

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

**RESPONSE TO JOINT MOTION FOR: 1) MODIFICATION OF THE SCOPING  
MEMO AND SETTING ASIDE SUBMITTAL OF THIS PROCEEDING FOR  
CONSIDERATION OF A PHASE 1 SETTLEMENT PROPOSAL; AND  
2) AN ORDER SHORTING TIME FOR COMMENTS AND REPLY COMMENTS  
ON THE SETTLEMENT PROPOSAL**

**I. INTRODUCTION**

Pursuant to Rule 11 and Rule 13.15 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure (Rules), the Public Advocates Office at the California Public Utilities Commission (Cal Advocates) the Center for Biological Diversity, Clean Coalition, Acton Town Council, and The Protect Our Communities Foundation (together, “Non-Settling Parties”) hereby respond to the Joint Motion from the Moving Parties<sup>1</sup> for a Ruling to: 1) modify the *Assigned Commissioner’s Scoping Memo And Ruling* (Scoping Memo) issued in this proceeding to set aside submission of this matter for the limited purpose of allowing the submittal of a settlement proposal for Commission consideration prior to the issuance of a Phase 1 Proposed Decision in this proceeding; and 2) shorten time for parties to comment on (and reply to comments on) the proposed settlement set forth in the *Joint Motion For Adoption Of Phase 1 Settlement Agreement*, (Motion to Expedite).

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<sup>1</sup> The term “Moving Parties” refers to those who have signed onto the Settlement that is appended to the Motion to Expedite, including Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company, dated September 29, 2023.

Non-Settling Parties request the Commission allow the full allotment of 30 days to respond to the Joint Motion for Adoption of Settlement,<sup>2</sup> for all of the reasons explained below.<sup>3</sup>

## **II. DISCUSSION: NON-SETTLING PARTIES REQUIRE THE FULL 30 DAYS TO COMMENT ON THE SETTLEMENT AGREEMENT BASED ON THE EXISTING SCOPING MEMO**

### **A. Non-Settling Parties Are Entitled to a Notice and Opportunity to Be Heard Regarding Phase 2 Issues**

As the Moving Parties acknowledge, Assigned Commissioner Karen Douglas issued a Scoping Memo on July 31, 2023, with two phases. Specifically, the Scoping Memo states that “Phase 2 shall consider all other changes to GO [General Order] 131-D [not required by SB 529], including the changes proposed in attachments to the OIR [Order Instituting Rulemaking], changes proposed by parties in comments on the OIR, and any additional changes that may be proposed by Commission staff or parties during the course of this proceeding.”<sup>4</sup>

In a surprise move, the Moving Parties request the Commission set aside the submittal of Phase 1 and adopt a settlement that is beyond the scope of Phase 1, even though there is no record from Phase 2 yet to support that settlement.<sup>5</sup> However, since the Scoping Memo issued instructions to have a Phase 2, Non-Settling Parties have the right to notice and opportunity to be heard regarding Phase 2. In short, Moving Parties’ Motion to Expedite prematurely presumes that the Phase 2 record would support the Proposed Settlement, which includes issues that are part of the scope of upcoming Phase 2; not current Phase 1.

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<sup>2</sup> See Commission Rule 12.2.

<sup>3</sup> See Motion to Expedite, at 4-5, fn. 3. [The Moving Parties request the responses to their Motion to Expedite be due October 4, 2023. Non-Settling Parties file this response on October 4, 2023, out of concern that this part of the Motion to Expedite would be granted.]

<sup>4</sup> Assigned Commissioner’s Scoping Memo and Ruling, at 4-5, emphasis added.

<sup>5</sup> Joint Motion, at 1, “[Moving Parties] respectfully move for a Ruling to: 1) modify the Assigned Commissioner’s Scoping Memo and Ruling (“Scoping Memo” issued in this proceeding to set aside submission of this matter for the limited purpose of allowing the submittal of a settlement proposal for Commission consideration”.

**B. Non-Settling Parties Need The 30-Day Comment Period to Identify Deficiencies with the Settlement**

The settlement may not be consistent with the law, and not entirely based upon the record. As such, it is not in the public interest. It will take time for Non-Settling Parties to identify these points. But the Moving Parties appear to prefer to have the Commission rush rather than comply with Senate Bill (SB) 529.

One example in which the Motion to Adopt the Settlement exceeds Phase 1’s record is that it identifies “Revisions To Implement New Legislation (If Signed By Governor Newsom).”<sup>6</sup> Settling Parties<sup>7</sup> have proposed up to eight different settlements,<sup>8</sup> depending upon the combination of bills that may or may not be signed into law. It will take time for parties to review these in order to decide how to comment on each of these versions. On its face, the Joint Motion for Adoption of Settlement proposes modifications that are wholly speculative (including new bills; not laws). This provision is particularly problematic. Even if all of the bills are adopted, parties may disagree as to how the Commission should apply them to the revised GO 131-E. As currently scoped, Phase 2 would help flesh out whether and how GO 131-E should be modified to comport with additional laws that supplement SB 529. Non-Settling Parties need more time in responding to the Motion to Adopt the Settlement to identify other problems with it like this one.

