
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**
Senator Steven Bradford, Chair
2023 - 2024 Regular

Bill No: AB 551 **Hearing Date:** 7/2/2024
Author: Bennett
Version: 6/10/2024 Amended
Urgency: No **Fiscal:** Yes
Consultant: Nidia Bautista

SUBJECT: Public Utilities Commission

DIGEST: This bill proposes streamlining of California Public Utilities Commission (CPUC) procedures related to transmission planning.

ANALYSIS:

Existing law:

- 1) Establishes and vests the CPUC with regulatory authority over public utilities, including electrical corporations. (Article XII of the California Constitution)
- 2) Provides that the CPUC may supervise and regulate every public utility in the state and may do all things, whether specifically designated or in addition, which are convenient and necessary and in the exercise of such power and jurisdiction. (Public Utilities Code §701)
- 3) Requires the CPUC to submit amendments, revisions, or modifications of its Rules of Practice and Procedure to the Office of Administrative Law for prior review, but exempts from that requirement general orders, resolutions, or other substantive regulations. (Public Utilities Code §311 (h))
- 4) Prohibits, via the Public Utilities Act, any electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the CPUC a Certificate of Public Convenience and Necessity (CPCN) that the present or future public convenience and necessity require or will require its construction, except that the extension, expansion, upgrade, or other modification of an existing electrical transmission facility, including transmission lines and substations, does not require a CPCN. The CPCN process includes California Environmental Quality Act (CEQA) review of the proposed project. A CPCN confers eminent domain authority for construction of the project. A CPCN is not required for the extension, expansion, upgrade, or other modification of an

existing electrical transmission facility, including transmission lines and substations. (Public Utilities Code §1001)

- 5) Requires the CPUC, by January 1, 2024, to update General Order (GO)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 GO to seek approval to construct an extension, expansion, upgrade, or other modification to its existing electrical transmission facilities, including electric transmission lines and substations within existing transmission easements, rights of way, or franchise agreements, irrespective of whether the electrical transmission facility is above a 200-kilovolt voltage (kV) level. (Public Utilities Code §564)
- 6) Requires, pursuant to the CEQA, lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. CEQA includes several statutory exemptions, as well as categorical exemptions in the CEQA Guidelines. (Public Resources Code §21000 *et seq.*)

This bill:

- 1) Clarifies that regulations and guidelines related to the CEQA are also exempt from the requirement to submit to the Office of Administrative Law for review.
- 2) Authorizes the CPUC to adopt guidelines at a publicly noticed meeting to carry out its review of and actions on applications for the construction of electrical transmission facilities, as described, subject to its regulatory jurisdiction, as provided.
- 3) Prohibits a cause of action arising out of an executive director disposition of a protest to a specified notice of proposed construction deemed exempt from the requirement to submit an application for a permit or certificate for electrical transmission facilities from accruing in any court to any entity or person unless the entity or person has filed an application to the CPUC for a rehearing within 10 days after the date of issuance of the disposition. This bill would require the CPUC to issue its decision and order on rehearing within 90 days after the filing of that application.

Background

Transmission projects. Electric transmission lines are generally high voltage lines that move electricity from generation resources (power plants) to distribution lines

in neighborhoods. Companies, usually electric investor-owned utilities (IOUs), proposing the construction of new transmission, are required to obtain a permit from the CPUC for construction of certain specified infrastructure listed under Public Utilities Code §1001, including transmission projects. The CPUC reviews permit applications under two concurrent processes: (1) an environmental review pursuant to CEQA, and (2) the review of project need and costs pursuant to Public Utilities Code §1001 and GO 131-D (Certificate of Public Convenience and Necessity (CPCN)).

