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

Bill No: AB 914 **Hearing Date:** 7/10/2023
Author: Friedman
Version: 5/1/2023 Amended
Urgency: No **Fiscal:** Yes
Consultant: Nidia Bautista

SUBJECT: Electrical infrastructure: California Environmental Quality Act: review time period

DIGEST: This bill requires a two-year time period for a lead state agency to complete California Environmental Quality Act (CEQA) environmental review and approve or deny an application for an electrical infrastructure project.

ANALYSIS:

Existing law:

- 1) Under CEQA, a lead agency on a proposed project determines whether a project is exempt from CEQA or if the lead agency must do an initial study to determine if a project will have significant effects on the environment. If a project has no effect on the environment or effects that can be mitigated, the lead agency prepares a negative declaration (ND) or mitigated ND (MND). If the project will have significant impacts, the lead agency prepares an environmental impact report (EIR) to evaluate and propose mitigation measures for any effects on the environment, including impacts or likely impacts. (Public Resources Code §§21000 et seq.)
- 2) Provides CEQA exemptions for 33 types of projects and establishes criteria for exceptions to these exemptions. (California Code of Regulations (CCR.) Title 14 §§15300-15333). These include exemptions that apply to utilities and transmission lines:
 - a) Repair and maintenance of existing public or private facilities, including both investor and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services. (Guidelines §15301)
 - b) Replacement or reconstruction of existing facilities on the same site with the same purpose and capacity. (CCR. Title 14 §15302)

- c) New construction or conversion of small structures, including electrical, gas, and other utility extensions of reasonable length to serve such construction. (CCR. Title 14 §15303)
- 3) Requires the California Public Utilities Commission (CPUC) to certify the “public convenience and necessity” of a transmission line over 200 kilovolts (kV) before an electric investor-owned utility (IOU) may begin construction. The Certificate of Public Convenience and Necessity (CPCN) includes CEQA review. 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)
- 4) Requires an IOU to obtain a discretionary permit to construct (PTC) from the CPUC for electrical power line projects between 50-200 kV. A PTC may be exempt from CEQA pursuant to CPUC orders and existing provisions of CEQA. (CPUC General Order (GO) 131-D)
- 5) Requires the CPUC, by January 1, 2024, to update GO 131-D to authorize IOUs to use the PTC process or claim an exemption under GO 131-D Section III(B) 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 200 kV. (Public Utilities Code §564)
- 6) Requires the California Energy Commission (CEC) to adopt a strategic plan for the state’s electric transmission grid. This plan makes recommendations on actions to implement investments to ensure reliability, relieve congestion and meet future growth in load and generation of the grid. (Public Resources Code §25324)

This bill:

- 1) Requires a state agency, acting as the lead agency, to complete its environmental review for an electrical infrastructure project and to approve or deny the project within two years of the submission and acceptance of a complete application for the issuance of a lease, permit, license, certificate, or other entitlement for use for electrical infrastructure to the state agency.
- 2) Requires, if the state agency fails to meet this time period the state agency to submit to the Legislature a report explaining the reasons for why the review

could not be completed within the time period and identifying potential impacts to the electrical system that could result from the delay.

- 3) Makes related findings and declarations regarding the increased demands for electricity and clean energy, and as such, the need to expand and develop new utility infrastructure.

Background

Electric transmission projects. Electric transmission lines are generally high voltage lines that move electricity from generation resources (power plants) to distribution lines in neighborhoods that serve individual customers. Companies, usually electric 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 (CPCN).

According to the Senate Committee on Environmental Quality:

The A, B, C's of CEQA. CEQA is designed to (a) make government agencies and the public aware of the environmental impacts of a proposed project, (b) ensure the public can take part in the review process, and (c) identify and implement measures to mitigate or eliminate any negative impact the project may have on the environment. CEQA is enforced by civil lawsuits that can challenge any project's environmental review. Nonprofits, private individuals, public agencies, advocacy groups, and other organizations can all file lawsuits under CEQA.

