transmission system planning should be rejected; the Legislature gave that job to CAISO."[42]

Although GO 131-E incorporates the AB 1373 rebuttable presumption "in favor of a CAISO governing board-approved finding that such project is needed" in VII.C.2.b, the AFR argues that Section *VII.C.2.a* violates AB 1373 as well as CEQA by making CAISO's need determination "fixed and permanent" and the "sole basis" for the project objectives used for CEQA review.[43] GO 131-E is not so restrictive. It properly requires that project need from a CAISO transmission plan "approved in accordance with the CAISO tariff approved by FERC" shall "form the basis of the statement of objectives," but it does not preclude other objectives. More importantly, Applicants fail to recognize that the CAISO evaluations themselves include modeling of cost-effective non-wire and other demand-side alternatives, which could be – and

[40] *In re Bay-Delta etc*. (2008) 43 Cal.4th 1143, 1175.

[41] *We Advoc. Through Env't Rev. v. Cnty. of Siskiyou* (2022) 78 Cal. App. 5th 683, 692.

[42] Reply Comments of San Diego Gas & Electric Company (U 902 E) On Proposed Decision Adopting General Order 131-E at 6.

[43] AFR at 22-23.

sometimes are – recommended by the CAISO instead of a transmission solution.[44] However, as is plain from Assembly Bill (AB) 2292's repeal of Public Utilities Code Section 1002.3, the California Legislature recognized that reviewing these alternatives separately in all cases would be duplicative and delay the approval of needed transmission projects.[45]

Likewise, Section VII.C.2.c states that the range of alternatives "may" be limited to routes or locations for the transmission concept identified by CAISO. It is axiomatic that CEQA only requires a lead agency to study a reasonable range of alternatives and that alternatives which are outside the rule of reason—including those that would not feasibly attain most of the project objectives—need not be included in an EIR.[46] By providing the option to explore non-wire and similar alternatives, but not a mandate to do so, the Decision allows the CPUC *discretion* to narrow the range of alternatives to those identified by CAISO. Such limitations will almost always be appropriate because alternative routes or locations will typically provide a

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[44]The California Legislature recognized this fact. *See, e.g.*, Assembly Committee on Utilities and Energy Legislative Analysis on AB 2292 (April 3, 2024) at 4:

> CAISO does consider "non-wires" alternatives, or any electrical grid investment that can defer or remove the need to construct or upgrade components of a distribution and/or transmission system. For example, the 2021-2022 TPP allocated 9,368 megawatts of battery storage in transmission zones.,

See also Senate Rules Committee Legislative Analysis on AB 2292 (8-7-24) ("The annual transmission plan fulfills the CAISO's core responsibility to identify and plan the development of solutions, *transmission and otherwise*, to meet the future needs of the electricity grid.") at 3, emphasis supplied. The CAISO's Transmission Plans themselves confirm this. For example, the CAISO 2-23-2024 Transmission Plan approved May 23, 2023, explains:

> Since implementing the current comprehensive transmission planning process in 2010, the ISO has considered and placed a great deal of emphasis on assessing non-transmission alternatives, including 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.

CAISO 2023-2024 Transmission Plan, § 1.4.3. This chapter describes specific efforts to include these alternatives.

[45] *See* Senate Rules Committee Legislative Analysis on AB 2292 (8-7-24), at 5 ("this bill proposes a modest, but important change to remove a duplicative review"); *see also* Assembly Committee on Utilities and Energy Legislative Analysis on AB 2292 (April 3, 2024), at 3 ("Repealing this requirement will remove a duplicative process that currently slows down transmission developments in the state").

