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**PROPOSED DECISION**

**Agenda ID #23210 (Rev. 1)**

**Quasi-Legislative**

**1/30/2025 Item #42**

Decision **PROPOSED DECISION OF COMMISSIONER DOUGLAS**

**(mailed 12/27/2024)**

**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

**DECISION ADOPTING GENERAL ORDER 131-E**

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**Attachment A:** General Order 131-D (Redlined)

**Attachment B:** General Order 131-E

**DECISION ADOPTING GENERAL ORDER 131-E****Summary**

This decision resolves the outstanding Phase 2 issues and adopts General Order (GO) 131-E, attached to this decision as Attachment B. Attachment A to this decision is GO 131-D, which is redlined to reflect the revisions we adopt today.

GO 131-E requires an early pre-filing coordination process and provides applicants with the opportunity to prepare and submit draft version of California Environmental Quality Act (CEQA) documents in lieu of the Proponent's Environmental Assessment (PEA) to help accelerate the processing time for the Certificate of Public Convenience (CPCN) and Permit to Construct (PTC) applications. To continue exploration of methods that streamline the Commission's review and approval process for PTC and CPCN projects, this decision also adopts a pilot to further study ways to streamline the existing CEQA review process at the Commission and instructs the Commission's Energy Division staff to report on the results of this pilot review by compliance filing on December 1 of every even year starting with December 1 of 2026, to this docket.

This decision adopts revisions to GO 131-D, as reflected in GO 131-E, including language incorporating Assembly Bill (AB) 1373 provisions that the Commission shall establish a rebuttable presumption in favor of the California Independent System Operator's (CAISO) need evaluation when considering the issuance of a CPCN for a proposed transmission project, given that the project meets certain criteria specified in Public Utilities Code Section 1001.1. This decision also adopts GO 131-E requirements that reflect AB 2292 provisions

regarding the Commission's consideration of transmission project alternatives during the Commission's review of proposed project applications.

In addition, this decision makes other necessary updates and clarifications to GO 131-D, as reflected in the attached GO 131-E, including: (1) updating and clarifying various terms, definitions and exemptions; (2) consolidating electric and magnetic fields (EMF) application requirements within existing application requirements; (3) updating reporting requirements including the list of financial information that must be reported by electric public utilities to the Commission; (4) aligning of GO language with GO-96 B that specifies rules for dispositions of advice letters; and (5) requiring protests of Commission Executive Director dispositions of advice letters that grant PTC exemptions to be addressed through applications for rehearing pursuant to AB 551.

All redlined revisions to GO 131-D, as reflected in Attachment A, and as discussed in this decision, are adopted. GO 131-E, Attachment B to this decision, replaces and supersedes GO 131-D, effective upon issuance of this decision.

This proceeding is closed.

## **1. Procedural Background**

On May 23, 2023, the California Public Utilities Commission (Commission) issued an Order Instituting Rulemaking (OIR), Rulemaking (R.) 23-05-018, to update and clarify General Order (GO) 131-D pursuant to Senate Bill (SB) 529 (Hertzberg), Stats. 2022, ch. 357, and also to make other clarifications and updates to GO 131-D, as necessary.

Enacted on January 1, 2023, SB 529 added Public Utilities (Pub. Util.) Code Section 564 which required amendments to GO 131-D 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.

Further, SB 529 modified 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 OIR included two draft versions of GO 131-E, including Attachment A which proposed amendments to GO 131-D solely to conform to the requirements of SB 529, and Attachment B which included other proposed modifications to GO 131-D.

In June of 2023, Rural County Representatives of California (RCRC), the Acton Town Council, Clean Coalition; American Clean Power – California (ACP), Pacific Gas and Electric Company (PG&E), California Farm Bureau Federation (Farm Bureau), the Protect Our Communities Foundation (PCF), Coalition of California Utility Employees (CUE), Environmental Defense Fund (EDF), California Energy Storage Alliance (CESA), San Diego Gas & Electric Company (SDG&E), Defenders of Wildlife (DOW), the Public Advocates Office

(Cal Advocates), Southern California Edison Company (SCE), Large-Scale Solar Association, LS Power Grid California, LLC (LSPGC), California Independent System Operator Corporation (CAISO), Center for Energy Efficiency and Renewable Technologies (CEERT), REV Renewables, LLC, Independent Energy Producers Association (IEP), and the City of Long Beach, California (City of Long Beach), a municipal corporation acting by and through its Board of Harbor Commissioners, filed opening comments on the OIR. Joint opening comments to the OIR were filed by Liberty Utilities LLC (CalPeco Electric), PacifiCorp, and Bear Valley Electric Service, Inc. (collectively, California Association of Small and Multi-Jurisdictional Utilities (CASMU)) as well as Trans Bay Cable LLC, Horizon West Transmission, LLC, and GridLiance West LLC (collectively, Transmission Owners).

In July of 2023, LSPGC, Cal Advocates, PG&E, ACP, the Acton Town Council, EDF, SDG&E, Farm Bureau, CEERT, CAISO, SCE, Large-Scale Solar Association, Transmission Owners, and IEP filed reply comments.

On July 31, 2023, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo) that identified the issues in the scope of this rulemaking and set the proceeding schedule. The Scoping Memo determined that issues in the scope of this rulemaking would be examined in two phases. Phase 1 would consider GO 131-D amendments necessary to conform it to SB 529 requirements and updates to outdated references. Phase 2 would consider all other outstanding GO 131-D amendments, that were proposed in OIR Attachment A and Attachment B and by parties in this proceeding. Further, the Phase 2

schedule specified that the Commission's Energy Division Staff (Staff) would issue a Staff Proposal on the Phase 2 issues by the first quarter of 2024.

On September 23, 2023, SCE, PG&E, and SDG&E (Moving Parties) filed a Joint Motion seeking to modify the Scoping Memo schedule and to set aside submission of the Phase 1 record to consider the Moving Parties' Settlement Agreement.<sup>1</sup>

On September 29, 2023, the Moving Parties filed a Joint Motion for Adoption of the Phase 1 Settlement Agreement, (Settlement Agreement) on behalf of some of the parties to this proceeding (Settling Parties).<sup>2</sup> The Settlement Agreement proposed revisions to GO 131-D that relate to (1) SB 529 implementation; (2) applicant-prepared California Environmental Quality Act<sup>3</sup> (CEQA) documents; (3) recognition of CAISO transmission planning findings; (4) Commission CEQA process deadlines; (5) protest filing, processing, and disposition procedures; (6) clarifications of GO 131-D, Section III.B.1.g, Permit to Construct (PTC) exemption language; (7) miscellaneous updates and general references; and (8) implementation of new legislation, including Assembly Bill (AB) 1373 (Garcia) Stats. 2023, ch. 367.

On October 7, 2023, Pub. Util. Code Section 1001,1 was modified by AB 1373 to read as follows:

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<sup>1</sup> The September 23, 2023 Joint Motion also sought an order shortening time for Comments and Reply Comments on the Settlement Agreement.

<sup>2</sup> The Settling Parties include PG&E, SCE, SDG&E, Bear Valley Electric Service, Inc., Cal Peco Electric, PacifiCorp, ACP, IEP, CEERT, EDF, LSPGC, REV Renewables, Large-Scale Solar Association, California Energy Storage Alliance, City of Long Beach, and Transmission Owners.

<sup>3</sup> California Pub. Res. (Pub. Res.) Code Sections 21000 *et seq.*



In a proceeding evaluating the issuance of a certificate of public convenience and necessity for a proposed transmission project, the commission shall establish a rebuttable presumption with regard to need for the proposed transmission project in favor of an Independent System Operator governing board-approved need evaluation if all of the following are satisfied:

- (a) The Independent System Operator governing board has made explicit findings regarding the need for the proposed transmission project and has determined that the proposed project is the most cost-effective transmission solution.
- (b) The Independent System Operator is a party to the proceeding.
- (c) The Independent System Operator governing board-approved need evaluation is submitted to the commission within sufficient time to be included within the scope of the proceeding.
- (d) There has been no substantial change to the scope, estimated cost, or timeline of the proposed transmission project as approved by the Independent System Operator governing board.

On December 14, 2023, the Commission issued its Phase 1 Decision (D.) 23-12-035, and adopted several modifications to GO 131-D to align its provisions with SB 529 requirements and make a few updates to outdated references in it. In D.23-12-035, the Commission addressed the Joint Motion for Settlement Agreement by noting that issues addressed in the Settlement Agreement were outside of the Phase 1 scope and that the Settlement Agreement therefore would be considered during Phase 2.

On December 18, 2023, the assigned Administrative Law Judge (ALJ) issued a ruling (December 18 Ruling) and directed the parties to file opening and

reply comments on Phase 2 issues. The December 18 Ruling also directed the parties to file comments regarding the Settlement Agreement and definition of terms in GO 131-D and Pub. Util. Code Sections 564 and 1001(b).

To ensure the parties had adequate time to prepare and file meaningful comments responsive to the December 18 Ruling, the assigned ALJ issued an additional ruling on January 10, 2024, and extended the deadline to file opening comments by February 5, 2024, and replies by February 26, 2024.

On January 17, 2024, PCF filed an application for rehearing of D.23-12-035. Trans Bay Cable LLC, PG&E, CUE, LSPGC, ACP, EDF, GridLiance West LLC, SDG&E, SCE, Large-Scale Solar Association, Horizon West Transmission, LLC, and IEP filed a joint response to PCF's application for rehearing on February 1, 2024. On June 20, 2024, D.24-06-026 was issued and denied the application for rehearing.

On February 5, 2024, SCE, SDG&E, EDF, City of Long Beach, CUE, PG&E, Sierra Club, ACP, The Acton Town Council, CEERT, Large-Scale Solar Association, PPCF, Center for Biological Diversity (CBD), and Clean Coalition (jointly), and Cal Advocates filed opening comments on the December 18 Ruling. On February 26, 2024, SCE, SDG&E, EDF, LSPGC, CUE, PG&E, Sierra Club, ACP, Farm Bureau, RCRC, The Acton Town Council, CEERT, CalAdvocates, and CAISO filed reply comments.

On May 17, 2024, the assigned ALJ issued a ruling that included the Staff Proposal for R.23-05-018 Phase 2 Updates to General Order 131-D (Staff Proposal). The ruling directed parties to file opening and reply comments on the Staff Proposal and noticed a Staff workshop to be held on June 3, 2024.

On June 28, 2024, and July 1, 2024, REV Renewables, DOW, RCRC, SCE, SDG&E, EDF, IEP, CUE, PG&E, Sierra Club, ACP, The Acton Town Council, CEERT, Large-Scale Solar Association, Transmission Owners (jointly), Farm Bureau, CAISO, CBD and PCF (jointly) and Clean Coalition, and Cal Advocates filed opening comments on the Staff Proposal. On July 15, 2024, DOW, SCE, SDG&E, EDF, IEP, LS Power Grid LLC, PG&E, Sierra Club, The Acton Town Council, CEERT, Large-Scale Solar Association, Transmission Owners (jointly), CAISO, CBD and PCF (jointly) and Cal Advocates filed reply comments.

On September 20, 2024, AB 551 (Bennett) Stats. 2024, ch. 299 amended Pub. Util. Code Sections 311 and 1731 prohibiting any cause of action arising out of an Executive Director's disposition of a protest to a notice of proposed construction of a transmission project that receives a Certificate of Public Convenience and Necessity (CPCN) or PTC exemption from accruing in any court to any entity or person unless said entity or person files a rehearing application within 10 days after the disposition has been issued. The bill requires the Commission to issue a decision and order on rehearing within 90 days after the filing of that application.

Further, AB 551 added Pub. Util. Code Section 1002.4 to read as follows:

- (a) The Commission may, by resolution, adopt successor guidelines to the commission's Guidelines for Energy Project Applications Requiring CEQA Compliance: Pre-filing and Proponent's Environmental Assessments (November 2019) at a publicly noticed meeting to address its receipt and review of and actions on applications for the construction of electrical transmission facilities subject to its regulatory jurisdiction. These guidelines shall be designed to mitigate ratepayer costs, lessen the

uncertainty of the submittal process, and improve the commission's review process by increasing applicant understanding of applicable requirements with the intent of advancing the timely resolution of the construction of the facilities and efficient disposition of the applications.

- (b) To the extent there is a conflict or inconsistency between the content in the guidelines adopted or revised pursuant to this section and a commission rule of practice or procedure addressing the completeness of applications for electrical transmission facilities, the guidelines shall prevail.
- (c) The guidelines adopted pursuant to this section shall supersede the commission's Guidelines for Energy Project Applications Requiring CEQA Compliance: Pre-filing and Proponent's Environmental Assessments (November 2019), unless the guidelines adopted pursuant to this section specify otherwise.
- (d) Notwithstanding any other law, guidelines adopted pursuant to this section are exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.
- (e) For purposes of this section, "electrical transmission facilities" means electrical generation facilities, transmission, power, and distribution line facilities, and substations, as described in commission General Order No. 131-D, as it may be amended from time to time.

On September 27, 2024, AB 2292 (Petrie-Norris) Stats. 2024, ch. 709 repealed Pub. Util. Code Section 1002.3, which required that the Commission consider cost-effective alternatives that meet the need for an efficient, reliable, and affordable supply of electricity, including demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation, as defined, and

other demand reduction resources when considering a CPCN application for a proposed electric transmission facility.

## **2. Submission Date**

The Phase 2 was submitted on July 15, 2024, upon parties filing of reply comments on the Staff Proposal.

## **3. Current Regulatory Framework**

### **3.1. GO 131-D**

GO 131-D, most recently amended by D.23-12-035, is currently in effect and reflects the Commission's current rules for the planning and construction of electric generation resources; transmission, power, or distribution lines; and electric substations located in California - including CEQA compliance.

GO 131-D, Section III, identifies three review processes for authorizing electrical generation resource and infrastructure projects, as noted below, that are subject to Commission jurisdiction along with applicable noticing requirements, if any.

### **3.2. Certificate of Public Convenience and Necessity (CPCN)**

The first process is the CPCN application process. Pursuant to Pub. Util. Code Section 1001, GO 131-D, Section III.A, provides:

No electric public utility shall begin construction in this state of any new electric generating plant having in aggregate a net capacity available at the busbar in excess of 50 megawatts (MW), or of the modification, alteration, or addition to an existing electric generating plant that results in a 50 MW or more net increase in the electric generating capacity available at the busbar of the existing plant, or of major electric transmission line facilities which are designed for immediate or eventual operation at 200 kV or more (except for the replacement of existing power line facilities or supporting structures

with equivalent facilities or structures, the minor relocation of existing power line facilities, the conversion of existing overhead lines to underground, or the placing of new or additional conductors, insulators, or their accessories on or replacement of supporting structures already built) without this Commission's having first found that said facilities are necessary to promote the safety, health, comfort, and convenience of the public, and that they are required by the public convenience and necessity.

GO 131-D, Section III.A, also authorizes an electric public utility:

... to file a permit to construct application or claim an exemption under Section III.B to construct an extension, expansion, upgrade, or other modification to an electric public utility's 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-kV voltage level.

Before granting a CPCN,<sup>4</sup> the Commission must find that proposed facilities are necessary for "the present or future public convenience and necessity require or will require its construction."<sup>5</sup> In reviewing a CPCN application, the Commission considers project need, the maximum prudent and

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<sup>4</sup> Under the Warren-Alquist State Energy Resources Conservation and Development Act of 1974 (Pub. Res. Code Sections 25000 *et seq.*) the California Energy Commission (CEC) is the lead environmental permitting authority for all thermal power plants 50 megawatts and greater that are proposed for construction in California. This authority also covers the projects' associated infrastructure such as electric transmission lines, natural gas lines, and water pipelines. Thus, requiring CEC to certify the need for the plant and the suitability of the site of the plant—effectively making the CEC the lead agency for such projects rather than the Commission. However, GO 131-D still includes processes for Commission review of CEC-jurisdictional projects proposed by electric public utilities.

<sup>5</sup> Pub. Util. Code Section 1001.

reasonable cost of the project (if approved),<sup>6</sup> community values,<sup>7</sup> electric and magnetic fields (EMF) issues,<sup>8</sup> and environmental impacts, feasible mitigation measures and project alternatives pursuant to CEQA.<sup>9</sup>

### **3.2.1. Permit to Construct (PTC)**

The second process is the PTC application process. GO 131-D, Section III.B, provides, *inter alia*:

No electric public utility shall begin construction in this state of any electric power line facilities or substations which are designed for immediate or eventual operation at any voltage between 50 kV and 200 kV or new or upgraded substations with high side voltage exceeding 50 kV without this Commission having first authorized the construction of said facilities by issuance of a permit to construct in accordance with the provisions of Sections IX.B, X, and XI.B of this General Order....

While GO 131-D imposes certain noticing requirements for PTC applications,<sup>10</sup> such notice is not required for the construction of projects that are statutorily or categorically exempt pursuant to the CEQA Guidelines.<sup>11</sup> GO 131-D, III.B.2 stipulates that these exemptions do not apply when: (a) there is a reasonable possibility that the activity may impact an environmental resource of

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<sup>6</sup> *Id.* at Section 1005.5(a).

<sup>7</sup> *Id.* at Section 1002(a)(1).

<sup>8</sup> GO 131-D, Section X.

<sup>9</sup> Pub. Util. Code Sections 1001 *et seq.* and Sections III.A and IX.A of GO 131-D, and Pub. Util. Code Section 1002.3, respectively require Commission review of CPCN project need and cost. Pub. Util. Code Section 1005.5 (a) requires that the Commission consider cost-effective alternatives to transmission facilities in CPCN project applications.

<sup>10</sup> GO 131-D, Section XI.B.

<sup>11</sup> California Code of Regulations (CCR), Title 14, Sections 15000 *et seq.*

hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies; or (b) the cumulative impact of successive projects of the same type in the same place, over time, is significant; or (c) there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.<sup>12</sup> Moreover, if a protest of a claimed exemption is timely filed,<sup>13</sup> construction may not commence until the Executive Director or Commission has issued a final determination.

The Commission's review of PTC applications is more limited, as compared to CPCN applications. The Commission will consider project need, potential EMF exposure,<sup>14</sup> and environmental impacts, feasible mitigation measures and project alternatives pursuant to CEQA.<sup>15</sup>

### **3.2.2. Authorization of Electric Distribution Lines and Other Substations**

The third process is for distribution lines and other substations which do not require Commission's review. GO 131-D, Section III.C, provides:

The construction of electric distribution (under 50 kV) line facilities, or substations with a high side voltage under 50 kV, or substation modification projects which increase the voltage of an existing substation to the voltage for which the substation has been

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<sup>12</sup> GO 131-D, III.B.2.

<sup>13</sup> *Id.* at Section XIII.

<sup>14</sup> GO 131-D, Section X.

<sup>15</sup> Pub. Util. Code Section 1001 *et seq.* and Sections III.A and IX.A of GO 131-D, respectively require Commission review of CPCN project need and cost. Pub. Util. Code Section 1005.5 (a) requires that the Commission consider cost-effective alternatives to transmission facilities in CPCN project applications.



previously rated within the existing substation boundaries, does not require the issuance of a CPCN or permit by this Commission nor discretionary permits or approvals by local governments.

However, this section still requires the utility to first communicate with, and obtain the input of, local authorities regarding land use matters and obtain any non-discretionary local permits required for the construction and operation of these projects.

### **3.3. CEQA Overview**

This decision does not alter or otherwise modify any CEQA requirements. To provide context, we now provide an overview of CEQA requirements which the Commission must follow before issuing CPCNs or PTCs.

CEQA generally requires California state and local agencies (public agencies), including the Commission, to inform decision makers and the public about potential environmental impacts attributed to proposed projects, and to reduce those impacts to the extent feasible.<sup>16,17</sup> Under CEQA, public agencies must not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant environmental effects of such a project.<sup>18</sup>

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<sup>16</sup> Governor's Office of Planning and Research, CEQA Process Overview [Getting Started with CEQA - Office of Planning and Research \(ca.gov\)](#)

<sup>17</sup> CEQA is codified in Pub. Res. Code Sections 21000-21189. The "CEQA Guidelines" codified in CCR, Title 14, Sections 15000 *et seq.* are regulations prescribed by the Secretary for Natural Resources to be followed by all state and local agencies in California in the implementation of CEQA. These Guidelines are binding on all public agencies in California.

<sup>18</sup> CEQA Guidelines Section 21002.

Public Resources (Pub. Res.) Code Section 21065 defines a “project” as the “whole of an action” subject to a public agency's discretionary funding or approval that has the potential to either (1) cause a direct physical change in the environment or (2) cause a reasonably foreseeable indirect physical change in the environment. “Projects” include a discretionary activity by a public agency, a private activity that receives any public funding, or activities that involve the public agency's issuance of a discretionary approval and are not statutorily or categorically exempt from CEQA.

Pursuant to CEQA, projects can qualify for statutory exemptions under Article 18 of the CEQA Guidelines,<sup>19</sup> or categorical exemptions under Article 19 of the CEQA Guidelines.<sup>20</sup> Statutory exemptions are created by the Legislature. Statutory exemptions include “ministerial projects.”<sup>21</sup> Ministerial projects are projects that involve government decisions involving little or no personal judgement<sup>22</sup> and are determined by each public agency as part of its implementing regulations or on a case-by-case basis. Categorical exemptions include a list of classes of projects which have been determined not to have a significant effect on the environment.<sup>23</sup> The CEQA Guidelines also set out certain

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<sup>19</sup> 14 CCR Sections 15260-15285.

<sup>20</sup> *Id.* at Sections 15300-15333.

<sup>21</sup> *Id.* at Section 15268.

<sup>22</sup> *Id.* at Section 15369.

<sup>23</sup> *Id.* at Section 15300.

conditions that trigger exceptions to categorical exemptions triggering full CEQA review.<sup>24</sup>

An initial study (IS) is a preliminary analysis conducted to determine if there are significant effects on the environment associated with a project if it is not exempt from CEQA.<sup>25</sup> Public agencies that have primary jurisdiction over the project serve as lead agencies that are tasked with performing these studies.<sup>26</sup> Based on the IS analysis, a lead agency may draft a negative declaration (ND), a written statement that an Environmental Impact Report (EIR) is not required to evaluate a proposed project that may have significant effects on the environment.<sup>27</sup>

Alternatively, a mitigated negative declaration (MND) is prepared when an IS identifies that a project may impose potentially significant effects on the environment, but an applicant revises or agrees to a project plan or proposal that mitigates these effects before the IS and ND are released for public review. The MND must clearly show that (1) the project plan or proposal would mitigate or avoid significant effects on the environment; and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.<sup>28</sup> If there is evidence to the contrary, an EIR is prepared.

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<sup>24</sup> *Id.* at Section 15300.2.

<sup>25</sup> CEQA Guidelines Sections 15063, 15365 and Pub. Res. Code Sections 21080.1.

<sup>26</sup> Governor's Office of Planning and Research, [CEQA 101 \(ca.gov\)](https://www.ceqa.ca.gov/)

<sup>27</sup> Pub. Res. Code Sections 21064 and 21080.

<sup>28</sup> *Id.* at Section 21064.5.

In consultation with the project applicant, other agencies, and the public, the lead agency must determine the scope of the EIR.<sup>29</sup> Subsequently, a draft EIR is prepared by the lead agency. The lead agency reviews the draft EIR to evaluate environmental impacts and consider mitigation measures. The draft EIR must be released for public comment for at least 45 days but no more than 60 days, unless there are unusual circumstances.<sup>30</sup> The final EIR reflects public comments and the lead agency's responses to comments regarding potentially significant environmental issues.<sup>31</sup>

#### **3.4. Commission Rule 2.4**

The Commission must adopt an ND or MND, or certify an EIR, as applicable, before approving a CPCN or PTC for a project that is not statutorily or categorically exempt from CEQA. Rule 2.4 of the Commission Rules of Practice and Procedure (Rules) sets out Commission rules directing project applicants to comply with CEQA and the CEQA Guidelines when filing applications.<sup>32</sup> Rule 2.4(b) requires that applications for projects that are not statutorily or categorically exempt from CEQA must include a Proponent's Environmental Assessment (PEA), prepared in accordance with the Commission's Guidelines for Energy Project Applications Requiring CEQA

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<sup>29</sup> CEQA Guidelines Sections 15082, 15083.

<sup>30</sup> *Id.* at Section 15105.

<sup>31</sup> CEQA Guidelines Section 15088(b).

<sup>32</sup> CEQA Guidelines Section 21082 provides that public agencies must adopt their own objectives, criteria, and procedures for CEQA review.

Compliance (PEA Guidelines).<sup>33,34</sup> The PEA Guidelines provide direction to applicants, Commission staff, and outside consultants about the type and detail of information to be included in a project application to expeditiously and efficiently deem the application complete.<sup>35</sup>

The CEQA Guidelines direct public agencies on how to determine if an EIR, MND, or ND should be prepared.<sup>36</sup> Specifically, the CEQA Guidelines specify that public agencies have 30 days after receipt of project applications to determine (1) if they are complete,<sup>37</sup> and (2) if an ND, MND, or EIR will be prepared.<sup>38</sup> CEQA Guidelines Section 15060 provides that lead agencies have the authority to request additional information or explanation from the applicant to deem a project application complete. If the lead agency and applicant agree, the 30-day deadline can be extended by 15 days to collect additional information to conduct an environmental evaluation of the project.<sup>39</sup>

A specific type of CEQA document (*e.g.*, ND, MND, or EIR) is not necessarily used to issue a CPCN or PTC as requested in an application. Rather,

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<sup>33</sup> Commission's Guidelines Pre-filing and Proponent's Environmental Assessments (Version 1.0, November 2019).

<sup>34</sup> Staff Proposal at 9.

<sup>35</sup> California Government Code Section 65940(a)(1) requires that each public agency compile one or more lists that shall specify in detail the information that will be required from any applicant for a development project.

<sup>36</sup> CEQA Guidelines Section 21082.

<sup>37</sup> CEQA Guidelines Section 15101.

<sup>38</sup> *Id.* at Section 15102.

<sup>39</sup> *Ibid.*

the appropriate level of CEQA review is determined by each project's details and impacts, irrespective of whether the application is for a CPCN or PTC.

Historically, CPCN applications tended to involve larger higher-voltage projects with cross jurisdictional boundaries and/or impacts on more resource areas, and therefore, had a greater potential for significant environmental impacts. As such, the Commission has historically been more likely to have prepared EIRs for such CPCN projects.