CEQA Process and timeline. A lead agency reviewing a project under CEQA takes three progressive steps of environmental review. First, a lead agency looks at the footprint of the project to determine if it can be exempted from CEQA. If it is not exempt, the lead agency then conducts an initial study to look at potential environmental impacts. If there are no significant environmental impacts, or if those impacts can be fully mitigated, the lead agency prepares an ND or MND. If there are environmental impacts that cannot be mitigated, the lead agency proceeds with the most extensive level of environmental review: a full EIR. The EIR is a comprehensive document that evaluates all the environmental impacts that a project might have, and proposes mitigation measures for impacts that have a significant effect on the environment.

Under CEQA, state and local agencies must complete and adopt a ND in 180 days, and certify an EIR within a year. If there is a compelling circumstance to extend this timeline, agencies may take longer, but only if the project applicant consents.

Multiple Players in Energy Infrastructure Planning. Planning and building transmission lines requires coordination across multiple state entities. The CEC, CPUC, and CAISO have a memorandum of understanding regarding transmission and resource planning and implementation.

- *CAISO plans transmission.* California Independent System Operator (CAISO) is a nonprofit, public benefit corporation established in statute to ensure efficient use and reliable operation of the transmission grid and to manage the transmission grid and related energy markets. CAISO annually conducts a Transmission Planning Process which evaluates the electricity system's needs and identifies new transmission lines and upgrades to existing transmission lines. These projects are then taken on by incumbent transmission owners or by a utility following a competitive solicitation process.
- *The CPUC reviews transmission projects.* The CPUC conducts environmental review for transmission projects, including CEQA review as part of a CPCN or a PTC, depending on the size of the project. Only larger, high-voltage projects over 200 kV, which also require a CPCN, are consistently subject to complete CEQA review, including an EIR.
- *CEC – power plants and last mile lines.* The CEC certifies all thermal power plants 50 megawatts (MW) and larger and related short connecting transmission lines. In siting these plants and lines, the CEC uses an Application for Certification (AFC) process, a certified regulatory program that is the functional equivalent of CEQA.

CEQA and transmission timeline. The CPUC anticipates that major transmission projects will take five to six years to complete, with CEQA and CPCN review adding around three to four years for a project. If these environmental planning documents are legally challenged, then lawsuits can extend this process even further.

However, the majority of transmission projects are eligible for exemption from CEQA either through categorical exemptions or through GO 131-D. IOU electrical distribution line projects under 50 kV do not require a CPCN or PTC from the CPUC, nor discretionary approval from local governments, and therefore are not

subject to CEQA. Only larger, high-voltage projects over 200 kV, which also require a CPCN, are consistently subject to CEQA review with a full EIR. According to CPUC data, between 2012 to 2023, 608 projects have been exempted from CEQA, 29 projects have been approved via negative declaration, and 27 have undergone an EIR. That means that 90 percent of electric IOU projects over the last decade were exempt from CEQA, on top of the thousands of projects under 50 kV that do not require any review from the CPUC. In the case of an exemption, the amount of time spent on CEQA review is negligible.

Comments

Need for this bill. This bill attempts to address an area of potential delay in helping the state achieve its clean energy, greenhouse gas emissions, and reliability goals, namely the deployment of electric infrastructure projects, perhaps most notably electrical transmission projects. However, as noted above, very few electrical transmission projects undergo a CEQA environmental review, so the benefits of the proposed two-year time period in this bill may be applicable to only a limited number of transmission projects. Nonetheless, given the potential need for transmission the two year period may prove beneficial to supporting the state's efforts to achieve its clean energy and climate goals. The CAISO's first-ever 20 Year Outlook for transmission planning, written in partnership with the CPUC and CEC and released in 2022, estimates that more than \$30 billion in new transmission capacity will be needed by 2040 to support the development of over 120 gigawatts of new generating resources to meet the state's goals. As such, the potential benefit from this and other legislative efforts to help expedite permitting can support the state's efforts to deploy this necessary transmission capacity.

