

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

FILED
PUBLIC UTILITIES COMMISSION
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SAN FRANCISCO, CALIFORNIA
RULEMAKING 23-05-018

ORDER INSTITUTING RULEMAKING

1. Summary

The California Public Utilities Commission's existing General Order (GO) 131-D addresses the siting of electric transmission infrastructure within the State of California. This Order Instituting Rulemaking opens a proceeding to update and amend GO 131-D pursuant to Senate Bill 529 and to make other necessary changes.

2. Purpose

On January 1, 2023, Senate Bill (SB) 529 (Hertzberg; Stats. 2022, Ch. 357) became law and added Public Utilities (Pub. Util.) Code Section 564, which reads as follows:

By January 1, 2024, the 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. SB 529 also amended Section (b) of Pub. Util. Code Section 1001 to read as follows:

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

The California Public Utilities Commission (Commission) is opening this rulemaking to update and clarify General Order (GO) 131-D pursuant to SB 529 and to make other necessary changes. Our goal is to adopt a new “E” version of GO 131 that will better address the needs of the State of California and its residents, be consistent with SB 529, other applicable laws, policies and Federal Energy Regulatory Commission (FERC) orders, and provide a clearer, more efficient and consistent process.

3. Background

GO 131-D sets forth the Commission’s process for addressing the siting of electric transmission lines, substations, and related facilities. GO 131-D is based on Pub. Util. Code Section 1001, which generally requires electric utilities, prior to constructing or expanding transmission facilities, to obtain from the Commission a certificate that the “public convenience and necessity” requires such construction.

The first iteration of GO 131 was adopted by the Commission in 1970 in Decision (D.) 77301. The current version, GO 131-D, was adopted on June 8, 1994, in D.94-06-014 and modified in D.95-08-038. The primary purpose behind

the adoption of GO 131-D was to address the permitting of transmission lines and substations that operate at or below 200 kilovolts (kV).¹

There have been significant changes in both the physical configuration of the electric grid and the market structure for electricity in California since 1994 when the Commission first adopted GO 131-D. Correspondingly, there have also been many changes in the process for review and approval of new electric generation and transmission facilities in California. Additionally, some of the Commission Rules of Practice and Procedure (Rules)² and processes referenced in GO 131-D are now anomalous or outdated. This has created procedural requirements unique to GO 131-D that are inconsistent with GO 96-B, which generally specifies how Commission staff must process advice letters.

Two draft versions of a proposed GO 131-E are attached to this Order Instituting Rulemaking (OIR) for the purpose of eliciting comment. The first version (Attachment A) proposes and reflects amendments to GO 131-D solely to conform to the requirements of SB 529 (Hertzberg), 2022.³ The second version (Attachment B)⁴ includes additional proposed amendments to:

- Reflect changes in Commission Rules and other regulations that have occurred since GO 131-D was modified in 1995;
- Provide the Commission with better cost information for electrical infrastructure projects;

¹ Prior iterations of GO 131 including GO 131-C did not require any permit or certificate from the Commission for the construction of transmission facilities operating at or below 200 kilovolts (kV).

² Hereafter, all references to Rules mean the Commission's Rules of Practice and Procedure unless otherwise specified.

³ For ease of review, a clean version of Attachment A is provided as Attachment C.

⁴ For ease of review, a clean version of Attachment B is provided as Attachment D.

- Create a process for the permitting of battery storage projects;
- Respond to requests from resource agencies for the Commission to serve as the lead agency pursuant to the California Environmental Quality Act (CEQA)⁵ for all electric infrastructure projects requiring discretionary permits;
- Increase cost transparency for all projects subject to GO 131;
- Provide better notice to local governments of projects in their locality; and
- Better align GO 131 with GO 96-B.

4. Preliminary Scoping Memo

In accordance with Rule 7.1(d), a preliminary scoping memo is included in this OIR. This scoping memo is reflected below in the discussion of issues, preliminary determination of category, preliminary determination of need for hearing, and schedule.

