

**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  
(Filed May 18, 2023)

**REPLY COMMENTS OF THE INDEPENDENT ENERGY PRODUCERS  
ASSOCIATION ON PHASE 2 ISSUES**

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The *Administrative Law Judges’ Ruling Inviting Comment on Phase 2 Issues* (Ruling), dated December 18, 2023, invited parties to respond to a series of questions on issues to be resolved in Phase 2 of this proceeding. In these reply comments, the Independent Energy Producers Association (IEP) will offer its observations on some of the positions taken in parties’ opening comments.

**I. DEFINITIONS**

The Ruling’s first two questions concern definitions and the implications of those definitions.

The basic principle the Commission should follow in developing definitions of the terms used in Senate Bill (SB) 529 is to carry out the Legislature’s goal of expediting the Commission’s review of proposals for new transmission facilities by allowing more of these projects to qualify for the Permit to Construct (PTC) process, rather than requiring the lengthier process for obtaining a Certificate of Public Convenience and Necessity (CPCN). Public Utility Code section 564’s reference to “extension, expansion, upgrade, or other modification” to existing facilities was intended to be comprehensive, not restrictive. These terms should not be defined or viewed as discrete, isolated actions; rather, the Legislature was attempting to describe

a wide range of activities, with some overlap in the terms' meanings, as demonstrated by the addition of "or other modifications" as the last, comprehensive item on this list.

As a matter of statutory interpretation, as San Diego Gas & Electric Company (SDG&E) pointed out, "SB 529's terms are not ambiguous and must be given their plain meaning."<sup>1</sup> Most parties that proposed definitions referred to dictionary definitions to give everyday, common-sense meanings to these terms. IEP joins the Environmental Defense Fund (EDF) in urging the Commission "not to become too bogged down in considering the various [definitions], and instead take a straightforward approach that can be approved quickly."<sup>2</sup>

**A. "Existing Electrical Transmission Facilities"**

The first question asks for a definition of "existing electrical transmission facilities." While the plain meaning of this phrase seems clear, some parties attempt to load unwarranted or unnecessary restrictions onto this definition. For example, some parties propose that facilities must be in operation or in use, or even "commercially operational for at least five years."<sup>3</sup> The joint comments of the Center for Biological Diversity, the Protect Our Communities Foundation, and Clean Coalition (CBD *et al.*) propose that the facilities must have been permitted by the Commission,<sup>4</sup> a restriction that would exclude many indisputably "existing" transmission projects: the Commission did not issue permits to transmission facilities of less than 200 kV before General Order 131-D was adopted in 1994.<sup>5</sup>

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<sup>1</sup> SDG&E's comments, p. 2.

<sup>2</sup> EDF's comments, p. 5.

<sup>3</sup> Sierra Club's Comments, p. 2.

<sup>4</sup> CBD *et al.*'s comment, pp. 2-4.

<sup>5</sup> Decision 94-06-014.

The Commission should reject these attempts to unduly limit the application of SB 529. Decision (D.) 23-12-035 already determined that “SB 529 does not require an existing electrical transmission facility to be operational for SB 529 to apply.”<sup>6</sup> The Commission thoroughly explained the basis for this conclusion, and there is no need to reconsider that conclusion. D.23-12-035 likewise recognized that “an authorized facility does not necessarily equate to an existing facility,” because some existing projects might have been constructed before GO 131 required the Commission’s approval.

The one term that might need some clarification is “transmission.” GO 131-D defines “transmission line” as “a line designed to operate at or above 200 kilovolts (kV)” and a “power line” as “a line designed to operate between 50 and 200 kV.”<sup>7</sup> The Legislature, however, did not follow GO 131-D’s terminology, and referred instead to transmission “facilities.” In this context, references to “transmission” are best understood to mean the higher-voltage lines used for bulk power transfers from generation sources to load centers, as opposed to lower-voltage distribution lines that distribute power to local areas and customers. This common-sense definition is roughly aligned with the jurisdictional distinction between transmission lines that are subject to the Federal Power Act and are regulated by the Federal Energy Regulatory Commission (FERC), and distribution lines that are regulated by the Commission.

