

**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
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ON JOINT MOTION FOR ADOPTION OF PHASE 1 SETTLEMENT AGREEMENT**

Roger E. Collanton
General Counsel
Anthony Ivancovich
Deputy General Counsel
Sarah E. Kozal
Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel.: (916) 956-8838
Fax: (916) 608-7222
skozal@caiso.com

Attorneys for the California Independent
System Operator Corporation

Dated: November 13, 2023

**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
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
ON JOINT MOTION FOR ADOPTION OF PHASE 1 SETTLEMENT AGREEMENT**

I. Introduction

Pursuant to Rule 12.2 of the California Public Utilities Commission’s Rules of Practice and Procedure, the California Independent System Operator Corporation (CAISO) submits reply comments on the September 29, 2023 *Joint Motion for Adoption of Phase 1 Settlement Agreement* (Joint Motion).

II. Discussion

The CAISO reiterates its support of efforts to expedite transmission permitting. In order to meet California’s ambitious clean energy and electrification goals, California must deploy significant new infrastructure at an unprecedented speed. The Commission has not updated General Order (GO) 131-D since the creation of the CAISO and development of the CAISO’s Transmission Planning Process (TPP). In the TPP, the CAISO performs modeling and analysis to identify the most cost-effective and efficient solutions to address reliability needs, utilizing the Commission’s own inputs regarding resource growth. Efforts to reduce duplicative analysis in the Commission’s processes will help expedite permitting processes without any material reduction in the opportunity for parties to provide input. The CAISO agrees with the Sierra Club that “the benefits of more rapidly developing California’s transmission infrastructure outweigh the relatively limited (and largely procedural) costs these changes will impose on the public process.”¹ The CAISO offers reply comments on the proposed California Environmental Quality Act (CEQA)-related revisions and reiterate that the CAISO evaluates non-wires alternatives in the TPP. The CAISO also offers reply comment on the newly established rebuttable

¹ Sierra Club Opening Comments at 4.

presumption of need. Finally, the CAISO encourages the Commission to focus on proposals that expedite permitting and reduce duplicative procedures.

A. The Commission Should Seek to Avoid Duplicative Processes in Order to Expedite Transmission Permitting.

The CAISO supports proposals to align the range of alternatives in a project’s CEQA analysis with the feasible electrical solution identified in the CAISO’s TPP. The proposed revisions do not diminish the public’s ability to participate in the evaluation of all alternatives, but instead defer the discussion of electrical solution alternatives to the CAISO’s process. The CAISO’s TPP is the appropriate forum for modeling, technical analysis, and feasibility analysis in the context of the CAISO’s system. As described in the CAISO’s opening comments, the CAISO’s TPP process includes multiple opportunities for stakeholder engagement and a more robust opportunity to evaluate electrical solution alternatives.²

1. The Commission Should Leverage the CAISO’s TPP Analysis to Streamline Permitting and the CEQA Process.

The CAISO recognizes the importance of the CEQA process as the critical evaluation of environmental impacts and tool for mitigating those impacts. The Commission should, however, streamline the process and leverage the CAISO’s independent analysis of feasible electrical alternatives. This aligns with the Environmental Impact Report’s requirements to “consider a reasonable range of potentially feasible alternatives.”³ Although transmission developers determine routing, location, construction techniques, and mitigation measures such as undergrounding in the development phase of a proposed project, the initial step of identifying *which* electrical solution alternatives “would feasibly attain most of the basic objectives of the project”⁴ is initially best evaluated in the CAISO’s TPP.⁵

The CEQA process administered by the Commission does not employ the rigorous analysis of electrical reliability present in the CAISO’s TPP to determine system impacts or

² CAISO Opening Comments at 4, citing to <http://www.caiso.com/Documents/Transmission-Planning-Process-Overview.pdf>.

³ CEQA Guidelines Section 15126.6(a). The Legislature has defined “feasible,” for purposes of CEQA review, as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” Cal. Pub. Resources Code, § 21061.1.

⁴ CEQA Guidelines Section 15126.6(a).

⁵ The CAISO recognizes that the Commission may need to reflect this analysis in the alternatives screening process and encourages the Commission to leverage work already done by the CAISO.

feasibility of alternatives. Importantly, the TPP looks not just at the proposed project itself, as the CEQA documentation does, but identifies the proposed project as part of the electrical system as a whole and how it contributes to reliability overall. There is no effective framework for the CEQA process to accurately model electrical alternatives and assess feasibility in the context of the interconnected grid. Indeed, the Commission cannot effectively assess an entirely new electrical solution without the technical analysis developed in the CAISO’s TPP or without duplicating the process all over again. Changing the electrical solution identified at the transmission level could have cascading impacts elsewhere that a CEQA analysis would not identify.