[46] *See* CEQA Guidelines, § 15126.6, subd. (f); *California Nat. Gas Vehicle Coal. v. State Air Res. Bd.* (2024) 105 Cal.App. 5th 304, 324–26.

reasonable range of alternatives; other project types would not achieve project objectives, including those identified by CAISO. During the CAISO planning process, when CAISO determines that a new transmission line would provide needed grid improvements, project objectives are crafted and designed to meet those needs identified during the CAISO planning process. Spending valuable time and resources analyzing alternatives that would not achieve those objectives is unreasonable, unnecessary, and inefficient. GO 131-E's new provisions recognize the importance of CAISO's role in the grid-planning process and allow Commission staff to focus on those alternatives that will achieve CAISO objectives, make logical sense, and are consistent with CEQA.

2. The Decision Is Consistent with AB 2292 and Does Not Unilaterally Foreclose Consideration of Non-Wires Alternatives Where Reasonable

The AFR argues that these new provisions are also inconsistent with AB 2292 and excessively limit potential reviews of alternative technologies.[47] But those arguments are fatally flawed because they ignore the very premise of AB 2292 and well-established CEQA law.

As the Decision states, "AB 2292 (Petrie-Norris) repealed Public Utilities Code Section 1002.3, which formerly required the Commission to consider cost-effective alternatives to transmission facilities, including demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation, as defined, and other demand reduction resources."[48] The AFR suggests that while this recent legislation applies to CPCN cost reviews, it does not alter CEQA's alternatives review requirements, especially with regard to PTCs.[49] Yet that is beside the point. AB 2292 does not speak to PTCs because there has never been an explicit requirement that the Commission analyze or consider "cost-effective" alternatives (including particular technologies) for PTC projects. In fact, even under now-superseded GO 131-D, detailed cost considerations

[47] AFR, at pp. 17-19.

[48] Decision, at 57-58; Pub. Util. Code, § 1002.3. Repealed by Stats.2024, c. 709 (A.B.2292), § 1 (Jan. 1, 2025).

[49] AFR, at p. 18.

were specifically *excluded* from the type of information needed in a PTC application.[50] Indeed, some parties during this proceeding urged the Commission to reverse that long-standing rule and incorporate cost reviews into PTC proceedings,[51] and the Commission declined to do so in GO 131-E. Applicants continue to push that argument here.

Furthermore, the AFR's argument fundamentally misinterprets CEQA. CEQA is clear that there is no fixed rule regarding the scope or range of alternatives to be reviewed.[52] Neither the Decision nor the new GO 131-E provides anything different. The new rulemaking merely states that the range of alternatives *may* be limited to routes or locations. Nothing therein establishes a blanket prohibition on consideration of alternative technologies or strategies in appropriate instances. In fact, when adopting GO 131-E, the Commission explicitly rejected various proposals that would have limited the scope of alternatives to be reviewed.[53] The AFR's argument mistakenly implies that the Commission must always consider alternative technologies, demand-side measures and other alternatives that are purportedly more "cost-effective" alternatives, even for PTCs. That would be explicitly contrary to CEQA's well-established rule that the scope of a lead agency's alternatives analysis is flexible, and subject only to the rule of reason. The Commission declined to establish such a rule in GO 131-D and has once again declined to do so within the new GO 131-E—and rightfully so, given that costs are not at issue in PTC proceedings.

3. The Decision Does Not "Create or Enlarge CEQA's Exemptions"

The AFR argues that the exemptions in GO 131-E improperly expand the scope of CEQA exemptions, and that the CPUC is not empowered to alter CEQA to expand exemptions beyond

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[50] *See* GO 131-D § IX.1.f.; Decision Adopting General Order 131-D (issued June 8, 1994), at pp. 2-3.

[51] *See, e.g.,* Center for Biological Diversity, Clean Coalition, and the Protect Our Communities Foundation Opening Comments on Phase 2 Issues, p. 23-25 ("D. The Commission Must Include Cost And Other Economic Considerations In The PTC Process").

[52] *See* CEQA Guidelines, § 15126.6, subd. (f)(1).