5. Issues

- 1) What changes should be adopted to GO 131-D are necessary to conform it to the requirements of SB 529 (Hertzberg), 2022?
- 2) Should the Commission modify GO 131-D to:
 - (a) Reflect changes in Commission Rules and other regulations that have occurred since GO 131-D was last modified in 1995?
 - (b) Provide the Commission with better cost information for electrical infrastructure projects?
 - (c) Create a process for permitting battery storage projects?

⁵ Public Resources Code; § 21000 *et seq.*

- (d) Respond to requests from resource agencies for the Commission to serve as the lead agency pursuant to CEQA⁶ for all electric infrastructure projects requiring discretionary permits?
- (e) Increase cost transparency for projects subject to GO 131-D?
- (f) Provide better notice to local governments of projects in their locality?
- (g) Better align GO 131-D with GO 96-B?
- (h) Adopt other changes to GO 131-D as needed?

The precise issues to be addressed and the process for addressing those issues will be set forth in an assigned Commissioner's scoping memo.

6. Questions for Party Comment

Respondents to this OIR shall, and other potential parties may, file comments in response to this OIR not later than 30 days from the issuance date of this OIR responding to the questions below. Respondents to this OIR shall, and other parties may, file reply comments to this OIR no later than 15 days after the due date for opening comments.

Questions for Party Comment:

- 1) Do the proposed changes in the two versions of the proposed GO 131-E modifying GO 131-D and appended to this OIR comply with the requirements of SB 529?
- 2) Should the Commission adopt the proposed amendments to GO 131-D as reflected in the Attachment A version of GO 131-E that include only the modifications to GO 131-D necessary to conform to the requirements of SB 529 (Hertzberg), 2022? Explain your response.
- 3) Should the Commission adopt the proposed amendments to GO 131-D as reflected in the Attachment B version of GO 131-E that include other modifications to GO 131-D in

⁶ Public Resources Code; § 21000 *et seq.*

addition to those modifications required by SB 529?
Explain your response.

- 4) Should the Commission consider any other modifications to GO 131-D in addition to the proposed amendments reflected in the appendices?
- 5) Should the Commission further address the roles of other entities, such as the California Independent System Operator (CAISO), the California Energy Commission (CEC), or local governments through additional edits? If so, what additional changes are needed?
- 6) Does the adoption of FERC Order 1000 require any additional changes to GO 131-D?⁷
- 7) What notice requirements should apply in a modified GO 131-D to a Certificate of Public Convenience and Necessity and/or Permit to Construct?
- 8) Should the existing GO 131-D requirements for submission of reports to the Commission be modified? If so, how?
- 9) Should the Commission adopt either of the two versions of the appended modified GO 131-E in its entirety? Should either version be adopted with amendments? Please include redlines of the General Order that support your positions with your comments.

7. Preliminary Determination of Category

Commission Rules require that an OIR preliminarily determine the category of the proceeding.⁸ As a preliminary matter, we determine that this proceeding is quasi-legislative, because our consideration and approval of a

⁷ FERC Order No. 1000 is a Final Rule that reforms the FERC's electric transmission planning and cost allocation requirements for public utility transmission providers. The rule builds on the reforms of FERC Order No. 890 and corrects remaining deficiencies with respect to transmission planning processes and cost allocation methods. For further information, *see*: <https://www.ferc.gov/electric-transmission/order-no-1000-transmission-planning-and-cost-allocation>.

⁸ Rule 7.1(d).

modified General Order 131 would establish policy or rules affecting a class of regulated utilities.

8. Preliminary Determination of Need for Hearing

Rule 7.1(d) requires that an OIR preliminarily determine the need for hearing. Because we expect that this OIR will be examining policy and legal issues, rather than factual controversies, it appears appropriate that the issues can reasonably be resolved through the filing of comments and briefs, and we preliminarily determine that hearings will not be needed.

Any party that believes hearings are necessary should be prepared to discuss at the prehearing conference (PHC) why hearings are necessary, including identifying any material issues of fact that are presented and in dispute.

