

**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)

**OPENING COMMENTS OF RURAL COUNTY REPRESENTATIVES OF  
CALIFORNIA ON PHASE 2 STAFF PROPOSAL**

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Dated: July 1, 2024

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**I. Introduction**

Pursuant to Rule 6.2 of the California Public Utilities Commission (“Commission” or “CPUC”) Rules of Practice and Procedure, the Rural County Representatives of California (“RCRC”) submits comments to the *Administrative Law Judge’s Ruling Inviting Comment on Phase 2 Staff Proposal and Noticing Workshop* (“Staff Proposal”), issued on May 17, 2024. RCRC is an association of forty rural California counties, and our Board of Directors is comprised of an elected Supervisor from each of our member counties.

**II. Comments**

RCRC appreciates the Commission’s development of the Staff Proposal and the opportunity to provide feedback. We recognize the necessity of updating the regulatory frameworks to improve the procedural efficiencies of California’s energy infrastructure. RCRC seeks to ensure that General Order (GO) 131 updates align with the overarching statutory goals of expediting essential projects while safeguarding public safety and local authority. Our specific comments are outlined in accordance with the questions put forth in the Ruling.

Overall, RCRC commends the Staff Proposal for providing detailed policy rationale and meaningful options that balance a variety of stakeholder input received thus far, along with the appendices with the redline changes, clean version, and selected data requests and responses. Generally, RCRC

supports several of the Staff Proposal’s recommendations; however, we believe others need to be modified as explained in further detail below.

## 1. General

*Do you support the proposals and recommendations contained in the Staff Proposal and appended GO 131-D redlines? Please explain why or why not, and provide suggestions to revise or improve any proposals, including those that you support and do not support.*

RCRC supports several of the Staff Proposal’s recommendations as summarized below and explained in greater detail later in these comments. Those recommendations RCRC supports include:

- Proposed definitions of the undefined terms from SB 529 (with the exception of the term “upgrade” as noted below).
- Clarifying applicability of Permit to Construct (PTC) exemption “g”.
- Clarifying applicability of PTC exemption “h”.
- Updating GO 131-D’s reporting requirements to include existing quarterly meetings.
- Conducting further review of the Public Advocates’ right-of-way sharing proposal to explore the complex legal issues surrounding the concept.

RCRC suggests modifications to the following recommendations suggested by Commission staff as follows:

- The definition of “upgrade” needs refinement as it is overly broad and would allow the construction of ***any size*** battery storage facility on property adjacent to an existing substation.
- Concerning establishing a rebuttable presumption in favor of CAISO transmission plans, RCRC prefers Settling Parties’ “Proposal 2”; however, we support the framework proposed in Assembly Bill 3238 (Garcia)<sup>1</sup> that is currently pending before the Legislature and urge the Commission to consider the way that provision is crafted. We also note that AB 3238 resolves some of the Commission’s legitimate concerns about limiting the scope of alternatives it reviews under CEQA while preserving the Commission’s underlying authority.

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<sup>1</sup> As amended June 12, 2024, accessed here:

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240AB3238](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB3238)

- Regarding allowing applicants to submit draft CEQA documents, we believe the applicant should be able to submit a draft negative declaration or draft mitigated negative declaration along with an initial study. We are concerned that the lengthy pre-application consultation process proposed by staff will erode many of the streamlining benefits.
- RCRC opposes the Commission’s proposed time limits for CEQA review, as we believe they are inconsistent with the existing CEQA Guidelines. We suggest modifications to better align Commission review with the timeframes outlined in the CEQA Guidelines and urge the Commission to find ways to alter its processes and procedures to meet those requirements.

**A. Clarify Applicability of CPCN and PTC Exemptions**

**1. Define “Extension”, “Expansion”, “Upgrade”, and “Modification”**

The Staff Proposal proposes to define “upgrade” to include, among other things, “adding battery energy storage systems to an existing substation, or expanding an existing substation to include battery energy storage systems.”<sup>2</sup> RCRC is concerned with the open-ended nature of this illustration. While an existing substation may indeed be “upgraded” to add additional battery energy storage within the perimeter of the facility, RCRC objects to allowing a utility to expand an existing substation (without limits) to include battery energy storage. Taken literally, this appears to allow a utility to acquire new property and build a battery storage facility many times the size of the adjacent substation.

