

**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 THE PHASE 2 STAFF PROPOSAL**

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The Independent Energy Producers Association (IEP) respectfully offers its reply to the comments on the Energy Division’s “Staff Proposal for R.23-05-018 Phase 2 Updates to General Order 131-D” (Staff Proposal), as authorized by the *Administrative Law Judges’ Ruling Inviting Comment on Phase 2 Staff Proposal and Noticing Workshop* (Ruling), issued on May 17, 2024.

As IEP noted in its opening comments, the Commission should focus on revisions to General Order (GO) 131-D that will streamline the processes for approving applications for a Permit to Construct (PTC) or Certificate of Public Convenience and Necessity (CPCN) for the transmission and substation projects that are urgently needed to maintain the reliability of the grid and meet California’s climate goals. The bulk of IEP’s membership consists of the developers of independent generation and storage projects that are not directly subject to GO 131-D, but IEP’s members are nevertheless directly affected by the delays in the approval and construction of the transmission lines and substations needed to connect their projects to consumers. The time required to obtain the Commission’s approval of these projects undermines the clean energy and greenhouse gas (GHG) reduction goals the state has established. The deadlines to achieve those goals are rapidly approaching, and significant reform of the Commission’s processes for approving transmission and substation projects must begin now. As IEP stated in its opening comments, “business as usual is no longer acceptable.” The revisions

of GO 131-D under consideration could take an important step toward enlarging the electric sector's contribution to meeting the state's clean energy goals.

From that perspective, IEP offers the following replies to the comments on the Staff Proposal.

**I. ADOPT THE REVISIONS PROPOSED BY THE SETTLEMENT AGREEMENT**

IEP was one of the 18 settling parties that joined in negotiating the terms of the Settlement Agreement presented in the *Joint Motion for Adoption of Phase 1 Settlement Agreement* filed on September 29, 2023. IEP continues to support the Settlement Agreement's recommendations because the proposed revisions would result in a more efficient approval process for applications for a PTC or CPCN without compromising the Commission's responsibilities. Although IEP appreciates that Decision (D.) 23-05-018 adopted some of the revisions proposed in the Settlement Agreement, IEP joins other settling parties in urging the Commission to adopt the other revisions agreed to by the settling parties.

The 18 settling parties represent an unusually wide range of interests, including parties that are usually adverse to one another. In addition to the large and small investor-owned utilities (IOUs), the settling parties include trade associations, environmental groups, renewable power developers, independent transmission project developers, and others. This unusual combination of interests should alert the Commission that the revisions to GO 131-D that the representatives of these divergent interests agreed to deserve close attention and consideration. As several parties pointed out, the Staff Proposal seemed to view the Settlement Agreement as a product of the large IOUs, but that view does not reflect the actual composition of the settling parties.

The revisions proposed in the Settlement Agreement were focused on streamlining the Commission's approval process and environmental review. IEP continues to urge the Commission to adopt the remaining revisions proposed in the Settlement Agreement.

## **II. ADOPT PROVISIONS THAT BUILD ON THE CAISO'S TRANSMISSION PLANNING PROCESS**

Two proposals from the Settlement Agreement would help speed up the processing of PTC and CPCN applications.

The first incorporates the rebuttable presumption required by Assembly Bill (AB) 1373 into GO 131-D. That bill added section 1001.1 to the Public Utilities Code to create a rebuttable presumption that would require the Commission to accept the findings of the California Independent System Operator Corporation (CAISO) on a project's need in a CPCN proceeding if certain conditions are met, including a CAISO Board finding that the project is needed and that the project is the most cost-effective transmission solution.

The second proposal makes greater use of the analyses performed as part of the CAISO's Transmission Planning Process (TPP). In addition to the rebuttable presumption required by AB 1373, the Settlement Agreement proposes revisions that would (1) include CAISO's identification of the project's underlying purpose and benefits in the California Environmental Quality Act (CEQA) document's statement of objectives and any overriding considerations; (2) limit the range of reasonable alternatives considered in the draft CEQA document to (a) routing and siting options for the project identified as CAISO's electrical solution and (b) the "no project" alternative; and (3) create a rebuttable presumption that any analysis of cost-effective non-wires alternatives to the project will be limited to the alternatives in the Commission's base resource portfolio and the CAISO Transmission Plan.

The parties who oppose this proposal base their opposition on a belief that this proposal would limit the Commission’s ability to consider alternatives to the project, particularly alternatives like rooftop solar, community solar, and virtual power plants. These parties have a misconception of the CAISO’s process and the nature of their proposed alternatives. As San Diego Gas & Electric Company (SDG&E) explained:

CAISO’s FERC Tariff requires it to consider multiple transmission and non-wires alternatives to solve a system constraint. The CAISO Plan reflects CAISO’s analysis of alternatives, including which are feasible and cost-effective, and CAISO’s identification of the electrical solution that is both feasible and most cost-effective. . . . Limiting the range of reasonable alternatives to “no project” and routing and siting options for the CAISO approved project avoids duplicating CAISO’s analysis of electrical solutions and determination that other alternatives do not feasibly attain the project’s basic objectives.<sup>1</sup>

The CAISO supports the proposal because it focuses the CEQA review on routing and siting alternatives that are able to address the CAISO’s electrical solution, which is arrived at after an analysis of system alternatives.<sup>2</sup>

IEP agrees that this proposal will help streamline the review of the project at the Commission. There is no good reason to study alternatives in the CEQA review that are unable to provide the electrical solution to an identified grid problem.

