BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Update And Amend Commission General Order 131-D.	Rulemaking 23-05-018 (Filed May 18, 2023)

RESPONSE OF THE CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES IN OPPOSITION TO THE APPLICATION OF PROTECT OUR COMMUNITIES FOUNDATION, CENTER FOR BIOLOGICAL DIVERSITY, ACTON TOWN COUNCIL, CALIFORNIA FARM BUREAU FEDERATION, ANZA BORREGO FOUNDATION, AND DEFENDERS OF THE WILDLIFE FOR REHEARING OF DECISION 25-01-055

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For: CENTER FOR ENERGY EFFICIENCY AND RENEWABLE TECHNOLOGIES

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Pursuant to Rule 16.1(d) of the Commission's Rules of Practice and Procedure, the Center for Energy Efficiency and Renewable Technologies ("CEERT") respectfully submits this Response in Opposition to the Application of Protect Our Communications Foundation ("POC"), Center for Biological Diversity ("CBD"), Acton Town Council ("Acton"), California Farm Bureau Federation ("Farm Bureau"), Anza Borrego Foundation ("Anza Borrego"), and Defenders of Wildlife ("Joint Applicants") for Rehearing of Decision ("D.") 25-01-055 ("Joint Application for Rehearing or Joint AFR"). D.25-01-055 has a date of issuance of February 7, 2025; the Joint AFR was filed on March 10, 2025. CEERT's Response is timely filed and served today pursuant to Rule 16.1(d).

I.
THE JOINT APPLICATION FOR REHEARING DOES NOT COMPLY WITH APPLICABLE LAW AND SHOULD BE DENIED.

A. Applicable Law and Record for an Application for Rehearing of D.25-01-055

1. Grounds and Legal Requirements for Rehearing Requests

By Rule 16.1 of the Commission's Rules of Practice and Procedure, an application for rehearing is intended "to alert the Commission to a *legal error*" and, to do so, must "set forth

specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous, and *must make specific references to the record or law*."[1] This mandatory requirement is consistent with statutes governing applications for rehearing,[2] as well as those governing judicial review of Commission decisions in all proceedings that state: "No new or additional evidence shall be introduced upon review by the court."[3]

In applying this law, the Commission has made the following very clear:

- To meet the legal standard to "specifically set forth a party's claim," an application for rehearing is required to provide "an analysis of relevant authority … and how this authority applies to the relevant facts, accompanied by citations to the record and the law."[4]
- A "rehearing application should not seek to introduce new evidentiary material"[5] and "must support [its] claims with specific reference to the record, and not seek to introduce extraneous material" or "extra-record evidence."[6]
- Citations to "evidence outside the record" should not be considered by the Commission "in disposing of the rehearing applications."[7]
- An assertion or claim made in an application for rehearing that "relies on evidence outside the record" should "be rejected."[8]
- Citations to "evidence outside the record" should not be considered by the Commission "in disposing of the rehearing applications."[9]

[1] Commission Rules of Practice and Procedure, Rule 16.1(c); emphasis added.
[2] Public Utilities ("PU") Code Section 1732.
[3] PU Code Sections 1757(a) and 1757.1(c).
[4] D.11-04-034, at p. 17, n. 41.
[5] *Id*., at p. 22.
[6] D.14-10-051, at p. 10, n. 7.
[7] D.11-05-049, at p.27, n. 24.
[8] *Id*., at p. 36, n. 28.
[9] *Id*., at p.27, n. 24.

The Commission has also confirmed the impropriety of considering "new factual material presented with a rehearing application" when "other parties are not give[n] an opportunity to formally review" or respond to "such material."[10] In contrast, a Commission's order will not be reversed where the Commission has relied on or drawn reasonable inferences from "the direct evidence" of record in the proceeding.[11]

Finally, the Commission has also concluded: "Relitigation does not constitute an allegation of legal error for a rehearing application."[12] As such, an application for rehearing that "attempt[s] to relitigate an issue" does not comply with the legal requirements for specificity or serve as an "alert" of a legal error as mandated by PU Code Section 1732 and Rule 16.1 and "should be denied."[13]

2. The Record in R.23-05-018

R.23-05-018 was divided into two phases. The first phase was specific to implementation of SB 529, adding PU Code Section 564 to authorize certain transmission infrastructure to be permitted through a Permit to Construct ("PTC") rather than a Certificate of Public Convenience and Necessity ("CPCN"). The record in that phase consisted of party comments and a joint settlement agreement, with comments in response. A limited change to the Commission's permitting process in General Order ("GO") 131-D pursuant to that statute was approved in D.23-12-035, with an application for rehearing by POC denied in D.24-06-026.