**2. Clarify Applicability of PTC Exemption “g”**

RCRC supports staff recommendation 3.1.3, Proposal 5, Option 1 to limit the Senate Bill 529 process to facilities within existing transmission easements, rights of way, or franchise agreements. RCRC agrees with Sierra Club’s observation cited in the Staff Proposal that, “SDG&E’s proposed definition of ‘extension’ would effectively encompass *all* new transmission facilities, thereby eliminating *de facto* all transmission-related CPCN review,”<sup>3</sup> as well as Acton Town Council’s reading of SB 529.<sup>4</sup>

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<sup>22</sup> *Staff Proposal*, page 60.

<sup>3</sup> *Staff Proposal*, page 25.

<sup>4</sup> *Staff Proposal*, page 24: “The Supreme Court has long held that the term ‘includes’ is a term of limitation and not a term of enlargement; where it is used, it prescribes all of the things or classes of things to which the statute pertains and it excludes by implication all other possible objects of the statute.”

3. Clarify Applicability of PTC Exemption “h”

RCRC appreciates that the Commission is no longer suggesting deleting Section III.B.1.h. The Staff Proposal seeks to require utilities to provide an information-only submittal to the Commission for projects that are statutorily or categorically exempt from CEQA, rather than via a Tier 2 advice letter. The Staff Proposal notes that the information-only submittal shall not be subject to protest. It appears that this process involves the utility determining its project is exempt from CEQA and so does not require a PTC from the Commission. While RCRC appreciates that this “information only” submittal will be reviewed by Commission staff, it is unclear how an entity or stakeholder can challenge the utility’s determination that its projects are exempt from CEQA.

**B. Update Reporting Requirements (3.2)**

RCRC generally supports the Staff Proposal’s effort to integrate existing quarterly forecast briefings into the framework of GO 131-D (3.2.2 Proposal 1). RCRC believes these meetings provide valuable information to the CPUC and their integration into GO 131 increases predictability and improves transparency.

**C. Establish Rebuttable Presumption in Favor of CAISO Transmission Plan (3.3)**

The Staff Proposal includes two different approaches to establishing a rebuttable presumption for CAISO-approved projects.

Proposal 1, as recommended by CPUC Staff, says the statement of project objectives in the project’s CEQA document “should consider” the underlying purpose and project benefits as stated in the relevant CAISO transmission plan. Proposal 2, as suggested by Settling Parties, includes stronger language that the statement of objectives in the CEQA document and any statement of overriding considerations “shall include” the underlying purpose and project benefits as stated in the relevant CAISO transmission plan. This is an important distinction.

Proposal 1 merely directs the CPUC to *consider* the statement of underlying purpose and project benefits stated in the CAISO transmission plan when crafting the project’s statement of objectives for purposes of CEQA. This is even more attenuated than the Staff Proposal’s characterization of the measure, which says the CPUC CEQA document “should include the CAISO objectives and purposes for that project outlined in the associated transmission plan.”<sup>5</sup> The actual language proposed for inclusion in GO

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<sup>5</sup> Staff Proposal, page 45.

131-D would stop short of including the CAISO objectives and purposes and merely require the CPUC to consider those in developing the project's statement of objectives.

In contrast, Proposal 2 requires integration of the CAISO objectives and purpose in the CPUC's statement of objectives, thereby better aligning the CPUC's CEQA document with the purpose of the project considered by the CAISO. RCRC supports the way Proposal 2 frames this particular issue; however, the best approach is what is proposed in Assembly Bill 3238 (Garcia) that is currently being considered by the Legislature. AB 3238's proposed Public Utilities Code Section 2845.14(a) would provide: "The statement of objectives sought by the project, including the underlying purpose and project benefits, required by CEQA...shall be those identified by the Independent System Operator's approved transmission plan." This approach seems to provide the most consistency between the two entities.

Proposal 2 also goes further by limiting the range of reasonable alternatives that the CPUC may consider for a proposed project. Proposal 2 limits the range of alternatives that can be considered to alternative routes or locations for construction, thereby precluding consideration of different approaches to achieving the project's objectives. RCRC agrees with Commission staff that "limiting the range of reasonable alternatives...would potentially be inconsistent with the level of the alternatives analysis required of the Commission under CEQA."<sup>6</sup> We note that this problem would be solved by AB 3238 (Garcia), which would statutorily allow (but not require) the Commission to limit the range of reasonable alternatives to alternative routes or locations for the construction of the project. If this provision of AB 3238 is signed into law, this section of Proposal 2 is no longer inconsistent with CEQA. Similarly, AB 3238 allows (but does not require) the Commission to avoid considering demand-side alternatives. As such, AB 3238 appears to provide a preferable middle ground and should be considered as a way to harmonize the differences between the CPUC and Settling Parties.