Need for expanded transmission capacity. In order for the state to meet its clean energy goals, including achieving 100 percent clean energy by 2045, electric transmission capacity will likely need to grow significantly. The California Independent System Operator (CAISO) conducts its transmission planning process (TPP) to identify potential transmission system limitations as well as opportunities for system reinforcements that improve reliability and efficiency. The annual transmission plan fulfills the CAISO's core responsibility to identify and plan the development of solutions, transmission or otherwise, to meet the future needs of the electricity grid. The CAISO identifies projects that address grid reliability requirements, identify upgrades needed to successfully meet California's policy goals, and explore projects that can bring economic benefits to consumers. In 2021, the CAISO created a 20-Year Transmission Outlook for the electric grid, in collaboration with the CPUC and the California Energy Commission (CEC), with the goal of exploring the longer-term grid requirements and options for meeting the state's SB 100 clean energy objectives reliably and cost-effectively. The 20-Year Transmission Outlook estimates a significant amount, and expense, to construct and expand transmission facilities, including an estimated \$10.74 billion in upgrades to existing facilities.

The Transmission Permitting Process. Usually, utilities proposing the construction of new transmission are required to obtain a permit from the CPUC for construction of certain specified infrastructure listed under Public Utilities Code §1001, including transmission projects. The CPUC reviews permit applications under two concurrent processes:

- 1) An environmental review of applicable projects pursuant to CEQA and CPUC environmental rules. To prepare for the environmental review, the utility first conducts and submits a Proponents Environmental Assessment (PEA). The PEA is a preliminary assessment of the project's potential environmental impacts and alternatives. Some projects may trigger a federal National Environmental Policy Act (NEPA) review if they cross federal land or use federal funds.

- 2) The review of project needs and costs according to Public Utilities Code §1001 and GO 131-D, also known as a CPCN, or — depending on project size — a permit to construct (PTC).

Permit/Certificate Review. Parallel to environmental review under CEQA, the CPUC reviews the utility's application for a CPCN or a PTC, depending on the size of the project. The CPUC's decision on the CPCN or PTC cannot be issued until the environmental review is complete, if one is required. But most transmission projects are categorically exempt from CEQA. Most of the CPCN/PTC process is outlined in GO 131-D.

CPUC's GO 131-D. GO 131-D was first adopted in 1970 and before a recent update late in 2023, it had not been updated since 1995. It establishes the criteria to be followed to trigger the need for a PTC or renovate electrical facilities, including transmission lines and substations, and also sets out public notice requirements for proposed transmission projects. The level of analysis performed by the CPUC pursuant to GO 131-D varies with the size (measured in voltage) of the transmission project.

- Projects below 50 kV are considered distribution line projects and in general, do not require CPUC approval.
- Projects between 50 kV and 200 kV generally require a PTC, which includes an environmental review pursuant to CEQA, if applicable. The CPUC process generally does not require a detailed analysis of the need for or economics of these projects. An application for a PTC must be filed at least nine months before a decision is required.
- Projects over 200 kV generally require a CPCN and are subject to CEQA review, as applicable.

The CPCN process analyzes the need for the project and the economics of the project, as well as, the environmental impacts of the project if CEQA applies. An application for a CPCN must be filed at least 12 months before a decision is required.

GO 131-D Reforms. SB 529 (Hertzberg, Chapter 357, Statutes of 2022) requires the CPUC to revise the permitting process for specified transmission projects. The bill directed the CPUC to revise GO 131-D to authorize a utility to use the PTC process or claim an exemption to seek approval to construct an extension, expansion, upgrade, or other modification to its existing transmission facilities regardless of the voltage level by January 1, 2024. However, CEQA still applies. In May 2023, the CPUC opened a rulemaking to solicit comments that would revise

the GO 131-D rules. Based on the feedback, the assigned commissioner determined the issues to be considered in the proceeding should be separated into two phases. Phase 1 includes consideration of changes to GO 131-D necessary to conform it to the requirements of SB 529 and updates to outdated references. Phase 1 decision was approved on December 14, 2023. Currently, the CPUC is in Phase 2 of the rulemaking proceeding to make changes to GO 131-D, which includes consideration of changes not addressed in the Phase 1. Roughly a month ago, the CPUC issued a *Phase 2 Staff Proposal* with recommendations for various approaches to the changes sought in GO 131-D, including various recommendations, including in response to recommendations from stakeholders.

Comments

Need for this bill. The author's office has shared that as the state begins to further focus on expanding and upgrading the electrical transmission system it is vital that the CPUC have the ability to adapt its rules expeditiously in order to ensure that the state can meet its climate and energy needs. This bill attempts to streamline CPUC procedures related to transmission planning.