Historically, PTC applications tended to involve lower-voltage projects that were more limited in scope and impacts; thus, PTC applications have more often resulted in MNDs or NDs. However, depending on factors such as environmental setting and initial evaluation of potential impacts, some projects that qualified for PTCs sometimes still required EIRs, and some projects that qualified for CPCNs sometimes require MNDs or NDs.

If the final EIR identifies significant environmental impact or impacts that cannot be lessened to below the significant impact level, the Commission may still determine that project approval serves the public interest and certify the EIR. In this circumstance, the Commission's certification of the CEQA document must be supported by a statement of overriding considerations that provides a rationale for why the project should be approved despite the environmental impacts.<sup>40</sup>

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<sup>40</sup> Pub. Util. Code Section 21081(b) and CEQA Guidelines Section 15093.

### **3.5. Commission's Bifurcated Review Process**

The Commission typically reviews CPCN and PTC applications under two parallel but largely bifurcated processes: an environmental review pursuant to CEQA, and a review of formal proceeding issues, such as public convenience and necessity,<sup>41</sup> maximum prudent and reasonable cost of the project (if approved),<sup>42</sup> community values,<sup>43</sup> and EMF issues.<sup>44</sup>

### **4. Issues Before the Commission**

Outstanding Phase 2 issues in this proceeding are whether the Commission should further 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;
- d. Respond to requests from resource agencies for the Commission to serve as the lead agency pursuant to the California Environmental Quality Act (CEQA) 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; and

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<sup>41</sup> Pub. Util. Code Section 1001.

<sup>42</sup> *Id.* at Section 1005.5(a).

<sup>43</sup> *Id.* at Section 1002(a)(1).

<sup>44</sup> GO 131-D, Section X.

h. Adopt other changes to GO 131-D as needed

Moreover, the Scoping Memo clarified that Phase 2 shall “consider all other changes to GO 131-D, including the changes proposed in attachments to the OIR, and changes proposed by parties in comments on the OIR, and any additional changes that may be proposed by Commission staff or parties” during the course of this proceeding.<sup>45</sup>

## **5. Process Acceleration**

First and foremost, we examine ways to accelerate our processes where feasible. The Commission and permit applicants currently engage in a multi-step process to evaluate proposed projects and adopt or certify the appropriate CEQA documents, culminating in the issuance of a CPCN or PTC. A streamlined approach to permitting of infrastructure projects is especially important in light of the need to meet SB 100 mandates that target the reduction of greenhouse gas emissions.

There is also agreement from the legislature as confirmed by recent legislation (*e.g.*, AB 1373) and parties to this proceeding, as shown by Settlement Agreement and other party proposals, that we must strive to streamline the infrastructure permitting process to accelerate the issuance of CPCNs and PTCs, where feasible.

As discussed below, we examine the current processes, various proposals to expedite the Commission’s Rule 2.4(b) process and CEQA review process and adopt proposals, where prudent, to accelerate the processing time for the CPCNs

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<sup>45</sup> Assigned Commissioner’s Scoping Memo and Ruling at 3-4.



and PTC applications. The proposals we adopt below include early and diligent project applicant coordination with Staff, a pilot to assess how to streamline the Commission's process to review and approve permit applications, and other steps to accelerate the CEQA process through adoption of Staff and party proposals.

### **5.1. Overview of Current GO 131-D Process**

We examine the Commission's current processes, starting from the pre-filing planning stage.

**Pre-filing Stage:** It is important to note that the overall timeline to develop electric transmission projects is lengthy and protracted. According to Cal Advocates' analysis, looking at a sampling of seven past CPCN projects, the average time required to plan, permit, and construct a CPCN project (i.e., 200 kV or greater) was 11 years and nine months. While examining a sampling of seven past PTC projects, Cal Advocates determined that the average time required to develop a PTC project (i.e., 50 kV-200 kV) was 10 years and three months.<sup>46</sup> In this study, Cal Advocates also found that on average, utilities file CPCN applications at the Commission four years after project approval in the CAISO Transmission Planning Process (TPP) which extends the timeline even further.<sup>47</sup>

The PEA Guidelines includes Pre-filing Guidelines<sup>48</sup> that sets forth the process for CPCN and PTC applicants to voluntarily engage with Staff on a

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<sup>46</sup> Cal Advocates' Opening Comments on Phase 2 Issues at 13 and Staff Proposal at 92.

<sup>47</sup> Staff Proposal at 92-94.

<sup>48</sup> The Pre-Filing Guidelines in the PEA Guidelines provides, *inter alia*, the following guidance on the following topics: meeting with Commission staff, consultant resources, draft PEAs

*Footnote continued on next page.*

variety of topics prior to submission of the PEA. Pre-Filing Guidelines also requires that “successful projects will commence Pre-filing Consultation no less than six months prior to application filing at the Commission.”<sup>49</sup>

***At the time of filing:*** Rule 2.4(b) requires that CPCN and PTC applications shall include a PEA prepared in accordance with the PEA Guidelines. The PEA Guidelines outline requirements for all PEAs and include each of the chapters and sections found in typical Commission-drafted EIRs. Further, Rule 2.4(b) requires that PEAs “shall include all information and studies required under the Commission's Information and Criteria List adopted pursuant to Chapter 1200 of the Statutes of 1977 (Government Code Sections 65940 through 65942).”<sup>50</sup>

***After filing:*** When the CPCN or PTC applications are filed, Staff must review the filing to identify deficiencies, and utilities must correct the identified deficiencies in their applications before they are deemed complete. Due to the complexity of many of these projects, Staff conducts a review of the detailed data and information in CPCN and PTC applications,<sup>51</sup> including strategies to avoid

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provided prior to PEA filing, project site visits, consultation with public agencies, alternatives development, formal PEA submittal, transmission and distribution system data and technical accuracy, applicant proposed measures, PEA checklist deviations, submittal of confidential information, and additional CEQA impact questions. <https://www.cpuc.ca.gov/-/media/cpuc-website/files/legacyfiles/c/6442463239-ceqa-pre-filing-guidelines-pea-checklist-nov-2019.pdf>.

<sup>49</sup> PEA Guidelines at iv.

<sup>50</sup> Commission Rule 2.4(b)

<sup>51</sup> Staff Proposal at 69. GO 131-D, Sections VIII and IX.A.1 require that CPCN applications include a detailed description of proposed facilities; a proposed schedule; a map; a statement of why the public convenience and necessity require the construction of the project; a detailed statement of the estimated cost of the project; routing alternatives; a list of required permits; and a summary of consultation with public agencies. GO 131-D, Section IX.B.1, requires that PTC

*Footnote continued on next page.*

or minimize environmental impacts and reduce EMF exposure.<sup>52</sup> If deficiencies are found, Staff is required to notify the utility applicant in writing about them within 30 days.<sup>53</sup>

Utilities must then correct the identified deficiencies in CPCN applications within 60 days of notification, while those found in PTC applications must be corrected within 30 days, unless a written explanation is provided to request an extension. For some applications, Staff's identification of application deficiencies and revisions and utility development of corrective action is an iterative process that may entail multiple rounds of Staff review and oversight. In some cases, Staff may also need to send additional deficiency letters to request further revisions to correct initial deficiencies and/or new deficiencies arising from these corrections. When an application is deemed complete, Staff must then determine whether CEQA applies, and if so, whether an EIR or MND/ND has been or will be prepared.

We recognize that CEQA Guidelines Sections 15107 and 15108 require that MNDs and NDs must be completed within 180 days of deeming an application complete with the option to extend for an additional 90 days (resulting in a total

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applications must include most information required for CPCNs, except for a detailed analysis of public convenience and necessity, a detailed estimate of cost and economic analysis, a detailed schedule, or a detailed description of construction methods beyond that required for CEQA compliance.

<sup>52</sup> Staff Proposal at 76. D.23-12-035 deleted Section X.B, leaving a brief paragraph (formerly Section X.A) requiring that CPCN and PTC applications "shall describe the measures taken or proposed by the utility to reduce the potential exposure to electric and magnetic fields generated by the proposed facilities, in compliance with Commission order".

<sup>53</sup> Notification of applicants about CPCN and PTC application deficiencies is required pursuant to Government Code Section 65943 and CEQA Guidelines Section 15101.

of 270 days) and that EIRs must be completed within one year of deeming an application complete, with the option to extend this timeline by an additional 90 days (resulting in a total of 455 days).

However, Staff explains in the Staff Proposal that during the review of CPCN or PTC applications, several other factors, in addition to the lengthy iterative process of application deficiency identifications and corrections, can also contribute to delays. These include but are not limited to addressing public concerns through outreach efforts, or consultation; consideration and coordination of permitting processes of other State or federal agencies; and changes in technology or electric demand that may require the analysis of additional project alternatives. To emphasize this point, as detailed in the PEA Guidelines, Staff's examination of 108 applications filed with the Commission between 1996 and 2019 revealed that on average the Commission issued decisions for EIR projects within 29 months (approximately 870 days) of application filing. For MNDs, the Commission issued decisions within 19 months (approximately 570 days) of application filing.<sup>54</sup>

## **5.2. Acceleration of Rule 2.4(b) Related Process**

As discussed below, we have summarized and weighed the parties' and Staff proposals surrounding the Rule 2.4(b) process. Accordingly, we adopt Staff Proposal Section 3.7, Proposal 1, Option 3, as modified, and Staff Proposal Section 3.7, Proposals 2 and 3, without modification.

### **5.2.1 Proposals and Party Positions**

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<sup>54</sup> Staff Proposal at 93.

**Settling Parties Proposal:** Settling Parties propose to amend GO 131-D, Section VIII.A.7, and create new Sections IX.C and IX.C.1. This would enable CPCN or PTC applicants to submit a draft CEQA document in lieu of a PEA as required by Rule 2.4(b).<sup>55</sup> Further, the Settling Parties propose the addition of new CPCN and PTC application requirements, pursuant to Government Code Section 65940. Amended Section VII.A.7, and the addition of Section IX.C, and Section IX.C.1 would also state that Staff may provide the applicant with “...appropriate guidance and assist in the preparation of the draft CEQA document”.<sup>56</sup> According to the Settling Parties, this revision would eliminate the duplicative, time-consuming, and expensive process wherein the Commission staff and consultants that prepare CEQA documents re-draft the environmental analysis contained in the PEA.<sup>57</sup>

**Staff Proposal Section 3.7, Proposal 1:** Staff Proposal 1 relates to Rule 2.4(b) and includes three potential options to amend GO 131-D based on the Settling Parties’ recommended revisions to streamline the CPCN application processes.

Staff Proposal Section 3.7, Proposal 1, Option 1 would involve accepting the Settling Parties’ recommended revisions to Section VIII.A.7 and proposed new Section IX.C.1:

In Staff Proposal Section 3.7, Proposal 1, Option 1, Staff provided an option for the Commission to accept the Settling Parties’ recommended revisions to Sections VIII.A.7 and recommended

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<sup>55</sup> Joint Motion for Adoption of Settling Parties’ Settlement Agreement at 9.

<sup>56</sup> Staff Proposal at 77-78 provides a full description.

<sup>57</sup> Joint Motion for Adoption of Settling Parties’ Settlement Agreement at 10.

language of IX.C.1 to enable CPCN applicants to submit a draft version of a CEQA document (i.e., a draft version of an ND, MND, EIR, draft addendum, or analysis to support a CEQA exemption) in lieu of a PEA. Pursuant to Government Code Section 65940, Staff note that Rule 2.4(b) may require amendment to reference submission of a CEQA document in-lieu of a PEA. Further, Staff notes that a new checklist must be to specify the detailed information that project applicants would need to include in such a document.<sup>58</sup>

In the Staff Proposal, Staff did not support adoption of Staff Proposal Section 3.7, Proposal 1, Option 1 because it would require the Commission to (1) submit a proposed revision of Rule 2.4 (b) for review by the California Office of Administrative Law (OAL), which could be a prolonged process, and (2) create a separate list (or lists) detailing the application requirements not already included in Section VIII and IX of GO 131-D. However, the enactment of AB 551 now permits the Commission to adopt amendments to the PEA Guidelines via resolution, which supersedes the OAL review process that was previously required.

Staff Proposal Section 3.7, Proposal 1, Option 2 would comprise the following:

Staff proposes to create a new Section VIII.B, split current Section VIII.B into Section VIII.C, Section VIII.D, and Section VIII.E, and amend Section IX. These revisions modify Staff Proposal Section 3.7 Proposal 1, Option 1 such that (1) an applicant-submitted draft version of an initial study or EIR can be used to prepare a draft CEQA document if it meets specifications of the PEA Guidelines, and includes substantial evidence for all findings and conclusions,

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<sup>58</sup> Staff Proposal at 78.

and specific technical studies (*e.g.*, biological resource studies, cultural resource studies); and (2) the applicant initiates pre-filing consultation with Staff at least 12 months prior to the filing of the CPCN application and provides the draft version(s) of CEQA document(s) during pre-filing. Given that draft version(s) of the CEQA documents would need to meet the application criteria to PEA Guidelines, Staff suggest that applicants may not be required to develop a separate list of application requirements pursuant to Government Code Section 65940.<sup>59</sup>

Staff notes the benefits of the above Staff Proposal Section 3.7, Proposal 1, Option 2 because it would require project applicants to: (1) follow a process that is consistent with CEQA and Commission policy, and (2) engage in early consultation with Staff on the draft version of a CEQA document to minimize deficiencies. Staff Proposal Section 3.7, Proposal 1 Option 2 would also authorize applicants to submit a draft version of an IS, that could be useful for Staff in preparing the Commission's draft IS/MND, IS/ND, or EIR. Staff suggests that adopting this technical change would better align with the CEQA Guidelines and would clarify that the Commission—not the applicant—is ultimately responsible for circulating a draft CEQA document to the public.

Staff Proposal Section 3.7, Proposal 1, Option 3 represents a modification of the Settling Parties' proposed revisions to GO 131-D, Sections VIII and IX, as detailed in Staff Proposal Section 3.7, Proposal 1. This proposal comprises the following:

In Staff Proposal Section 3.7, Proposal 1, Option 3, Staff would modify Staff Proposal Section 3.7, Proposal 1, Option 1 to create a new Section VIII.A.8, a new Section VIII.B, split current

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<sup>59</sup> *Id.* at 79.

Section VIII.B into Section VIII.C, Section VIII.D, and Section VIII.E, and amend Section IX. Similar to Section 3.7 Proposal 1, Option 2, above, these revisions would specify that (1) a draft version of an initial study or EIR can be used to inform the preparation of a draft CEQA document if it meets specifications of the PEA Guidelines, and includes substantial evidence for all findings and conclusions, and specific technical studies (*e.g.*, biological resource studies, cultural resource studies); and (2) the applicant initiates pre-filing consultation with Staff at least 12 months prior to the filing of the CPCN application and provides draft CEQA document(s) during pre-filing.

Because applicant-submitted draft versions of CEQA documents would need to adhere to the PEA Guidelines, Staff suggest that the adoption of Staff Proposal Section 3.7, Proposal 1, Option 3, above, would not require applicants to develop a separate list of application requirements pursuant to Government Code Section 65940.<sup>60</sup> Unlike the prior options, Staff Proposal Section 3.7, Proposal 1, Option 3 would add new application criteria for applicant-prepared draft versions of CEQA documents directly into the text of GO 131-E. This would ensure that the application requirements are compliant with Government Code Section 65940 (*e.g.*, the draft version of a CEQA document shall provide substantial evidence for all findings and conclusions, and shall include issue-specific technical studies [*e.g.*, biological resource studies, cultural resource studies]).<sup>61</sup>

While Staff cites the potential benefits of Staff Proposal Section 3.7 Proposal 1, Option 2, Staff favors the adoption of Staff Proposal Section 3.7,

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<sup>60</sup> *Id.* at 79.

<sup>61</sup> *Id.* at 81-82.



Proposal 1, Option 3, because requiring applicants to prepare and submit draft versions of CEQA documents (i.e., draft versions of initial studies or EIRs) that include contents of the PEA Guidelines in lieu of a PEA would provide Staff and consultants with the necessary information to process the application and prepare the draft CEQA document for public circulation.<sup>62</sup> Staff Proposal Section 3.7, Proposal 1, Option 3 also outlines additional necessary specifications for applicant-submitted documents.

**Staff Proposal Section 3.7, Proposal 2:** Staff Proposal Section 3.7, Proposal 2 would delete EMF requirements in Section X in GO 131-D and place them in the list of CPCN and PTC requirements located in Sections VIII.A, IX.A.1, and IX.B.1. Staff supports the adoption of Staff Proposal Section 3.7, Proposal 2 primarily because incorporation of EMF into the existing list of CPCN and PTC application requirements is expected to provide greater clarity to project applicants.<sup>63</sup>

**Staff Proposal Section 3.7, Proposal 3:** Pursuant to Rule 2.4 and the PEA Guidelines, Staff Proposal Section 3.7, Proposal 3 would set requirements in Section IX.A and IX.B for utilities to provide advance notice and initiate pre-filing consultation with Staff regarding a CPCN or PTC application not less than six months before the filing of a CPCN or PTC application with the Commission.<sup>64</sup>

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<sup>62</sup> Staff Proposal at 86.

<sup>63</sup> *Id.* at 83.

<sup>64</sup> *Id.* at 84.

Staff recommends the adoption of Staff Proposal Section 3.7, Proposal 3 because various parties expressed support for an earlier pre-filing review process that may encourage earlier filing of applications that could yield fewer application deficiencies. Further, requiring earlier pre-filing consultation could facilitate greater coordination between utilities and Staff during the later stages of the project design process. This point is especially important since several parties noted that the level of design completeness ranges from 30 to 60% for CPCN or PTC project applications that are filed for review before the Commission.<sup>65</sup>

Additionally, some parties oppose requiring utilities to file CPCN or PTC applications within a specified timeframe after a project has received CAISO approval or within a specified timeframe in relation to the CAISO-approved project in-service date.<sup>66</sup>

To address this concern, Staff propose to require pre-filing consultation for all projects, including CAISO-approved or non-CAISO approved projects.<sup>67</sup>

**Party Positions on Staff Proposals:** PG&E does not support Staff Proposal Section 3.7, Proposal 1, Option 2 based on their view that compliance with the PEA Guidelines is burdensome.<sup>68</sup> IEP opposes Staff Proposal Section 3.7 Proposal 1, Option 3, because in their view it would not streamline the CPCN application

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<sup>65</sup> *Id.* at Appendix C.

<sup>66</sup> *Id.* at 88.

<sup>67</sup> *Id.* at 90.

<sup>68</sup> PG&E Opening Comments on Staff Proposal at 16.

process. Given this, IEP supports the Settling Parties' proposal, which is reflected in Staff Proposal Section 3.7, Proposal 1, Option 1.<sup>69</sup>

A range of parties (PG&E, SCE, SDG&E, LSPGC, Transmission Owners, DOW, Cal Advocates, et al.) generally support Staff Proposal Section 3.7 Proposal 1, Option 3. PG&E suggests that the 12-month deadline to initiate pre-filing consultation with Staff is rigid, and therefore recommends a more flexible timeline. SDG&E concurs with PG&E and further recommends that the 12-month deadline should be shortened to six-months because the earlier deadline could delay the construction of projects.<sup>70</sup> LSPGC agrees.<sup>71</sup>

To accommodate their request, PG&E, SCE, SDG&E, LSPGC, and Transmission Owners suggest revising proposed GO 131-E, Section IX.C.1, to reduce the 12-month pre-filing requirement to six months "and earlier if reasonably feasible". PG&E, SCE, SDG&E, as supported by IEP and other parties, suggest granting flexibility to applicants to "prepare and submit a draft version of an initial study (with a draft ND or MND, as appropriate)".<sup>72</sup>

With respect to Staff Proposal Section 3.7 Proposal 1, Option 2 and Staff Proposal Section 3.7 Proposal 1, Option 3, PG&E, SCE, and SDG&E suggest clarifying that Section IX.C.1.a applies to "any required issue-specific technical studies (e.g., biological resource studies, cultural resource studies)".

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<sup>69</sup> IEP Opening Comments on Staff Proposal at 5.

<sup>70</sup> SDG&E Opening Comments on Staff Proposal at 62.

<sup>71</sup> LSPGC Opening Comments on Staff Proposal at 10.

<sup>72</sup> SCE Reply Comments on Staff Proposal at 19.

PG&E does not have any concerns with Staff Proposal Section 3.7, Proposal 2,<sup>73</sup> while Cal Advocates states that Proposal 2 is a commonsense approach to streamline GO 131-D.<sup>74</sup>

A range of parties, including PG&E, SCE, SDG&E, Transmission Owners, Cal Advocates, generally support Staff Proposal Section 3.7, Proposal 3. Some parties suggest revisions (*e.g.*, Transmission Owners, Cal Advocates). Transmission Owners suggests modifying Section IX.A.1.c and IX.B.1.c to state that Staff shall initiate the process of retaining an environmental consultant as soon as possible after the pre-filing consultation so that the consultant is engaged promptly after filing of the application.<sup>75</sup>

Cal Advocates suggests revising Staff Proposal Section 3.7, Proposal 3 or using the Phase 2 decision to clarify existing pre-filing procedures and include additional procedures to further expedite the permitting process by enhancing early environmental review, that include requiring applicants to:<sup>76</sup>

- (1) file a “high-level assessment of expected environmental and cultural impacts” of the proposed project and alternatives as part of the pre-filing consultation process, and explicitly determine, as early as possible, the extent to which the project is expected to impact any CEQA resource;
- (2) provide conceptual siting and identified impacts to the Commission as soon as identified, and conduct a

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<sup>73</sup> PG&E Opening Comments at 16.

<sup>74</sup> Cal Advocates Opening Comments at 12.

<sup>75</sup> Horizon West Transmission, LLC, Trans Bay Cable LLC, and GridLiance West LLC Opening Comments at 18.

<sup>76</sup> Cal Advocates Opening Comment at 14.

- preliminary high-level assessment of any large greenfield project's impacts prior to that project's consideration in the CAISO Transmission Planning Process (TPP);
- (3) file a report within 6-12 months of each CAISO transmission plan approval identifying which projects from that transmission plan will require a permit from the Commission, including estimated application date and requested permit issuance date; and
  - (4) submit a project summary, maps and basic GIS data for several preliminarily identified alternatives in addition to the proposed project, as part of the pre-filing consultation.

### **5.2.2 Adoption of Proposals**

While the enactment of AB 551 now permits the Commission to adopt amendments to the PEA Guidelines via resolution, which supersedes the OAL review process that was previously required, we do not favor Staff Proposal Section 3.7, Proposal 1, Option 1. As detailed below, we choose to adopt Section 3.7, Proposal 1, Option 3 because it clarifies that applicant-submitted documents would be "draft versions" of CEQA documents, not "draft CEQA documents", and outlines additional necessary specifications for applicant-submitted documents. Further, we also agree with Staff that if Section 3.7, Proposal 1, Option 1 were to be adopted, a checklist must be created to include detailed project information that corresponds with information currently required in a PEA.<sup>77</sup> This is an additional layer of regulatory process that would stall our current efforts.

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<sup>77</sup> Staff Proposal at 78.

However, as mentioned earlier, the enactment of AB 551 now permits the Commission to adopt amendments to the PEA Guidelines through adoption of a resolution. This process would supersede the prior OAL review process.

**Adoption of Staff Proposal Section 3.7, Staff Proposal 1, Option 3, With Modification:** As supported by a diverse set of parties, including PG&E, SCE, SDG&E, LSPGC, Transmission Owners, DOW, and Cal Advocates, we adopt Staff Proposal 1, Option 3 with modifications, as discussed below.

In doing so, we stress the need for and importance of applicants to initiate early coordination and pre-filing consultation with Staff to ensure adequate coordination time before filing an application on the required level of environmental analysis and to timely initiate a contract with an environment consultant. This early coordination will be especially critical when applicants prepare and submit a draft version of a CEQA document. As noted by parties, we also recognize that it may not always be feasible for applicants to initiate pre-filing consultation 12 months prior to filing an application. Therefore, we are amenable to applicants initiating pre-filing consultation closer to the application filing date on a case-by-case basis.

Balancing these needs, we do not adopt Staff Proposal Section 3.7, Proposal 1, Option 3 as originally proposed. Instead, we require project applicants to initiate pre-filing consultation with Staff at least six months before filing an application. To address potential concerns raised by project applicants, pre-filing consultation may be delayed on a case-by-case basis if authorized by Staff in writing.

As proposed by PG&E, SCE, SDG&E, LSPGC, and Transmission Owners, we also modify Staff Proposal Section 3.7, Proposal 1, Option 3, by revising the list of permissible draft versions of CEQA document types in Section IX in GO 131-D, as reflected in Section VII.C.1 in GO 131-E, that applicants may prepare and submit to include a draft version of an initial study, ND, MND, EIR, addendum, or analysis of the applicability of an exemption from CEQA in their applications in lieu of a PEA. We also make similar conforming changes to Section VI in reference to the submission of draft versions of applicant-prepared CEQA documents for the permitting of generation facilities. Our inclusion of this broad list of draft versions of CEQA documents acknowledges that some applicants may be eager to draft a version of the “MND” or “ND” section of the IS/MND or IS/ND (i.e., the section summarizing the findings and mitigation measures) in addition to the initial study checklist. These draft versions of CEQA documents, however, would be subject to the Commission’s independent review, judgement, and revision when the Commission prepares its own draft CEQA document pursuant to California Pub. Res. Code Section 21082.1.

Pub. Res. Code Section 21082.1(a) states that a draft EIR, MND, or ND “shall be prepared directly by, or under contract to, a public agency.” Pub. Res. Code Section 21082.1(b) provides that a person may submit “information or other comments” to the public agency responsible for preparing a CEQA document, and that the information or other comments “may be submitted in any format, shall be considered by the public agency, and may be included, in whole or in

part, in any report or declaration.<sup>78</sup> While we approve the submittal of a broad list of draft versions of CEQA documents in applications, limiting the types of applicant-prepared draft versions of CEQA documents to an initial study or EIR as originally proposed by Staff would also be consistent with CEQA Guidelines Section 15063. We agree with Staff that an “initial study” is the technical term used for the draft IS/MND or IS/ND prior to the circulation of a draft to the public, and that the document only would be referred to as an IS/MND or IS/ND once Staff circulates the document to the public.<sup>79</sup> If an applicant prepares and submits a draft version of the full IS/MND or IS/ND, rather than just the initial study checklist, the Commission will subject any such draft version to its own review and analysis. Any IS/ND, IS/MND, or EIR circulated for public review will reflect the Commission’s independent judgment pursuant to CEQA Guidelines Sections 15063 and 15064 and Pub. Res. Code Section 21082.1.