The CAISO and Commission’s roles are unique but complementary in the development of transmission, as outlined in the Memorandum of Understanding (MOU) between the CAISO, the Commission, and California Energy Commission.⁶ Similar cooperative situations exist in other contexts, and may lack the same formality as presented in the MOU. For example, in the context of development in coastal zones, local governments may utilize findings and analysis from Local Coastal Programs (LCPs), certified by the California Coastal Commission, in developing their Environmental Impact Reports (EIRs). *Citizens of Goleta Valley v. Board of Supervisors*⁷ is frequently cited for the holding that “no ironclad rule govern[s] the nature or scope of the alternatives to be discussed in an EIR, other than the rule of reason,”⁸ which pertains here. Even more relevant, however, is the California Supreme Court’s unanimous holding in that case that the lead agency did not “abuse[] its discretion in relying on the LCP to help it assess the feasibility of potential project alternatives.” Though the County had prepared the LCP, the Coastal Commission had exerted its state-wide planning expertise and refused to certify the LCP’s zoning of the specific location of the project at issue. The Coastal Commission’s determination ultimately limited the feasibility of project alternatives under the EIR.⁹ The Court noted that each LCP “must be submitted to the state coastal commission for approval, thus ensuring not only a local but a regional and state perspective, as well.”¹⁰ The opponents of the

⁶ Available at <http://www.caiso.com/Documents/ISO-CEC-and-CPUC-Memorandum-of-Understanding-Dec-2022.pdf>.

⁷ 52 Cal. 3d 553, 572 (1990).

⁸ *Id.* at 576.

⁹ *Id.* at 562.

¹⁰ *Id.* at 572.

project, challenging the adequacy of the EIR, sought an alternatives analysis that the Court described as “broad-based regional planning...in light of a variety of pertinent planning and environmental factors,” “regardless of whether the alternatives could feasibly be developed by the project proponent, or even necessarily approved by the lead agency.”¹¹ The Court recognized broad-based planning as an important concern, but notes that the opponents “fail[] to recognize that the law provides for their consideration *elsewhere*,”¹² namely in the LCPs and other required land use planning documents that ensure “planned, comprehensive development”.¹³ This is analogous to the CAISO’s role in system-wide planning, where the CAISO undertakes transmission planning. The Commission should utilize the CAISO’s TPP analysis and findings in its determination of alternatives under CEQA.

2. Existing Processes Exist to Evaluate Non-Transmission Solutions.

Additionally, the CAISO seeks to address misinformation about the CAISO’s TPP process. Some parties incorrectly state that the CAISO’s TPP does not consider non-transmission alternatives.¹⁴ As the CAISO has explained in prior comments, the TPP process does consider non-transmission alternatives.¹⁵ Other parties state that the CAISO’s tariff requirements are inadequate because non-wires alternatives are included only when proposed by stakeholders.¹⁶ The CAISO does unilaterally consider storage on the transmission system, for example. Ultimately, if stakeholders seek to include distributed energy resources and other non-wires alternatives in the analysis that could impact the CAISO’s decision-making, the appropriate venue to adequately model and study those solutions is in the CAISO’s planning process and not in a process intended to evaluate and mitigate environmental impacts. Stakeholders have the opportunity to engage early in the evaluation of all electrical solutions and should not rely on the CEQA process to re-litigate findings made in the CAISO’s TPP. Such intervention only at the CEQA phase of a transmission project’s development misses crucial opportunities to engage during the electrical modeling phase of the process and can serve as a delay to the evaluation.

¹¹ *Id.* at 570.

¹² *Id.* Emphasis from original.

¹³ *Id.* at 571.

¹⁴ Center for Biological Diversity and Clean Coalition at 13; Acton Town Council Opening Comments at 13.

¹⁵ *See* CAISO Opening Comments at 3.

¹⁶ Acton Town Council Opening Comments at 15.

The CAISO recognizes that the Commission has previously engaged in alternative analysis that includes evaluation of distributed energy resource (DER) alternatives, such as the addition of storage, at the distribution level. The CAISO does not object to such evaluations as part of the alternatives analysis because they generally still fall under the electrical solution identified by the CAISO. These alternatives are not proposed to materially change what is approved in the CAISO process, but to mitigate local distribution issues. DER proposals that affect the need for a specific transmission project must be coordinated with the utility through the CAISO's TPP in order to be studied at the system-wide level. The CAISO also notes that these proposed revisions to describing the reasonable range of alternatives would be largely procedural, as many alternatives in the CEQA process are already eliminated in the alternative screening process for not meeting the project objectives. Incorporating the CAISO's findings into the evaluation of alternatives aligns with the "rule of reason" agencies use when determining the range of alternatives.¹⁷