#### **D. Clarify Permitting of Battery Storage Facilities (3.5)**

The Staff Proposal would require a PTC prior to an electric utility extending, expanding, upgrading, or otherwise modifying an existing electrical transmission facility unless the project is otherwise exempt from CEQA. As previously noted, the Staff Proposal would define "upgrade" to include, among other things, "adding battery energy storage systems to an existing substation, or expanding an existing substation to include battery energy storage systems."

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<sup>6</sup> Staff Proposal, page 49.

As we have previously mentioned, RCRC supports the thoughtful deployment of battery storage and “acknowledges the core function [those facilities] play in augmenting the intermittent nature of renewable energy generation and increasing state and local energy resilience.”<sup>7</sup> The Staff Proposal recognizes that “local agency approvals have varied widely throughout California”<sup>8</sup> and include fast-tracking those projects, denials, and developing moratoria. This range of local actions (and reactions) is fairly typical for any type of project, especially for newer types of technologies and projects that local agencies may not have had much experience dealing with. These responses are even more reasonable and natural given the facilities “unique and emerging risks that many local agencies and fire departments are just starting to learn how to deal with.”<sup>9</sup> RCRC disagrees with the Staff Report’s characterization that local moratoria on battery energy storage systems are the same as denials and prohibitions.<sup>10</sup> RCRC aligns with Protect Our Communities Foundation (PCF) that the battery chemistry of the battery storage project is a more important safety consideration than the size or discharge capacity of the project.<sup>11</sup> Local governments are often trying to adapt the few building safety standards and best practices for lithium-ion battery storage to high fire threat areas. Local moratoria, while rare, are a tool to provide the local agency more time to explore an issue and update ordinances that balance safety considerations while providing more clarity and certainty for project developers.

Despite the best intentions, construction standards, and programming, energy storage facilities have and continue to catch fire. This is a particularly alarming situation given the sheer amount of the state that is at an elevated fire risk and where winds may fan flames to surrounding vegetation. RCRC appreciates the Legislature’s and Commission’s attempt to improve battery storage facility safety and emergency response through SB 1383 (Hueso) of 2022, SB 38 (Laird) of 2023, and updates to General Order 167-B. Many of these concerns can be addressed through increased collaboration with local emergency responders and host jurisdictions. Utilities (and the Commission) should strongly consider setback distances that protect against the spread of fire to surrounding areas. Given the need to scale up battery storage deployment, the State Fire Marshal should update California’s Fire Code to make permitting easier for all parties involved.

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<sup>7</sup> *Opening Comments of Rural County Representatives of California on Order Instituting Rulemaking to Update and Amend Commission General Order 131-D*, June 22, 2023, page 6.

<sup>8</sup> *Staff Proposal*, page 57.

<sup>9</sup> *RCRC*, page 6.

<sup>10</sup> *Staff Proposal*, page 57.

<sup>11</sup> *Staff Proposal*, page 63.

RCRC agrees with the Staff Proposal’s observation that “the CPUC cannot preempt local authorities from regulating electric facilities constructed solely by non-public-utility entities (e.g. IPPs).”<sup>12</sup> Moreover, it is important that utilities continue consulting with local authorities to obtain non-discretionary local permits for the construction of specified projects<sup>13</sup> to ensure safety and compliance with local building standards. This “good neighborliness” does a great deal to improve trust, confidence, and relationships between the utility and host jurisdiction. These simple steps can have additional benefits on local permitting of non-IOU energy storage projects: as the communities become more familiar with and confident in the safety of battery storage facilities and have concerns addressed, projects will move more quickly through the permitting process.

Responding to disagreement among the stakeholders as to the size of energy storage projects that should be subject to the PTC vs CPCN process, the Staff Proposal instead clarifies certain categories of projects are eligible for the PTC process. “Rather than establishing a capacity threshold for energy storage projects,” the Staff proposal’s changes to GO 131-D “focus on smaller projects that might be expected to be exempt from CEQA and/or the PTC requirement.”<sup>14</sup> As previously mentioned, this intent is not immediately clear, as the proposed definition of “upgrade” would allow a battery storage facility of *any* size that is located only newly-acquired land adjacent to a utility’s substation to qualify for the PTC process. RCRC is concerned with the open-ended nature of this definition. If the Commission intends to limit the battery storage facility to the size of the adjacent substation, it should say so. As written, the mere presence of a substation provides a gateway to the construction of a massive battery storage facility over which the host community and neighboring residents have little to no control.