Specifically, this bill attempts to make clear that the CPUC is afforded the flexibility to adjust its guidelines related to the Guidelines for Energy Project Applications Requiring CEQA Compliance: Pre-filing and Proponent's Environmental Assessments (Version 1.0, November 2019) [PEA Guidelines]. Currently, if the CPUC makes changes to the guidelines it must undergo the Administrative Procedures Act (APA) review, which takes a year. The Administration suggests this is required because the CPUC's Rules of Practice and Procedures is required to undergo APA review and it references the PEA Guidelines. This bill proposes to make clear that the PEA Guidelines would be exempt from APA review.

This bill also attempts to provide clarity regarding the protest process and timeline for electric transmission projects that are exempt from a CPCN or PTC. The Administration contends that while these projects can be contested, the process to appeal is unclear. This bill proposes to provide stakeholders with certainty about the ability to appeal to seek judicial review of the Executive Director disposition of a protest allowed by GO 131-D. This bill would require a protest to be filed within 10 days of a disposition and a decision from the CPUC within 90 days. The author contends this certainty will avoid the current ambiguity and delays in processing protests.

Need for amendments. The author and committee may wish to amend this bill to make clear that the APA exemption is for the successor PEA Guidelines and other related changes.

Prior/Related Legislation

AB 2292 (Petrie-Norris, 2024) repeals the requirement that the CPUC consider alternatives to prospective transmission projects before issuing a CPCN approval. The bill is pending in Senate Committee on Appropriations.

AB 3238 (Garcia, 2024) exempts, by January 1, 2030, from the CEQA for the expansion of an existing public right-of-way across state owned land to accommodate the for specified electrical infrastructure projects. Exempts projects that expand existing public right-of-way across state-owned land to accommodate the construction, expansion, modification, or update of electrical infrastructure from CEQA until January 1, 2035. This bill would also designate the CPUC as the lead agency for purposes of CEQA for electrical infrastructure projects. The bill is pending in Senate Committee on Appropriations.

AB 3246 (Garcia, 2024) requires the CPUC, on or before January 1, 2026, to update a general order to provide specified exemption from the permit to construct process for advanced reconductoring transmission projects. The bill is pending in Senate Committee on Appropriations.

SB 1006 (Padilla, 2024) requires electrical transmission utilities, by January 1, 2026, to study grid-enhancing technologies to cost-effectively increase transmission capacity and to identify which of its transmission and distribution lines can be reconductored with advanced reconductors. The bill is pending in the Assembly.

SB 420 (Becker, 2023) would have removed the requirement on new electrical transmission facility projects less than 138 kV proposed by the state's six largest IOUs from a determination of need from the CPUC before construction. These new projects must either be located on previously disturbed land, located in an urbanized area or be part of a project that has undergone a CEQA review. Excludes from eligibility projects that are located in wetlands, any un-remediated hazardous waste site, or critical habit, as specified. The bill was vetoed.

SB 619 (Padilla, 2023) would have authorized an electrical corporation, at the time it files an application with the CPUC for a CPCN or PTC for new construction of any electrical transmission facility 138 kV or greater to, at the same time, submit

an application for that facility to the CEC. Prohibits the CEC from considering the necessity for the electrical transmission facility. The bill was vetoed.

SB 529 (Hertzberg, Chapter 357, Statutes of 2022) exempted an extension, expansion, upgrade, or other modification of an existing transmission line or substations from the requirement of a CPCN and directs the CPUC to revise its general orders, by January 1, 2024, to instead use its PTC process for these approvals.

SB 887 (Becker, Chapter 358, Statutes of 2022) among other provisions, directed the CPUC, on or before January 15, 2023, to request CAISO to identify the highest priority anticipated transmission facilities that are needed to deliver renewable energy resources or zero-carbon resources.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT:

Office of California Governor Gavin Newsom, Sponsor
Public Advocates Office

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: The Public Advocate's Office states:

We support AB 551, as amended on June 10, 2024, because it would help streamline the approval process for much needed transmission project and continue to uphold the state's environmental review processes. Overall, AB 551 would provide a path for improving the transmission permitting process while ensuring environmental protections are in place and would help advance the state's climate and energy goals.

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