B. Newly Established Rebuttable Presumption of Need Supports Evaluation of CAISO-defined Electrical Solution.

Several parties' comments object to the rebuttable presumption of need language included in Option B of the proposed settlement, or suggesting that more careful review is needed in order to incorporate it into GO 131-D.¹⁸ However, since the joint settlement filing, the Governor of California has signed Assembly Bill (AB) 1373 into law, codifying this same rebuttable presumption in the Public Utilities Code.¹⁹

AB 1373 does not require the Commission to update GO 131-D to reflect the rebuttable presumption before it becomes effective. The CAISO believes reflecting this rebuttable presumption in GO 131-D is appropriate to ensure the general order reflects all applicable law. There is no need for significant additional review. The bill provides specific conditions for when the Commission shall establish a rebuttable presumption in a Certificate of Public Convenience and Necessity (CPCN) proceeding.²⁰

¹⁷ CEQA Guidelines Section 15126.6(a) & (f).

¹⁸ California Farm Bureau Federation Opening Comments at 6; Center for Biological Diversity and Clean Coalition Opening Comments at 12-13; Acton Town Council Opening Comments at 13; Cal Advocates Opening Comments at 11.

¹⁹ Cal. Pub. Utilities Code § 1001.1.

²⁰ Note that Permit to Construct (PTC) proceedings do not evaluate the need for a project.

The TPP process remains the correct venue for technical analysis of any electrical solutions a CEQA process examines. The CEQA process assesses which alternatives identified as electrical solutions can best mitigate environmental impacts. In establishing the rebuttable presumption, the Legislature recognized the process through which the CAISO makes “explicit findings regarding the need for the proposed transmission project and [determines] that the proposed project is the most cost-effective transmission solution.”²¹ Establishing a rebuttable presumption of need pertaining a proposed transmission project, with a specific scope, estimated cost, and timeline as approved by the CAISO Board demonstrates a deference to the CAISO’s independent evaluation process in identifying transmission solutions necessary to meet the reliability and policy needs of the state.

C. The Commission Should Pursue Proposals that Expedite Permitting Process.

Cal Advocates plans to put forward an additional proposal intended to prioritize which CAISO-approved projects can apply for and receive their permitting first under GO 131-D.²² Such a proposal does not address underlying concerns with permitting delays—specifically that the permitting process itself for each individual application has historically involved delays. The Cal Advocates does not clarify how its proposal will expedite any of the existing permitting issues. Additionally, the CAISO believes that the GO 131-D reforms should apply to all approved transmission projects, not a subset of them as determined by an additional – and potentially redundant – prioritization process.

Transmission projects are developed and constructed by multiple developers, and ranking permit applications will not alleviate permitting or construction delays for individual projects. These applications at the Commission run independently of each other and there is no evidence that any of the delays in those proceedings are due to other open applications. Cal Advocates includes a timeline analysis in comments,²³ but it is not clear how the proposed ranking system’s timeline concretely shortens the length of the Commission proceedings. It is also unclear how this framework could require applicants to file their applications in a certain timeframe.²⁴ Again,

²¹ Cal. Pub. Utilities Code § 1001.1.

²² Cal Advocates Opening Comments at 13.

²³ *id.* at 4.

²⁴ The CAISO notes that other levers already exist to achieve this goal. For example, one of AB 1373’s conditions for the rebuttable presumption of need is that there has been no change in timeline of the proposed transmission project as approved by the CAISO, which should encourage developers to maintain their timelines and submit applications in a timely manner.

there is no evidence that delays are due to too many CPCN or Permit to Construct (PTC) applications being open at once and this proposal risks distracting from more effective updates to GO 131-D.

Moreover, the CAISO's TPP already provides a system-wide of analysis of when each transmission project needs to be online to meet California's reliability needs and clean energy goals. Project developers have milestones they are expected to meet under their relevant agreements with the CAISO and other parties. Beyond the application and permitting procedures, it does not make sense to compare projects intended to meet different needs in different areas. The Commission should not prioritize projects over other projects beyond the projects target completion dates provided in the CAISO's TPP, which reflect the Commission's resource plans.

The CAISO encourages the Commission to adopt enhancements to the permitting procedures that eliminate duplicative processes and expedite the CPCN and PTC processes. The Commission should not add additional procedural complexity or new duplicative analysis to the permitting process.

III. Conclusion

The CAISO appreciates the opportunity to provide reply comments on the Joint Motion.

Respectfully submitted

By: /s/ Sarah E. Kozal

Roger E. Collanton

General Counsel

Anthony Ivancovich

Deputy General Counsel

Sarah E. Kozal

Counsel

California Independent System

Operator Corporation

250 Outcropping Way

Folsom, CA 95630

Tel.: (916) 956-8838

Fax: (916) 608-7222

skozal@caiso.com

Dated: November 13, 2023

Attorneys for the California Independent
System Operator Corporation