#### **E. Facilitate Right-of-Way Sharing Between Incumbent and Non-Incumbent Utilities (3.6)**

The Public Advocates suggested amending GO 131-D to require right-of-way (ROW) sharing between non-incumbent electric utilities and the incumbent electric utility. RCRC strongly agrees with the Commission staff that this issue requires far more consideration by stakeholders and should be considered as part of a later part of this proceeding or in a different proceeding altogether.

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<sup>12</sup> Staff Proposal, page 59.

<sup>13</sup> Staff Proposal, page 7 Appendix A Proposed Revisions to GO 131-D to Address R.23-05-018 Phase 2 Issues (Redlines): electric distribution (under 50kV) line facilities; substations with high side voltage under 50kV; or substation modification projects which increase the voltage of an existing substation to the voltage for which the substation has been previously rated within existing substation boundaries.

<sup>14</sup> Staff Proposal, page 65.



RCRC agrees with the IOUs that “allowing another utility to build transmission lines in the easement holder’s ROW could extend beyond what many landowners have negotiated with the incumbent utility” and so may violate the terms of easements and lead to litigation and project delays. Other issues include: who would be responsible for maintaining the easement; avoiding over-burdening the easemen,; apportionment of franchise rights; etc. RCRC is concerned that Phase 2 of this proceeding is not the right venue to address this proposal given the scope and complexity of these issues.

**F. Enable Applicant-Submitted Draft CEQA Documents**

Settling Parties sought to modify GO 131-D by allowing a project proponent to submit, in lieu of a Proponent’s Environmental Assessment (PEA), a draft environmental impact report (EIR), draft mitigated negative declaration, draft negative declaration, draft addendum, or draft analysis to help expedite the Commission’s CEQA review process (Option 1). This proposal is intended to reduce unnecessary and redundant CEQA review by the Commission. Rather than submit a PEA, the proponent is seeking to do the work itself and submit ready-to-go CEQA documentation that the Commission can adopt (or modify) based upon its review. The Staff Report instead suggests Option 3, which would allow a proponent to only submit a draft initial study or a draft version of an EIR in lieu of a PEA and only if the proponent initiates pre-filing consultation with the Commission at least 12 months before filing the application.

RCRC is concerned that the Staff Proposal’s recommended adoption of Option 3 misses many of the benefits that would be achieved by the Settling Parties’ proposal. We do not dispute that an Initial Study is intended to determine whether an EIR or negative declaration is appropriate for a particular project. This “initial study” should inform the proponent’s decision about whether to submit a draft EIR, draft negative declaration, or draft mitigated negative declaration to the Commission. A proponent should not be precluded from submitting a draft negative declaration or mitigated negative declaration along with an initial study, thereby providing the Commission with ready-to-go CEQA documents along with the underlying justification. While we do not dispute the utility of pre-filing consultation with the Commission, we are concerned that the proposal’s 12-month window will erode many of the streamlining benefits the Settling Parties intended to achieve.

**G. Accelerate the CPUC CEQA Review Process**

The Settling Parties sought to require the Commission to review and certify a project’s CEQA documentation within 270 days of deeming an application complete. The Staff Proposal notes that CEQA

Guidelines currently require mitigated negative declarations and negative declarations to be completed within 270 days of a project’s application being deemed complete, with a 455-day maximum applying to review of an EIR. We note the CEQA Guidelines Section 15110 also allows for additional time to complete and certify CEQA documents for projects involving the federal government.

*1. Proposal 1 - Clarify Applicability of Existing CEQA Review Time Limits*

Proposal 1 would have the Commission determine which types of projects may be eligible for a 455-day or 270-day CEQA review timeframe. In particular, it notes that the Commission will “strive” to complete mitigated negative declarations and negative declarations within 270 days and complete reviews of projects with an EIR within 455 days, provided those projects do not have any federal agency involvement. It further outlines that projects requiring approval of a PTC that qualify for a mitigated negative declaration or negative declaration and that do not involve federal agencies “could involve completion of CEQA review within 270 days.”

RCRC appreciates the Commission interest in improving the status quo which has resulted in average review times of 19 months for mitigated negative declaration or negative declarations and 25 months for EIRs. At the same time, RCRC objects to Proposal 1 to the extent that it seems to ignore the 270-day and 455-day periods outlined in the CEQA Guidelines. We disagree that the proposal “is consistent with the time limits for EIR preparation listed in the CEQA Guidelines”<sup>15</sup> as it seems to suggest those timelines are merely aspirational. Rather than merely identify a small subset of projects which may have CEQA documentation reviewed within the 270-day timeframe, the Commission should do all within its power to ensure that its reviews for all projects can be completed within the 270-day or 455-day timeframes.