Because different utilities draw the line between transmission and distribution and differing voltage levels, there is not an agreed-on voltage that separates transmission and

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<sup>6</sup> D.23-12-035, p. 9.

<sup>7</sup> GO 131-D, § 1.

distribution facilities. GO 131-D’s definition of “distribution line” as a “line designed to operate under 50 kV” serves as a workable boundary between distribution and transmission voltages.<sup>8</sup>

With this clarification, the three questions posed by the Ruling may be quickly answered.

- Modification of a facility below 50 kV to 200 kV: A transmission facility designed for operation at 200 kV or more would require a CPCN under section III.A of the existing GO 131-D, and would be eligible for a PTC under SB 529.<sup>9</sup> A modification that increases the voltage rating of a substation to a high-side voltage exceeding 50 kV qualifies for the PTC process under section III.B and would not require the provisions of SB 529 to be eligible for a PTC.
- Modification of a facility between 50 kV and 200 kV to a 500 kV facility: Same answer as above.
- Application of the statute’s permitting processes to modifications of “transmission lines” as defined in GO 131-D: As mentioned above, “transmission facilities,” as used in the statute, should be understood in terms of the functional distinction between transmission lines and distribution lines. GO 131-D’s use of “distribution line” to refer to facilities of under 50 kV serves as a reasonable boundary between transmission and distribution facilities.

## **B. Other Definitions**

As noted above, SB 529’s reference to “extension, expansion, upgrade, or other modification” was intended to be comprehensive, not restrictive. Some parties stray too far from this goal by offering definitions that incorporate unnecessary and counterproductive limitations, as discussed in the following sections.

### **1. Extension**

The definition proposed by CBD *et al.* has at least three unnecessary restrictions.

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<sup>8</sup> GO 131-D, § I.

<sup>9</sup> Modification of a facility below 50 kV to a voltage less than 200 kV would already qualify to use the PTC process to seek the Commission’s approval.

First, the definition is limited to “policy-driven construction.” This limitation is based on the CAISO’s division of authorized transmission projects into policy-driven, reliability-driven, and economic-driven categories. CBD *et al.* defines “policy-driven construction” as “CAISO-adopted transmission projects that CAISO deems necessary to meet the state’s clean energy goals.”<sup>10</sup> However, there is no basis in the statute or otherwise to limit SB 529’s revisions to policy-driven projects. Reliability-driven projects are also necessary to support the electrification of the transportation and building industry segments, a key element of California’s drive toward a clean energy system. There is also no apparent reason to exclude economic projects that provide benefits by reducing congestion costs.

Second, the definition is limited to connections to a “service delivery point.” This restriction would exclude loop-ins to new substations that are needed to support reliability and improve grid efficiency.<sup>11</sup>

Third, the definition applies only to projects that do not have a “significant effect on the environment or rates.” The determination of a project’s effect on the environment is the purpose of the evaluation required by CEQA, which takes place **after** the application for a project is filed. Because transmission projects will almost always require an assessment of the project’s potentially significant effects on the environment, CBD *et al.*’s approach would require transmission project sponsors to guess whether a PTC or CPCN is required. Moreover, major transmission projects typically have high costs that will inevitably have a significant effect on rates. The CAISO, for example, projects that the transmission upgrades needed to meet 2045’s

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<sup>10</sup> CBD *et al.*’s comments, p. 11, fn.43.

<sup>11</sup> The definition offered jointly by Sierra Club and EDF that excludes extensions of lines that include an additional substation or transformer would also have the effect of disqualifying loop-ins. PG&E describes the need to include loop-ins within the definition of “extension.” PG&E’s comments, pp. 3-4.

clean energy goal will cost \$30.5 billion,<sup>12</sup> a cost that will be reflected in rates. But the Legislature, Governor, and the Commission have determined that the benefits of the transition to clean energy outweigh these projected costs. That sort of determination is precisely what Public Utilities Code section 451 requires of the Commission—a determination that rates are just and reasonable, not an assurance that the costs of providing safe and reliable service to customers will never have a significant effect on rates.