To further modify Staff Proposal 3.7, Proposal 1, Option 3, we also accept and adopt the suggestion from PG&E, SCE, and SDG&E to insert “any required” before “issue-specific technical studies” in Section VII.C.1.a. Given that the term “issue-specific technical studies” is a nonspecific requirement, we recognize that different projects require various combinations of technical studies.

We also adopt language in Section VII.C.1.a that identifies Staff and other California agencies, as applicable, as the entities responsible for determining which technical studies are “required” for a particular project. We anticipate that

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<sup>78</sup> Note that a draft version of a CEQA document is not the public draft CEQA document for the project.

<sup>79</sup> Staff Proposal at 80.



this determination will be made during the required six-month pre-filing consultation period, or earlier in cases where applicants are willing and able to initiate pre-filing consultation prior to the six-month deadline.

**Adoption of Staff Proposal Section 3.7, Proposal 2, Without Modification:**

Based on our review of party comments and given the support of parties, including PG&E and Cal Advocates, we adopt Proposal 2 which consolidates EMF application requirements in GO 131-E. This will be accomplished by deleting Section X and incorporating the EMF requirements into the existing lists of CPCN and PTC application requirements provided in Sections VII.A.2 and VII.B.2. in GO 131-E.

**Adoption of Staff Proposal 3, Without Modification:** Based on our review of party comments, we adopt Proposal 3 with no additional modifications. As such, we refrain from accepting Transmission Owners' proposal to create a binding requirement to promptly engage consultants in GO 131-E. At the earliest, Staff would endeavor to engage consultants when pre-filing consultation begins. Therefore, we will continue to focus on improvement of Staff-level processes to address this issue.

### **5.3 Acceleration of Commission's CEQA Review**

As discussed and summarized below, we have weighed the parties' and staff proposals and comments surrounding acceleration of CEQA review process. Upon evaluation, we adopt Staff Proposal Section 3.8, Proposals 1 and 2 only.

#### **5.3.1 Proposals and Party Positions**

**Settling Parties' Proposal:** To accelerate the regulatory process, Settling Parties propose that the Commission complete a CEQA review, adopt or certify

the appropriate CEQA document, and close a proceeding through issuance of a decision that grants a CPCN no later than 270 days after an application is deemed complete. Subject to certain conditions, this deadline may be extended (e.g., the Commission is required to recirculate the EIR, substantial changes are required, new substantial evidence is revealed, and upon request from the Department of Fish and Wildlife or the State Water Resources Control Board).<sup>80</sup> Further, the Settling Parties' proposal would specify in GO 131-E that an application is complete after 30 days, unless the utility applicant is notified of deficiencies.<sup>81</sup>

**Cal Advocates' Proposal:** Cal Advocates proposes that the Commission prioritize the permitting of CAISO-approved policy-driven transmission projects. Cal Advocates claims that prioritizing projects for expedited permitting can help utilities "expediently develop, construct, and place projects into service while bringing the projects that are the most cost-efficient and urgently needed online first."<sup>82</sup>

**Staff Proposal Section 3.8, Proposal 1:** Staff Proposal Section 3.8, Proposal 1 would modify Sections IX.B and XVI in GO 131-D and reference the CEQA Guidelines to indicate that Staff would endeavor to complete proposed final MNDs and NDs without Federal agency involvement within 270 days of deeming a PTC or CPCN application complete, and proposed final EIRs without Federal agency involvement within 455 days of deeming an application

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<sup>80</sup> *Id.* at 11.

<sup>81</sup> *Id.* at 40-41.

<sup>82</sup> Cal Advocates' Opening Comments on Phase 2 Issues at 13.

complete. As an example, for a project that requires a PTC qualifies for an MND or ND, and has no Federal agency involvement, the Commission may be able to complete CEQA review within 270 days. In this scenario, Staff may prepare an MND or ND only when the initial study indicates there are no significant effects on the environment. An MND or ND could be prepared if potentially significant effects on the environment are identified, subject to project revisions that mitigate significant effects on the environment.<sup>83</sup>

Staff recommend the adoption of its Staff Proposal Section 3.8, Proposal 1 because it would be consistent with the timelines for CEQA document preparation specified in the CEQA Guidelines. Specifically, CEQA Guidelines Section 15107, requires MNDs or NDs to be completed and approved within 180 days after a lead agency deems an application complete. CEQA Guidelines Section 15108 requires the lead agency to complete and certify the final EIR within one year after the date when the lead agency deems the application as complete. Upon consent of the applicant and lead agency, the one-year time limit may be extended once for a period of not more than 90 days, for a total of 270 days for MNDs and NDs or a total of 455 days for EIRs. CEQA Guidelines Section 15109 also states that an unreasonable delay by an applicant to meet requests from the lead agency required to prepare an ND or an EIR shall suspend the deadlines prescribed in Sections 15107 and 15108 for the period of unreasonable delay. CEQA Guidelines Section 15110 further provides for waivers of the one-year time limit for lead agencies to complete and certify a

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<sup>83</sup> Staff Proposal at 95.

final EIR or the time limit for lead agencies to complete an ND for projects with Federal involvement.

*Staff Proposal Section 3.8, Staff Proposal 2:* Staff Proposal Section 3.8, Proposal 2 would establish a pilot program for accelerated CEQA review of electric transmission projects. Implementation of this pilot program does not require modifications to GO 131-D. Staff Proposal Section 3.8, Proposal 2 envisions that Staff initiates a pilot that would identify at least two projects where an MND may be completed within 270 days of deeming an application complete, and at least two projects where an EIR may be completed within 455 days of deeming an application complete. In addition, the pilot would require the enrollment of at least one project, each proposed by PG&E, SCE, and SDG&E, and inclusion of a mixture of competitive and non-competitive bid projects. Staff Proposal Section 3.8, Proposal 2 identifies other potential project selection criteria for the pilot, along with metrics that can be used by Staff to track and report pilot success.<sup>84</sup>

Staff recommends adoption of Staff Proposal Section 3.8, Proposal 2 because a pilot would serve as a mechanism for continued improvement of the Commission's CEQA review process, satisfy the need to advance the delivery of clean energy resources pursuant to SB 529, and recognize parties' urgency to accelerate the CEQA review process for electric transmission projects.<sup>85</sup>

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<sup>84</sup> *Id.* at 96-97.

<sup>85</sup> Staff Proposal at 101-103.

Staff Proposal Section 3.8, Proposal 3: Staff Proposal Section 3.8, Proposal 3 would amend Sections IX.A and IX.B to require that the Commission determine whether to adopt or certify the appropriate CEQA document and issue the requested CPCN or PTC, no later than 270 days after a CPCN or PTC application is deemed complete, as proposed by Settling Parties in the Settlement Agreement.<sup>86</sup>

Staff does not recommend adoption of Staff Proposal Section 3.8, Proposal 3 because imposing a 270-day deadline to issue CEQA documents would (1) have no bearing on the time required to complete key elements of the CEQA process, (2) be inconsistent with deadlines specified in the CEQA Guidelines to develop draft NDs, MNDs, and EIRs, (3) be challenging or even infeasible to consistently meet due to the complexity of issues, and level of controversy associated with projects that may not arise until later in the CEQA review process, (4) threaten the integrity of Commission-issued CEQA documents by creating pressure to complete critical steps without sufficient and substantial evidence, and (5) constrain scoping of issues, consultation with other agencies and tribes, and public participation. Further, Staff notes that while deeming an application complete after 30 days unless a utility is notified of deficiencies is consistent with Government Code Section 65943, it is implicit in GO 131-D, as GO 131-D states that the Commission shall issue a decision within the time limits prescribed by Government Code Sections 65820 *et seq.*<sup>87</sup>

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<sup>86</sup> *Id.* at 97-100.

<sup>87</sup> Staff Proposal at 101-107.

*Staff Proposal Section 3.8, Staff Proposal 4:* Staff Proposal Section 3.8, Staff Proposal Section 3.8, Staff Proposal 4 would modify Section IX.B to establish a prioritized and expedited permitting process for policy-driven CAISO-approved electrical transmission projects, as proposed by Cal Advocates.<sup>88</sup> Staff does not recommend adoption of Staff Proposal Section 3.8, Proposal 4 at this time because it may delay resolution of key issues raised in Phase 2. However, Staff recommend further consideration of Staff Proposal Section 3.8, Proposal 4 in a subsequent Phase 3 of the instant proceeding or in an alternative regulatory venue.<sup>89</sup> Given that some parties oppose Staff Proposal Section 3.8, Proposal 4 and do not support minimizing the importance of economic or reliability projects, Staff contends that further development of the record is needed to consider an appropriate method to prioritize CAISO-approved projects.

*Party Positions:* Cal Advocates, CBD, and PCF agree with Staff's determination that Staff Proposal Section 3.8, Proposal 1 is consistent with the time limits for EIR preparation listed in the CEQA Guidelines.<sup>90,91</sup> RCRC opposes Staff Proposal Section 3.8, Proposal 1 in favor of Staff Proposal Section 3.8, Proposal 3 which aligns the project review process with the CEQA Guidelines. As such, RCRC contends that ND and MND reviews should be completed with 270 days and that reviews of EIRs should be completed within 455 days, with the

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<sup>88</sup> Cal Advocates' Opening Comments on the Administrative Law Judges' Ruling Inviting Comment on Phase 2 Issues, February 5, 2024, at 13-15.

<sup>89</sup> Staff Proposal at 107.

<sup>90</sup> Cal Advocates Opening Comments on Staff Proposal at 15.

<sup>91</sup> CBD and PCF Joint Opening Comments on Staff Proposal at 18.

possibility for extensions for projects involving federal agency approval.<sup>92</sup> IEP,<sup>93</sup> LSA,<sup>94</sup> CEERT,<sup>95</sup> LSPGC,<sup>96</sup> Transmission Owners,<sup>97</sup> SDG&E,<sup>98</sup> and SCE<sup>99</sup> oppose Staff Proposal Section 3.8, Proposal 1 and support Staff Proposal Section 3.8, Proposal 3 in alignment with the Settling Parties' proposal. These parties contend that Staff Proposal Section 3.8, Proposals 1 and 2 do not commit the Commission to meeting a 270-day deadline to complete the CEQA review process.

Cal Advocates and Sierra Club supports Staff Proposal Section 3.8, Proposal 2 but suggests that the pilot should focus on CAISO projects that are needed to integrate clean energy resources within 10 years.<sup>100,101</sup>

PG&E<sup>102</sup> and SDG&E oppose Staff Proposal Section 3.8, Proposal 2 as it would redirect Staff resources to focus on a pilot, versus expediting the review of projects that are currently in the project queue.<sup>103</sup> Based on pilot results, CAISO suggests that the Commission should set a firm timeline for CEQA review if it is

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<sup>92</sup> RCRC Opening Comments on Staff Proposal at 11.

<sup>93</sup> IEP Opening Comments on Staff Proposal at 6.

<sup>94</sup> LSA Opening Comments on Staff Proposal at 3.

<sup>95</sup> CEERT Opening Comments on Staff Proposal at 27.

<sup>96</sup> LSPGC Opening Comments on Staff Proposal at 8.

<sup>97</sup> Transmission Owners' Opening Comments on Staff Proposal at 15.

<sup>98</sup> SDG&E Opening Comments on Staff Proposal at 65.

<sup>99</sup> SCE Opening Comments on Staff Proposal at 25.

<sup>100</sup> Cal Advocates Opening Comments on Staff Proposal at 18.

<sup>101</sup> Sierra Club Opening Comments on Staff Proposal at 9.

<sup>102</sup> PG&E Opening Comments on Staff Proposal at 17.

<sup>103</sup> SDG&E Opening Comments on Staff Proposal at 78.

deemed to be feasible.<sup>104</sup> To consider pilot projects, DOW proposes that pilot applicants should consult with trustee and responsible agency staff (*e.g.*, California Department of Fish and Wildlife) prior to conducting technical studies to identify the correct scope and protocols. If Staff Proposal Section 3.8, Proposal 2 is adopted by the Commission, CBD argues that the pilot should feature a transparent project selection and evaluation process subject to stakeholder feedback, and therefore must focus on internal Commission and applicant processes, and not subvert CEQA requirements. ACP suggests that adoption of a pilot is equivalent to business as usual. CEERT believes that considering a pilot versus setting mandatory deadlines to complete a CEQA review is a step backwards.<sup>105</sup> CFBF highlights that current oversight and compliance processes to evaluate and adjust projects (*i.e.* time spent by CAISO to review projects and utility responses to CAISO directives) provides better opportunities for stakeholders to examine projects than a pilot.<sup>106</sup> Transmission Owners,<sup>107</sup> SCE,<sup>108</sup> and RCRC<sup>109</sup> suggest that a pilot should be designed to identify how to complete complex projects rather than standard projects in a reasonable timeframe.

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<sup>104</sup> CAISO Opening Comments on Staff Proposal at 2.

<sup>105</sup> CEERT Opening Comments on the Staff Proposal at 29.

<sup>106</sup> CFBF Opening Comments on the Staff Proposal at 7.

<sup>107</sup> Horizon West Transmission, LLC, Trans Bay Cable LLC, and GridLiance West LLC Opening Comments on the Staff Proposal at 16.

<sup>108</sup> SCE Opening Comments on the Staff Proposal at 27.

<sup>109</sup> RCRC Opening Comments on the Staff Proposal at 10.



Cal Advocates agrees with Staff's observation that Staff Proposal Section 3.8, Proposal 3 would be inconsistent with CEQA.<sup>110</sup> CBD states that Proposal 3 should be rejected because while it appears to be based in part on SB 149 (Stats. 2023, Ch. 6), which requires CEQA reviews to be completed within 270 days for certain Governor-approved projects, the projects and process addressed by SB 149 differ in important ways from the Commission's process and the projects subject to GO 131-D.<sup>111,112</sup>

However, many Settling Parties support Staff Proposal Section 3.8, Proposal 3. IEP,<sup>113</sup> CEERT,<sup>114</sup> and SCE,<sup>115</sup> argue that recent legislation (i.e., AB 205) tasked the California Energy Commission (CEC) with completing CEQA reviews for certain projects (i.e., Governor-certified projects) within 270 days from the date an application is deemed complete, which in their view is a reasonable target for the Commission to meet. Further, CEERT claims that the Settlement Agreement includes a provision for the Commission to issue an order if the 270-day timeline for CEQA review must be extended if extenuating circumstances arise.<sup>116</sup> RCRC suggests that an exacting review of data and information

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<sup>110</sup> Cal Advocates Opening Comments on the Staff Proposal at 15.

<sup>111</sup> CBD Opening Comments on the Staff Proposal at 19.

<sup>112</sup> SB 149 provides for an expedited judicial process to complete CEQA reviews of Governor-certified projects within 270 days.

<sup>113</sup> IEP Opening Comments on the Staff Proposal at 6.

<sup>114</sup> CEERT Opening Comments on the Staff Proposal at 31.

<sup>115</sup> SCE Opening Comments on the Staff Proposal at 27.

<sup>116</sup> CEERT Opening Comments on the Staff Proposal at 31.

submitted in permit applications is not necessary, especially if it prevents the State from meeting its climate and environmental goals.<sup>117</sup>

Sierra Club supports Staff Proposal Section 3.8, Proposal 4 and suggests that prioritizing the permitting of CAISO-approved projects that support the State's policy goals should be addressed at some point during this rulemaking.<sup>118</sup>

Many parties recognize that there is a clear issue with network upgrade delays, including CAISO-approved policy-driven projects. ACP cites ongoing and extensive delays to in-service dates for network upgrades needed for deliverability and renewable energy curtailment management. ACP also points out that the State has not developed a meaningful solution for these delays.<sup>119</sup> Further, ACP cites supply chain issues, construction sequencing, and reprioritization of capital to focus on wildfire risk mitigation as continued reasons for network upgrade delays.<sup>120</sup>

However, CUE, EDF, Transmission Owners, LSPGC, PG&E, RCRC, SCE, and SDG&E disagree that prioritization of policy-driven projects should be considered in a future phase of the proceeding (*e.g.*, Phase 3). CUE claims this measure would add a procedural layer to the lengthy transmission approval process.<sup>121</sup> EDF argues that Staff Proposal Section 3.8, Proposal 4 is impractical because it would be difficult to prioritize 21 policy-driven projects and 24

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<sup>117</sup> RCRC Opening Comments on the Staff Proposal at 11.

<sup>118</sup> Sierra Club Opening Comments on the Staff Proposal at 9.

<sup>119</sup> ACP Opening Comments on the Staff Proposal, July 1, 2024, at 11 and 12.

<sup>120</sup> *Id.* at 2.

<sup>121</sup> CUE Opening Comments on the Staff Proposal at 4.

reliability projects specified in CAISO's 2022-2023 Transmission Plan that directly impact meeting the State's climate goals.<sup>122</sup> Like EDF, Transmission Owners explains that reliability-driven projects are equally important in the CAISO's TPP. As such, Transmission Owners claims that Staff Proposal Section 3.8, Proposal 4 inappropriately omits projects driven by reliability or economic benefits and does not address when such projects would be eligible for Commission permitting under this framework.<sup>123</sup> CUE asserts that the State cannot afford to expedite processing some transmission projects at the expense of others.<sup>124</sup>

### **5.3.2 Adoption of Proposals**

*Adoption of Staff Proposal Section 3.8, Proposal 1:* We adopt Staff Proposal Section 3.8, Proposal 1 which we find would be consistent with the CEQA Guidelines that specify timelines for CEQA document preparation.

Due to potential unforeseen circumstances that may prolong the review and approval of CEQA documents, including but not limited to additional time required to resolve and correct application deficiencies and address public concerns, we agree with Staff's observation that the timeline to adopt or certify CEQA documents should be flexible to accommodate the contingencies.

The Commission is committed to issuing CPCN and PTC permits for projects as efficiently as possible while maintaining compliance with CEQA.

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<sup>122</sup> EDF Opening Comments on the Staff Proposal at 20.

<sup>123</sup> Horizon West Transmission, LLC, Trans Bay Cable LLC, and GridLiance West LLC on the Staff Proposal at 17.

<sup>124</sup> CUE Opening Comments on the Staff Proposal at 4.

Pursuant to Pub. Res. Code Section 21082, Staff ensures that the content of CEQA documentations for projects is thorough and reflect the Commission's independent judgement. Further, Staff is required to support its findings through substantial evidence pursuant to Pub. Res. Code Section 21082.2, and meet the legislative intent of CEQA, pursuant to Pub. Res. Code Sections 21000 and 21001.

The Commission also coordinates with multiple stakeholders, including other State and Federal agencies, and the public, during the CEQA review process.<sup>125</sup> This coordination is critical for the approval of the appropriate CEQA documents. In compliance with Pub. Res. Code Section 21003.1, Staff provides stakeholders, including the public and public agencies, with an opportunity to comment on potential significant environmental effects of a project, its alternatives, and mitigation measures that can substantially reduce them, as well as on potentially feasible alternatives to the project. Staff would continue to implement an adequate public involvement process as required by CEQA, including meaningful tribal consultation as required by AB 52.

Ensuring that the Commission's project review processes and procedures are consistent with CEQA maximizes the opportunity for the Commission's CEQA documentation to be used by other State agencies for their permit processes as well. Further, coordination of the CEQA process with NEPA process implemented by Federal agencies maximizes the chance that Federal landowners grant permission for projects to occur on Federal land.

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<sup>125</sup> Implementation of GO 131-E complies with the Commission's Tribal Consultation Policy. The Commission will continue to conduct early and meaningful engagement with Tribes regarding projects within the Commission's jurisdiction under GO 131-E.

To comply with legal mandates, ensure a thorough review of the record in each CPCN or PTC application, including consideration of reasonable project alternatives where applicable, we agree with Staff that committing to meet a targeted 270-day deadline for completing all CEQA reviews would not be in the public interest. Therefore, we adopt Staff Proposal Section 3.8, Staff Proposal 1 which modifies GO 131-D, Section XVI, CEQA Compliance. GO 131-E, Section XIII will include language that outlines standard CEQA review timeframes and deadlines consistent with CEQA and the CEQA Guidelines. This amendment would maintain the consistency of Commission practices and procedures so that adequate time is provided to comply with CEQA, with the understanding that the Commission is also committed to reducing permitting timelines, as feasible.

**Adoption of Staff Proposal Section 3.8, Proposal 2:** We adopt Staff Proposal Section 3.8, Proposal 2 to establish a pilot that will serve as a mechanism to formalize on-going review and analysis of existing project permitting practices and procedures. It should be noted that the Commission actively and routinely reviews its internal CEQA processes for permitting standard or complex projects to identify methods that increase efficiency. Therefore, running a pilot aligns with current Commission practice. As such, it should not distract the Commission from meeting its commitment to expedite the permitting of projects.

### **5.3.3 Disposition of Other Proposals**

As discussed below, we do not adopt Staff Proposal Section 3.8, Proposals 3 and 4.

Based on review of recent proceedings, the time required to issue a permit for many projects subject to Commission review requiring an EIR, exceeds the 270-day deadline as proposed by Settling Parties. Therefore, we reject Staff Proposal Section 3.8, Proposal 3.

To emphasize this point, transmission line projects that exceed 100 miles are typically require CEQA review by the Commission (*e.g.*, a new 145-mile, 500 kV transmission line that would connect the Imperial Valley substation with a new proposed 500/230-kV substation located north of the San Onofre Nuclear Generating Station (SONGS), awarded in the 2022-2023 CAISO TPP. In addition, the Imperial Valley-North of SONGS project will also involve NEPA review by the Department of Defense (DOD) and will cross numerous local government jurisdictions, California State Park land, and other Federal lands owned by the Bureau of Land Management (BLM) and United States Forest Service (USFS). These projects typically traverse multiple jurisdictions, often over long distances, and are expected to require the preparation of draft EIRs that are circulated by the Commission to the public for a mandatory 30-day public scoping period for the Notice of Preparation and a minimum 45-day public comment period on a draft EIR. In total, 75 days of the Settling Parties' proposed 270-day timeline to issue a permit would be spent on engagement with the public.

Consequently, the remaining 195 days in this timeline, or approximately six months, would remain to address additional steps in the CEQA review and permitting processes, namely preparing the EIR, providing written responses to all public and agency comments, engaging in tribal consultation, and finalizing the Commission's regulatory process, up to and including voting on a proposed

decision by the Commission. Due to the length of most transmission line projects subject to the Commission's permitting oversight, Federal, State, and local agencies, and tribes must be consulted and concerns of the vast number of people affected must be addressed. Given this effort, added to the need to mitigate impacts to diverse natural resources, the Settling Parties' 270-day time limit for all CEQA documents processed by the Commission is unrealistic and infeasible, and risks compromising the Commission's ability to comply with CEQA.

We do not adopt Staff Proposal Section 3.8, Proposal 4 and do not suggest that this issue should be resolved in a later phase of this rulemaking or in an alternate proceeding. First, we note that Cal Advocates' proposal for reporting the approximate order of proposed projects for the next 10 years would be addressed through proposed revisions to Section V of GO 131-D. In these annual reports, project applicants will be required to report the "Original Planned In-Service Date," "Current Projected or Actual In-Service Date," and "Reason for Change in In-Service Date" for planned projects.

Second, the Transmission Project Review (TPR) process required in Resolution E-5252 will examine transmission owners' planning assumptions, determination and prioritization of needs, and the processes leading to transmission solutions and network upgrades. Further analysis of the data collected through the TPR process is needed to better understand the delays in large transmission projects and network upgrades.

While we choose not to implement Cal Advocates' proposal in GO 131-E, we do acknowledge the value that it could provide to utilities during pre-filing

consultation. Similar to the Transmission Owners' proposal, we will monitor and review to enhance and develop these processes further at the Staff level. For example, Items 1 and 4 in Cal Advocates' proposal can be addressed in the draft PEA or draft version of a CEQA document prepared by the applicant, and in pre-filing consultation between an applicant and Staff on draft versions of these documents. As well, they could also be considered for inclusion in future pre-filing consultation procedures developed by Staff. Item 2 in Cal Advocates' proposal would require utilities to conduct a preliminary high-level assessment of the impact of projects sited on large greenfields (i.e., previously undeveloped areas) before they are considered in the CAISO TPP. These assessments would be more appropriately handled outside of this instant rulemaking. Finally, Item 3 in Cal Advocates' proposal could be addressed by proposed revisions to reporting requirements in GO 131-D, Section V, and need not be duplicated in Section IX.

## **6. Rebuttable Presumption in Favor of CAISO Transmission Plan Findings**

As discussed below, we have summarized and weighed the parties' and Staff proposals concerning the issue of rebuttable presumption in favor of CAISO Transmission Plan findings. We review them below in the context of AB 1373, Staff and party proposals and comments. As discussed, we adopt the Staff Proposal Section 3.3, Proposal 1 with modifications to add new sections, to be reflected in GO 131-E, to comply with AB 1373 provisions as follows:

- As Section VII.C.2.a of GO 131-E that CAISO objectives and purpose for a project approved in the CAISO Transmission Plan shall form the basis of the statement of objectives in a Commission CEQA document;



- As Section VII.C.2.b of GO 131-E that incorporates AB 1373 provisions that the Commission shall establish rebuttable presumption in favor of the CAISO need evaluation when evaluating the issuance of a CPCN for a proposed transmission project, given that the project meets certain criteria specified in Pub. Util. Code Section 1001.1; and
- As Section VII.C.2.c of GO 131-E that the range of reasonable alternatives to the proposed project in an initial draft EIR circulated for public comment may be limited to alternative routes or locations for construction of the relevant CAISO Transmission Plan-approved electric project and the “no action” alternative.<sup>126</sup>

AB 1373 was recently enacted and modified Pub. Util. Code Section 1001.1 to require the Commission to establish a rebuttable presumption in favor of CAISO Transmission Plan findings on projects if specific requirements are satisfied, as follows:

In a proceeding evaluating the issuance of a certificate of public convenience and necessity for a proposed transmission project, the Commission shall establish a rebuttable presumption with regard to need for the proposed transmission project in favor of an Independent System Operator governing board-approved need evaluation if all of the following are satisfied:

- (a) The Independent System Operator governing board has made explicit findings regarding the need for the proposed transmission project and has determined that the proposed project is the most cost-effective transmission solution.
- (b) The Independent System Operator is a party to the proceeding.

