

**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 OF THE INDEPENDENT ENERGY PRODUCERS ASSOCIATION TO
COMMENTS ON THE MOTION FOR ADOPTION OF SETTLEMENT**

November 14, 2023

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The Joint Motion for Adoption of Phase 1 Settlement Agreement, filed on September 29, 2023, asked the Commission to approve a Settlement Agreement that proposed updates and revisions to General Order (GO) 131-D, which was last revised in 1995. In response to the Joint Motion, several parties submitted comments on the Settlement Agreement. In this reply, the Independent Energy Producers Association (IEPA), one of the Settling Parties, will address some parties' misunderstanding or mischaracterization of the Settlement Agreement's provisions.

In particular, IEPA is concerned about assertions made in the joint comments of intervenors Center for Biological Diversity and Clean Coalition (CBD/CC) and the comments of intervenor Protect Our Communities Foundation (POCF) that the Settlement Agreement's provisions will curtail the environmental review required by the California Environmental Protection Act (CEQA). A fair reading of the Settlement Agreement, however, affirms the Settlement Agreement's intent to reduce the duplication of the review of transmission projects, especially the major transmission projects that are evaluated and approved as part of the Transmission Planning Process of the California Independent System Operator (CAISO). Reducing duplication does not circumvent CEQA.

CBD/CC, for example, charges that the Settlement violates Senate Bill (SB) 529's commitment to environmentally responsible transmission development. The reasoning behind

this charge is perplexing. CBD/CC states, “Projects that would, as a pure matter of voltage, be expected to undergo the PTC [Permit to Construct] process—and CEQA review as a result—rarely receive either PTC or CEQA review because applicants claim a categorical exemption under CEQA, which secures them an exemption from PTC review.”¹ CBD/CC is apparently suggesting that the categorical and statutory exemptions adopted by the Legislature by statute² and the Natural Resources Agency by regulation³ should be ignored, and that projects qualifying for these exemptions should nevertheless be compelled to undergo CEQA review. This argument makes no sense. Projects that are eligible for a statutory or categorical exemption are not evading CEQA, as CBD/CC suggests; they are acting squarely within the law and regulations. In fact, it is CBD/CC that urges the Commission to ignore the provisions of CEQA and the CEQA Guidelines and to operate outside of the law: “[A]ny change to GO 131-D in Phase 1 should provide that an expansion, extension, upgrade, or modification to any existing electrical transmission facility at or above a 200 kV level may not claim a categorical or statutory exemption to CEQA, nor may it avoid PTC review by attempting to claim a categorical or statutory exemption to CEQA.”⁴

POCF makes a similar argument based on a misreading of SB 529. SB 529 added Section 564 to the Public Utilities Code. That statute provides that “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 and extension, expansion, upgrade, or other modification to its existing

¹ CBD/CC Comments, p. 19.

² *E.g.*, Public Res. Code § 21080(b)(1)-(15).

³ 14 Cal. Code of Regs. §§ 15260-15285, 15300-15332.

⁴ CBD/CC Comments, p. 20.

electrical transmission facilities . . . irrespective of whether the electrical transmission facility is above a 200-kilovolt voltage level.” The statute provides that transmission facilities above 200 kV can use the PTC process to seek the Commission’s approval; under the existing GO 131-D, transmission line facilities above 200 kV would require a Certificate of Public Convenience and Necessity (CPCN).

POCF reads this provision as a “mandate requiring the Commission to exercise its regulatory authority over electrical transmission facilities irrespective of voltage.” But nothing in SB 529 or the Settlement Agreement attempts to alter the Commission’s jurisdiction over transmission facilities. SB 529 addresses only how the Commission exercises that jurisdiction, and the Settlement Agreement similarly focuses on the process the Commission uses to exercise its jurisdiction. POCF’s charge that “the Utilities would have the Commission abdicate its regulatory authority” is just plain wrong.⁵

The purpose of the Settlement Agreement is not “tying the Commissions hands” with regard to its compliance with CEQA, as CBD/CC asserts. The intent of the Settlement Agreement is to reduce the duplicative review required under the current approval processes of GO 131-D. Reducing duplication in the environmental review is consistent with CEQA. The transmission-level projects that are the focus of the proposed modifications of GO 131-D are first studied as part of the CAISO’s Transmission Planning Process, based on the Preferred Resource Portfolio that the Commission approves in its Integrated Resource Planning proceeding. The CAISO’s Transmission Planning Process considers both transmission and non-transmission

⁵ POCF’s Comments, p. 2. Among other distortions, POCF ignores that the Settlement Agreement was signed by 13 parties other than the investor-owned utilities, including representatives of environmental groups, renewable energy and energy storage developers, and a municipality.

alternative for resolution of an identified transmission system need.⁶ The CAISO approves projects that are demonstrated to be needed on reliability, economic, or public policy grounds, but, importantly, the CAISO does not specify the particular route or location of a project; the specific route or location will be studied as part of the environmental evaluation performed in the Commission proceeding for approval of the project. The CAISO also estimates the cost of constructing approved projects, and major projects that are subject to a competitive solicitation are evaluated on their cost containment proposals. Thus, the CAISO undertakes the evaluation of need and cost that prior to the enactment of SB 529 would have been considered in a CPCN proceeding.

For most utility transmission projects, the Commission serves as the lead agency and conducts the review required by CEQA. The current processes, however, are unnecessarily duplicative and require a considerable amount of time to complete. Under the existing GO 131-D, an application for a CPCN or PTC must be accompanied by a Proponent's Environmental Assessment (PEA) that must comply with a 91-page document setting the Guidelines for PEAs.⁷ After the application is filed, the Energy Division engages consultants to prepare the appropriate environmental document, which largely duplicates the evaluation presented in the PEA. Requiring both an extensive PEA and a separate environmental document adds one to two years to the approval process, for no added benefit. The intervenors fail to explain how eliminating duplication in the environmental review violates CEQA.

The Settlement Agreement proposes a process that is employed by some other state agencies. Under the provisions of the Settlement Agreement, the applicant may submit a draft

⁶ CAISO's Comments, p. 3.

⁷ Available at <https://www.cpuc.ca.gov/-/media/cpuc-website/files/legacyfiles/c/6442463239-ceqa-pre-filing-guidelines-pea-checklist-nov-2019.pdf>.

CEQA document as an alternative to submitting a PEA. The draft CEQA document will be subject to independent review and analysis and will reflect the independent judgment of the Commission before it is circulated for public review and comment, as required by CEQA.

By eliminating unnecessary duplication, this common-sense approach allows the environmental review required by CEQA to be completed thoroughly and on a much faster schedule and will help meet California's clean energy goals.

For these reasons, IEPA respectfully urges the Commission to disregard the comments of intervenors CBD/CC and POCF and to approve the Settlement Agreement at its earliest convenience.

Date: November 14, 2023

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