In denying rehearing of D.23-12-035, the Commission found that the decision's adopted change to GO 131-D was supported by "the clear intent of the bill … to expedite review and

[10] D.14-10-051, at pp. 10-11, n. 7.
[11] D.11-05-049, at p. 35, n. 27.
[12] D.14-10-051, at p. 26, n. 22.
[13] D.11-05-049, at p. 26, n. 22.

approval of transmission project extensions."[14] The Commission also confirmed that the statute permitted "flexibility" in the permitting process by allowing a utility the option to elect a PTC or CPCN in seeking approval of certain modifications to existing transmission facilities, but that that statutory change "was not intended to" and "does not eliminate the Commission's regulatory authority over Utilities' construction projects."[15]

In the second phase (Phase 2) of R.23-05-018, which is the subject of D.25-01-055, parties were given detailed notice and multiple opportunities to formally file opening and reply comments on multiple matters, including all proposals for further modifying GO 131-D. These included comments on the issues to be considered in Phase 2 on additional revisions to GO 131-D to streamline that process consistent with the law, including relevant implementation of PU Code sections enacted after SB 529; comments and proposals in response to a Staff Proposal for Phase 2 updates to General Order 131-D; and, finally, comments on the Proposed Decision that, with modifications, was issued as D.25-01-055. These opportunities for participation in Phase 2 are detailed in D.25-01-055 at pages 3 through 11, inclusive of identification of all participating parties in each opportunity and statutes relevant to further revisions of GO 131-D.

B. The Joint Application for Rehearing Fails to Comply with the Applicable Legal Standard and Should be Denied.

The formal party submissions and Staff Proposal identified in D.25-01-055 represent the record developed for and on which D.25-01-055 is based and was completed with the filing of reply comments on the Proposed Decision on January 21, 2025, where the proceeding was closed

[14] D.24-06-026, at p. 5.
[15] *Id*., at pp. 7-8 ("There is nothing in the Decision that suggests the Commission is foregoing its regulatory duties other than expanding on the use of the PTC process as required by the statute.")

by the issuance of D.25-01-055.[16] All of the parties to the Joint AFR (Joint Applicants) submitted comments in this process.

For two of the Joint AFR parties, participation in Phase 2 of R.23-05-018 was limited. Specifically, Anza Borrego, describing itself as a "novice to CPUC proceedings,"[17] requested party status just prior to the release of the Phase 2 Proposed Decision and filed only Opening Comments on the Phase 2 Proposed Decision, and the Farm Bureau, while filing Reply Comments on the question of Phase 2 issues, followed that only with Opening Comments on the Phase 2 Proposed Decision.

With respect to the Phase 2 Proposed Decision, these two parties asserted "support" for "much of" or "elements" of the Proposed Decision with only limited modifications.[18] Specifically, the Farm Bureau sought a change to the definition of "expansion," and Anza Borrego sought modifications requiring "objectives" to be "broadly construed" and "alternative locations" to include "substations other than those proposed by the project applicant or CAISO [California Independent System Operator]."[19]

With respect to the other 4 parties joining the AFR - Acton Town Council, POC, CBD, and Defenders of Wildlife -- all have been active participants throughout Phase 2 and certainly could not be characterized as "novice[s] to CPUC proceedings," including R.23-05-018, with each separately or jointly responding to all comment opportunities with detailed legal and factual contentions. The comments filed by Acton Town Council alone on Phase 2 issues and the Phase 2 Staff Proposal totaled more than 450 pages, inclusive of embedded graphs and attached

[16] D.25-01-055, Ordering Paragraph (OP) 8, at p. 151.
[17] Anza-Borrego Motion for Party Status, at p. 1.
[18] Farm Bureau PD Opening Comments (January 16, 2025), at p. 2; Anza-Borrego PD Opening Comments (January 16, 2025), at p. 3.
[19] Farm Bureau PD Opening Comments (January 16, 2025), at pp.7-8; Anza-Borrego PD Opening Comments (January 16, 2025), at p. 6.

analysis and documents related to transmission projects in California in support of its positions on modifications to GO 131-D.[20]