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<sup>126</sup> Staff Proposal at 46-47 provides a full description.

- (c) The Independent System Operator governing board-approved need evaluation is submitted to the Commission within sufficient time to be included within the scope of the proceeding.
- (d) There has been no substantial change to the scope, estimated cost, or timeline of the proposed transmission project as approved by the Independent System Operator governing board.

To thoughtfully implement this legislative mandate, the Commission first notes that CAISO and the Commission each have a distinct role in the process of selection and permitting of transmission projects. CAISO's primary grid planning process is the CAISO TPP which aims to satisfy grid reliability needs, meet renewable energy and greenhouse gas (GHG) targets, and address economic solutions intended to reduce ratepayer costs. CAISO relies on generation resource portfolios from the Commission's Integrated Resource Planning (IRP) proceeding, forecasted load from the CEC's Integrated Energy Planning Report (IEPR), and stakeholder input received through comments, to identify the purpose, need, expected cost and cost range, and engineering alternatives for each approved project in CAISO's Transmission Plan.<sup>127</sup> The base case resource portfolio transmitted to the CAISO for the 2022-23 TPP included 40 gigawatts (GW) of new resource capacity which resulted in the identified need and approval of 45 transmission projects.<sup>128</sup> The base case resource portfolio used as an input to the 2023-24 TPP included an additional 30 GW of new resource capacity which resulted in the approval of an additional

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<sup>127</sup> Staff Proposal at 43.

<sup>128</sup> CAISO Board-Approved Transmission Plan 2022-2023, Table 3-4-1 at 62.

26 transmission projects.<sup>129</sup> These recent CAISO Transmission Plans demonstrate the evident need for transmission project development to support California's energy transition.

Many of the selected transmission projects in CAISO's Transmission Plan are filed before the Commission for review as CPCN and PTC applications. 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."<sup>130</sup> The Commission must also determine a project's maximum and prudent cost before deciding to issue a CPCN.<sup>131</sup>

As described, AB 2292 (Petrie-Norris) repealed Pub. Util. Code Section 1002.3, which formerly required the Commission to consider cost-effective alternatives to transmission facilities, including demand-side

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<sup>129</sup> *Id.* at 65.

<sup>130</sup> Pub. Util. Code Section 1002.3.

<sup>131</sup> *Id.* at Section 1005.5(a).

alternatives such as targeted energy efficiency, ultraclean distributed generation, as defined, and other demand reduction resources.

Within this context, Staff and Settling Parties present proposals for our consideration concerning how to implement the rebuttable presumption in favor of CAISO Transmission Plan findings.

Settling Parties, in their Settlement Agreement, propose GO 131-D revisions that (1) acknowledge coordination between the Commission, CAISO, CEC, and interested parties to develop the CAISO Transmission Plan; (2) recognize CAISO TPP findings in the Commission's CEQA statement of project objectives,<sup>132</sup> statement of overriding considerations,<sup>133</sup> and range of reasonable alternatives;<sup>134</sup> and (3) establish a rebuttable presumption that the Commission's assessment of preferred resources under Pub. Util. Code Section 1002.3, if applicable to a CPCN application, should be limited to analysis in the CAISO

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<sup>132</sup> CEQA Guidelines Section 15124(b) states that an EIR should include "a statement of objectives sought by the proposed project. 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 or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project and may describe project benefits".

<sup>133</sup> CEQA Guidelines Section 15093. Statement of Overriding Considerations. (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project.

<sup>134</sup> CEQA Guidelines Section 15126.6 provides that an EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation. An EIR is not required to consider alternatives which are infeasible.

Transmission Plan. Finally, the Settlement Agreement proposes that the Commission's base resource portfolio for such Plan, and that CAISO approval of a project (in the CAISO Transmission Plan) requires that the public convenience and necessity for that project is approved by the Commission.<sup>135</sup>

Settling Parties contend that their proposal is warranted because the Commission, CEC, and CAISO coordinate on electric load forecasting, resource planning and transmission planning to achieve state reliability and policy goals. Settling Parties also note that CAISO utilizes resource portfolios from the Commission's IRP proceeding to identify needed transmission projects. Further, Settling Parties highlight a December 2022 Memorandum of Understanding between the Commission, CEC and CAISO, which expresses that the CAISO TPP meets transmission needs for loads and resources identified by the Commission in response to the CEC's electric load forecasts.<sup>136</sup>

Staff offer two proposals.

Adoption of Staff Proposal Section 3.3, Proposal 1 would add the below new sections to GO 131-E, to comply with AB 1373 provisions:

- Proposed Section IX.C.2 of GO 131-E acknowledges that a project under review in a CPCN application has been reviewed and approved in the CAISO Transmission Plan;
- Proposed Section IX.C.2 of GO 131-E provides that CAISO objectives and purpose for a project approved in the CAISO Transmission Plan should be considered in the statement of objectives in a Commission CEQA document; and

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<sup>135</sup> Joint Motion for Adoption of Phase 1 Settlement Agreement, September 29, 2023, at 28-29.

<sup>136</sup> *Id.*

- Proposed Section IX.C.2.b of GO 131-E incorporates AB 1373 provisions that the Commission shall establish rebuttable presumption in favor of the CAISO need evaluation when evaluating the issuance of a CPCN for a proposed transmission project, given that the project meets certain criteria specified in Public Utilities Code Section 1001.1.<sup>137</sup>

In support of its Staff Proposal Section 3.3, Proposal 1, Staff notes two observations. First, Staff opines that acknowledgement of the coordination between the Commission, CEC, and CAISO in the CAISO TPP in GO 131-E is not necessary to implement key components of the Settlement Agreement. Second, Staff opines that analysis of project alternatives from the CAISO TPP should be considered in the context of the Commission's own independent analysis of project alternatives.<sup>138</sup>

Staff Proposal Section 3.3, Proposal 2 would establish a rebuttable presumption for CAISO-approved projects and would add the below new sections to GO 131-E, to comply with AB 1373 and incorporate the Settlement Agreement provisions:

- Proposed Section IX.C.2 of GO 131-E acknowledges that the Commission and CEC coordinate with the CAISO on electric load forecasting, resource planning, and transmission planning in the CAISO TPP, and articulate that CAISO conducts electric transmission planning to meet resource needs identified by the Commission, including analysis of alternatives to transmission projects;

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<sup>137</sup> Staff Proposal at 46-47 provides a full description.

<sup>138</sup> *Id.* at 49 provides a full description.

- Proposed Section IX.C.2 of GO 131-E requires that CAISO objectives and purpose for a project approved in the CAISO Transmission Plan shall be reflected in the statement of objectives and overriding considerations in a Commission CEQA document;
- Proposed Section IX.C.2.b of GO 131-E limits the range of reasonable alternatives considered in the Commission's CEQA process to the "no action" alternative, which essentially constrains the Commission to only examine different feasible routes or locations to construct CAISO-approved project;
- Proposed Section IX.C.2. of GO 131-E establishes a rebuttable presumption limiting the Commission's consideration of "preferred resources", pursuant to Pub. Util. Code Section 1002.3, as an alternative to a CAISO-approved project, and requires that the Commission defer to results from analysis in the relevant CAISO Transmission Plan or the Commission's base resource portfolio that was utilized to develop the relevant CAISO Transmission Plan;
- Proposed Section IX.C.2.d of GO 131-E requires the Commission, pursuant to AB 1373, that approval of a project in the CAISO Transmission Plan establishes a rebuttable presumption that the public convenience and necessity requires the Commission to approve the project, if the project meets certain criteria established in Section IX.C.3; and
- Proposed Section IX.C.2.d of GO 131-E clarifies the applicability of Section IX.C.2.D by providing criteria from AB 1373 to establish which projects are eligible.<sup>139</sup>

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<sup>139</sup> Staff Proposal at 47-48 provides a full description.

Staff contends that limiting the range of reasonable alternatives, as proposed by the Settling Parties, may be inconsistent with the extent of alternatives analysis that must be performed by the Commission pursuant to CEQA. If the proposed Settlement Agreement provisions were adopted, Staff explains that the Commission's ability to fully evaluate the required alternatives including non-wires alternatives would be constrained.

In addition, Staff did not originally support the Settling Parties' proposal to establish a rebuttable presumption that would require the Commission to only consider approved projects in CAISO's Transmission Plan or the Commission's underlying base resource portfolio upon which the Plan is based as cost-effective alternatives pursuant to Pub. Util. Code Section 1002.3, which was repealed by the enactment of AB 2292.

Further, by constraining the alternatives analysis, Staff warns that the Settling Parties' proposal would hinder the Commission's ability to comply with CEQA; would be inconsistent with the robust alternatives analysis required by NEPA for projects with Federal involvement; and would constrain the Commission's ability to evaluate non-wires alternatives to proposed transmission projects.<sup>140</sup>

Further, Staff does not support the Settling Parties' proposal to establish a rebuttable presumption that the Commission must approve CPCNs for projects that are approved in the CAISO Transmission Plan, subject to satisfying all requirements specified in Pub. Util. Code Section 1001.1 (a)-(d). If the Settling

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<sup>140</sup> Staff Proposal at 49 provides a full description.



Parties' proposal were to be adopted, Staff notes and we agree that the Commission's discretionary authority to approve or deny CPCN applications for proposed projects would be preempted, thereby impeding the Commission's responsibility to use discretionary powers to avoid or mitigate significant environmental impacts.<sup>141</sup>

CAISO, CBD, and DOW support Staff Proposal Section 3.3, Proposal 1, as proposed. Transmission Owners conditionally supports Staff Proposal Section 3.3, Proposal 1 if the Commission's CEQA objectives reflect the CAISO-identified purpose and benefit of a project.<sup>142</sup> Cal Advocates supports Staff Proposal Section 3.3, Proposal 1, but requests that Staff's proposed Section IX.C.3 should not be codified in GO 131-E because it could potentially conflict with Pub. Util. Code Section 1001.1 if it is later modified by statute.

PG&E, SCE, and SDG&E would support Staff Proposal Section 3.3, Proposal 1 if the Joint IOU's following additional redline revisions are adopted: (1) the Commission's statement of overriding considerations in the CEQA document must include the CAISO's underlying project purpose and benefits; (2) the Commission's initial draft EIR must only consider the CAISO TPP "no action" alternative and alternative routes or locations for construction of CAISO-approved projects; and (3) the Commission's consideration of cost-effective alternates may be limited to CAISO-approved projects and the base resource

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<sup>141</sup> *Id.* at 51.

<sup>142</sup> Transmission Owners Opening Comments on Staff Proposal at 9.

portfolio provided by the Commission to CAISO for development of the CAISO TPP.<sup>143</sup>

Several other Settling Parties, including ACP, CEERT, EDF, LSA, and RCRC, oppose Staff Proposal Section 3.3, Proposal 1. These parties instead support Staff Proposal Section 3.3, Proposal 2 which reflects the Settling Parties' proposal to codify rebuttable presumption language in GO 131-E.<sup>144</sup>

Despite the enactment of AB 2292, which repeals Pub. Util. Code Section 1002.3 that required the Commission's consideration of cost-effective alternatives during the review of project applications, we find that the Settling Parties' proposed language limits the range of reasonable and acceptable alternatives considered in an initial draft EIR per requirements in the CEQA Guidelines. This could delay permit approval for some projects if comments on the draft EIR require the Commission to examine project alternatives that were not studied in the draft EIR. Accordingly, we do not adopt their proposed language to amend GO 131-E.

To preserve the Commission's role as lead agency entrusted with the responsibility to certify CPCNs that avoid or mitigate significant environmental impacts associated with proposed projects and adhere to AB 2292 and Pub. Util. Code requirements, we adopt Staff Proposal Section 3.3, Staff Proposal 1, with modifications to GO 131-E, Section VII.C.2, instead of adding the proposed sections to Section IX.C. These modifications prescribe that project needs

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<sup>143</sup> SCE Opening Comments on Staff Proposal at B-23.

<sup>144</sup> EDF Opening Comments on Staff Proposal at 5.

specified in the CAISO Transmission Plan shall be used to form the basis of the statement of objectives required by 14 Cal. Code Regs. § 15124(b) in a CEQA document. We also require that the Commission shall establish a rebuttable presumption in favor of a CAISO governing board-approved finding if the project applicant demonstrates that all requirements of Pub. Util. Code 1001.1 are satisfied. Further, we clarify that the range of reasonable alternatives to the proposed project in an initial draft EIR circulated for public comment may be limited to alternative routes or locations for construction of the relevant CAISO transmission plan-approved electric project and the “no action” alternative. This modification is necessary to preserve Staff’s discretion to determine that additional project alternatives should be considered based on information presented during the CEQA review process.

The Commission adopts these requirements with the recognition that the Commission has duties under CEQA and Pub. Util. Code which cannot be compromised, and the presumption, being rebuttable, may be overcome.

#### **7. Terms and CPCN and PTC Exemptions**

Based on a review of party comments and Staff proposals, we adopt the definitions of project-related terms in GO 131-E as follows:

- Existing electrical transmission facility is an electrical transmission line, power line, or substation that has been constructed for operation at or above 50 kV;
- Extension is an increase in the length of an existing electrical transmission facility within existing transmission easements, rights-of-way, or franchise agreements; or a generation tie-line (gen-tie) segment or substation loop-in;

- Expansion is an increase in the width, capacity, or capability of an existing electrical transmission facility, including but not limited to rewiring or reconductoring to increase the capacity of existing transmission lines, expanding the carrying capacity of existing towers or poles, or converting a single-circuit transmission line to a double-circuit line to expand the quantity or capacity of the existing transmission line facilities;
- Upgrade is the replacement or alteration of existing transmission facilities, or components thereof, to enhance the rating, voltage, capacity, capability, or quality of those facilities, including but not limited to reconductoring existing transmission or power lines to use conductors with greater power transfer capability and/or increased voltage levels, where reconductoring requires replacement of the existing support structures, adding smart grid capabilities to an existing transmission or power line, or above ground wildfire hardening equipment, and installation of new mid-line series capacitors on a transmission line or power lines to support an increase in the power transfer capability of the line;<sup>145</sup>
- Modification is a change to an existing electrical transmission facility or equipment without extending or expanding the physical footprint of the facility;
- Equivalent facilities or structures are new transmission line or power line facilities or supporting structures that are installed to replace existing transmission line or power line facilities or supporting structures, or new substation facilities or switchyard facilities or equipment that are

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<sup>145</sup> Upgrades will not pertain to replacing existing support structures, adding battery energy storage systems to an existing substation, or expanding an existing substation to include battery energy storage systems, or replacing or adding equipment to a substation for the purpose of uprating the substation, or the uprating of the individual components of a transmission line, power line, or substation.

installed to replace existing substation or switchyard facilities or equipment, and that provide power at no greater voltage than the facilities or structures being replaced; and

- Accessories are transmission line, power line, substation or switchyard equipment required for the safe and reliable operation of the transmission system, including but not limited to switches, connectors, relays, real-time monitoring equipment (*e.g.*, telemetry, SCADA), communications and weather monitoring equipment, fiber optic grounding wire, and control cabinets.

Further, we adopt clarifications of PTC exemptions in GO 131-E as follows:

- PTC exemptions, as specified in GO 131-D, Section III.B.1.f, will be clarified in GO 131-E, Section III.B.2.e, and will apply to power lines, substations, or switchyards to be relocated or constructed which have undergone environmental review pursuant to CEQA as part of a larger project, regardless of whether the CEQA review for the larger project identified significant and unavoidable impacts.
- PTC exemptions, as specified in GO 131-D, Section III.B.1.g, will be clarified in GO 131-E, Section III.B.2.f, and will apply to power line facilities, substations, or switchyards to be located in an existing franchise, road-widening setback easement, or public utility easement; or power line facilities, substations, or switchyards in an existing right-of-way (ROW), fee-owned property, or other property on which a public utility has a legal right to operate containing existing transmission or power line facilities or substations; or power line facilities, substations, or switchyards in a utility corridor designated, precisely mapped, and officially adopted pursuant to law by Federal, State, or local agencies; and

- PTC exemptions for projects that are categorically or statutorily exempt from CEQA, as described in GO 131-D, Section XIII.B.1.h, will be modified and clarified in GO 131-E as follows:
  - Create and specify categorical and statutory PTC exemptions respectively in GO 131-E, III.B.2.g and III.B.2.h;
  - Modify Section III.B.3 in GO 131-E such that Section XIII.B.1.h shall not apply when a project is categorically exempt pursuant to CEQA Guidelines Sections 15303, 15304, 15305, 15306, or 15311;
  - Modify Section III.B.4 in GO 131-E such that notice of proposed construction must be made in compliance with Section VIII.B, but notice is not required for the construction of projects that are statutorily or categorically exempt pursuant to the CEQA Guidelines.
- The exception to certain PTC exemptions set forth in GO 131-E, Section III.B.3 (i.e., that certain PTC exemptions shall not apply when there is reasonable possibility that the activity may impact an environmental resource of hazardous or critical concern) will not apply to the PTC exemption in GO 131-E, Section III.B.2.e, given that projects are only eligible for exemption when environmental review has already been completed for a larger project.

#### **7.1. Definition of Existing Electrical Transmission Facility**

As discussed below, upon consideration of the proposals and party comments, we adopt the definition of “existing electrical transmission facility” as proposed by Staff, with some modifications addressing party concerns.

Under GO 131-D, Section III.A, CPCNs are not required for projects that (1) replace existing power line facilities or supporting structures with equivalent

facilities or structures, (2) perform minor relocation of existing power line facilities (3) convert existing overhead lines to underground, or (4) place new or additional conductors, insulators, or their accessories on or replacement of supporting structures already built.<sup>146</sup>

SB 529 recently codified language in Pub. Util. Code Sections 564 and 1001 that authorize- electric public utilities (“utilities”) to file a PTC application or claim an exemption under Section III.B to construct an extension, expansion, upgrade, or other modification to an electric public utility’s 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-kV voltage level.<sup>147</sup>

In these circumstances, project applicants must identify if a proposed project is an extension, expansion, upgrade, or other modification to an “existing electrical transmission facility.” However, “existing electrical transmission facility” is currently undefined.

Staff Proposal Section 3.1, Proposal 1 defines the term “existing electrical transmission facility” as an: “Electrical transmission line, power line, or substation that has been constructed for operation at or above 50 kV within an existing transmission easement, right of way, or franchise agreement.”<sup>148</sup> Staff explains that the proposed definition would improve clarity for applicants,

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<sup>146</sup> Staff Proposal at 12.

<sup>147</sup> *Ibid.*

<sup>148</sup> Staff Proposal, Section 3.1.2, at 15.

reduce the need for case-by-case interpretation, and represented opinion from a range of parties to include “power lines” and “substations.”

Transmission Owners support Staff’s proposed definition. Several parties (EDF, PCF, CBD, IEP, California Farm Bureau Federation (CFBF), and Cal Advocates) support Staff’s proposed definition with modifications.<sup>149</sup> A select number of Settling Parties (PG&E, SCE, SDG&E, CUE, IEP, EDF) assert that SB 529 should be interpreted to mean that “existing electrical transmission facilities” include, but are not limited to, facilities “within an existing transmission easement, right of way, or franchise agreement.”<sup>150</sup> The Sierra Club contends that the term “existing facilities” should be limited to facilities that first became commercially operational at least five years ago.<sup>151</sup>

Some parties point out in their comments that much of the utilities’ existing electrical transmission infrastructure is sited on fee-owned property. Therefore, it would be restrictive to exclude such infrastructure from the definition.

Pub. Util. Code Section 564 also references “existing electrical transmission facilities,” including electric transmission lines and substations within existing transmission easements, rights of way, or franchise agreements,” but various parties assert that the term “including” does not create a restrictive list.

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<sup>149</sup> CFBF Opening Comments on Staff Proposal at 3.

<sup>150</sup> CUE Opening Comments on Staff Proposal at 1.

<sup>151</sup> Sierra Club Opening Comments on Staff Proposal at 2.



Balancing these considerations, we adopt the modified Staff Proposal Section 1, Proposal 1 definition of “existing electrical transmission facility” as follows:

... an electrical transmission line, power line, substation, or switchyard that has been constructed for operation at or above 50 kV.

## **7.2. Definition of Extension, Expansion, Upgrade, and Modification**

As discussed below, we adopt the definition of “extension” (that revises the Staff Proposal Section 3.1, Proposal 2 definition of “extension” to be included in Section I.F., GO 131-E), definition of “expansion” (that applies only to projects that increase the “width, capacity, or capability” of an existing facility), definition of “upgrade” (as proposed by Staff Proposal Section 3.1, Proposal 2, Option 1 but with the deletion of three referenced examples (i.e., I.H.4, I.H.5, and I.H.6)), and definition of “modification” (that is limited by the caveat “without extending or expanding the physical footprint of the facility”).

In GO 131-D, the term “upgrade” specifically applies to electric substation projects, while “modification” is a general term used in reference to projects that alter existing facilities.<sup>152</sup> As explained, Pub. Util. Code Sections 564 and 1001 now authorize project applicants to file a PTC application or claim an exemption under Section III.B to construct an “extension”, “expansion”, “upgrade”, or other “modification” to existing electrical transmission facilities.<sup>153</sup> As such, these terms must be defined with the appropriate degree of specificity to characterize

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<sup>152</sup> GO 131-D at 2.

<sup>153</sup> *Ibid.*

projects and subsequently enable the Commission to more effectively review applications and approve CPCNs or PTCs and determine if permit exemptions can be claimed.

Staff provided two options to define “extension”, “expansion”, “upgrade”, and “modification”. Staff Proposal Section 3.1, Proposal 2, Option 1 would adopt separate but broad, overlapping definitions of the terms. Staff Proposal Section 3.1, Proposal 2, Option 2 would adopt consolidated definitions of the terms. A full description of these options is provided in Table 1 in the Staff Proposal.<sup>154</sup>

Based on a review of party comments, Staff recommends that the Commission adopt Staff Proposal Section 3.1, Proposal 2, Option 1. Staff’s reasoning is based on broad support from a range of parties for a definition of (1) upgrade that includes replacing or altering existing facilities to enhance the rating, voltage, capacity, capability, or quality, (2) expansion that includes increasing the width, capacity, or capability of an existing electrical transmission facility, and (3) extension that is only applicable to extensions of existing electrical transmission facilities within existing easements, rights of way, or franchise agreements. Further, Staff finds that parties generally preferred overlapping definitions of extension, expansion, upgrade, and modification, including a broad definition of “modification” that may include examples provided for the other three categories. According to Staff, parties also suggest that the definitions of “extension,” “expansion,” “upgrade,” and “modification”

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<sup>154</sup> Staff Proposal at 16-18.

as they pertain to existing facilities should be distinguished from those that are applicable to the construction of new facilities.

If the Commission adopted Staff Proposal Section 3.1, Proposal 2, Option 1, Staff reasons that defining “extension”, “expansion”, “upgrade”, and “modification” with additional detail would provide more clarity to project applicants to request a PTC or claim an exemption for certain projects that were subject to CPCN requirements. Further, Staff suggests that providing clear definitions would help ensure consistent interpretation of Section III.A by current and future Commission staff.

With respect to definition of the term “extension”, EDF and the Sierra Club support Staff’s recommendation to adopt Staff Proposal Section 3.1, Proposal 2, Option 1 with no revisions.<sup>155</sup> However, 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 but propose revisions to address these concerns. DOW proposes further constraining the definition. DOW and CBD propose revising the definition of “extension” to limit its length to prevent the construction of a “new” transmission line that could span hundreds of miles.<sup>156</sup> Pursuant to Pub. Util. Code Section 564 and Section III.A of GO 131-D, CBD suggests revising the definition to read, “policy-driven construction, within an existing easement, right of way, or franchise agreement, of an electric transmission or power line facility that connects an existing electric transmission

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<sup>155</sup> Sierra Club Opening Comments on Staff Proposal at 2-8.

<sup>156</sup> DOW Opening Comments on Staff Proposal at 3.

facility to a service delivery point and does not have a significant effect on the environment or rates.”<sup>157</sup> PG&E suggests revising the definition to read, “A new major electric transmission facility that is interconnected to existing electrical transmission facilities.”<sup>158</sup> SCE proposes an inclusive, non-limited list of examples that includes gen-tie segments, substation loop-ins, and “Major transmission or power line relocations that create a longer line to reduce or avoid environmental impacts and/or land-use conflicts.”<sup>159</sup> LSPGC suggests deleting the “within existing transmission easements, rights-of-way, or franchise agreements” limitation.<sup>160</sup>

Parties generally support Staff’s recommendation to adopt the definition of the term “expansion” in Staff Proposal Section 3.1, Proposal 2, Option 1. EDF and the Sierra Club support Staff Proposal Section 3.1, Proposal 2, Option 1 with no revisions.<sup>161</sup> PG&E, SCE, SDG&E, and CUE support Staff Proposal Section 3.1, Proposal 2, Option 1 with minor revisions that expand the definition. The IOUs propose to revise the definition to read, “an increase in the width size, capacity, or capability of an existing electrical transmission facility, including but not limited to the following types of projects regardless of whether the facilities would be located within existing utility property rights”, to make minor edits to the examples, and to add the following example of an “expansion”: “Installing a

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<sup>157</sup> CBD Opening Comments on Staff Proposal at 6.

<sup>158</sup> PG&E Opening Comments on Staff Proposal at 5.

<sup>159</sup> SCE Opening Comments on Staff Proposal at A-3.

<sup>160</sup> LSPGC Reply Comments on Staff Proposal at 4.

<sup>161</sup> EDF Opening Comments on Staff Proposal at 4.

new 200 kV or greater transmission line project within, and/or at locations adjacent to, an existing ROW containing transmission facilities, resulting in an enlargement of the ROW.”

DOW suggests revising the definition of “expansion” to read:

... policy-driven construction, within an existing easement, right of way, or franchise agreement, that adds new facilities or capacity to an existing electric transmission facility and does not have a significant effect on the environment or rates.