9. Comments on Order Instituting Rulemaking (OIR)

Consistent with Rule 6.2, respondents to this OIR shall, and any other prospective party may, file and serve comments on this OIR, and the questions contained in it, within 30 days of issuance of the OIR. Respondents to this OIR shall, and other parties may, file reply comments to this OIR no later than 15 days after the due date for opening comments. Rule 6.2 requires that any person filing such comments “shall state any objections to the preliminary scoping memo regarding the category, need for hearing, issues to be considered, or schedule.”

The assigned Commissioner will issue a scoping memo that will rule on the category, need for hearing, and scope.

10. Preliminary Proceeding Schedule

The preliminary proceeding schedule is:

| ACTIVITY | DATE |
|-----------------------|---------------------------------------|
| Comments on OIR | 30 days from issuance of OIR |
| Reply comments on OIR | 15 days from date for comments on OIR |
| PHC | ~ 10 days from reply comments on OIR |
| Scoping Memo issued | ~ 30-45 days from PHC |
| Opening Comments | 30 days from Scoping Memo |
| Reply Comments | 15 days from Opening Comments |
| Proposed Decision | ~ 90 days from Reply Comments |

A PHC will be held for the purposes of 1) taking appearances, 2) discussing schedule and process, and 3) informing the scoping memo. The PHC shall be held remotely with the exact date indicated in a subsequent ruling.

The scoping memo will provide direction to the parties and an opportunity to review and respond to the Staff Proposal prepared in response to the comments on the OIR.⁹ Parties will also have the opportunity to file reply comments responding to the comments of other parties and to raise any additional issues.

The assigned Commissioner or the assigned Administrative Law Judge (ALJ) may alter the schedule to promote efficient and fair administration of this proceeding. A schedule for the remainder of the proceeding will be adopted in the assigned Commissioner’s scoping memo.

This proceeding will conform to the statutory case management deadline for quasi-legislative matters set forth in Pub. Util. Code Section 1701.4 and 1701.5

⁹ A Staff draft proposed revised GO 131-E may be attached to the scoping memo or issued separately.

11. Respondents

Respondents are all investor-owned electric utilities and merchant transmission owners operating in the State of California, as follows:

- Pacific Gas and Electric Company (PG&E)
- Southern California Edison Company (SCE)
- San Diego Gas & Electric Company (SDG&E)
- Bear Valley Electric Service, Inc (BVES)
- Liberty Utilities (CalPeco Electric) LLC (Liberty)
- PacifiCorp d.b.a. Pacific Power (PacifiCorp)
- NextEra Energy Transmission West, LLC
- Valley Electric Association, Inc.
- GridLiance- Nextera Energy Transmission
- LS Power Grid California
- DCR Transmission, LLC

12. Parties and Service List

In addition to the respondents, this order will be served on the following service lists:

- R.17-05-010, *Rulemaking to Consider Revisions to Electric Rule 20 and Related Matters*
- R.18-12-005, *Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions*
- R.18-07-003, *Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program*
- R.20-01-007, *Rulemaking to Establish Policies, Processes, and Rules to Ensure Safe and Reliable Gas Systems in California and Perform Long-Term Gas System Planning*
- R.20-05-003, *Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes*

- R.20-11-003, *Rulemaking to Establish Policies, Processes, and Rules to Ensure Reliability Electric Service in California in the Event of an Extreme Weather Event in 2021*
- R.21-06-017, *Rulemaking to Modernize the Electric Grid for a High Distributed Energy Resources Future*

Persons receiving this OIR will not be placed on the service list for this proceeding absent a specific request. Pursuant to Rule 1.4(a)(2)(ii), persons or entities filing comments in response to this OIR by the indicated deadlines will automatically become a party to the proceeding. Persons may request to be added to the service list as a party at the PHC or may file and serve a motion for party status. Persons who wish to be in the information-only category may do so by contacting the Process Office.

It is the responsibility of each person or entity to notify the Process Office of his or her current postal service mailing address, current electronic-mail address, and any changes or corrections. The Process Office may be reached via email at: ALJ_Process@cpuc.ca.gov; or via mail at: Process Office, California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, San Francisco, California, 94102. The service list will be posted on the Commission's web site, at www.cpuc.ca.gov. Parties must use the latest service list for service of each pleading over the course of this proceeding.