Yet, of the 161 footnotes in the Joint AFR cited in support of allegations claimed to identify legal error in D.25-01-055, only 3 of those footnotes cite to any of the material that is part of the Phase 2 record. These 3 include: (1) a citation to Acton Town Council Opening Comments on the Phase 2 Staff Proposal to support the statement that "there are more than 54,000 miles in California" of "existing electrical transmission or subtransmission facility"[21]; (2) a "*See*" citation to Acton Town Council Reply Comments on a *Phase 1* Joint Motion for Adoption of a Settlement Agreement that "very few 'public interest' organizations" participate in the CAISO Transmission Planning Process (TPP);[22] and (3) a "*See*" citation to Joint Opening Comments on Phase 2 Issues of CBD, Clean Coalition, and POC to support the statement "that projects under 200 kV constitute some of the most expensive projects undertaken by the utilities".[23]

These 3 footnotes may "make specific references to the record"[24] in R.23-05-018 by referencing these comments, but none of those citations, either individually or collectively, demonstrate any "legal error" in D.25-01-055 as claimed by the Joint AFR. Put simply, that referenced "record" does not demonstrate, as the Joint AFR contends, that GO 131-E definitions adopted by D.25-01-055 are "overbroad and ambiguous" and that adoption of GO 131-E itself constitutes "an improper attempt to evade CEQA [California Environmental Quality Act],"

[20] Acton Town Council Opening Comments on Phase 2 Issues (February 5, 2024); Acton Town Council Reply Comments on Phase 2 Issues (February 26, 2024); Acton Town Council Opening Comments on Phase 2 Staff Proposal (July 2, 2024); Acton Town Council Reply Comments on Phase 2 Staff Proposal (July 15, 2024).
[21] Joint AFR, at p. 6, n. 22.
[22] Joint AFR, at p. 26, n. 111.
[23] Joint AFR, at pp. 34-35, n. 149.
[24] Commission's Rules of Practice and Procedure, Rule 16.1.

"violates" CEQA, and represents an abdication of the Commission's statutory duties to supervise and regulate the utilities and an illegal infringement on the rights and duties of local agencies.[25]

Instead, the Joint AFR has attempted to support these assertions by extensive material and analysis that is *not* part of the record in R.23-05-018, including information from other Commission or other agency or entity proceedings that were never made the subject of any motion to consolidate those records with R.23-05-018.[26] Even if any one of those documents cited in the Joint AFR to support its allegations was ever referenced in comments filed by any party to R.23-05-018, there is no identification or citation provided as to where or if such material exists in the record for this proceeding.

Use of this extra-record material is extant throughout the Joint AFR and, in turn, fails to substantiate any claim of legal error in D.25-01-055 in the manner required by law for applications for rehearing. Further, as the Commission has already found, an application for rehearing that is not based on the record denies parties – as well as the Commission – the opportunity to be heard on any such claim.

There is no excuse for this non-compliance with the law governing applications for rehearing where the Joint Applicants had been fully noticed and given repeated opportunities to be heard on all issues addressed by D.25-01-055. Yet, instead of identifying legal error in the thorough consideration of the entirety of the "direct" record in R.23-05-018 by the Commission in D.25-01-055, the Joint AFR wrongly "attempt[s] to relitigate" positions taken in its filed comments in further violation of the legal requirements of Rule 16.1 and PU Code Section 1732 for applications for rehearing and "should be denied."[27]

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[25] Joint AFR, at pp. 4-38.
[26] Joint AFR, at pp. 7-13, 17-19, 22, 24, 25, 27-28 and nn. 26-54, 71-73, 76, 77, 81-82, 91, 97, 104-106, 112-114, 117 ("*see also*" portion).
[27] D.11-05-049, at p. 26, n. 22.

Finally, the Joint AFR engages in an unwarranted and unsupported attack on the California Independent System Operator (CAISO) and its transmission planning process to support an unsubstantiated claim that, by D.25-01-055, the Commission has "outsource[d] its CEQA obligations to CAISO."[28] These claims are not supported by the record in R.23-05-018 or the text, findings, or conclusions in D.25-01-055, and most are allegations made without attribution at all – like "the CAISO process for approving new projects allows only a minimal amount of stakeholder involvement."[29] Of importance as to this claim, first, the CAISO transmission planning process is not an issue within the scope of this proceeding, and, second, no evidence was produced or cited by the Joint Applicants that they have been excluded from that process, that they have ever attempted to participate in that process, or that this process has "wholly impaired" the Commission's CEQA review.[30] In fact, the Joint AFR appears to be an attempt, without evidence, to undermine the needed cooperation and collaboration between the two entities with primary responsibility for transmission planning and permitting in California carried out pursuant to all applicable laws.