## **2. Expansion**

CBD *et al.*'s definition of “expansion,” like its definition of “extension,” includes the unnecessary restrictions limiting the effect of SB 529 to policy-driven projects and those without a significant effect on the environment or rates.

## **3. Modification**

CBD *et al.*'s definition of “modification,” like its definition of “extension,” includes the unnecessary restrictions limiting the effect of SB 529 to policy-driven projects and those without a significant effect on the environment or rates.

## **4. Upgrade**

Upgraded substations are already defined in GO 131-D as “one in which there is an increase in substation land area beyond the existing utility-owned property or an increase in the voltage rating of the substation above 50 kV.”<sup>13</sup> Upgraded substations with high-side voltages of 50 kV or more are already authorized to use the PTC process to seek the Commission’s approval. The definition offered by Acton Town Council directly contradicts this definition by proposing

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<sup>12</sup> CAISO, 20 Year Transmission Outlook, May 2022, p. 3.

<sup>13</sup> GO 13-D, § III.B.

to limit upgrades to changes that do not enlarge the developed footprint or increase the operating voltage of the equipment.<sup>14</sup>

## **5. Equivalent Facilities or Structures**

CBD *et al.*'s definition of "equivalent facilities or structures," like its definition of "extension," includes the unnecessary and unworkable restriction that equivalent facilities or structures are limited to those without a significant effect on the environment or rates. Again, the determination of whether equivalent facilities or structures have a significant effect on the environment will be made in the environmental review that will occur **after** an application for a PTC is filed.

## **II. SETTLEMENT**

IEP was a party to the "Settlement Agreement Regarding Phase 1 Revisions to General Order 131-D" filed with the Joint Motion for Adoption of Phase 1 Settlement Agreement on September 29, 2023. Like other settling parties, IEP continues to urge the Commission to approve the settlement as soon as possible. Some of the provisions in the settlement were already incorporated into GO 131-D by D.23-12-035, but the Commission should not let potential reiteration deter it from taking action to approve the settlement as quickly as possible.

At least some of the opposition to the settlement is based on an erroneous understanding of the environmental review. To be clear, the scope of the environmental review is identical whether a project is using the PTC or CPCN process. Section IX.A.1.h of GO 131-D, which requires a CPCN application to include a "PEA [Proponent's Environmental Assessment] or equivalent information on the environmental impact of the project in accordance with the provisions of CEQA" for CPCN applications, is identical (except for references to subdivisions)

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<sup>14</sup> Acton Town Council's comments, p. 14.

to Section IX.B.1.e, which prescribes the contents of PTC applications. In addition, the Energy Division’s “Guidelines for Energy Project Applications Requiring CEQA Compliance: Pre-filing and Proponent’s Environmental Assessments,”<sup>15</sup> makes no distinction between PTC and CPCN applications.

Sierra Club appears to fail to understand that CEQA compliance is required regardless of whether a PTC or CPCN is sought for a project. Sierra Club hypothesizes an implausible situation in which a utility receives a PTC for a 150 kV transmission line, then six months later proposes an increase in the project’s voltage to 500 kV. If a PTC is allowed for the higher voltage project, Sierra Club argues, “[s]uch an outcome would undermine California’s environmental review.”<sup>16</sup> Under this strained scenario, however, the same CEQA review would be required as would be the case if the higher-voltage project required a CPCN. Sierra Club refers to a need to avoid creating “any meaningful gaps in California’s environmental review process,”<sup>17</sup> but no such gaps exist: CEQA will apply regardless of whether a PTC or CPCN is the mechanism for the Commission’s review.