Consistent with party positions regarding Staff’s proposed definition of “expansion,” most parties, including PG&E, SCE, SDG&E, EDF, and the Sierra Club, support Staff’s recommended definition of “upgrade” in Staff Proposal Section 3.1, Proposal 2, Option 1 with minor revisions. PG&E, SCE, and SDG&E propose deleting these three examples proposed for the “upgrade” definition: (1) “Replacing existing support structures with new support structures of a different material and/or design;”<sup>162</sup> (2) “Adding battery energy storage systems to an existing substation, or expanding an existing substation to include battery energy storage systems;”<sup>163</sup> and (3) “Replacing or adding equipment (e.g., circuit breakers, transformers) to a substation for the purpose of uprating the substation; or the uprating of individual components of a transmission line, power line, or substation.”<sup>164</sup>

However, several parties (ATC, RCRC, SCE, etc.) recommend deleting battery storage (Section I.H.5) from the proposed definition of “upgrade.” The

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<sup>162</sup> Staff Proposal, Appendix A, Section 1.H.4, at 3.

<sup>163</sup> *Id.* at 3.

<sup>164</sup> *Ibid.*

Sierra Club proposes adding the limiting phrase “without extending or expanding the physical footprint of the facility” to the first sentence of the “upgrade” definition proposed in Staff Proposal Section 3.1, Proposal 2, Option 1 and deleting the references to increased “capacity” and “capability” (asserting that those terms overlap with the proposed definition of “expansion”). RCRC opposes Staff Proposal Section 3.1, Proposal 2, Option 1 because they assert that the definition would be overly broad and would allow the construction of any size battery storage facility on property adjacent to an existing substation.<sup>165</sup>

EDF and the Sierra Club support Staff’s recommended definition of “modification” in Staff Proposal Section 3.1, Proposal 2, Option 1. PG&E, SCE, and SDG&E support Staff Proposal Section 3.1, Proposal 2, Option 1 with revisions. As such, PG&E, SCE, and SDG&E suggest amending the definition of “modification” to clarify that it is “a change to an existing electrical transmission facility or equipment to serve a new or additional purpose without extending or expanding the physical footprint of the facility or better serve an existing purpose.”

Based on our review, we adopt a definition of “extension” that revises Staff Proposal Section 3.1, Proposal 2 definition of “extension” to be included in Section I.F.2.a of GO 131-E, as follows:

F. An “extension” is:

1. An increase in the length of an existing electrical transmission facility within existing transmission easements, rights-of-way, or franchise agreements; or

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<sup>165</sup> RCRC Opening Comments on Staff Proposal at 3.

2. One of the following types of projects:
  - a. Generation tie-line (gen-tie) segments, i.e., the construction of a new transmission or power line from an existing electrical transmission facility to connect to a new electric generation facility; or
  - b. Substation loop-ins, i.e., looping one or more existing transmission lines into and out of a new or existing substation or switchyard.

Upon consideration of Staff Proposal Section 3.1, Proposal 2 and party comments, we adopt a definition of “expansion” that applies only to projects that increase the “width, capacity, or capability” of an existing facility.

- G. An “expansion” is an increase in the width, capacity, or capability of an existing electrical transmission facility, including but not limited to the following types of projects:
  1. Rewiring or reconductoring to increase the capacity of an existing transmission line.
  2. Expanding the load carrying capacity of existing towers or poles.
  3. Converting a single-circuit transmission line to a double-circuit line.

The intent is to explicitly exclude “extension” of linear transmission facilities within the definition of the term “expansion.” The consequence of broadening the definition of “expansion” to include increases in the “size” of existing facilities could allow utilities to claim an “expansion” for large new transmission lines without limiting that development to existing property rights. Because the proposed definition of the term “expansion” does not make reference to property rights, it is not necessary to add the IOUs’ suggested caveat

“regardless of whether the facilities would be located within existing utility property rights.”

We also adopt a slightly modified version of the Staff Proposal Section 3.1, Proposal 2 definition of “upgrade” specified in Option 1. Upon consideration of the IOUs’ proposal, we find that deletion of the three examples related to the definition of “upgrade” (i.e., I.H.4, I.H.5, and I.H.6) is reasonable. As PG&E points out, example I.H.4 “represents a potential conflict with the definition in part J below for replacement of existing facilities with equivalent facilities,” which could lead to confusion.<sup>166</sup> Further, deleting example I.H.5 is consistent with our separate conclusion to remove battery storage proposals from GO 131-E. We also concur with SDG&E’s observation that example I.H.6 is unnecessary given that “Substation work is not subject to a CPCN [...] and thus substation projects do not need to be included in the “upgrade” definition to allow utilities to pursue a PTC or PTC exemption for such projects.” Finally, we clarify in GO 131-E that adding wildfire hardening equipment is an example of an “upgrade”

We do not delete “capacity” and “capability” from the definition of “upgrade,” as proposed by the Sierra Club, and instead choose to retain these terms because they enable the terms “expansion” and “upgrade” to be relatively broad and overlapping. Likewise, we do not add the limiting phrase “without extending or expanding the physical footprint of the facility” to the definition of “upgrade,” as proposed by the Sierra Club. We similarly anticipate that to the

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<sup>166</sup> PG&E Opening Comments on Staff Proposal at 6.



extent the “upgrade” definition overlaps with the “expansion” definition, some upgrade projects may require minor expansions to the physical footprint (*e.g.*, moving a supporting structure 20 feet when reconductoring an existing line).

Finally, we adopt Staff Proposal Section 3.1, Proposal 2 definition of the term “modification” that is limited by the caveat “without extending or expanding the physical footprint of the facility.” The IOUs proposed a revision to the definition to include modifications that “better serve an existing purpose. However, broadening the language to include modifications that “better serve an existing purpose,” in addition to those that “serve a new or additional purpose” would encompass nearly any conceivable purpose for such infrastructure. As such, it is not necessary to specify that modifications serve a particular purpose.

### **7.3. Definition of Equivalent Facilities or Structures**

As discussed below, we adopt a slightly modified version of the IOUs’ proposed revisions to the Staff Proposal Section 3.1, Proposal 3 definition of “equivalent facilities or structures.”

Staff’s proposal seeks to clarify the meaning and interpretation of “equivalent facilities or structures,” because they are used in longstanding exemption criteria within Sections III.A and III.B of GO 131-D. Project applicants are not required to obtain a CPCN or PTC if existing power line facilities or supporting structures are replaced with equivalent facilities or structures, or if

they intend to place new accessories, including additional conductors, insulators, on existing supporting structures.<sup>167</sup>

As written, application of the terms “equivalent facilities or structures” in Sections III.A and III.B of GO 131-D to claim CPCN and PTC exemptions enables utilities to notice construction of such facilities through submission of Tier 2 advice letters. However, these terms are not defined in GO 131-D, leaving their definition open to interpretation. Clarifying the meaning of “equivalent facilities or structures” in GO 131-E provides applicants with clear criteria to determine which projects may be noticed via advice letter and ensure consistent interpretation of the CPCN and PTC exemptions by Commission staff.<sup>168</sup>

On this point, Staff Proposal Section 3.1, Proposal 3 would modify Section III.A of GO 131-D to add specificity to the term “equivalent facilities or structures,” as used Sections III.A and III.B.1.b, by adopting the following definition:

“Equivalent facilities or structures” are new power line facilities or supporting structures that are installed to replace existing power line facilities or supporting structures and that provide power transfer capability at no greater voltage than the facilities or structures being replaced.

Cal Advocates supports staff’s proposed definition stating that it would be valuable to enable the consistent interpretation of exemption criteria in Section III.A and III.B of GO 131-D which use this term.<sup>169</sup> PG&E, SCE, and

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<sup>167</sup> Staff Proposal at 12-13.

<sup>168</sup> *Ibid.*

<sup>169</sup> Cal Advocates Opening Comments on Staff Proposal at 4.

SDG&E support the definition with minor revisions. PG&E, SCE, and SDG&E propose the following revisions to the staff definition: “new power transmission line or power line facilities or supporting structures, or substation facilities or equipment, that are installed to replace existing transmission line or power line facilities or supporting structures, or substation facilities or equipment, and that provide power transfer capability at no greater voltage than the facilities or structures being replaced.” PG&E, SCE, and SDG&E also propose to update the staff-proposed Section III.A.3.a and III.A.3.b to refer to transmission lines instead of power lines from the CPCN process, as in, “The replacement of existing power transmission line facilities or supporting structures with equivalent facilities or structures” and “The minor relocation of existing power transmission line facilities.” Finally, PG&E, SCE, and SDG&E propose to update PTC exemption “b” to read: “The replacement of existing power line facilities or supporting structures, or substation facilities or equipment, with equivalent facilities or structures.”

Because the term “equivalent facilities or structures” is used in both GO 131-D, Section III.A, which sets rules for transmission lines with rated voltages at or above 200 kV, and Section III.B, which sets rules for power lines with rated voltages from 50 kV to 200 kV, we concur with SDG&E that the term should pertain to both “transmission line or power line facilities.”<sup>170</sup> Further, we agree with SDG&E that the “replacement of existing substation facilities or equipment with equivalent facilities or structures ... is extremely unlikely to

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<sup>170</sup> SDG&E Opening Comments on Staff Proposal at 30.

have any new environmental impacts” and that replacing substation facilities or equipment has heretofore been exempt from the PTC requirement under GO 131-D due to the “upgraded substation” definition. Therefore, we adopt SDG&E’s proposed revision to expand the definition to include substation facilities or equipment.<sup>171</sup>

Upon consideration of Staff Proposal Section 3.1, Proposal 3 and party comments, we adopt a slightly modified version of the IOUs’ proposed revisions to the Staff’s proposed definition of “equivalent facilities or structures” as follows:

- Revise the Staff Proposal Section 3.1, Proposal 3 definition of “equivalent facilities or structures” as follows: “new transmission line or power line facilities or supporting structures that are installed to replace existing transmission line or power line facilities or supporting structures, or new substation facilities or switchyard facilities, or equipment that are installed to replace existing substation facilities or switchyard facilities or equipment, and that provide power transfer capability at no greater voltage than the facilities or structures being replaced;”
- Update the Staff-proposed Section III.A.1.c in GO 131-E to refer to transmission lines instead of power lines from the CPCN process, as in, “...the replacement of existing transmission line facilities or supporting structures with equivalent facilities or structures” and “...the minor relocation of existing transmission line facilities;” and
- Revise the PTC exemption specified in Section III.B.2.a in GO 131-E to read: “The replacement of existing power line facilities or supporting structures, or existing substation

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<sup>171</sup> *Ibid.*

facilities or equipment, with equivalent facilities or structures.”

#### **7.4. Definition of Accessories**

As discussed below, we adopt the IOUs’ proposed definition of the term “accessories” to include the attachment of telecommunications equipment to existing towers and poles in the definition of accessories.

The term “accessories” is not currently defined in GO 131-D and could lead to misinterpretation. Like treatment of the term “equivalent facilities and structures,” Staff Proposal Section 3.1, Proposal 4 aims to clarify the meaning of “accessories” because it is used in Sections III.A and III.B of GO 131-D to specify exemption criteria for CPCNs and PTCs and permits utilities to notice construction through submission of Tier 2 advice letters. As such, defining the term “accessories” would clarify which projects do not require a CPCN or a PTC but are subject to noticing requirements.<sup>172</sup>

On this point, Staff Proposal Section 3.1, Proposal 4 would modify Section I of GO 131-D to add specificity to the term “accessories”, as used in Sections III.A and III.B.1.e, by adopting the following definition:

“Accessories” are transmission line, power line, or substation equipment required for the safe and reliable operation of the transmission system, including but not limited to switches, connectors, relays, real-time monitoring equipment (*e.g.*, telemetry, SCADA), and control shelters.

Aside from the benefit that defining “accessories” could clarify the applicability of the CPCN and PTC exemptions in GO 131-D, Sections III.A and

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<sup>172</sup> *Ibid.*

III.B, Staff also point out that party comments support a definition that references a broad range of equipment that is needed for safe and reliable operation of the transmission system.<sup>173</sup>

Cal Advocates supports Staff's proposed definition stating that it would be valuable to enable the consistent interpretation of exemption criteria in Section III.A and III.B of GO 131-D which use this term.<sup>174</sup> PG&E, SCE, and SDG&E support the definition with revisions as follows:

Accessories are transmission line, power line, or substation equipment required for the safe and reliable operation of the transmission system, including but not limited to switches, connectors, relays, real-time monitoring equipment (*e.g.*, telemetry, SCADA), communications and weather monitoring equipment, fiber optic grounding wire, and control shelters.

We adopt the IOUs' recommendation to expand the list of examples provided in the GO 131-E definition of "accessories" to include other types common equipment required for the safe and reliable operation of the transmission system. The term "accessories" is used in GO 131-D in the existing permitting exemption for "placing of new or additional conductors, insulators, or their accessories on or replacement of supporting structures already built." Inclusion of "communications and monitoring equipment" in the definition of "accessories" would clarify that utilities may file a Tier 2 advice letter to place such accessories on existing supporting structures, to the extent those activities are not already exempt from CEQA. In practice, the attachment of

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<sup>173</sup> Staff Proposal at 33.

<sup>174</sup> Cal Advocates Opening Comments on Staff Proposal at 4.

telecommunications equipment to existing towers and poles is already exempt from CEQA in most circumstances, so the effect of this revision is expected to be minimal.

PG&E, SCE, and SDG&E propose that certain types of communications equipment (i.e., communications and weather monitoring equipment, fiber optic grounding wire) should be included as examples of “accessories” in proposed GO 131-E, Section I.K, (see Staff Proposal Section 3.1, Proposal 4, Define “Accessories”).<sup>175</sup> Further, PG&E, SCE, and SDG&E propose revisions to Section III.C.1 and XIV.B that would exempt electric utility-owned communications infrastructure that is constructed to provide services to a public utility’s electric system from CPCN and PTC permitting.<sup>176</sup> PG&E, SCE and SDG&E also suggest that local agency permitting for such infrastructure would also be preempted.

To implement this proposed change, PG&E, SCE, and SDG&E would add a new subsection to GO 131-E, Section III.C.1, that exempts electric utility-owned communications infrastructure constructed to provide services to a public utility’s electric system from the Commission’s CPCN or PTC permitting requirements.

In addition, PG&E, SCE, and SDG&E propose to modify GO 131-D, Section XIV.B, (proposed GO 131-E, Section XII.B) such that local jurisdictions

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<sup>175</sup> SDG&E Opening Comments on Staff Proposal at 30-31 and A-3-A-4; SCE Opening Comments on Staff Proposal at 21 and B-4-B-5; and PG&E Opening Comments on Staff Proposal at 2 and Attachment A.

<sup>176</sup> SDG&E Opening Comments on Staff Proposal at A-8; SCE Opening Comments on Staff Proposal at B-9; and PG&E Opening Comments on Staff Proposal at Attachment A.

acting pursuant to local authority are preempted from regulating electric utility-owned communications infrastructure, among other facilities, needed to operate the electric grid. The existing GO 131-D, Section XIV.B, (proposed GO 131-E, Section XII.B) requires public utilities to consult with local agencies on land use matters, whereby the Commission would resolve any differences through a hearing if an agreement on land use matters has not been reached. These revisions would clarify that the Commission is not authorized to determine real property rights owned by local governments.

SDG&E contends that the addition of electric utility-owned communications infrastructure has a small footprint and may be needed to ensure safety and reliability. SDG&E also observes that local jurisdictions do not always recognize the Commission's exclusive jurisdiction over communications infrastructure needed to maintain and operate SDG&E's electric system.<sup>177</sup>

Cal Advocates, PCF, and CBD oppose SDG&E's rationale to support the IOU communications infrastructure proposal. Cal Advocates asserts that the IOU proposal would eliminate the Commission's and local authorities' oversight of the utilities' activities related to telecommunications infrastructure. If implemented, Cal Advocates contends that the proposal would likely have a negative impact on ratepayers, because utilities may increase ratepayer funds to deploy broadband projects in the absence of coordination with local authorities.<sup>178</sup> Cal Advocates further contends that Commission oversight of

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<sup>177</sup> SDG&E Opening Comments on Phase Staff Proposal at 73, Declaration of Ellen Allyn, July 1, 2024.

<sup>178</sup> Cal Advocates Reply Comments on Staff Proposal at 9.



these critical facilities would run counter to the State's goal of making broadband services available to all Californians.<sup>179</sup>

PCF and CBD argue that the IOU's proposal must be rejected because it conflicts with limitations in the California Constitution which exempts the Commission's regulatory authority power from interfering with a city's charter to make and enforce sanitary regulations; and other regulations concerning municipal affairs, or with a city's right to grant gas and electric franchises.<sup>180</sup>

Cal Advocates supports Staff's proposed definition of accessories.<sup>181</sup> PG&E, SCE, and SDG&E support a revised version of Staff's proposed definition of accessories that includes communication and weather equipment.

Upon consideration of Staff Proposal Section 3.1, Staff Proposal 4 and party comments, we adopt a slightly revised version of the IOUs' proposed revision of GO 131-E, Section I.K, (see Staff Proposal Section 3.1, Proposal 4, Define "Accessories") to include communications and weather monitoring equipment, fiber optic grounding wire, and control cabinets. Accessories on supporting structures already built are exempt from a PTC (GO 131-D, Section III.B.1.3, (proposed GO 131-E, Section III.B.2.d). These activities are already exempt from CEQA in most circumstances and are expected to have minimal environmental impacts. This adopted revision effectively requires that applicants file a Tier 2 advice letter to install such "accessories" on existing supporting structures, if not already subject to a categorical or statutory exemption from CEQA.

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<sup>179</sup> *Id.* at 12.

<sup>180</sup> PCF and CBD Joint Reply Comments on Staff Proposal at 20-21.

<sup>181</sup> Cal Advocates Opening Comments on Staff Proposal at 4.

We do not adopt the IOUs' proposed revisions to GO 131-D, Section III.C.1, to add an exemption from a PTC and exemption from noticing for "electric utility-owned communications infrastructure constructed to provide services to a public utility's electric system" or proposed revisions to GO 131-D, Section XIV.B, (proposed GO 131-E, Section XII.B). If adopted, those revisions could allow construction of larger standalone infrastructure (*e.g.*, monopoles, towers, microwave dishes, antennas, and structures) outside the footprint of existing electric facilities, which is expected to have greater environmental impact than attaching equipment to existing structures, without environmental review. While SDG&E's Opening Comments on the Staff Proposal filed in July 2024 contended that the addition of electric utility-owned communications infrastructure has a small footprint, SDG&E's Opening Comments on the scope of Phase 2 filed in February 2024 and testimony filed by Elaine Allyn stated that "Under some circumstances, standalone critical communication infrastructure, which may need 'line of sight' communication, is needed to properly support the electric grid. These sites may include poles, towers, microwave dishes, antennas, and cabinets" with an example photograph of a monopole was shown.<sup>182</sup> Given the concerns raised by several parties regarding ratepayer costs, and environmental impacts, we conclude that the record does not support adoption of the IOUs' proposal at this time.

Finally, the term "control shelters" was changed to "control cabinets" in the definition of accessories (GO 131-E, Section I.K) to clarify that larger structures

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<sup>182</sup> SDG&E Opening Comments on the Scope of Phase 2, Declaration of Ellen Allyn, February 5, 2024.

are not included in the definition, such as In-Line Amplification (ILA) fiber huts typically required for broadband infrastructure that require foundations, lighting, and typically a backup energy supply (*e.g.*, backup generator or propane).

#### **7.5. PTC Exemption “f” Clarification**

As discussed below, we adopt revisions to GO 131-D, Section III.B.1.f, (exemption “f”) which would establish that projects are exempt from the PTC requirement when they have undergone environmental review pursuant to CEQA as part of a larger project, regardless of whether the final CEQA document finds that no significant unavoidable environmental impacts would be caused by the proposed facility.

GO 131-D, Section III.B.1.f, exempts from the PTC requirement any “power lines or substations to be relocated or constructed which have undergone environmental review pursuant to CEQA as part of a larger project, and for which the final CEQA document (Environmental Impact Report (EIR) or Negative Declaration) finds no significant unavoidable environmental impacts caused by the proposed line or substation.”

Under the current version of exemption “f” in GO 131-D, if a proposed new or relocated power line or substation has been thoroughly reviewed pursuant to CEQA by another lead agency as part of a larger project for which even one significant unavoidable impact was found, the project proponent could be required to file a PTC application. When these PTC applications are filed, the Commission is required to make its own CEQA findings, even if the lead agency for the larger project made a statement of overriding considerations explaining

why the beneficial aspects of the proposed project outweigh the significant unavoidable impacts.

In D.94-06-014, which adopted GO 131-D, the Commission explained that the Commission Advisory and Compliance Division (CACD), the precursor to the Energy Division, originally proposed to exempt from the PTC requirement facilities which “are to be relocated in connection with a broader action by another agency which undertakes environmental review pursuant to CEQA covering the relocation project.” D.94-06-014 ultimately adopted a version of exemption “f” containing the condition that a final CEQA document for a larger project must find that there are no significant unavoidable environmental impacts caused by the proposed line or substation in order for the exemption to apply, citing concerns “that under some circumstances CEQA review of a broader project by another agency will not guarantee that the environmental impacts associated with the power line itself can be effectively mitigated by the reviewing agency.” However, in that decision, the Commission noted, “Since such projects would be reviewed by another agency pursuant to CEQA, we find no reason to duplicate the effort.” D.94-06-014 also specified that in any case where a utility claims exemption “f”, the project would have to be held in abeyance pending issuance of such a final CEQA document.

Consistent with the finding in D.94-06-014, we also acknowledge that since projects eligible for exemption “f” would be reviewed by another agency pursuant to CEQA, there is no reason for the Commission to duplicate that effort. If another lead agency is unable to fully mitigate the significant unavoidable impacts of the larger project and must make a statement of overriding

considerations to approve the project, it is likely that the Commission would need to take a similar approach to approve the project, adding another layer of process to reach the same outcome. Allowing utilities to file an advice letter instead of a permit application for exemption “f” projects could substantially streamline the process and reduce the level of effort needed to process these projects, enabling the utility and Commission staff to focus on other priorities. We further find that the impact of deleting the “significant unavoidable” provision is low, as any projects subject to exemption “f” would be held in abeyance pending the adoption or certification of the applicable final CEQA document, and Commission staff would retain the ability to suspend an advice letter if needed. Finally, we find that striking the “significant unavoidable” provision from exemption “f” would reduce the number of power line and substation facilities subject to discretionary permits by the Commission, in keeping with the legislative intent of SB 529 to accelerate and streamline the permitting of needed grid updates.

Upon consideration of these points, we adopt modifications to GO 131-D, Section III.B.1.f, to delete the criterion that the final CEQA document completed for a larger project must not find significant unavoidable environmental impacts caused by the proposed line or substation. With these changes, exemption “f” applies to any power line, substation, or switchyard projects to be relocated or reconstructed which have undergone environmental review pursuant to CEQA as part of a larger project, regardless of whether the final CEQA document completed for the larger project finds significant unavoidable environmental impacts. Additionally, with the deletion of GO 131-D, Section III.B.1.a,

(exemption “a”), described separately, and other formatting changes, we move the text of exemption “f” to GO 131-E, Section III.B.2.e, and specify that GO 131-D exemption “f” shall henceforth be referred to as GO 131-E exemption “e”.

GO 131-D, Section III.B.1.f, shall be modified as follows:

f. Power lines, substations, or switchyards to be relocated or constructed which have undergone environmental review pursuant to CEQA as part of a larger project, ~~and for which the final CEQA document (Environmental Impact Report (EIR) or Negative Declaration) finds no significant unavoidable environmental impacts caused by the proposed line or substation~~

#### **7.6. PTC Exemption “g” Clarification**

As discussed below, we adopt the PG&E, SCE, and SDG&E’s proposed revisions to Staff Proposal Section 3.1, Proposal 5, Option 1 for PTC exemption “g”, as modified, which would bifurcate the “containing existing power line facilities or substations” requirement by property right type to address Cal Advocates’ suggestions regarding the use of disturbed lands; and we also adopt PG&E, SCE, and SDG&E’s proposed revisions to Staff Proposal Section 3.1, Proposal 5, Option 2. These revisions we adopt would expand exemption “g” to include ROW, fee-owned property, and “other property” if said property contains existing power line facilities or substations. We also adopt revisions to exemption “g” to specify that where a proposed facility is located in a utility corridor designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies, the exemption applies regardless of whether the final CEQA document prepared by the agency adopting the utility corridor found significant unavoidable impacts.

GO 131-D, Section III.B.1.g, (exemption “g”) exempts from the PTC requirement “power line facilities or substations to be located in an existing franchise, road-widening setback easement, or public utility easement; or in a utility corridor designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies for which a final Negative Declaration or EIR finds no significant unavoidable environmental impacts.”

D.97-03-058 specified that the semicolon, followed by the word “or” in exemption “g” created two clauses for projects that propose to locate power line facilities and substations either in (1) an existing franchise or defined easements (Clause 1), or (2) in utility corridors, contingent upon meeting specific criteria (Clause 2), to claim a PTC exemption.<sup>183</sup>

The Commission has interpreted that Clause 1 in exemption “g” applies narrowly to the location of power lines or substations on existing franchises, road-widening setback easements, or public utility easements.<sup>184</sup> PG&E, SCE, and SDG&E recommend revisions to Staff Proposal Section 3.1, Proposal 5, Option 2 such that exemption “g” applies to proposed power line facilities or substations located in an existing ROW containing existing power line facilities or substations, on utility fee-owned property, or property on which a public utility has a legal right to operate.<sup>185</sup>

In the Settlement Agreement, Settling Parties propose that Clause 1 in exemption “g” should apply to proposed projects that locate power line facilities

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<sup>183</sup> Decision 97-03-058, “Batiquitos” March 18, 1997.

<sup>184</sup> Staff Proposal at 13, Footnote 7.

<sup>185</sup> PG&E Opening Comments on Staff Proposal at 14.

or substations in an existing public “right-of-way (ROW)” or easement, and that Clause 2 in exemption “g” should apply to proposed projects that locate “power line facilities or substations” in a utility corridor.<sup>186</sup> The Settlement Agreement states that most utility ROW is pursuant to an easement, but it is the fact that it is a utility ROW that is important, not the legal instrument creating the ROW.