Second, contrary to the Joint AFR's claims, D.25-01-055 provides an in-depth description of the CAISO process and interaction with the Commission's need determination to "thoughtfully implement [the] legislative mandate" of AB 1373 (adding PU Code Section 1001.1) "to establish a rebuttable presumption in favor of CAISO Transmission Plan findings on projects if specific requirements are satisfied."[31] Just as the Commission did in implementing SB 529, the Commission has followed the applicable principles of statutory construction in D.25-01-055 for construing and applying AB 1373, along with other relevant statutory

[28] Joint AFR, at p. 24.
[29] Joint AFR, at p. 26.
[30] Joint AFR, at p. 27, line 14, - p. 28, l. 28.
[31] D.25-01-055, at pp. 55-58.

enactments defining the Commission's legal obligations applicable to transmission project permitting, according to the plain language and legislative intent of these statutes.[32]

Further, and again contrary to the Joint AFR's contentions, D.25-01-055 has done so while maintaining the Commission's obligations to ratepayers and the environment in its review of applications brought before it for the approval of transmission projects, including in the consideration of "project alternatives."[33] In addition to making clear the well-defined roles and points of integration between the Commission and CAISO on the issue of transmission project planning,[34] D.25-01-055 further confirms:

> "As the lead agency, under CEQA, 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 CEQA Guidelines. Further, the Commission is required to determine whether the project serves the public convenience and necessity, and to make other mandatory determinations, including but not limited to, determination of project need and cost pursuant to Pub. Util. Code 1001 *et seq*. In so doing, the Commission must apply a 'rule of reason' to identify cost-effective alternatives in an EIR that meets 'the need for an efficient, reliable, and affordable supply of electricity, including but not limited to, demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation … and other demand reduction resources.' The Commission must also determine a project's maximum and prudent cost before deciding to issue a CPCN. [Footnotes omitted.]"[35]

In fact, in recent CPCN applications for transmission projects, the Commission has continued to prioritize environmental review of proposed transmission projects pursuant to CEQA over review of "formal proceeding issues, such as public convenience and necessity, maximum prudent and reasonable cost of the project (if approved), community values, and EMF issues"[36] where CEQA review is to be completed first before that second review phase even

[32] *See, e.g.,* D.25-01-055, at pp. 49-50; 55-58; 91; see also, D.24-06-026, at pp. 4-8.
[33] D.25-01-055, at pp. 64-65.
[34] *Id*., at pp. 56-57.
[35] *Id*., at p. 55.
[36] *Id*., at p. 141.

starts.[37] The Scoping Memos in those applications also confirm that the proposed project's "maximum reasonable and prudent cost" is certainly among the issues to be addressed and resolved for each proposed project.[38]

Clearly, the Joint AFR fails to comply with the legal requirements for an application for rehearing, misconstrues applicable law, and misrepresents the Commission's statements, findings, and conclusions in D.25-01-055. The Joint AFR should be summarily denied.

II.
NO BASIS EXISTS FOR THE COMMISSION TO GRANT AN ORAL ARGUMENT ON THE JOINT AFR.

The Joint AFR concludes by requesting oral argument pursuant to Rule 16.3 of the Commission's Rules of Practice and Procedure. Again, however, the Joint AFR fails to "specifically" identify or demonstrate any legal error in D.25-01-055 to support rehearing or any claim that the Commission has not or will not meet its statutory obligations in regulating investor owned utilities. In these circumstances, an oral argument on the Joint AFR is completely unwarranted and should be denied.

III.
CONCLUSION

For the reasons stated above, CEERT strongly urges the Commission to promptly deny the Joint AFR. No basis exists to rehear D.25-01-055 or hold an oral argument on the Joint AFR. As in the case of the first decision issued in R.23-01-058 (D.23-12-035), "[t]here is nothing" in D.25-01-055 "that suggests the Commission is foregoing its regulatory duties" in

[37] *See, e.g.,* A.24-04-017 (Manning Substation), Scoping Memo (August 30, 2024); A.24-04-017 (Santa Clara Valley Project), Scoping Memo (October 7, 2024).
[38] A.24-04-017 (Santa Clara Valley Project), Scoping Memo, at p. 8.

modifying GO 131-E other than as required by statute and supported by the "direct" record in R.23-05-018.[39]

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[39] D.24-06-026, at pp. 7-8.