As noted by the author of SB 529,<sup>9</sup> “If California is going to meet increased capacity needs and achieve clean energy goals, the state must support the development of cost-effective, environmentally responsible transmission projects that can reliably deliver renewable resources throughout the state. With this principle in mind, SB 529 enables a

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<sup>6</sup> Joint Motion, at 13.

<sup>7</sup> “Settling Parties” refers to those parties who signed onto the proposed settlement, a different group than the Moving Parties.

<sup>8</sup> See Settlement, at 8-9. “If one or more, but not all, of SB 420, SB 619, and Assembly Bill (AB) 1373 become law, the Settling Parties request that the Commission adopt Option A along with the language relevant to the adopted laws from Option B.”

<sup>9</sup> Senate Bill (SB) 529’s (stats. 2022, ch. 357 (Hertzberg)).

more expedited review and approval process for upgrades to existing transmission system facilities in existing corridors, or “rights of way.”<sup>10</sup> The Legislature has made clear that there is a “need to ensure adequate review of transmission projects, including upgrades, extensions, expansions, or modifications.”<sup>11</sup> Cal Advocates is developing a proposal to comply with SB 529 and is mindful of this legislative intent, but the Moving Parties’ last minute proposal takes away from Cal Advocates’ ability to recommend alternatives to the Settling Parties’ proposed settlement.

With the mandated 30-days to comment on the proposed settlement, Cal Advocates would have the time and opportunity to be able to identify any other examples of issues with the proposed settlement.

**C. The Moving Parties Request to Set Aside Submittal of Phase 1 Is Untimely**

Commission Rule 12.2 allows parties to file comments contesting all or part of a settlement within 30 days of the date the motion for adoption of a proposed settlement was served. The Moving Parties allege that this matter is urgent, meriting an exception to the rule, and that the Commission needs to complete the record on the proposed settlement.<sup>12</sup>

Moving Parties further reference Commission Rule 13.15 as a basis for their motion. Rule 13.15 requires that “A motion to set aside submission for taking of additional evidence or argument, or for consideration of a settlement ... specify the facts claimed to constitute grounds in justification thereof ... It shall contain a brief statement of proposed additional evidence and explain why such evidence was not previously adduced.”

While the Moving Parties acknowledge that Assigned Commissioner Karen Douglas issued a Scoping Memo on July 31, 2023, that the Scoping Memo divided the

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<sup>10</sup> Senate Rules Committee Bill Analysis (August 23, 2022) at 6.

<sup>11</sup> Senate Rules Committee Bill Analysis (August 23, 2022) at 4.

<sup>12</sup> Joint Motion, at 4, fn 3.

proceeding into two phases, and that Phase 1 needed to be completed by January 1, 2024,<sup>13</sup> they do not comply with Rule 13.15. Moving Parties factual justification boils down to one thing: The Moving Parties think it is a good idea because they claim permit streamlining benefits would be realized in 2024.<sup>14</sup> The Motion to Expedite does not support that claim with facts, again denying parties notice and an opportunity to be heard regarding whether the Proposed Settlement achieves the streamlining benefits they claim.

In particular, although the Moving Parties explain negotiations occurred over two months, they do not explain why they needed until approximately two months after the Scoping Memo to propose the settlement. In short, the Moving Parties' words suggest urgency, but they fail to justify it.

The Moving Parties could also have recommended that the Scoping Memo not include a Phase 2, or that the Commission merge Phases 1 and 2, shortly after the Scoping Memo was issued, in order to accommodate the fact that their proposed settlement exceeds the scope of Phase 1. This would have given Non-Settling Parties an opportunity to be heard regarding Phase 2 issues at the outset of the proceeding.

**D. Cal Advocates Is Working on Proposing Changes to GO 131-D that the Scoping Memo Has Identified for Phase 2**

In reliance upon the Scoping Memo's Phase 2 instructions, Cal Advocates is working on proposing changes in Phase 2 to help streamline the transmission permitting process. If the Administrative Law Judge (ALJ) grants a full 30-day period, this would enable Cal Advocates to articulate such proposals and related ideas for additional changes to GO 131-E at a high level, and give the Commission, the ALJ, and parties an opportunity to consider the full proposal in Phase 2.

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<sup>13</sup> Joint Motion, at 2.

<sup>14</sup> Joint Motion at 4.

### III. CONCLUSION

For the reasons identified herein, Non-Settling Parties respectfully request they be allotted a full 30 days to respond to the Settling Parties Joint Motion For Adoption of Phase 1 Settlement Agreement.

Respectfully Submitted,

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