*2. Proposal 2 – Establish a Pilot Program for Accelerated CEQA Review*

Proposal 2 would require the Commission to develop a pilot program to evaluate what criteria and process changes could lead to completion of CEQA documents within the 270-day and 455-day time periods. Under the pilot project, the Commission would identify at least two projects that could be completed within each of those timeframes; however, the Commission only seems interested in smaller, less complex projects or those located within previously disturbed areas.

RCRC supports the Commission’s efforts to more carefully evaluate how it can improve its CEQA review process; however, we are concerned that the pilot program’s inclusion of simpler projects will provide very little constructive insight for meaningful reform. Rather than create a pilot project, RCRC

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<sup>15</sup> *Staff Proposal*, page 101.

suggests that the Commission direct staff and counsel to thoroughly review existing practices and procedures to find and suggest ways to expedite the Commission internal CEQA review processes for all projects.

3. Proposal 3 – Establish 270-Day Deadline for CPUC CEQA Review

Proposal 3 reflects the Settling Parties’ suggestion to require the Commission to determine whether to adopt or certify a project’s CEQA documents within 270 days after the application is deemed complete. The Staff Report expresses concern that requiring a 270-day time limit would “risk rushing the CEQA process...potentially degrading the quality of CPUC CEQA documents.”<sup>16</sup> Unfortunately, CEQA has become a far more cumbersome and exacting process over the decades and perfection often becomes the enemy of the good. Rather than striving for perfection in CEQA review, the Commission should instead focus on the adequacy of those documents and processes, lest the state fail to achieve its climate, energy reliability, and resiliency goals.

RCRC continues to support efforts like this to ensure CEQA review occurs within the timeframes set out in the CEQA Guidelines, recognizing that there may be occasional exceptions. As such, we suggest aligning the review process with the CEQA guidelines. Consistent with 14 CCR 15107, 15108, and 15110, we suggest that reviews of negative declarations and mitigated negative declarations be completed within 270 days and that reviews of EIRs be completed within 455 days, with the possibility for extensions for projects involving federal agency approval.

4. Proposal 4 – Prioritize Policy-Driven CAISO TPP Projects

Proposal 4 seeks to establish an expedited permitting process for policy-driven CAISO-approved transmission projects, as suggested by the Public Advocates Office. RCRC agrees with Commission staff and other stakeholders that this proposal should not be considered for inclusion in this phase of the proceeding. As we have noted in other proceedings, prioritizing only certain policy-driven projects will disadvantage other critical projects, including those intended to address long-overdue reliability concerns or that are vital to support economic development. We echo those stakeholders who instead suggest that the Commission should speed up the development, approval, and construction of all varieties of the transmission projects required to maintain reliable and affordable electric service.”<sup>17</sup>

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<sup>16</sup> Staff Proposal, page 104.

<sup>17</sup> Staff Proposal, page 109 quoting Reply Comments of the Independent Energy Producers Association on Phase 2 Issues, February 26, 2024 at page 9.

### 3. Right-of-Way (ROW) Sharing

- a. *Are there any revisions to the Public Advocates Office of the California Public Utilities Commission (Cal Advocates) ROW sharing Proposal (Staff Proposal, Section 3.6.2, Proposal 1) that would make it more feasible to implement or otherwise improve it? Please explain.*

As noted above, RCRC supports the Staff Proposal’s deferral of consideration of Cal Advocates’ ROW sharing proposal to a separate (third) phase of the R.23-05-018 proceeding, or perhaps in a separate CPUC proceeding.<sup>18</sup> While RCRC does not dispute the benefits of ROW sharing outlined by numerous parties (largely third-party developers), RCRC shares the concerns with the critical issues raised by incumbent utilities regarding how to maintain responsibility for easement areas and protect landowner property.<sup>19</sup> As such, RCRC defers our input on ROW sharing until a proper time or procedural venue is determined.

- b. *Other than Cal Advocates ROW sharing proposal, what actions could the Commission take to facilitate ROW sharing between incumbent and non-incumbent utilities without mandating the use of ROW sharing agreements? Please explain.*

RCRC has no comment at this time, but suggests that the Commission could develop best management practices or guidelines that address some of the complex issues raised by utilities and references on pages 71-73 of the Staff Proposal.

### III. Conclusion

RCRC appreciates your consideration of our comments and the recommendations contained herein.

Respectfully submitted,

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<sup>18</sup> *Staff Proposal*, page 69; staff recommendation 3.6.3, Proposal 1.

<sup>19</sup> *Staff Proposal*, page 72.