[53] Staff Proposal for R.23-05-018 Phase 2 Updates to General Order 131-D (May 2024), at pp. 46-55; Decision Adopting General Order 131-E (issued February 7, 2025), at pp. 62-65.

those established in the CEQA Guidelines.[54] Yet that position ignores a fundamental distinction between the Commission's rules and CEQA: the exemptions in GO 131-E are not exemptions from *CEQA* at all, but rather exemptions from *CPUC permitting*. The provisions of CEQA (including *its* exemptions as set forth in the CEQA Guidelines) only come into play when a public agency considers whether to grant a discretionary approval, such as a permit.[55]

The CPUC is vested with authority to decide which type of utility infrastructure projects require a permit and which do not,[56] and it exercised that authority over 30 years ago by establishing GO 131-D's CPCN requirements, PTC requirements, *and respective exceptions and exemptions thereto*.[57] The CPUC retains that same authority and, in GO 131-E, has determined which projects require permits and which do not, regardless of CEQA. Whether the exemptions provided in GO 131-E are more, or less, broad than CEQA exemptions is irrelevant, yet the AFR conflates the two completely separate and unrelated types of exemptions.

4. Adoption of GO 131-E Itself Does Not Require CEQA Review

Applicants contend that GO 131-E cannot be adopted without first undertaking CEQA review, although they offer no concrete or measurable physical change that would convert GO 131-E into a "project" under CEQA. Applicants simply assume that changing a project's permitting category through changes to GO 131-E will lead inevitably to *different* physical changes in the environment – and that those differences are sufficiently concrete to enable environmental review. This assumption is misplaced and significantly diverges from the facts in the authority cited by Applicants. There remains no causal connection between the decision and any measurable physical change and, thus, no "project" cognizable under CEQA.[58]

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[54] AFR, at pp. 28-32.

[55] Public Resources Code, § 21080, subd. (a).

[56] Cal. Const. art. XII, § 8; Pub. Util. Code, §§ 451, 564, 701, 702, 761, 762, 768, 770, 1001, 1001.1.

[57] See D.94-06-014 (adopting GO 131-D), § D.

[58] *See, e.g., Friends of the Sierra Railroad v. Tuolumne Park and Recreation District* (2007) 147 Cal.App.4th 643, 657 (rejecting "a sufficient causal relationship between the land transfer and the anticipated future development" and sufficient information "at the time of the transfer to allow for meaningful environmental review").

The AFR argues, based on *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171 ("*UMMP"*), that the adoption of GO 131-E is a project requiring CEQA review. But that is incorrect because, unlike the ordinance at issue in *UMMP,* GO 131-E does not *create* the potential for new direct or indirect effects on the environment, and no such effects could be analyzed in any reasonably reliable way.

CEQA defines a project as, among other things, the "whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."[59] In 2019, the California Supreme Court held in *UMMP* that CEQA's definition of a project extends to even broad land use regulations, in particular a San Diego zoning ordinance regulating where medical marijuana dispensaries could be sited.[60]

Citing the *UMMP* case, the AFR argues that the Commission's adoption of GO 131-E also should be considered a "project" subject to CEQA review because it includes provisions regarding statements of objectives, alternatives analyses and exemptions related to electrical facilities development.[61] But GO 131-E is not like the zoning ordinance at issue in *UMMP* and does not provide any factual basis for a potential environmental analysis. In *UMMP*, the San Diego ordinance included specific provisions that could be used as a basis for an assessment of environmental impacts – it identified *specific zones* in the City where dispensaries could be located, limited the *number of dispensaries* in any single city council district to four and required a dispensary to be *located more than 1,000 feet from certain sensitive uses*, such as parks and schools, and more than 100 feet from residential zones.[62] Based on those details, the California Supreme Court reasoned that, even though no particular individual dispensaries were contemplated in the ordinance, by designating numbers, categories and zones where dispensaries

[59] Public Resources Code, § 21065; CEQA Guidelines, § 15378, subd. (a).

[60] *UMMP,* 7 Cal.5th 1171.