The settlement proposes to reduce an unnecessary duplication of the environmental review by providing project sponsors the option of preparing and submitting a draft CEQA document instead of a PEA. This revision would enable the Commission to begin the CEQA review for a project seeking a PTC or CPCN more quickly than under the current procedures. As EDF observed, “PEA’s are entirely redundant and they take roughly one year to prepare.”<sup>18</sup> The

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<sup>15</sup> Available at <https://www.cpuc.ca.gov/-/media/cpuc-website/files/legacyfiles/c/6442463239-ceqa-pre-filing-guidelines-pea-checklist-nov-2019.pdf>.

<sup>16</sup> Sierra Club’s comments, pp. 2-3.

<sup>17</sup> Sierra Club’s comments, p. 3.

<sup>18</sup> EDF’s comments, p. 11.

scope or detail of the CEQA review of the project would not be affected by the choice of a PEA or draft CEQA document. CEQA exemptions might apply, but those exemptions would exist whether or not the utility has a choice between a PEA and a draft CEQA document.

### **III. ADDITIONAL PROPOSALS**

The Public Advocates Office (Cal Advocates) presented two proposals in response to the Ruling's invitation. Other parties again raised the question whether GO 131-D should be extended to energy storage projects.

#### **A. Prioritizing and Expediting the Permitting of Transmission Projects**

Cal Advocates first proposes a way to prioritize and streamline policy-driven transmission projects. IEP agrees that the Commission's approval of transmission projects needs to be streamlined, and Cal Advocates has developed a thorough and detailed proposal. However, it's not clear why policy-driven projects should be singled out for expedited treatment. As mentioned above, reliability-driven projects are essential to support the electrification of the transportation and building industry segments, and economic-driven projects can help support the affordability of electric service. What's needed is an approach that speeds up the development, approval, and construction of all varieties of the transmission projects required to maintain reliable and affordable electric service while supporting California's transition to a clean electric system.

Some of the goals of Cal Advocates' proposal will be met by provisions of the settlement, if approved. Specifically, the settlement gives utilities the option of preparing and submitting a draft CEQA document rather than a PEA, which could reduce the approval time by about a year compared to existing procedures. The settlement also sets time limits on the environmental review process.

Cal Advocates' proposal will likely improve after it has been vetted by concerned parties. The proposal deserves further consideration. Any steps the Commission can take to speed up the approval of transmission projects should be pursued.

**B. Right-of-Way Sharing**

Cal Advocates' second proposal addresses the potential benefits of requiring utilities to share their existing rights-of-way with non-incumbent transmission utilities. Cal Advocates' proposal is particularly relevant in the context of the CAISO's competitive solicitations for regional transmission projects, where access to rights-of-way is a key selection factor that works to the disadvantage of non-incumbent transmission utilities.

Cal Advocates' proposal could result in cost savings for some significant transmission projects. This proposal deserves the Commission's further consideration.

**C. Expanding GO 131-D to Battery Energy Storage Facilities**

Several parties revive the proposal to expand the scope of GO 131-D to include battery energy storage facilities, in addition to the existing coverage of generation and transmission facilities. IEP emphasizes that the subjects of GO 131-D are "electric public utilities," not non-utility entities that develop electric facilities. For example, the requirement in section III.A for electrical public utilities to receive a CPCN before beginning construction of "any new electric generating plant having in aggregate a net capacity available at the busbar in excess of 50 megawatts" does not apply to the non-utility entities (many of whom are IEP members) who have developed the bulk of the state's new generation in this century and nearly all of the renewable resources needed to meet California's clean energy goals. Any expansion of GO 131-D to include energy storage facilities should likewise be limited to utility-owned storage facilities.

#### IV. CONCLUSION

IEP respectfully urges the Commission to give quick approval to the pending settlement in this proceeding and to take other steps to improve and streamline the process for approving projects to improve the transmission system. The Commission's interpretation of the statutes affected by SB 529 should respect and further the legislative goal of allowing use of the less-onerous and time-consuming PTC process for Commission review and approval of new transmission facilities. The state's clean energy goals will require significant investments in transmission in coming years, and the Commission should adjust its processes for reviewing and approving those projects to eliminate any unnecessary delay.

Date: February 26, 2024

*/s/ Jan Smutny-Jones*

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