To support their amendment to Clause 1, the Settling Parties contend that new facilities constructed in a utility’s ROW are less likely to lead to significant impacts compared to construction in non-utility areas. With respect to Clause 2, the Settling Parties propose to add “power line facilities or substations” to clarify that these facilities may qualify for an exemption in utility corridors.

Staff Proposal Section 3.1, Staff Proposal 5 includes two options to clarify the applicability of exemption “g” as follows:

Option 1: Amend Clause 1 to reflect that Section III.B.1.g is applicable to proposed projects that locate power line facilities or substations in an existing ROW containing existing power line facilities or substations. Amend Clause 2 to reflect that Section III.B.1.g is applicable to proposed projects that locate power facilities lines or substations in a government-adopted utility corridor where a prior CEQA document found no significant unavoidable impacts; and

Option 2: Amend Clause 1, as proposed by the Settling Parties, to reflect that Section III.B.1.g is applicable to proposed projects that locate power line facilities or substations in an existing public ROW or easement. Amend Clause 2 in Section III.B.1.g, as proposed by Settling Parties, to reflect that proposed projects that locate power line facilities or substations in an existing public ROW or easement.

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<sup>186</sup> Joint Motion for Adoption of Phase 1 Settlement Agreement, September 29, 2023 at 48-49.



Staff recommends adoption of Staff Proposal Section 3.1, Proposal 5, Option 1, because in the presence of an existing ROW, new facilities are less likely to lead to significant impacts in such locations compared to non-utility areas.

RCRC supports adoption of Staff Proposal Section 3.1, Proposal 5, Option 1.<sup>187</sup> Cal Advocates supports adoption of Staff Proposal Section 3.1, Proposal 5, Option 1 with revisions. The revisions would add power lines or substations located in areas that are disturbed or connected with approved broader actions that are compliant with CEQA to Clause 1.<sup>188</sup> Further, Cal Advocates proposes that the term “existing”, in the context of exemption “g” should mean longstanding land rights that include disturbed lands upon which utility infrastructure has been previously sited.<sup>189</sup> The IOUs and other parties (e.g., LSPGC, IEP) also support portions of Staff Proposal Section 3.1, Proposal 5, Option 1, but recommend adding “utility fee-owned property, or property on which a public utility has a legal right to operate” to Clause 1.<sup>190</sup> Transmission Owners oppose the staff-proposed Staff Proposal Section 3.1, Proposal 5, Option 1, and instead supports Staff Proposal Section 3.1, Proposal 5, Option 2, the Settling Parties’ proposal. LSPGC, IEP, and others recommend striking

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<sup>187</sup> RCRC Opening Comments on Staff Proposal at 3.

<sup>188</sup> *Ibid.*

<sup>189</sup> Cal Advocates’ Opening Comments on Staff Proposal at 4.

<sup>190</sup> LSPGC Opening Comments on Staff Proposal at 4.

“containing existing power line facilities or substations” from staff’s proposed version of exemption “g.”<sup>191</sup>

The existence of a franchise, road-widening setback easement, or public utility easement indicates local planning involvement in the designation of such property rights. However, fee-owned property (as a real estate transaction) and ROW or “other property on which a public utility has a legal right to operate” (as broader and less precise categories of property right) may not be subject to local land use planning to the same extent, and therefore development of those areas may be more likely to lead to significant impacts than would development in an existing franchise or easement.

Upon consideration of both options in Staff Proposal Section 3.1, Proposal 5 and party comments, we adopt a modified version of the IOUs’ joint proposed revisions to Staff Proposal Section 3.1, Proposal 5, Option 1 which bifurcates the “containing existing power line facilities or substations” requirement by property right type to address Cal Advocates’ suggestions regarding the use of disturbed lands. As such, the current PTC exemption “g” in GO 131-D, as revised, would become PTC exemption “f” in Section III.B.2.f in GO 131-E. Therefore, we reject PG&E’s proposal to add “transmission or” before “power line facilities.”

Accordingly, Staff Proposal Section 3.1, Proposal 5, Option 1 shall be modified as follows to include a third clause as underlined below:

Power line facilities , substations, or switchyards to be located in an existing franchise, road-widening setback easement, or public utility

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<sup>191</sup> IEP Opening Comments on Staff Proposal at 4.

easement; ~~or power line facilities, substations, or switchyards in an existing right-of-way (ROW), fee-owned property, or other property on which a public utility has a legal right to operate existing power line facilities, substations, or switchyards; or power line facilities, substations, or switchyards in a utility corridor designated, precisely mapped, and officially adopted pursuant to law by federal, State, or local agencies for which a final EIR, MND, or ND finds no significant unavoidable environmental impacts.~~

With respect to Staff Proposal Section 3.1, Proposal 5, Option 2, we accept a slightly revised version of the IOUs' joint proposal, as underlined and stricken below, represented in Option 1:

Power line facilities, substations, or switchyards to be located in an existing franchise, road-widening setback easement, or public utility easement; or power line facilities, substations, or switchyards in an existing right-of-way (ROW), fee-owned property, or other property on which a public utility has a legal right to operate existing power line facilities, substations, or switchyards; or power line facilities, substations, or switchyards in a utility corridor designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies ~~for which a final EIR, MND, or ND finds no significant unavoidable environmental impacts.~~

The above revisions to Staff Proposal Section 3.1, Proposal 5, Option 1 and Staff Proposal Section 3.1, Proposal 5, Option 2 which are reflected in Section III.B.2.f in GO 131-E, would retain the existing Clause 1 of exemption "g" without changing its applicability, but would expand the applicability of exemption "g" to include ROW, fee-owned property, and "other property" if said property contains existing power line facilities or substations. This would allow the utilities to claim exemption "g" for a broader array of projects on disturbed lands. Additionally, by deleting the "significant unavoidable" criterion

in the existing Clause 2 (i.e., “for which a final EIR, MND, or ND finds no significant unavoidable environmental impacts”), the above revision would specify that where a proposed facility is located in a utility corridor designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies, exemption “g” applies regardless of whether the final CEQA document prepared by the agency adopting the utility corridor found significant unavoidable impacts.

PG&E’s recommendation to add “transmission or” before “power line facilities” is not adopted because it would inappropriately expand the exemption to allow utilities to construct sizable new transmission lines with an advice letter filing in lieu of an application.

#### **7.7. PTC Exemption “h” Clarification**

As discussed below, we adopt the IOUs’ proposals to revise PTC exemption “h” in GO 131-E to bifurcate the exemption into two separate exemptions such that:

- (1) Pursuant to GO 131-E, Section III.B.4, the utilities must notice projects that have been determined to be categorically or statutorily exempt from CEQA in annual reports and quarterly briefings provided to Staff; and
- (2) Pursuant to GO 131-E, Sections IV.B.3, the utilities must list all projects that have been determined to be categorically or statutorily exempt from CEQA pursuant to Section III.B.2 respectively in annual reports and quarterly briefings.

GO 131-D, Section III.B.1.h, specifies that a PTC is not required for the construction of projects that are statutorily or categorically exempt from

CEQA.<sup>192</sup> The last paragraph of Section III.B.1 states that a notice of proposed construction must be issued for most PTC-exempt projects in compliance with Section IX.B, except for those that are statutorily or categorically exempt from CEQA. Reading these Section III.B.1 provisions together could lead a utility to initially determining that a project is statutorily or categorically exempt from CEQA, and subsequently determining that it is not subject to noticing requirements. Such reading is not consistent with the CEQA Guidelines that place responsibility for making these determinations with lead agencies.<sup>193,194</sup>

Utilities currently provide notice of PTC-exempt activities by submitting a Tier 2 advice letter pursuant to GO 96-B Energy Industry Rule 5.2 which states that a “request relating to a substation or power line under Section III.B.1 of General Order 131” is a matter appropriate for the Tier 2 advice letter process and therefore subject to disposition by Energy Division staff.

The purpose of Staff Proposal Section 3.1, Proposal 6 is to ensure that utilities provide appropriate notice of projects identified by utilities that could qualify as statutorily and categorically exempt projects pursuant to CEQA.<sup>195</sup> To that end, Staff proposes three options to clarify exemption “h” as follows:

- Option 1: Require notice via an information-only submittal through a modification to Section III.B.4.
- Option 2: Require notice via a Tier 2 advice letter submittal as required for other GO 131 Section III.B.1 projects

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<sup>192</sup> CEQA Guidelines Section 15260.

<sup>193</sup> *Id.* at Section 15061.

<sup>194</sup> Staff Proposal at 14 and CEQA Guidelines Section 15062.

<sup>195</sup> *Id.* at 20-21 for complete description of Proposal 6.

pursuant to Rule 5.2 Energy Industry of the Commission's Rules of Practice and Procedure.

- Option 3: No action. Retain language in Section III.B.1.h of GO 131-D that states "except that such notice is not required for the construction of projects that are statutorily or categorically exempt pursuant to CEQA Guidelines."

In the Staff Proposal, Staff recommends adoption of Staff Proposal Section 3.1, Proposal 6, Option 1 because it would ensure that Staff would have the opportunity to review the information-only submittal and "determine whether the project is exempt from CEQA" pursuant to CEQA Guidelines Section 15061 while minimizing the associated workload for Staff and utilities. While information-only submittals are not subject to protest because they do not seek relief, GO 96-B General Rule 6.2 establishes a process whereby Staff could request correction of submittals to address an erroneous assumption that a given activity is exempt from CEQA. This process also provides Staff with an avenue to comply with CEQA Guidelines Section 15061.

RCRC does not specify support or opposition for Staff Proposal Section 3.1, Proposal 6, Option 1 but raises questions about how stakeholders would be able to challenge the utility's determination that its projects are exempt from CEQA.<sup>196</sup> PG&E, SCE, SDG&E, and CEERT oppose Staff Proposal Section 3.1, Proposal 6, Option 1.<sup>197</sup> The IOUs suggest revising Option 1 by modifying Section III.B.4 to reflect that information-only submittals do not require the level of information included in an advice letter. Furthermore, the IOUs propose that

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<sup>196</sup> RCRC Opening Comments on Staff Proposal at 5.

<sup>197</sup> CEERT Opening Comments on Staff Proposal at 25.

notices should not be required for projects that entail routine operations and maintenance work, or construction needed to comply with GOs 95 and 128.<sup>198</sup> Cal Advocates contends that projects that are deemed to be statutorily or categorically exempt from CEQA should be noticed, open to public participation, and subject to protest. As such, Cal Advocates proposes that Staff Proposal Section 3.1, Proposal 6, Option 2 should be modified to require submittal of such notices in batches, according to cost, location, and time of construction.<sup>199</sup>

The IOUs propose bifurcating PTC exemption “h” into two separate exemptions (GO 131-E, Sections III.B.2.g and III.B.2.h), one for categorically exempt projects and another for statutorily exempt projects. According to SDG&E, the Commission may consider the exception to some PTC exemptions but doing so would be inconsistent with CEQA and may not be needed with respect to other PTC exemptions. For example, SDG&E points out that Staff application of Section III.B.2 to any project that is categorically exempt from CEQA could result in the need to obtain PTCs for projects that entail minor alterations, repair, or maintenance among other routine operations.<sup>200</sup>

To accomplish this, the IOUs propose to modify Section III.B.3 related to the applicability of (1) exemptions (a) through (g), and (2) exemption (h) when a project is categorically exempt pursuant to CEQA Guidelines Sections 15303, 15304, 15305, 15306, or 15311. In both instances, exemptions will not be applicable if there is a reasonable possibility that the proposed activity may

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<sup>198</sup> PG&E Opening Comments on Staff Proposal at 11.

<sup>199</sup> Cal Advocates’ Opening Comments on Staff Proposal at 8.

<sup>200</sup> SDG&E Opening Comments on Staff Proposal at 36.

impact an environmental resource of hazardous or critical concern pursuant to CEQA Guidelines Section 15300.2(a).

Regarding bifurcation of exemption “h”, we agree with the IOUs that the exceptions to PTC exemptions should be consistent with CEQA Guidelines. We therefore clarify that the exception only applies to categorical exemptions and not statutory exemptions. Accordingly, we adopt the IOUs’ proposals to bifurcate PTC exemption “h” into two separate exemptions (III.B.2.g and III.B.2.h).

The information-only submittal process proposed in Staff Proposal Section 3.1, Proposal 6, Option 1 is intended to provide Staff with increased visibility about when and how utilities claim PTC exemptions for projects that are categorically or statutorily exempt from CEQA. However, we acknowledge that many of these projects are already reported to the Commission by utilities in the Transmission Project Review (TPR) Process. Furthermore, Staff can use the data request process outside of GO 131-E to require utilities to provide additional information on any of their electrical infrastructure projects.

Therefore, with the understanding that Staff have other ways to track these projects, we do not adopt the Staff Proposal’s information-only submittal proposal and do not include new requirements in GO 131-E for utilities to notice projects that are eligible for the PTC exemptions set forth in GO 131-E Sections III.B.2.g and III.B.2.h.



### 7.8. Substation Modification Exemption

After considering party comments and Staff recommendations, we adopt revisions to Sections III.B and III.C in GO 131-E that retain existing PTC exemptions for minor substation modification projects.

In Section 7.2 of this decision, the Commission intends to provide clarity by proposing to delete the terms “upgraded modification” or “substations modification projects” from the list of projects specified in GO 131-D that are exempt from the PTC requirements.<sup>201</sup>

In response to Staff Proposal Section 3.1, Proposal 2, several parties (PG&E, SCE, SDG&E, CUE, EDF) assert that by making these changes, Staff would require PTCs for minor substation modification projects within the existing footprint which have been exempt from permitting for nearly 30 years.<sup>202</sup> PG&E refers to “hundreds of minor maintenance, modification and interconnection projects that occur entirely within existing substation property” that are currently exempt from the PTC requirement based on the definitions of “substation modification” and “substation upgrade project” but do not qualify for any of the PTC exemption categories in Section III.B.<sup>203</sup> PG&E, SCE, and SDG&E additionally recommend that Staff, in SCE’s words, “revise [Section III.C.1] to capture all work within an existing substation, rather than arbitrarily limiting the exemption as currently proposed,” so that the following

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<sup>201</sup> GO 131-D at 2.

<sup>202</sup> SCE Opening Comments on the Staff Proposal at 24.

<sup>203</sup> PG&E Opening Comments on the Staff Proposal at 9.

projects would not require a CPCN, PTC, or notice.<sup>204</sup> This revision would state the following: “Substation modification projects which do not result in an upgraded substation.”

Staff Proposal Section 3.1, Proposal 2, which revises the definitions of extension, expansion, upgrade, and modification, assumes that proposed substation modifications and/or upgrades would qualify either (1) as a PTC exemption pursuant to GO 131-D, Section III.B.1, (proposed GO 131-E, Section III.B.2) or (2) would be included in the list of projects that are fully exempt from permitting and notice pursuant to Section III.C. However, the Commission still recommends deleting the existing definitions of “substation modification” and “substation upgrade project” from Section III.B, rather than retaining them as suggested by the IOUs to avoid potential confusion with the new definitions of “upgrade” and “modification.”

To preserve the existing exemption for minor substation modification and upgrade projects that have heretofore not required a PTC application or advice letter filing, we adopt the revisions to GO 131-D, as reflected in attached GO 131-E, Sections III.B and III.C, which include:

- Modifying Section III.B.1.c as follows: “The extension, expansion, upgrade, or other modification of existing electrical transmission facilities, except where exemptions apply as specified in Section III.B.2 and Section III.C.1, or where the utility elects to file a CPCN application pursuant to Section III.A;”

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<sup>204</sup> SCE Opening Comments on the Staff Proposal at 24.

- Adding the phrase “Notwithstanding Section III.B.1” to the beginning of Section III.B.2.;
- Adding the phrase “Notwithstanding Section III.A or Section III.B” to the beginning of Section III.C.1.;
- Modifying Section III.C.1.b as follows: “New, expanded, or upgraded substations or switchyards with a high side voltage under 50 kV;”
- Adding a new Section III.C.1.c which explicitly exempts the following projects from the CPCN and PTC requirements: “Substation or switchyard expansion, upgrade, or modification projects which do not result in an increase in substation or switchyard land area beyond the existing property on which the utility has a legal right to operate or an increase in the voltage rating of the substation or switchyard above 50 kV”; or
- Modifying Section III.C.1.d (formerly III.C.1.c) to read: “Substation or switchyard upgrade or modification projects which increase the voltage of an existing substation or switchyard to the voltage for which the substation or switchyard has been previously rated within the existing substation or switchyard boundaries property.”

The foregoing revisions address specific cases for substation upgrades and modifications in GO 131-E, Section III.C rules.

#### **7.9. Terms “Substation” and “Switchyard”**

We do not adopt the IOUs’ suggested augmented definition of “substation” (*i.e.*, to define “substation” to include “switchyard”) because the terms “switchyards” and “substations” have distinct meanings. However, we include the term “switchyard” in GO 131-E definitions referenced in applicable sections and in the list of permit exemptions. These modifications are intended to

clarify where switching stations and substations have the same permitting process, particularly that CPCNs are not required for upgrades or modifications to these transmission facilities.

PG&E asserts that prior Commission interpretation of the term “substation” includes switching stations, or switchyards.<sup>205</sup> Accordingly, PG&E, SCE, and SDG&E propose to add a new Section I.D to GO 131-D which includes “switching station” in the definition of “substation.” To reflect this proposed change, subsequent definitions in Section I (*e.g.*, I.E, I.F, I.G) would be reordered accordingly. The IOUs do not provide a rationale or explanation for these proposed revisions.

We do not adopt the IOUs’ suggested augmented definition of “substation” because the terms “switchyards” and “substations” have distinct meanings. A switching station is a facility that operates at a single level of voltage without transformers, whereas “substation” is a broader category of facilities that can include multiple voltage levels and transformers and may be much larger than switching stations.

Rather than conflating the definitions of the two terms, we recommend inserting “switchyard” into the relevant sections of GO 131-E to clarify where a given requirement applies to switchyards. Accordingly, we instead use the term “switchyard” rather than “switching station” as the two terms are functionally interchangeable, and the current version of GO 131-D already refers to “switchyards” rather than “switching stations”.

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<sup>205</sup> PG&E Comments, June 3, 2024 workshop on Staff Proposal.

Based on the foregoing and to address party comments and concerns, we adopt revisions that include “switchyard” in GO 131-E, Sections III.A.3, Section III.B.1.a, and Section III.B.1.b regarding permit requirements and in the list of permit exemptions in Section III.C.1. to clarify where switching stations have the same permitting process as substations.

#### **7.10. Deletion of Permit Exemption “a”**

As discussed below, we adopt Staff’s recommended deletion of the PTC exemption “a”, as set forth in GO 131-D, Section III.B.1.a, in GO 131-E.

Exemption “a” provides that compliance with the PTC application process in Section IX.B is not required for “power line facilities or substations with an in-service date occurring before January 1, 1996, which have been reported to the Commission in accordance with the Commission’s decision adopting GO 131-D.”

PG&E, SCE, and SDG&E recommend retaining exemption “a” in GO 131-E even though it is only applicable to projects built prior to 1996. SDG&E acknowledges Staff’s proposal to delete an exemption for projects that were constructed decades ago. However, SDG&E points out that parties may challenge the utilities’ authorization for previously built power lines or substations. For this reason, SDG&E suggests that PTC exemption “a” should be retained in the historical record as the basis for prior Commission decisions not to authorize certain power line facilities and substations.<sup>206</sup>

Upon review of the recommendation from PG&E, SCE, SDG&E, we will not retain current PTC exemption “a”, as specified in GO 131-D, Section III.B.1.a,

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<sup>206</sup> SDG&E Opening Comments on the Staff Proposal at 31.

in GO 131-E. Section III.B.1.a of GO 131-D will serve only as a historical record to show why certain facilities did or did not require authorization under past versions of the general order. In the spirit of simplifying GO 131-E, deleting outdated references, and clarifying permitting requirements, it is not necessary to retain a long-outdated permitting requirement merely for the sake of providing historical context.

## **8. Reporting Requirements**

As discussed below, we adopt a modified version of Staff Proposal Section 3.2, Proposal 2, which amends the list of financial information that must be reported by electric public utilities to the Commission, as specified in GO 131-E, Appendix A, by (1) deleting GO 131-D, Section VI, (2) moving the financial reporting requirements into a new Section IV.C in GO 131-E, and (3) deleting the GO 131-D, Section IV requirement as unnecessary.

GO 131-D requires utilities to furnish copies to Staff of reports of loads and resources submitted to the CEC (Section IV of GO 131-D), annually submit reports to Staff on forecasts of planned transmission lines, power lines, and substations (Section V in GO 131-D), and biennially submit reports to Staff containing transmission-related financial information (Section VI and Appendix A in GO 131-D).<sup>207</sup>

More recently, the Commission has required each utility to brief Staff every quarter to obtain information on current and future activities related to transmission facilities, and biannually participate in the Transmission Project

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<sup>207</sup> Staff Proposal at 36 and GO 131-D, Sections IV, V, and VI provide a full description.

Review (TPR) Process which enables the Commission and stakeholders to receive information about transmission owners' planning assumptions, determination and prioritization of needs, and the processes leading to transmission solutions and network upgrades. Further, the TPR process provides information to stakeholders regarding capital additions to rate base for the past five years and capital expenditures incurred during the current year and projected for the next four years transmission projects with expected costs of at least \$1 million.

While GO 131-D prescribes processes for utilities to report loads and resources, forecasts of planned transmission facilities, and financial information (i.e. Section IV, Section V, and Section VI), there are no rules in GO 131-D that specify requirements for quarterly briefings and the TPR Process. To address this need, and improve all reporting requirements, including those outlined in Section IV, Section V, and Section VI, we will now consider the proposed revisions to GO 131-D in the Staff Proposal.

Staff proposes to update GO 131-D reporting requirements, as follows:

Proposal 1: Revise Section V in GO 131-D to specify that utilities shall organize a quarterly briefing with Staff to present the working version of the planned forecast of planned and forthcoming applications, and a summary of projects that have been reprioritized since the last quarterly briefing.

Proposal 2: Update Appendix A in GO 131-D, as proposed in Attachment B in the OIR, to amend the list of financial information that electric public utilities must provide to the Commission in biennial reports pursuant to Section VI.

A range of parties support or accept Staff Proposal Section 3.2, Proposal 1 (PG&E, CBD, RCRC, Cal Advocates). Other parties generally support Staff

Proposal Section 3.2, Proposal 1 but propose revisions (EDF, Clean Coalition).<sup>208</sup> EDF proposes that public utilities should present information related to transmission projects to stakeholders and track the progress of current transmission projects that are under Commission review. EDF suggests that stakeholders could then inform Staff if they have any concerns prior to quarterly briefings.<sup>209</sup> LSPGC and Transmission Owners argue that the Section V reports and quarterly meetings should not be required from transmission-only utilities whose rates are regulated exclusively by the Federal Energy Regulatory Commission (FERC).<sup>210</sup> SCE, SDG&E, and ACP oppose Staff Proposal Section 3.2, Proposal 1. However, SDG&E suggests that it would support Staff Proposal Section 3.2, Proposal 1 if quarterly meetings would serve only as a forum for utilities to answer questions from Staff about transmission projects.<sup>211</sup>

Cal Advocates recommends that non-confidential public versions of the biennial reports (required under Section VI of GO 131-D) and quarterly reports (required under Staff's proposed Section V.C of GO 131-E) should be accessible to the public, subject to a valid and legal-based claim by a utility that certain elements are confidential. EDF suggests that Section V revisions should require utilities to provide information about transmission project activities, including any reprioritization of planned activities, to the public prior to, or within seven days after each quarterly briefing and should be posted on the Commission's

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<sup>208</sup> PG&E Opening Comments on the Staff Proposal at 15.

<sup>209</sup> EDF Opening Comments on the Staff Proposal at 10.

<sup>210</sup> LSPGC Opening Comments on the Staff Proposal at 5.

<sup>211</sup> SDG&E Opening Comments on the Staff Proposal at 43.



webpage within 14 days of the briefing.<sup>212</sup> SDG&E supports the deletion of Staff's proposed V.C.1 and V.C.4 reporting requirements,<sup>213</sup> and contends the language would be repetitive of existing reporting requirements or would require quarterly updates to the annual report. However, SDG&E supports the V.C.2 and V.C.3 reporting requirements as SDG&E currently provides this information informally. Transmission Owners propose that modifications to Section V requirements should not apply to utilities that do not serve load or develop transmission projects other than those that are approved through CAISO's TPP.<sup>214</sup>

A range of parties support Staff Proposal Section 3.2, Proposal 2 or express that it is acceptable (PG&E, CBD, RCRC, Cal Advocates).<sup>215</sup> Cal Advocates recommends that non-confidential public versions of the biennial reports, required under Section VI, and quarterly reports, required under Staff's proposed Section V.C of GO 131-D, should be accessible to the public unless the utility provides a valid legal reason that identified elements are confidential.<sup>216</sup>

Transmission Owners contend that the Section VI reports should not be required from transmission-only public utilities whose rates are regulated exclusively by FERC.<sup>217</sup> As such, Transmission Owners propose Section VI

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<sup>212</sup> EDF Opening Comments on Staff Proposal at 10.

<sup>213</sup> SDG&E Opening Comments on Staff Proposal at 43.

<sup>214</sup> Transmission Owners Opening Comments on Staff Proposal at 6.

<sup>215</sup> CBD Opening Comments on Staff Proposal at 10.

<sup>216</sup> Cal Advocates Opening Comments on Staff Proposal at 9.

<sup>217</sup> Transmission Owners Opening Comments on Staff Proposal at 7.

requirements should not apply to electric public utilities that do not serve load or develop transmission projects other than those that are approved through the CAISO's TPP.<sup>218</sup>

SCE, PG&E, and SDG&E also recommend that Staff should consider removing GO 131-D, Section IV, which requires that every electric public utility furnish electronic copies to the Commission of any report of loads and resources submitted to the CEC in accordance with Pub. Res. Code Section 25300 *et seq.* SCE contends that utilities provide extensive data to the CEC that is not compiled into a single report, which makes it difficult to comply with this requirement.<sup>219</sup> To address this, SCE recommends that Staff either remove this reporting requirement or modify it to specify what information Staff needs or requires.<sup>220</sup>

Based on the need for Staff to receive necessary information on transmission projects, reduce administrative burden for utilities, update annual reporting to comport with the TPR process, and comply with SB 319 reporting requirements to the State Legislature, we adopt amendments to the GO 131-D reporting requirements that will be reflected in GO 131-E. As such, we delete the existing Section IV reporting requirements regarding reports of loads and resources and relocate the existing Section V and Section VI reporting requirements in GO 131-D to Section IV, GO 131-E which will be renamed as "Utility Reporting on Planned Transmission, Power Line, and Substation

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<sup>218</sup> *Ibid.*

<sup>219</sup> SCE Opening Comments on Staff Proposal at 31.