[61] AFR, at 32-33.

[62] *UMMP, supra,* 7 Cal.5th at 1181.

could be located, such policy changes could foreseeably result in new retail construction to accommodate them, as well as identifiable impacts such as citywide changes in patterns of vehicle traffic from the businesses' customers, employees, and suppliers.[63] The Court noted a "causal connection" between the ordinance and these effects.[64]

In contrast, unlike a zoning ordinance such as the one at issue in *UMMP*, GO 131-E does not identify any area where electric facilities projects could or should be located, does not limit or permit any specific number or location of such projects and does not create cascading land use implications associated with new development. Nor is there any evidence whatsoever that a different utility project would result from a CPCN approval than it would from a PTC approval. GO 131-E establishes new procedural rules regarding Commission permitting and jurisdiction, but there is no causal connection between the changes to its regulations and any reasonably foreseeable environmental effects from different permitting paths that could be analyzed in any reliable way.

This case belongs with those adopting broad-brush or preliminary planning tools – tools that establish a framework for processing future approvals. Courts have recognized that such tools do not commit an agency to a particular course of action on a particular project and thus do not trigger CEQA review. For example, in *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, an agency adopted a Memorandum of Understanding ("MOU") outlining a "joint vision" for processing future land-use agreements within a defined geographic area. Noting that the MOU did not approve any development, describe any specific development proposals, or change the existing land use designations, the court found that the MOU "is not a project within the meaning of CEQA, nor does it propose any specific project amenable to meaningful environmental review."[65] The court recognized the practical problem with attempting an environmental review before specific improvements are proposed: "It is both

[63] *UMMP*, *supra*, 7 Cal.5th at 1199.

[64] *Id.*

[65] *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1033.

impractical and useless to consider the multitude of potential environmental impacts before the financial feasibility is determined and the scope of the project is defined. . . . . Far too little is known about the scope, the location, or the types of projects that might be proposed in the future to assist decision makers in evaluating any potential environmental tradeoffs."[66]

The court reached the same conclusion in *Citizens to Enforce CEQA v. City of Rohnert Park* (2005) 131 Cal.App.4th 1594, where a city entered into an MOU with the Federated Indians of the Graton Rancheria ("Tribe") regarding a gambling casino proposed by the Tribe outside city limits. The MOU was an agreement to establish a source of funds for potential future improvements if the casino was built and addressed the ways the Tribe agreed to mitigate potential impacts of the project. The court held that the city's entry into the MOU was not a project because it was merely a funding mechanism – it set no time for development and did not obligate the City to undertake a specific development project.[67]

Indeed, the *UMMP* case itself notes that "an indirect effect is not reasonably foreseeable [and therefore should not be analyzed under CEQA] if there is no causal connection between the proposed activity and the suggested environmental change or if the postulated causal mechanism connecting the activity and the effect is so attenuated as to be 'speculative.'"[68] That is exactly the case with GO 131-E; while it certainly contemplates and governs electrical facilities development as a whole, it merely makes changes in the permitting scheme established under GO 131-D. Neither GO has identified limits on locations, dimensions, routes, lengths, voltage levels or associated impacts. Even attempting to assess a difference in environmental impacts would be completely speculative given the complete absence of any locational or other information to begin with.

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[66] *Id*. at 1032.

[67] *Id*. at 1601; *see also Concerned McCloud Citizens v. McCloud Community Services District* (2007) 147 Cal.App.4th 181, 197 (district's conceptual agreement to sell water was not a project under CEQA); *Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District* (1992) 9 Cal.App.4th 464, 476 (formation of a Mello Roos district without determining specific school improvements was a funding mechanism that did not require CEQA review).

[68] *UMMP, supra,* 7 Cal. 5th at 1197.