### **III. BATTERY ENERGY STORAGE SYSTEMS ADDED TO AN EXISTING SUBSTATION OR SUBSTATION EXPANSION REQUIRE A CPCN**

In opening comments, IEP and other parties expressed a concern about the proposed treatment of battery energy storage systems (BESS). The Staff Proposal included a definition of “upgrade” to include “[a]dding battery energy storage systems to an existing substation, or

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<sup>1</sup> SDG&E’s Comments, pp. 9-10 (footnotes omitted).

<sup>2</sup> CAISO’s Comments, pp. 2-3.

expanding an existing substation to include battery energy storage systems.” If the BESS addition is considered a substation upgrade, it would be possible for extremely large utility-owned BESS to obtain a PTC after undergoing only environmental review. This provision could give utility-owned projects a significant competitive advantage over independent storage projects that lack the ability to be part of a utility substation upgrade.

IEP recommended that at a minimum the Commission should set a size limit so that BESS projects above a specified threshold would be required to obtain a CPCN. Since BESS can function as supply resources, and utility-owned generation supply resources of more than 50 MW are required to obtain a CPCN (Section III.A), the Commission should consider applying the same 50 MW limit to utility-owned BESS added to substations.

#### **IV. RETAIN THE EXEMPTION FOR UPGRADED SUBSTATIONS**

The Staff Proposal would delete an existing exemption for upgraded substations and add provisions that would require utilities to obtain PTCs or file advice letters for substation projects that are not currently required to obtain the Commission’s approval.<sup>3</sup>

It appears that the Staff Proposal would have the opposite effect from what SB 529 intended and would require the utilities to make—and the Commission to process—hundreds of additional filings each year. At a time when faster processing of transmission and substation applications is essential, this proposal would create a procedural logjam at the Commission for these projects.<sup>4</sup>

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<sup>3</sup> SDG&E’s Comments, pp. 12-14.

<sup>4</sup> However, note that some BESS projects that meet the definition of upgraded substation should not be exempted.

**V. REJECT PROPOSALS THAT WOULD MAKE THE REVIEW PROCESS SLOWER AND MORE CUMBERSOME**

In addition to the proposals identified above that would slow down the Commission's processing of transmission line and substation projects, other proposals that run counter to SB 529's efforts to speed up the approval process were presented in the opening comments.

For example, the joint comments of the Center for Biological Diversity (CBD) and the Protect Our Communities Foundation (POC), echoed in the comments of Clean Coalition, seem to misunderstand the requirements of a PTC or CPCN. CBD/POC and Clean Coalition propose to add, to the definitions proposed for Section I, the phrase "does not have a significant effect on the environment or rates." But any project, however defined, that requires a PTC or a CPCN will undergo the environmental review required by CEQA (unless a CEQA exemption applies), and any project that requires a CPCN will be evaluated for its cost, so it is unclear what adding this phrase is intended to accomplish.

Moreover, the determination of whether a project has "a significant effect on the environment" is made as part of the CEQA process; consequently a project sponsor could not determine whether the project fell under one of these definitions until very late in the approval process. Adding this phrase to these definitions could have the effect of disqualifying projects from the definitions that are used in GO 131-D to determine which projects are required to pursue a PTC, CPCN, advice letter, or exemption. CBD/POC's and Clean Coalition's proposed addition creates confusion and serves no useful purpose.

**VI. CONCLUSION**

As IEP stated in its opening comments, IEP represents the interests of generators and storage providers who are directly affected by the need for grid upgrades. An improved transmission system is needed to connect the increasing load resulting from electrification with

the renewable generators and storage facilities needed to meet California’s climate goals. Grid upgrades can also result in more deliverability, which will allow some planned generating plants and storage facilities to proceed more quickly to commercial operation and enhance the reliability of the grid.

Grid upgrades allow for a more efficient movement of electricity from available resources to areas of high demand. Improvements to GO 131-D that speed up the approval of transmission lines and substations can have a direct effect on the ability of California to construct the grid upgrades needed to enhance reliability and meet California’s clean energy and GHG-reduction goals.

For these reasons, IEP respectfully urges the Commission to adopt revisions to GO 131-D that will reduce the time for the Commission’s review and approval of PTC and CPCN applications and the associated environmental review. In particular, the revisions proposed in the Settlement Agreement are well-considered and practical measures that will accelerate the review process without compromising the Commission’s authority and responsibilities.

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*/s/ Jan Smutny-Jones*

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