<sup>220</sup> *Ibid.*

Facilities.” GO 131-E, Section IV, will be divided into three sections: Section IV.A, Section IV.B, and Section IV.C. Section IV.A and Section IV.B will respectively specify requirements for electric public utilities to submit (1) annual forecasts of transmission projects, and (2) information in quarterly briefing as proposed in the Staff Proposal’s recommended GO 131-E, Section V.C, with additional modifications. This latter requirement will better align with the CAISO TPP cycle and the timing of the CAISO’s Transmission Development Forum.

Cal Advocates and EDF request that the Commission provide public versions of annual reports and quarterly briefings to promote data and information transparency. We recognize that providing this information to the public could increase the complexity of the reporting requirement due to the need to navigate the Commission’s confidentiality rules for some of the reported information. It is also possible that an additional stakeholder outreach process could add more time to finalize reported data. Despite these concerns, we acknowledge the value of public disclosure to facilitate a transparent planning and permitting process for this critical public infrastructure. Therefore, we direct Staff to coordinate with the reporting utilities to make the reports and briefings required in GO 131-E Section IV available to the public and to help properly redact any information that must be kept confidential.

Finally, we are not persuaded by LSPGC’s and Transmission Owners’ request for transmission-only utilities to be exempted from Section V reporting and quarterly meetings, as the Commission still has permitting jurisdiction over projects built by independent transmission owners (TO). Given this, independent

TOs, would benefit from regular coordination with utilities on current, and upcoming projects, even if, they are proposed infrequently.

Upon consideration of the Staff Proposal and party comments, we adopt a modified version of Staff Proposal Section 3.2, Proposal 2, which amends the list of financial information specified in GO 131-E Appendix A to specify that electric public utilities must report this information for all planned transmission line, power line, substation, and/or switchyard facility projects with high side voltage exceeding 50 kV for which a CPCN or PTC application or advice letter has been filed or is expected to be filed and that had capital expenditures over \$1 million in the prior five years or will have capital expenditures over \$1 million in the next four years. To achieve this, we delete GO 131-D, Section VI and move the financial reporting requirements into Section IV.C in GO 131-E. In addition, we modify the reporting requirements set forth in Appendix A to reduce the overall amount of financial information and focus the reporting requirement on retrieving necessary data. Similar to the annual reporting requirements in Section IV.A, utilities must annually report financial information on transmission lines, power lines, and substations on or before July 31 to better align with the CAISO TPP cycle and the timing of the CAISO's Transmission Development Forum.

In terms of reporting of utility electric loads and resources, as prescribed in Section IV of GO 131-D, that appears to be accomplished through the CEC's Integrated Energy Policy Report IEPR process (Pub. Res. Code Section 25302) and other existing programs. The requirements detailed in Pub. Res. Code Sections 25300 *et seq.* have been amended and expanded to include various new

statutory requirements since GO 131-D was first adopted. Many of those sections specify that the CEC must consult with the Commission to report on integrated energy policy reporting. Therefore, the inclusion of this reporting requirement in GO 131-E, as we update GO 131-D would not accurately reflect current practice. As SCE notes, utilities provide an array of data to the CEC that is not consolidated into a single report. Beyond the feasibility of reporting this information, there is no indication that GO 131-D, Section IV reports are received or used by the Commission's Staff that oversees matters related to CEQA, FERC, Electric Planning, and Market Design beyond existing coordination with the CEC. Finally, Appendix B.IV of GO 131-D separately specifies that CPCN applications for electric generating facilities must include relevant load and resource data. For these reasons, we delete GO 131-D, Section IV in GO 131-E.

## **9. Advice Letter Protest Process**

As discussed below, we adopt revisions that will be reflected in GO 131-E, Section X and adopt the proposal from PG&E, SCE, and SDG&E that an advice letter will take effect under the disposition letter pending Commission review. To implement AB 551 provisions, we require that protests of Commission dispositions of advice letters that grant PTC exemptions to projects must be addressed through rehearing applications filed within 10 days after disposition issuance.

GO 131-D, Section X establishes a process for filing advice letter protests that contest the construction of projects that receive a PTC exemption. Protests can be filed by interested parties that participate in a PTC proceeding or receive notice of construction within 20 days after the notice has been mailed and

published. Each protest must be filed with Staff in accordance with GO 96-B Sections 3.11, 7.4.1, and 7.4.2.

When a protest is filed, protestants must serve a copy to the utility that intends to construct the noticed project. The utility must respond to a protest within five days of receipt and serve responses to Staff and the protestant. Within 30 days after receipt of the utility's response, after consultation with Staff, the Commission's Executive Director must issue an Executive Resolution to either (1) direct the utility to file a PTC application or (2) dismiss the protest if a valid reason was not provided by the protestant. The validity of the protest is determined if any of the conditions described in Section III.B.2 exist or if the utility incorrectly applied an exemption as defined in Section III.<sup>221</sup>

While GO 131-D provides specific direction to resolve PTC exemption-related advice letter protests, GO 96-B General Rule 7.6.2 provides broad direction on disposition of protests through Commissioner voting and approval at business meetings. Alternatively, Staff is also delegated authority to approve or reject advice letter protests, pursuant to GO 96-B General Rules 5.3, 7.5.1, or 7.6.1.

The Settling Parties contend that construction of critical transmission projects may be delayed by several months due to the Commission's lengthy process for disposition of advice letter protests. According to the Settling Parties, this process may require an extended period for Staff to evaluate the advice letter protest and place a resolution that disposes of the matter on a Commission

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<sup>221</sup> Staff Proposal at 53.

meeting agenda, where it is subject to Commissioner vote. To address this concern, the Settling Parties put forth a proposal that they assert would streamline this process that we will now review.

In the Settlement Agreement, the Settling Parties propose revisions to Section XIII of GO 131-D that authorizes Staff to dispose all protests of advice letters that concern PTC-exempt projects, despite specific direction provided in GO 96-B that delegation of such authority to Staff is contingent upon satisfying requirements specified in General Rules 5.3, 7.5.1, or 7.6.1. In lieu of adhering to GO 96-B rules, the Settling Parties suggest that resolution of these protests should follow direction provided in Rule 2.6. which establishes procedures for protests of applications not advice letters.<sup>222</sup>

Prior to the passage of AB 551, Staff offered two proposals for the Commission to dispose of protests to advice letters.

Staff Proposal Section 3.4, Proposal 1 would retain the Executive Resolution process as described in Section XIII of GO 131-D but would amend Section XIII to clarify that protesters may request Commission review of the Executive Director's or Energy Division's disposition of an advice letter pursuant to GO 96-B, General Rule 7.6.3.

Staff Proposal Section 3.4, Staff Proposal 2 would make no changes to Section XIII of GO 131-D, which retains the Executive Resolution process as recommended by the Settling Parties in the Settlement Agreement.

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<sup>222</sup> Staff Proposal at 53.

Cal Advocates and Transmission Owners support Staff Proposal Section 3.4, Proposal 1.<sup>223</sup> CEERT opposes Staff Proposal Section 3.4, Proposal 1 because they contend that it would not comport with SB 529's intent to accelerate the Commission's permitting process.<sup>224</sup> PG&E, SCE, and SDG&E propose modifications to GO 131-D, Section XIII, that impose a 90-day timeline for the Commission to review and dispose of the advice letter protest, during which the advice letter would take effect under the disposition letter pending review. Further, PG&E, SCE, and SDG&E suggest that a "third-party with interest in the relief sought by the advice letter" versus a generic "entity" may request the Commission's Executive Director or Staff to dispose the advice letter protest pursuant to GO 96-B, General Rule 7.6.3 (or a successor regulation).<sup>225</sup>

We are not persuaded by PG&E, SCE, and SDG&E that resolution of an advice letter protest must be achieved within 90 days. We acknowledge that 90 days may not be an adequate period for Staff to draft and prioritize resolutions that dispose of either an advice letter or advice letter protest and then place it on an agenda for a Commission voting agenda within approximately 50 days.

We decline to adopt the Settling Parties' proposal to require compliance with Rule 2.6 to dispose of advice letter protests because this Rule only applies to protests of applications. More importantly, D.23-12-035, resolving Phase 1 issues, requires that advice letter protests should be filed in accordance with GO 96-B,

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<sup>223</sup> Cal Advocates Opening Comments on Staff Proposal at 11.

<sup>224</sup> CEERT Opening Comments on Staff Proposal at 25.

<sup>225</sup> PG&E Opening Comments on Staff Proposal at 15.



Sections 3.11 and 7.4.1, and does not provide for the use of other rules for this purpose.

Pursuant to AB 551, we adopt revisions to GO 131-E, Section X, that would authorize the utility, any persons that filed a protest to the advice letter, any third party whose name and interest in the relief sought appear on the face of the advice letter, or a person authorized under exceptional circumstances as set forth in GO 96-B or its successor regulation to challenge an Executive Director disposition of an advice letter granting a PTC exemption by filing an application for rehearing consistent with Rule 16.1 within 10 days of the issuance of a disposition letter.

#### **10. Permitting of Battery Storage Facilities**

Upon careful review of party comments, we conclude that we lack sufficient record on the issue of battery energy storage systems (BESS) permitting, at this time. As discussed below, we therefore do not adopt any of the proposed revisions and rules; instead we instruct Staff to continue to coordinate with the CEC to support the permitting of BESS projects subject to CEC's opt-in certification process wherein the Commission may be a CEQA responsible agency. Relatedly and in response to the Staff Proposal and party comments, we remove the reference to energy storage from the "extension" definition in Section I.F.2 and from the "upgrade" definition in Section I.H.

GO 131-D does not include specific rules that govern the permitting of BESS, which are subject to rules in Section XIV pertaining to electric facilities. Historically, local jurisdictions have served as lead agencies tasked with BESS permitting.

In 2022, AB 205 (Ting; Stats. 2022, Ch. 61) established a new process that authorizes the CEC, as a lead agency, to certify certain clean and renewable generation resources, including BESS with capacities at or above 200 MWh. AB 205 also includes a provision that offers project applicants a choice, until June 30, 2029, to file an application with the CEC for an expedited certification timeline of certain generation resources (opt-in certification). In the opt-in certification process, the CEC has exclusive authority to certify such projects.

However, AB 205, which is codified in Pub. Res. Code Section 25545.1(a), states that the CEC's oversight of project certification does not modify the Commission's jurisdiction to issue permits for facilities, including CPCNs. Despite this clarification, utilities under the Commission's authority may nonetheless choose to pursue the CEC's opt-in certification process to permit eligible projects pursuant to AB 205.

While parties did not propose how to modify GO 131-D rules to address BESS permitting, Staff offers two proposals to address this issue that we will now review.

Staff Proposal Section 3.5, Proposal 1 would create a PTC permitting requirement for transmission components of BESS by including "energy storage" in the definition of "extension" in Section I.F.2 as follows: "Generation tie-line (gen-tie) segments, i.e., the construction of a new transmission or power line from an existing electrical transmission facility to connect to a new energy storage or generation facility (i.e., the portion of the new line that will be owned by the transmission operator)."

Staff Proposal Section 3.5, Proposal 2 would create a PTC permitting requirement for BESS within or adjacent to existing substations by adding the following example to the “upgrade” definition in GO 131-E, Section I.H:

“Adding battery energy storage systems to an existing substation or expanding an existing substation to include battery energy storage systems.”

Staff supports adoption of both Staff Proposal Section 3.5, Proposal 1 and Proposal 2. Staff’s rationale for recommending their proposals stems from party comments that advocate for clarifying the permitting process. These comments stress the importance of identifying similarities or differences between permitting energy storage systems, substations, and power lines, setting a capacity threshold for energy storage systems, and determining the appropriate level of permitting for proposed projects (i.e. PTC versus CPCN). Staff state that their proposals address suggestions from some parties that PTC exemptions should be granted to energy storage systems that are in proximity to substations, while other parties strongly oppose this measure. Further, Staff cite party comments that point out that local agencies have jurisdiction to permit non-utility projects and therefore should not be subject to Commission permitting requirements.

REV Renewables supports Staff Proposal Section 3.5, Proposal 1 because it could accelerate interconnection of new energy storage and generation facilities.<sup>226</sup> SDG&E, PG&E, SCE, CBD, LSA, ACP oppose Staff Proposal Section 3.5, Proposal 1. SDG&E claims that adoption of Staff Proposal Section 3.5,

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<sup>226</sup> REV Renewables Opening Comments on Staff Proposal at 3.

Proposal 1 would cause significant project delays by requiring PTCs for energy storage system projects on substation property that currently do not require Commission-issued permits.<sup>227</sup> ACP's concern is that PTCs for energy storage projects that are substation expansions on utility-owned land could provide utilities with a competitive advantage.<sup>228</sup> To address their concerns, PG&E, SCE, and SDG&E recommend modifying Staff Proposal Section 3.5, Proposal 1 such that the definition of "extension" in GO 131-E, Section I.F.2., does not include a line that connects to a new battery energy storage facility located on existing utility-owned property that contains or contained substation, electric generation or energy storage infrastructure and/or on contiguous previously disturbed land.<sup>229</sup>

Most parties, including ATC, RCRC, SCE, PG&E, SDG&E, CBD, and ACP, oppose the inclusion of BESS in the definition of "upgrade" in Staff Proposal Section 3.5, Proposal 2. For example, ATC supports RCRC's assertion that the lack of specificity in Staff Proposal Section 3.5, Proposal 2 could open the door for energy storage systems of indeterminant size to be permitted as substation upgrades.<sup>230</sup> ACP, IEP, and REV Renewables suggest that there must be a demonstrated need and cost evaluation for utility-owned BESS, as required by a CPCN review, rather than "undergoing only (an) environmental review."<sup>231</sup> EDF

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<sup>227</sup> SDG&E Opening Comments on Staff Proposal at 50.

<sup>228</sup> ACP Opening Comments on Staff Proposal at 8.

<sup>229</sup> *Ibid.*

<sup>230</sup> ATC Opening Comments on Staff Proposal at 1.

<sup>231</sup> IEP Opening Comments on Staff Proposal at 8.

supports the inclusion of BESS in the definition of “upgrade” in Staff Proposal Section 3.5, Proposal 2 but suggest that further clarification is needed concerning the Commission’s preemption of local jurisdictional authority for BESS permitting to avoid any disputes.<sup>232</sup>

EDF recommends that GO 131-E should explicitly describe a PTC process for BESS, and that GO 131-D, Section XIV, (renumbered to Section XIII in the Staff Proposal and to Section XI in GO 131-E) should be revised to clearly preempt local agency jurisdiction to permit BESS projects.<sup>233</sup> LSA suggests amending Section III.A to include BESS projects if they provide transmission support, or transmission and generation benefits, subject to CAISO and Commission requirements and oversight.<sup>234</sup> REV Renewables, LLC asserts that the Commission should set a threshold of 50 MW for BESS projects that are included in the definition of “upgrade”, while BESS projects with capacities above the 50 MW capacity threshold should adhere to the CPCN permitting process, outlined in Section III.A, as other utility-owned generating plants.<sup>235</sup>

Upon careful review of party comments, we are persuaded by PG&E, SCE, SDG&E and remove the reference to energy storage from the “extension” definition in Section I.F.2 and from the “upgrade” definition in Section I.H.5. In this proceeding, there is insufficient record on how to develop GO 131-E rules for BESS permitting, including the extent of the Commission’s jurisdiction over

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<sup>232</sup> *Id.* at 7.

<sup>233</sup> *Id.* at 8.

<sup>234</sup> LSA Opening Comments on Staff Proposal at 8.

<sup>235</sup> REV Renewables, LLC Opening Comments on Staff Proposal at 4.

permitting BESS projects, that may entail preemption of local agency jurisdiction. The near-term effect of not including BESS permitting rules in GO 131-E is that permitting of transmission components of BESS projects would continue to be handled on a case-by-case basis by the Commission. In this scenario, the Commission acts as a CEQA responsible agency on BESS projects processed through the CEC's AB 205 opt-in certification process. We therefore close the instant proceeding while instructing Staff to continue to support the permitting of BESS projects subject to the AB 205 opt-in certification process wherein the Commission may be a CEQA responsible agency.

#### **11. ROW Sharing Between Incumbent and Non-Incumbent Utilities**

Below we consider Cal Advocates' ROW sharing proposal and related comments. As discussed, we do not adopt the proposal.

CAISO uses a competitive bid solicitation process to select a project sponsor for certain projects approved in CAISO's TPP. Access to ROW to site is a selection factor in the CAISO's solicitation process. While incumbent utilities, such as California's large IOUs, own and maintain transmission infrastructure in existing ROWs, non-incumbent utilities cannot leverage existing ROW agreements to the same extent. In the CAISO's solicitation process, this creates a disadvantage for non-incumbent utilities.

To create a streamlined, efficient, and cost-effective process, Cal Advocates proposes that the Commission amend GO 131-D rules to require ROW sharing

between non-incumbent and incumbent electric utilities.<sup>236</sup> We now review Cal Advocates' proposal.

Cal Advocates supports a ROW sharing process because it would enable non-incumbent electric utilities to: (1) build on already-permitted land; (2) use already-constructed assets; and (3) locate construction on land parcels that have already undergone some form of environmental review. Further, Cal Advocates contends that ROW sharing would be consistent with the State's long standing Garamendi Principles outlined in SB 2431 (Garamendi, Ch.1457, Stats. 1988), which encourages the use of existing ROWs.<sup>237</sup> Cal Advocates highlights that IOUs use ratepayer funds to obtain ROWs and related assets.

To structure this process, Cal Advocates proposes that joint use agreements, such as arrangements between telecommunications providers and electrical utilities, should be used to develop ROW sharing agreements. In support of this approach, Cal Advocates cites Pub. Util. Code Section 767 which states that the Commission may order a public utility to allow another public utility to use its ROW or facilities and prescribe reasonable compensation and

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<sup>236</sup> Cal Advocates Opening Comments on the Administrative Law Judges' Ruing Inviting Comment on Phase 2 Issues at 16.

<sup>237</sup> SB 2431 (Garamendi, 1988) enacted state transmission siting policies, known as the Garamendi Principles, which (1) encourage the use of existing rights-of-way by upgrading existing transmission facilities where technically and economically justifiable; (2) when construction of new transmission lines is required, encourage expansion of existing rights-of-way, when technically and economically feasible; (3) provide for the creation of new rights-of-way when justified by environmental, technical, or economic reasons as determined by the appropriate licensing agency; and (4) where there is a need to construct additional transmission capacity, seek agreement among all interested utilities on the efficient use of that capacity.

terms and conditions for joint use, when required by the public convenience and necessity.<sup>238</sup>

Cal Advocates asserts that its ROW sharing proposal would not pose a property takings or forfeiture issue pursuant to the Fifth Amendment due to the provisions of Pub. Util. Code Section 762, which states that the incumbent and non-incumbent utility will agree on the division of costs prior to when the ROW is shared. Cal Advocates states that if an agreement cannot be reached, the Commission will decide what proportion of costs should be allocated to each utility in the ROW sharing arrangement.<sup>239</sup>

Of note, ROW sharing by incumbent public utilities may be subject to Pub. Util. Code Section 851 or, if applicable, GO 173. Pursuant to Pub. Util. Code Section 851, prior to entering a ROW sharing agreement, a public utility may be required to secure a Commission order or file an advice letter to secure authorization.

Staff Proposal Section 3.6, Proposal 1 recommends consideration of Cal Advocates' ROW sharing proposal. To implement Cal Advocates' proposal, Staff suggests the addition of Section IX.D to GO 131-E wherein incumbent and non-incumbent utilities would be required to negotiate a joint use agreement for ROW sharing based on reasonable terms and conditions. Further, incumbent and non-incumbent utilities engaged in a ROW sharing agreement would be required to sign an agreement that reasonably compensates incumbent utilities.

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<sup>238</sup> Pub. Util. Code Section 767

<sup>239</sup> Cal Advocates Opening Comments on the ALJ's Ruling Inviting Comment on Phase 2 Issues at 19-20.



Section IX.D would also specify procedures for non-incumbent electric utilities to initiate ROW sharing when access to an incumbent electric utility's ROW is needed. If the incumbent and non-incumbent utilities cannot reach an agreement, Section IX.D would set rules for the Commission to issue an order that determines both reasonable terms conditions and reasonable compensation for ROW sharing.<sup>240</sup>

Cal Advocates maintains support of their ROW sharing proposal. Transmission Owners and CBD request further consideration of Cal Advocates' proposal in a future or separate proceeding. Transmission Owners point to the need to discuss complex issues including apportionment of costs and liability between incumbent and non-incumbent utilities and potential reliability impacts.<sup>241</sup> CBD suggests that public interest in promoting competition for siting transmission projects and environmental impacts associated with ROW sharing warrants additional review.<sup>242</sup>

LSPGC, ACP, RCRC, and CFBF support further consideration of the Cal Advocates proposal but raise some concerns and suggest limited modifications. LSPGC suggests five modifications that include (1) redefining "non-incumbent utility" to include parties on a CAISO Approved Project Sponsor list that become utilities upon receipt of a CPCN or PTC, (2) adding a "ratepayer-funded right-of-way" that includes ROWs, easements, leases, licenses, and deed ownership, and

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<sup>240</sup> Staff Proposal at 67-68 provides a full description.

<sup>241</sup> Horizon West Transmission, LLC, Trans Bay Cable LLC, and GridLiance West LLC Opening Comments on Staff Proposal at 20.

<sup>242</sup> CBD Opening Comments on Staff Proposal at 29.

other forms of utility property ownership, (3) requiring utilities to develop pro forma ROW access or joint use agreements, (4) clarifying that CAISO can reduce its reliance on “access to ROW” as a factor in competitive solicitation processes to select transmission projects, and (5) removing Staff’s proposal that a second hearing is needed if incumbent and non-incumbent utilities cannot enter into a joint use agreement. ACP suggests that the Commission should not consider ROW sharing in a pilot. Instead, ACP recommends that the Commission should coordinate with the CAISO to identify proposed projects that may require a ROW sharing agreement.<sup>243</sup> RCRC is concerned about how to maintain responsibility for easement areas and protect landowner property in a ROW sharing agreement. However, RCRC indicates that further comment on this topic will be deferred until an appropriate time or when the appropriate regulatory venue is determined.<sup>244</sup> CFBF suggests that significant unresolved questions regarding ROW access and the potential impacts to landowners associated with projects in shared ROWs warrants further evaluation.<sup>245</sup>

PG&E, SCE, SDG&E, and CUE oppose the Cal Advocates proposal. PG&E states that an imposed requirement for ROW sharing with non-incumbent utilities is equivalent to a mandatory transfer of property, would circumvent local area jurisdiction and is infeasible because utility ROWs may not be able to accommodate non-incumbent utility infrastructure.<sup>246</sup> According to SCE, Cal

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<sup>243</sup> ACP Opening Comments on Staff Proposal at 11.

<sup>244</sup> RCRC Opening Comments on Staff Proposal at 12.

<sup>245</sup> CFBF Opening Comments on Staff Proposal at 12.

<sup>246</sup> PG&E Opening Comments on Staff Proposal at 18-19.

Advocates' proposal ignores fundamental legal principles underlying longstanding easement and franchise rights, violates Constitutional principles regarding private property rights and the sanctity of contracts, is not authorized by the Pub. Util. Code; and would subject non-incumbent utilities to ejection if the property they occupied were needed by a priority-rights holder.<sup>247</sup> SDG&E asserts that Cal Advocates' proposal would ignore a utility's franchise rights, does not mention that easement contractual agreements require consent from local governments before any proposed land use changes to construct non-incumbent utility projects, and should correctly interpret Pub. Util. Code Section 767 such that only joint use of existing infrastructure is permissible, not ROW sharing agreements.<sup>248</sup> CUE argues that implementing a process for ROW sharing would require utilities to acquire access to additional ROWs to site their project which would ultimately increase ratepayer costs.<sup>249</sup>

We acknowledge that Cal Advocates' ROW sharing proposal may provide benefits to ratepayers, communities, and the environment, while weighing the strong concerns raised by PG&E, SCE, and SDG&E. We also note that the record is insufficient on this issue. Accordingly, we reject this proposal.

## **12. Adoption of GO 131-E**

This decision adopts GO 131-E, attached to this decision as Attachment B, which reflects all of the modifications discussed and adopted in the previous Sections of this decision.

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<sup>247</sup> SCE Opening Comments on Staff Proposal at 39.

<sup>248</sup> SDG&E Opening Comments on Staff Proposal at 54-57.

<sup>249</sup> CUE Opening Comments on Staff Proposal at 4.

### 13. Comments on Proposed Decision

The proposed decision of Commissioner Douglas in this matter was mailed to the parties in accordance with Section 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure.

On January 16, 2025, the Acton Town Council, Anza-Borrego Foundation, Cal Advocates, CAISO, CBD, CEERT, CUE, DOW, EDF, IEP, LSA, LSPGC, PG&E, SCE, and SDG&E filed opening comments, and CFBF and PCF filed joint opening comments. On January 21, 2024, ACP, the Acton Town Council, Cal Advocates, CEERT, CUE, DOW, EDF, IEP, LSPGC, PG&E, RCRC, SCE, and SDG&E filed reply comments, and PacifiCorp, Liberty Utilities, LLC (CalPeco Electric), and Bear Valley Electric Service, Inc. filed joint reply comments. We address those comments below.

*Applicant-prepared draft versions of CEQA documents & CAISO findings of project need:*

A broad range of parties generally support the proposed decision's direction (1) authorizing permit applicants to submit applicant-prepared draft versions of CEQA documents to Energy Division staff, in lieu of the current requirement to submit a PEA, and (2) establishing a rebuttable presumption in favor of CAISO governing board findings of project need per AB 1373 and providing that project alternatives in a draft EIR may be limited to alternative routes or locations for the relevant CAISO-approved project and the "no action" alternative.