C. GO 131-E DOES NOT ABDICATE THE COMMISSION'S REGULATORY AUTHORITY BY REVISING PROJECT PERMITTING RULES

Applicants argue that GO 131-E abdicates the Commission's obligation to supervise the utilities and to ensure just and reasonable rates by failing to include cost considerations in the PTC process, and by moving additional projects into that process.[69] The AFR, which constitutes little more than a thinly-veiled attempt to re-argue positions made abundantly clear in prior phases and filings of this multi-year proceeding, is no more persuasive at this stage than it was in prior stages. In an earlier attempt, PCF pressed for changes to the Commission's proposed decision in Phase I "to comply with SB 529 and protect ratepayers from exposure to major transmission and distribution spending without substantive Commission oversight."[70] However, the Commission explicitly rejected this argument in the Decision Addressing Phase 1 Issues (D.23-12-035), noting that:

> Contrary to POCF's contentions, implementation of the requirements of SB 529 does not result in the Commission abdicating responsibility to supervise public utilities and ensure just and reasonable rates. As is the case today, Commission review and approval of costs under the Commission's jurisdiction would be required in a utility's General Rate Case or other application prior to the costs being collected in rates. Furthermore, on April 27, 2023, the Commission adopted Resolution E-5252, which established the Transmission Project Review (TPR) Process for the state's investor-owned electric utilities (IOUs) beginning January 1, 2024. The TPR Process will allow the Commission and stakeholders to receive robust and consistent data from the IOUs, and to inquire about and provide feedback on the IOUs' historical, current, and forecast transmission projects with actual or forecast capital costs of $1 million or more.[71]

As the Commission correctly points out, both the General Rate Case and the Transmission Project Review Process provide ample opportunity for the Commission to provide its required regulatory authority over relevant projects. Applicants fail to add anything new to their argument, and the Commission should reject it as nothing more than a renewed attempt to relitigate a previously decided issue. In addition, the CPUC lacks jurisdiction under the Federal

[69] AFR at 34-36.

[70] The Protect Our Communities Foundation Comments on Proposed Decision Addressing Phase 1 Issues (filed November 15, 2023) at 2; *see also* The Protect Our Communities Foundation Comments on Order Instituting Rulemaking to Update and Amend Commission General Order 131-D (filed June 22, 2023), at 2.

[71] D.23-12-035 at 15.

Power Act to review the reasonableness of transmission spending, as federal courts have long held and as the CPUC has long acknowledged.[72]

D. GO 131-E DOES NOT IMPROPERLY INFRINGE ON LOCAL AGENCY RIGHTS BY CLARIFYING THE COMMISSION'S PREEMPTIVE AUTHORITY OVER THE FIELD OF ELECTRICAL INFRASTRUCTURE PERMITTING

The AFR argues that, by retaining provisions in GO 131-E that essentially continue the Commission's preemption of the field of electrical infrastructure siting and permitting (*i.e.*, newly numbered Section XI.B[73]), the Decision unconstitutionally impinges on agencies' police powers. This assertion is incorrect. It is well established, and has been so for decades, that the CPUC preempts the field of electrical facility permitting. This is so because the issues related to the field of electrical facility permitting remain issues of prime importance, which issues should not be subjected to the fluctuations and unpredictability of local politics. Applicants' arguments, which mistakenly claim that new caselaw changes this well-established preemption, are wrong.

It is self-evident that the construction of generation, transmission, substations, and other facilities intended to provide millions of residents across multiple counties and cities with power is appropriately a matter of statewide concern. As the California Supreme Court held over 80 years ago:

> Regulations of great businesses affected with a public interest touching every institution, every activity, every home and every person in the state must be uniform, and must be free from the local judgment and prejudice. Then too, many of these utilities reached into other communities, and uniformity of regulation by all these communities would be an unlooked for result. . . . None of these great interests would be served if each community retained the power of making such police regulations as each might deem proper. . . . Over regulations not exclusively local, those affecting the business as a whole, or affecting the public as a whole, and those which the nature of the business and the character of the

[72] *See, e.g.*, *Transmission Agency of N. California v. Sierra Pac. Power Co.* (9th Cir. 2002) 295 F.3d 918, 928 ("FERC's exclusive jurisdiction extends over all facilities for [interstate] transmission.") The CPUC has similarly confirmed this fact in D.17-06-009 at 5; *see id.* at 3 ("the [FERC] has jurisdiction to set rates to recover transmission costs").