Any party interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor's Office in Los Angeles at (213) 649-4782 or in San Francisco at (415) 703-7074, 1-866-836-7875 (TTY - toll free) or (415) 703-5282 (TTY), or send an email to public.advisor@cpuc.ca.gov.

Electronic service of documents in Commission proceedings is governed by Rule 1.10. All participants are encouraged to use electronic service.

13. Intervenor Compensation

Intervenor Compensation is permitted in this proceeding. Any party that expects to claim intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation within 30 days after the filing of reply comments, except that notice may be filed within 30 days of a PHC as well.¹⁰ Intervenor compensation rules are governed by Pub. Util. Code Section 1801 *et. seq.* Parties new to participating in Commission proceedings may contact the Commission's Public Advisor.

14. Ex-Parte Communications

In accordance with Rule 8.2(a), *ex-parte* communications in this proceeding are without restriction or reporting requirement.

O R D E R

IT IS ORDERED that:

1. This rulemaking is initiated to conform General Order 131-D with the requirements of Senate Bill 529 (Hertzberg), 2022 and to consider other changes to the General Order as described above.

2. The Executive Director shall cause this Order Instituting Rulemaking to be served on the respondents to this proceeding, which are: Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Bear Valley Electric Service, Inc (BVES), Liberty Utilities (CalPeco Electric) LLC (Liberty), PacifiCorp d.b.a. Pacific Power (PacifiCorp), NextEra Energy Transmission West, LLC, Valley Electric Association, Inc, GridLiance- Nextera Energy Transmission, LS Power Grid California, and DCR Transmission, LLC.

¹⁰ Rule 17.1(a)(1).

3. The Executive Director shall cause this Order Instituting Rulemaking to be served on the service lists of the following proceedings: Rulemaking (R.) 17-05-010, *Rulemaking to Consider Revisions to Electric Rule 20 and Related Matters*, R.18-12-005, *Rulemaking to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions*, R.18-07-003, *Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program*, R.20-01-007, *Rulemaking to Establish Policies, Processes, and Rules to Ensure Safe and Reliable Gas Systems in California and Perform Long-Term Gas System Planning*, R.20-05-003, *Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes*, R.20-11-003, *Rulemaking to Establish Policies, Processes, and Rules to Ensure Reliability Electric Service in California in the Event of an Extreme Weather Event in 2021*, and R.21-06-017, *Rulemaking to Modernize the Electric Grid for a High Distributed Energy Resources Future*.

4. The preliminary category for this proceeding is quasi-legislative. *Ex-parte* communications are permitted without restriction or reporting requirement.

5. Respondents shall, and prospective parties may, file and serve opening comments on the questions contained in this document and on the preliminary scope and schedule of this proceeding no later than 30 days after the issuance of this order.

6. Respondents shall, and prospective parties may, file and serve reply comments on this order no later than 15 days from the due date for comments.

7. Any party that expects to claim intervenor compensation for its participation in this rulemaking shall file its notice of intent to claim intervenor compensation no later than 30 days after any of the prehearing conferences related to their contribution to this proceeding.

8. The assigned Commissioner or Administrative Law Judge may make any revisions to the scheduling and filing determinations made herein as necessary to facilitate the efficient management of the proceeding.

This order is effective today.

Dated May 18, 2023, at San Francisco, California.

ALICE REYNOLDS
President
GENEVIEVE SHIROMA
DARCIE L. HOUCK
JOHN REYNOLDS
KAREN DOUGLAS
Commissioners

ATTACHMENT A

Proposed Revisions to General Order 131-D to
Reflect Senate Bill 529 (Hertzberg, 2022)

(REDLINES)

ATTACHMENT B

Proposed Revisions to General Order 131-D
to Address Senate Bill 529 (Hertzberg, 2022)
and Additional Issues

(REDLINES)

ATTACHMENT C

Proposed Revisions to General Order 131-D to
Reflect Senate Bill 529 (Hertzberg, 2022)

(CLEAN)

ATTACHMENT D

Proposed Revisions to General Order 131-D
to Address Senate Bill 529 (Hertzberg, 2022)
and Additional Issues

(CLEAN)