*Pre-filing consultation:*

Parties also generally support establishing the requirement for applicants to initiate pre-filing consultation with Energy Division staff six months prior to filing a CPCN or PTC application. While LSPGC suggests shortening the notice requirement from 12 months to six months prior to application filing, the 12-month noticing requirement is necessary to ensure that Energy Division staff will have adequate time to select a CEQA consultant and execute a contract before the applicant provides the application materials for pre-filing review.<sup>250</sup> Additionally, the proposed GO 131-E, attached to this decision, already provides flexibility for Energy Division staff to authorize a shorter period in writing, as needed.

CEQA review timeline and pilot:

CEERT and LSA reiterate that the Commission must adhere to a 270-day deadline to complete CEQA reviews and issue CEQA documents.<sup>251</sup> EDF, IEP, LSPGC, PG&E, SCE, and SDG&E recommend that the Commission specify in GO 131-E that it “shall” meet the existing CEQA review deadlines rather than committing to “strive to” meet those deadlines.<sup>252</sup>

CEERT argues that establishing a pilot to track project timeframes and evaluate criteria to accelerate CEQA review is a conciliatory and limited measure

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<sup>250</sup> LSGPC Opening Comments on Proposed Decision at 4.

<sup>251</sup> CEERT Opening Comments on Proposed Decision at 4.

<sup>252</sup> EDF Opening Comments on Proposed Decision at 4; IEP Opening Comments on Proposed Decision at 2; LSPGC Opening Comments on Proposed Decision at 4; PG&E Opening Comments on Proposed Decision at 1; SCE Opening Comments on Proposed Decision at 23; and SDG&E Opening Comments on Proposed Decision at 3.

that sidesteps the adoption of firm deadlines to complete CEQA reviews.<sup>253</sup>

Conversely, CAISO supports the Commission's development of a pilot program and encourages the Commission's adoption of best practices.<sup>254</sup> EDF suggests that parties should be engaged in the pilot process to ensure transparency.<sup>255</sup>

As discussed in Section 5.3.2, the Commission must comply with CEQA and must ensure a thorough review of the record in each CPCN or PTC proceeding for decision-makers and stakeholders to deliberate on reasonable project alternatives during CEQA reviews. On this point, language in Section XIII in GO 131-E will be clarified to affirm that the Commission is subject to the timeframes and deadlines set forth in the CEQA statute and CEQA Guidelines, including those that set forth timelines for review and issuance of CEQA documents, and those that provide for additional time as needed to comply with CEQA mandates.

Finally, to continue to examine how the Commission's CEQA review process for electric transmission projects can be streamlined and accelerated, the pilot program will be established and administered by Energy Division staff for the Commission to identify and implement lessons learned from the pilot.

Definitions:

The Acton Town Council supports the decision's definitions of the terms "equivalent facilities or structures", "modification", and "accessories".<sup>256</sup> CFBF

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<sup>253</sup> CEERT Opening Comments on Proposed Decision at 6.

<sup>254</sup> CAISO Opening Comments on Proposed Decision at 3-4.

<sup>255</sup> EDF Opening Comments on Proposed Decision at 6.

<sup>256</sup> Acton Town Council Opening Comments on Proposed Decision at 8.

and EDF support the definitions of extension”, “expansion”, “upgrade”, and “modification”.<sup>257</sup>

PG&E, SCE, and SDG&E recommend that the definition of “extension” should only consider extensions within existing transmission easements, rights-of-way, or franchise agreements, that the term “towers” should be changed to “structures” in the definition of “expansion”, and that the clause “without extending or expanding the physical footprint of the facility” should be deleted from the definition of modification.<sup>258</sup>

LSPGC, PG&E, SCE, and SDG&E propose edits to GO 131-E that they assert would ensure the permit-exempt status quo is retained for internal substation projects.<sup>259</sup> PG&E contends that the proposed decision’s treatment of this issue would require permitting for routine, minor projects including maintenance work entirely within or on existing substations or poles, small pole replacement projects, and minor distribution substation work.

Upon review, we are not persuaded and therefore reject the proposal by PG&E, SCE, and SDG&E to change the term “towers” to “structures” in the definition of “expansion” as the term “structures” is vague and would be subject to broad interpretation. As for the proposed expansion of the load carrying capacity of existing “structures” by PG&E, SCE, and SDG&E, such scenarios

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<sup>257</sup> CFBF Opening Comments on Proposed Decision at 5; and EDF Opening Comments on Proposed Decision at 3.

<sup>258</sup> SCE Opening Comments on Proposed Decision at B-3; and PG&E Opening Comments on Proposed Decision, Attachment B at 2.

<sup>259</sup> PG&E Opening Comments on Proposed Decision at 12; and SCE Opening Comments on Proposed Decision at 6.

could include substations or other transmission equipment that are not within existing transmission easements, rights-of-way, or franchise agreements; and that could open the potential for such “structures” to be exempted from the CPCN process. As such, we decline to adopt such a modification to the definition of proposed expansion that includes the term “structures.”

PTC exemptions:

PG&E, SCE, and SDG&E generally support the decision’s modification of GO 131-D PTC exemptions “f” and “g” (which would be GO 131-E PTC exemptions “e” and “f”, respectively), but propose that in GO 131-E PTC exemption “g”, the words “transmission or” should be added before the word “power line” at the end of the second clause as follows: “or power line facilities, substations, or switchyards in an existing right- of-way (ROW), fee-owned property, or other property on which a public utility has a legal right to operate existing transmission or power line facilities, substations, or switchyards”.

SCE and SDG&E assert that GO 131-E Section III.B.3 should be revised to clarify that the possibility of impact to an environmental resource of hazardous or critical concern would not preclude qualification for GO 131-E PTC exemption “e”.<sup>260</sup>

Upon review, Section III.B.3 is clarified such that exemption “e” would not be subject to the exception in Section III.B.3 because the project would have already gone through full environmental review. In addition, the words “transmission or” are added before the word “power line” at the end of the

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<sup>260</sup> SCE Opening Comments on Proposed Decision at 9.



second clause of PTC exemption “g” of GO 131-D (which would be GO 131-E exemption "f") so that this exemption also applies to proposed power line, substation, and switchyard projects located on property on which a public utility has a legal right to operate existing transmission lines.

Several parties, including PG&E, SCE, SDG&E, LSPGC, LSA, CUE, and CASMU are concerned that existing permit exemptions for minor substation modification or expansion projects would be removed with proposed Section III.C.1.c of GO 131-E. PG&E, SCE, SDG&E, LSPGC, and CASMU propose to revise Section III.C.1.c of GO 131-E to enable minor substation expansions to also proceed without the need for a PTC or notification via advice letter. Parties refer to a clause in existing Section III.B of GO 131-D that states that “An upgraded substation is one in which there is an increase in substation land area beyond the existing utility-owned property...”. As a result, the text of Section III.C.1.c and III.C.1.d has been modified to maintain this existing language. Furthermore, minor substation expansions could qualify for multiple PTC exemptions under Sections III.B.2.e., f., g., and h.

Reporting requirements:

PG&E, SCE, SDG&E, and CASMU point to the time-intensive process that is required to report data and information related to non-FERC-jurisdictional projects.<sup>261</sup> FERC-jurisdictional projects that are exempt from Commission permits are reported in the TPR data sets provided by the three major IOUs to the Commission. Additionally, Commission Staff have the ability to issue data

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<sup>261</sup> PG&E Opening Comments on Proposed Decision at 11; and SCE Opening Comments on Proposed Decision at 10.

requests to any public utility at any time regarding any of their projects. PG&E and SDG&E also express concerns that proposed new language in Section IV of GO 131-E could imply that reporting would be required for distribution facilities (i.e., with voltages less than 50 kV).

Accordingly, we modify Section IV in GO 131-E to only require reporting of transmission, power line, substation, and/or switchyard facility projects with high side voltage exceeding 50 kV for which a CPCN or PTC application or advice letter has been filed or is expected to be filed and that had capital expenditures over \$1 million in the prior five years or will have capital expenditures over \$1 million in the next four years.

Cal Advocates and EDF reiterate their request to make annual and quarterly reports available to the public. In acknowledgement of the value of public disclosure to ensure transparent planning and permitting of these critical public infrastructure projects, we direct Staff to coordinate with the reporting utilities to make these reports available to the public.

CAISO recommends requiring additional information regarding dollar amounts intended to be added to rate base as well as the status of approval of FERC incentives for projects. This information has been added to the reporting requirements in GO 131-E Section IV and Appendix A.

*Tribal Governments:*

We modify Section VII.A.2.g and Section VII.B.2.d in GO 131-E to require CPCN and PTC applicants to include Tribal governments among the contacted agencies listed in their permit applications instead of treating notice to the Native American Heritage Commission (NAHC) as notice on Tribal governments.

Other matters:

We have carefully reviewed and considered all parties' comments and made revisions and clarifications to the proposed decision, where warranted, including corrections of inadvertent clerical errors. All comments not specifically addressed in this decision and/or by revisions to the proposed decision have been considered but are found unpersuasive and do not warrant further modifications to the proposed decision.

**14. Assignment of Proceeding**

Karen Douglas is the assigned Commissioner and Rajan Mutialu and Zhen Zhang are the assigned Administrative Law Judges in this proceeding.

**Findings of Fact**

1. GO 131-D is currently in effect and reflects the Commission's rules for the planning and construction of electric generation resources; transmission, power, or distribution lines; and electric substations located in California while setting forth the Commission's process that aligns with the environmental review process set out in CEQA.

2. SB 529 added Section 564 to the Pub. Util. Code and required amendments to GO 131-D 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.

3. SB 529 modified Section 1001(b) of Pub. Util. Code 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.

4. On May 23, 2023, the Commission issued the instant OIR to update and clarify GO 131-D pursuant to SB 529 and to make other necessary clarifications and updates to the GO.

5. On September 29, 2023, SCE, PG&E, and SDG&E filed a Joint Motion for Adoption of Settlement Agreement on behalf of some of the parties to this proceeding (Settling Parties) and proposed revisions to GO 131-D that relate to:

- (a) SB 529 implementation;
- (b) applicant-prepared draft CEQA documents;
- (c) recognition of CAISO transmission planning findings;
- (d) Commission CEQA process deadlines;
- (e) protest filing, processing, and disposition procedures;
- (f) clarifications of GO 131-D, Section III.B.1.g, Permit to Construct (PTC) exemption language;
- (g) miscellaneous updates and general references; and
- (h) implementation of new legislation, including AB 1373.

6. On October 7, 2023, AB 1373 modified Section 1001.1 of Pub. Util. Code to read as follows:

In a proceeding evaluating the issuance of a certificate of public convenience and necessity for a proposed transmission project, the commission shall establish a rebuttable presumption with regard to need for the proposed transmission project in favor of an

Independent System Operator governing board-approved need evaluation if all of the following are satisfied:

- (a) The Independent System Operator governing board has made explicit findings regarding the need for the proposed transmission project and has determined that the proposed project is the most cost-effective transmission solution.
- (b) The Independent System Operator is a party to the proceeding.
- (c) The Independent System Operator governing board-approved need evaluation is submitted to the commission within sufficient time to be included within the scope of the proceeding.
- (d) There has been no substantial change to the scope, estimated cost, or timeline of the proposed transmission project as approved by the Independent System Operator governing board.

7. On December 14, 2023, the Commission issued D.23-12-035 (Phase 1 Decision) which (a) adopted several modifications to GO 131-D to align its provisions with SB 529 requirements, (b) made a few updates to outdated references in it, and (c) noted that issues addressed in the Settlement Agreement were outside of the Phase 1 scope and that the Settlement Agreement therefore would be considered during Phase 2.

8. From December 18, 2023, parties were afforded ample opportunities to file comments on Phase 2 issues and the Settlement Agreement, including various definitions of terms in GO 131-D and Pub. Util. Code Sections 564 and 1001(b); and the parties filed comments on those issues.

9. On May 17, 2024, the assigned ALJ issued a ruling with the Staff Proposal on Phase 2 issues, directed the parties to file comments and noticed a related Staff workshop to be held on June 3, 2024; and the workshop was held and the parties filed comments.

10. On September 20, 2024, AB 551 amended Sections 311 and 1731 of Pub. Util. Code to prohibit a cause of action arising out of a Commission Executive Director disposition of a protest to a notice of proposed project deemed to be PTC exempt from accruing in any court to any entity or person unless the entity or person has filed a rehearing application at the Commission within 10 days after disposition issuance. AB 511 also requires the Commission to issue its decision, order on the rehearing application within 90 days after the filing of that application, and provides authority for the Commission to amend the PEA Guidelines via resolution.

11. On September 27, 2024, AB 2292 repealed Section 1002.3 of the Pub. Util. Code and repealed the provision requiring that the Commission consider cost-effective alternatives that meet the need for an efficient, reliable, and affordable supply of electricity, including demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation, as defined, and other demand reduction resources when considering a CPCN application for a proposed electric transmission facility.

12. Rule 2.4 of the Commission Rules establishes Commission procedure for project applicants to comply with CEQA and CEQA Guidelines, and requires permit applications for projects that are not statutorily or categorically exempt

from CEQA to include a PEA, prepared in accordance with the Commission's PEA Guidelines.

13. A specific type of CEQA document (*e.g.*, ND, MND, or EIR) is not necessarily used to review and approve a CPCN or PTC application. Rather, the appropriate level of CEQA review is determined by each project's details and impacts not by the permit type.

14. Historically, CPCN applications tended to involve larger and higher-voltage projects with cross jurisdictional boundaries and impacts to more resource areas; accordingly, they tended to carry a greater potential for significant environmental impacts and were more likely to result in preparation of an EIR.

15. Historically, PTC applications tended to involve lower-voltage projects that were more limited in scope and impacts; thus, PTC applications often resulted in a mitigated negative declaration or a negative declaration. However, depending on factors such as environmental siting, initial evaluation of potential impacts, and level of public controversy, some projects that qualified for a PTC still required EIRs.

16. The Commission reviews CPCN and PTC applications under two parallel but largely bifurcated processes: (a) an environmental review pursuant to CEQA, and (b) a 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.

17. Under the Commission's current project approval practices and process, the Commission and permit applicants engage in a multi-step process to evaluate

proposed projects and adopt or certify the appropriate CEQA documents, culminating in the issuance of a CPCN or PTC. This process can often be protracted.

18. Projects involving new technologies, including BESS, have added another layer of challenge and complexity to this current project approval practices and process.

19. Staff Proposal Section 3.7, Proposal 1, Option 3, and related GO 131-D revisions to be reflected in GO 131-E, as modified below, are reasonable approaches to accelerate the processing time for CPCNs and PTC applications:

- (a) to revise the GO, as required in Staff Proposal Section 3.7, Staff Proposal 1, Option 3, to require utilities to initiate pre-filing consultation at least six months prior to filing a CPCN or PTC application, but allow utilities to initiate pre-consultation at a later date if authorized by Staff in writing.
- (b) to modify Staff Proposal Section 3.7, Proposal 1, Option 3, by adopting revisions in Section VI and Section VII in GO 131-E to update a revised list of permissible CEQA document types so that applicants may prepare and submit a draft version of an initial study, ND, MND, EIR, addendum, or analysis of the applicability of an exemption from CEQA in their applications in lieu of a PEA (proposed by PG&E, SCE, SDG&E, LSPGC, and Transmission Owners);
- (c) to insert “any required” before “issue-specific technical studies” in Section VII.C.1.a (proposed by PG&E, SCE, and SDG&E); and
- (d) to insert language in Section VII.C.1.a that identifies Staff and other California agencies, as applicable, as the entities



responsible for determining which technical studies are “required” for a particular project.

20. Staff Proposal Section 3.7, Proposal 2 to consolidate EMF application requirements and related GO 131-D revisions to be reflected in GO 131-E are reasonable.

21. Staff Proposal Section 3.7, Proposal 3 regarding Rule 2.4 and the PEA Guidelines (setting requirements for utilities to notice and file a CPCN or PTC application not less than 12 months before a Commission decision is required and to initiate pre-filing consultation at least six months prior to filing a CPCN or PTC application, or sooner b) and related GO 131-D revisions to be reflected in GO 131-E are reasonable.

22. In furtherance of the efforts to accelerate the Commission’s CEQA review process, Staff Proposal Section 3.8, Proposal 1 and related GO 131-D revisions to be reflected in GO 131-E (modifying GO 131-D to clarify that the Commission is subject to the timeframes and deadlines set forth in CEQA and the CEQA Guidelines) are reasonable.

23. To further examine ways to accelerate the Commission’s CEQA review process, Staff Proposal Section 3.8, Proposal 2 (to formalize existing CEQA processes and practices and to establish a pilot program to be administered by Staff, to identify at least two projects where an MND may be completed within 270 days of deeming an application complete, and at least two projects where an EIR may be completed within 455 days of an deeming an application complete) would not involve any GO revision and is reasonable.

24. To comply with AB 1373 and to preserve the Commission's role as lead agency entrusted with the responsibility to adopt MNDs and NDs and certify EIRs that avoid or mitigate significant environmental impacts associated with proposed projects, revisions of GO 131-D to add new sections, to be reflected in GO 131-E, as proposed by Staff provisions as follows, are reasonable:

- As Section VII.C.2.a of GO 131-E that CAISO objectives and purpose for a project approved in the CAISO Transmission Plan shall form the basis of the statement of objectives in a Commission CEQA document;
- As Section VII.C.2.b of GO 131-E that incorporates AB 1373 provisions that the Commission shall establish rebuttable presumption in favor of the CAISO need evaluation when evaluating the issuance of a CPCN for a proposed transmission project, given that the project meets certain criteria specified in Public Utilities Code Section 1001.1.
- As Section VII.C.2.c of GO 131-E that the range of reasonable alternatives to the proposed project in an initial draft EIR circulated for public comment may be limited to alternative routes or locations for construction of the relevant CAISO Transmission Plan-approved electric project and the "no action" alternative.

25. It is timely and necessary to update and clarify various terms, definitions and exemptions referenced in GO 131-D, as discussed and addressed in this decision to be adopted in GO 131-E.

26. GO 131-D currently requires utilities to submit reports on forecasts of planned transmission lines, power lines, and substations, and transmission-related financial information to Staff and to furnish copies to Staff of reports on utility loads and resources to the CEC. Amendments to these forecasting

requirements as reflected in GO 131-E, Section IV, and discussed in Section 7 of this decision are reasonable.

27. Staff proposals on certain financial reporting requirements which amend the list of financial information that must be reported by electric public utilities to the Commission, as modified, to be reflected in GO 131-E, are reasonable.

28. GO 131-D, Section IV should be deleted because there is no indication that GO 131-D, Section IV, reports are received or used by Commission's Staff that oversees matters related to CEQA, FERC, Electric Planning, and Market Design beyond existing coordination with the CEC, and Appendix B, Section IV of GO 131-D separately specifies that CPCN applications for electric generating facilities must include relevant load and resource data.

29. Consistent with GO 96-B, an advice letter takes effect under the disposition letter pending Commission review; accordingly, consistent updates should be made in GO 131-E.

30. GO 131-D does not currently include specific rules that govern the permitting of BESS projects, which are subject to rules in GO 131-D, Section XIV, pertaining to electric facilities.

31. Historically, local jurisdictions have served as lead agencies tasked with BESS permitting.

32. In 2022, AB 205 established a new process that authorizes the CEC, as a lead agency, to certify certain renewable generation resources, including BESS projects with capacities at or above 200 MWh. AB 205 also includes a provision that offers project applicants the choice to file an "opt in" application for streamlined certification, of these generation resources (opt-in certification) with

the CEC, until June 30, 2029. In the opt-in certification process, the CEC has exclusive authority to certify such projects pursuant to AB 205.

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

34. The record is insufficient on Cal Advocates' ROW sharing proposal.

### **Conclusions of Law**

1. GO 131-E, attached to this decision as Attachment B, should be adopted and reflects all redlined revisions to GO 131-D, as reflected in Attachment A and as discussed in this decision.

2. All redlined revisions to GO 131-D, including all updates and clarifications to various terms, definitions and exemptions, as discussed and addressed in this decision, as reflected in Attachment A, and as discussed in this decision, should be adopted.

3. Once adopted, GO 131-E, Attachment B to this decision, should replace and supersede GO 131-D.

4. Staff Proposal Section 3.7, Proposal 1, Option 3, and related GO 131-D revisions, as reflected in Attachment B to this decision, GO 131-E, with below modifications, should be adopted:

- (a) to revise the GO, as required in Staff Proposal 1, Option 3, to reduce the 12-month pre-filing requirement to six months and earlier if reasonably feasible and authorized by Staff in writing (proposed by PG&E, SCE, and SDG&E);

- (b) to modify Proposal 1, Option 3, by adopting to update a revised list of permissible CEQA document types so that applicants may prepare and submit a draft version of an initial study, ND, MND, EIR, addendum, or analysis of the applicability of an exemption from CEQA in their applications in lieu of a PEA (proposed by PG&E, SCE, SDG&E, LSPGC, and Transmission Owners);
- (c) to insert “any required” before “issue-specific technical studies” in Section VII.C.1.a (proposed by PG&E, SCE, and SDG&E); and
- (d) to insert language in Section VII.C.1.a that identifies Staff and other Commission agencies, as applicable, as the entities responsible for determining which technical studies are “required” for a particular project.

5. Staff Proposal Section 3.7, Proposal 2 to consolidate EMF application requirements and related GO 131-D revisions, as reflected in Attachment B to this decision, GO 131-E, should be adopted.

6. Staff Proposal Section 3.7, Proposal 3 (setting requirements for utilities to notice and file a CPCN or PTC application not less than 12-month before a Commission decision is required and to initiate pre-filing consultation at least 6 months prior to filing a CPCN or PTC application) and related GO 131-D revisions, as reflected in Attachment B to this decision, GO 131-E, should be adopted.

7. Staff Proposal Section 3.8, Proposal 1 and related GO 131-D revisions, as reflected in Attachment B to this decision (modifying GO 131-D Section XVI, which would be GO 131-E Section XIII, to clarify that the Commission is subject to the timeframes and deadlines set in CEQA and the CEQA Guidelines), should be adopted.

8. Staff Proposal Section 3.8, Proposal 2, which does not require GO revision to establish a pilot program to evaluate ways to accelerate existing CEQA processes, should be adopted. The pilot program will identify at least two projects where an MND may be completed within 270 days of deeming an application complete, and at least two projects where an EIR may be issued within 455 days of deeming an application complete. The pilot should:

- (a) be administered by Staff, consistent with the Staff Proposal and using the lists of other potential project selection criteria for the pilot, and metrics to review, track and report pilot success,
- (b) require the enrollment of at least one project each filed by PG&E, SCE, and SDG&E,
- (c) include a mixture of competitively and non-competitively bid projects, and
- (d) Instruct Staff to report on the results of this pilot review by compliance filing on December 1 of every even year starting with December 1 of 2026.

9. To comply with ABs 1373 and 2292 and to preserve the Commission's role as lead agency entrusted with the responsibility to issue CPCNs in compliance with CEQA, revisions of GO 131-D to add new sections, as reflected in Attachment B to this decision, GO 131-E, as proposed by Staff and as modified below, should be adopted:

- (a) Proposed Section VII.C.2.a of GO 131-E that CAISO objectives and purpose for a project approved in the CAISO Transmission Plan shall form the basis of statement of objectives in a Commission CEQA document;
- (b) Proposed Section VII.C.2.b of GO 131-E that incorporates AB 1373 provisions that the Commission shall establish

rebuttable presumption in favor of the CAISO need evaluation when evaluating the issuance of a CPCN for a proposed transmission project, given that the project meets certain criteria specified in Public Utilities Code Section 1001.1; and

- (c) Proposed Section VII.C.2.c of GO 131-E that the range of reasonable alternatives to the proposed project in an initial draft EIR circulated for public comment may be limited to alternative routes or locations for construction of the relevant CAISO Transmission Plan-approved electric project and the “no action” alternative.

10. Staff’s Proposal on certain financial reporting requirements and proposals to amend the list of financial information that must be reported by electric public utilities to the Commission, should be modified as reflected in Attachment B to this decision, GO 131-E, and be adopted.

11. The Commission’s direction that transmission forecasting reporting requirements to be provided by IOUs in annual reports and quarterly briefings as reflected in GO 131-E, should be adopted.

12. All revisions consistent with GO 96-B rules, should be made and adopted in GO 131-E.

13. Implementation of GO 131-E complies with the Commission’s Tribal Consultation Policy.

14. Reference to energy storage should not be included in the “extension” definition in GO 131-E, in Section I.F.2, and in the “upgrade” definition in Section I.H.5.

15. All proposals and revisions to GO 131-D not expressly adopted and otherwise reflected in the attached GO 131-E, Attachment B, should be rejected.

16. All rulings issued by the assigned Commissioner and ALJs should be affirmed.
17. All pending motions, not expressly ruled on to date should be denied.
18. Rulemaking 23-05-018 should be closed.

## O R D E R

### IT IS ORDERED that:

1. General Order 131-E, attached to this decision as Attachment B, is adopted.
2. All redlined revisions to General Order 131-D, as reflected in Attachment A, and as discussed in this decision, are adopted and reflected in Attachment B.
3. General Order 131-E, Attachment B to this decision, replaces and supersedes General Order 131-D.
4. A pilot program to evaluate the Commission's existing California Environmental Quality Act (CEQA) review process for electric transmission projects is established to be administered by the Commission's Energy Division CEQA Staff, to review at least two projects where a Mitigated Negative Declaration may be completed within 270 days of deeming an application complete, and at least two projects where an Environmental Impact Review may be issued within 455 days of deeming an application complete, as follows:
  - (a) be administered by Staff, consistent with the Staff Proposal and using the lists of potential project selection criteria and metrics to track and report findings,
  - (b) require the enrollment of at least one project each filed by Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company,



- (c) include a mixture of competitively and non-competitively bid projects, and
- (d) direct Staff to report on the results of this pilot program by compliance filing on December 1 of every even year starting with December 1 of 2026.

5. All proposals and proposed revisions to General Order 131-D not expressly adopted and otherwise reflected in the attached General Order 131-E, Attachment B to this decision, are rejected.

6. All rulings issued by the assigned Commissioner and Administrative Law Judges are affirmed.

7. All pending motions, not expressly ruled on to date, are denied.

8. Rulemaking 23-05-018 is closed.

This order is effective today.

Dated \_\_\_\_\_, at Sacramento, California

**ATTACHMENT A**

**ATTACHMENT B**