[73] Only the numbering has been changed from the previous GO; *see* GO 131-D, Section XIV.B.

> regulation require should be under the single agency of the state, are by our act committed to the exclusive jurisdiction of the Public Utilities Commission.[74]

With this overarching policy in mind, GO 131-E—like GO 131-D before it—contains a specific paragraph clearly declaring that the State has preempted local jurisdictions from regulating electrical facility projects.[75] The language in this paragraph has not changed.[76] The AFR argues that this preemption violates the California Constitution, Public Utilities Code Section 2902 and the recent California Supreme Court decision *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107 ("*T-Mobile*").[77] The AFR is wrong on every count.

First, with respect to the California Constitution, that document has long been interpreted to recognize the need for uniformity in decision making on utility infrastructure matters, and the Legislature has subsequently harmonized that need with the role of local governments to control aspects of utility work. Article 12, Section 8 of the California Constitution states in part:

> A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the [CPUC]. 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.

In keeping with the California Constitution, the California Legislature gave the Commission broad regulatory authority over utilities. For example, Public Utilities Code Section 701 states:

> The [CPUC] may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this

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[74] *Los Angeles Railway Corp. v. Los Angeles* (1940) 16 Cal. 2d 779, 787; *see also, Southern California Gas Co. v. City of Vernon* (1995) 41 Cal.App.4th 209, 217 ("The goal of statewide uniformity in this area would be defeated if a municipality…could enlarge upon the standards promulgated by the [CPUC] in its General Order. If [the City] believes the [CPUC's] standards are inadequate, it should direct its concerns to that entity.").

[75] GO 131-E § XI.B.

[76] *See* GO 131-D, § XIV.B.

[77] AFR, at pp. 36-37.

> part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

Similarly, Public Utilities Code Section 768 states in part:

> The [CPUC] may, after a hearing, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public. The [CPUC] may prescribe, among other things, the installation, use, maintenance, and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signaling. The [CPUC] may establish uniform or other standards of construction and equipment, and require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand. . . .

Based on the legislative authorization to regulate public utilities, and following lengthy hearings and testimony from local governments, the CPUC adopted GO 131-D in 1994 to clarify the Commission's role in the siting of electrical utility facilities.[78] The Commission received voluminous testimony from local jurisdictions and ultimately harmonized local concerns with the need to ensure statewide uniformity in decision-making. It did so by adopting GO 131-D provisions that broadly subject all electrical projects to the jurisdiction of the Commission to ensure that facilities may be sited, planned, and built in an orderly and reliable manner, while also confirming that utilities should take local concerns into account and providing that the CPUC would serve as a neutral arbiter in the review of utility projects.[79]

Nothing in GO 131-E (including sections XI.A-C, which all retain the same language as former GO 131-D Sections XIV.A-C.) divests a local jurisdiction's right to comment on or seek changes to a project. Regardless of whether a project is exempt from permitting, requires a PTC, or requires a CPCN, the utility must consult with local jurisdictions on land use matters and seek applicable ministerial permits.[80] Such jurisdictions are free to raise objections to the project to

[78] *See* D.94-06-014.

[79] GO 131-D § XIV.A.-C. (establishing preemption of local authority over electric utility projects while also requiring utilities to consult with local governments regarding land use matters and providing for dispute resolution procedures).

[80] GO 131-D § XIV.B.

the CPUC or to request that the Commission perform further review and take such concerns into account if the project is exempt from permitting. In fact, the Commission routinely acts to address local concerns when doing so may be harmonized with State interests. This practice is consistent with the Constitution and sanctioned by statute.

The AFR also argues that GO 131-E violates Public Utilities Code Section 2902.[81] Yet, that statute merely reserves a limited amount of power for local jurisdictions with respect to certain utility uses; it does not limit the Commission's right to exercise preemptive jurisdiction over the utility. In *Southern California Gas v. Vernon* (1995) 41 Cal.App.4th 209, the Court of Appeal held that the City of Vernon could not withhold a pipeline installation permit or otherwise regulate pipeline depth because design and construction particulars are matters governed by the CPUC. Vernon had argued (as Applicants do now) that preemption was foreclosed by application of Public Utilities Code Section 2902. The court disagreed, holding that Section 2902 does not confer any new powers upon a municipal corporation, and—while the precise location of pipelines beneath city streets, matters involving the flow of traffic, and the use and repair of public streets may be matters for municipal regulation—issues relating to the design and construction of the pipeline itself remained within the regulatory purview of the CPUC.[82]

GO 131-E's preemption provision is not inconsistent with the *T-Mobile* case, as Applicants contend.[83] *T-Mobile* addressed issues that are entirely distinct from those governing

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[81] AFR, at 16-17. That section provides:

> 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.

[82] 41 Cal.App.4th at 217-218.

[83] AFR at 36, 37.

regulation of electrical utilities under GO 131-E, namely the evaluation of local aesthetic permitting conditions applied against telecommunication providers for *wireless telecommunication facilities* in public rights of way. In that case, the City and County of San Francisco (hereinafter "San Francisco") was concerned about the proliferation of wireless telecommunication antenna systems and therefore sought to enforce aesthetic requirements on an application-by-application basis. T-Mobile challenged San Francisco's aesthetics rules as violating rights specifically afforded to telecommunication carriers by the California Legislature in Public Utilities Code Section 7901, which gives telecommunication providers the real property right to install systems in public rights of way, and on preemption grounds.[84] The California Supreme Court rejected those arguments and held that the City was authorized to apply its aesthetics regulations to the wireless facilities.[85]

But the *T-Mobile* case does not govern electric utility project development. Unlike the field of telecommunications wireless device installation, the Commission has clearly and concisely expressed its intent to preempt the field of *electric* utility project siting and development. In fact, in response to the wireless company's argument that wireless facility siting should also be subject to CPUC preemption, the Court explicitly held that the CPUC has *not* preempted that field and that given the limited nature and reach of such systems, the CPUC has largely *refrained* from regulating the siting of individual telecommunication systems, traditionally deferring to jurisdictions on the siting of wireless facilities.[86] Simply stated, *T-Mobile* does not govern permitting and siting of electrical facilities; that field is preempted by

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[84] *T-Mobile, supra*, at p. 1114-1115. Section 7901 provides:

> Telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the waters.

[85] *T-Mobile, supra,* at 1127.

[86] *T-Mobile, supra*, at 1122-1124,

long-standing CPUC practice and clear regulations, including GO 131-E which continues that practice.[87]

III. CONCLUSION

Applicants' primary complaint is not a CEQA, or any other, legal issue. Rather, it is whether the CPUC should require more CPCNs and second guess CAISO transmission planning decisions so that project need and cost can be relitigated in the permitting proceedings. This and other issues of CPUC discretion do not raise a CEQA violation or any other error of law that would justify granting rehearing.

The IOUs respectfully request that the AFR be denied.

Respectfully Submitted on behalf of the IOUs,

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Dated: March 25, 2025

[87] Despite the fact that the CPUC preempts the filed in this area, it should also be noted that like predecessor GO 131-D, new GO 131-E also retains provisions requiring utilities to consult with local agencies on land use matters, and provides mechanisms by which local agencies can seek redress at the Commission in instances where utilities and local agencies are unable to resolve their differences. (GO 131-E, §§ XI.A-C.)