Electrical infrastructure. The two-year time limit for CEQA review of electrical infrastructure projects proposed by this bill would apply whenever a state agency is the lead agency for an electrical infrastructure project. "Electrical infrastructure" is not defined, and therefore, would potentially include more than electric transmission projects, but could also include power plants, as the CEC serves as a lead agency for the licensing of thermal power plants over 50 MW via the AFC process, as well as, the small power plant exemption (SPPE) option for power plants between 50-100 MW. The AFC process is a certified regulatory program, the functional equivalent of CEQA. Regardless of whether it applies to the CPUC CPCN process or the CEC AFC process, two years to complete CEQA review and make a decision on the project seems reasonable and consistent with the agencies' own procedures and timelines.

Need for amendments. Due to the limited time between when this bill was heard in the Senate Committee on Environmental Quality and this committee, the committees have agreed to adopt all the proposed amendments for the bill in this committee. *The author and committee may wish to adopt the following amendments proposed in the Senate Committee on Environmental Quality:*

- *Strike the language specifying that the two-year time limit for public agencies' CEQA review of transmission projects is mandatory.*
- *Add a seven-year sunset to the requirement that lead public agencies complete their CEQA review in two years.*

Additional amendments needed. *The author and committee may wish to amend the findings and declarations to clarify some of the statements and delete provisions that may be less relevant to this bill.*

Double referral: This bill passed out of the Senate Committee on Environmental Quality by a vote of 7-0 on July 5, 2023.

Prior/Related Legislation

SB 149 (Caballero, 2023) makes various changes to CEQA, including administrative and judicial streamlining afforded to projects, including energy-related projects. The bill is in the enrollment process.

SB 319 (McGuire, 2023) would require the CEC, CPUC, and CAISO to jointly develop and recommend an expedited permitting roadmap that describes timeframes and milestones for a coordinated, comprehensive, and efficient permitting process for electrical transmission infrastructure. The bill is pending in the Assembly Committee on Utilities and Energy.

SB 420 (Becker, 2023) would allow specified transmission projects to become environmental leadership development projects eligible for CEQA streamlining and directs the CPUC to streamline its CPCN review if CAISO has already identified that project to be necessary. The bill is pending in the Assembly Committee on Natural Resources Committee.

SB 619 (Padilla, 2023) would expand the facilities eligible to be environmental leadership development projects, thereby subject to streamlined procedures under CEQA, to include electrical transmission projects. The bill is pending the Assembly Committee on Natural Resources.

SB 529 (Hertzberg, Chapter 357, Statutes of 2022) required the CPUC to update its rules to allow each electric IOU to use an accelerated process for approval to

construct an extension, expansion, upgrade or other modification to its existing electric transmission facilities.

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

SUPPORT:

350 Humboldt: Grass Roots Climate Action
Association of California Cities - Orange County
California Association of Councils of Governments
California Builder's Alliance
CivicWell
Clean Air Task Force
Clean Power Campaign
Housing Action Coalition
Pacific Gas and Electric Company
Sacramento Regional Builders Exchange
San Diego Gas & Electric
Southern California Edison

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to the author:

The state has set ambitious goals for decarbonization and increased reliance on clean energy, largely predicated on electrification of the transportation industry, greener buildings, increased reliance on renewable generation and development of energy storage... Utilities must also be able to interconnect renewable energy sources to the broader grid as efficiently as possible. Despite these objectives, the regulatory process for reviewing, siting and permitting the electrical infrastructure necessary to interconnect, transmit and transform the energy needed to power California more cleanly can lead to unwanted delays, roadblocks and bottlenecks. In particular, environmental review under the California Environmental Quality Act [Division 13 (commencing with Section 21000) of the Public Resources Code] ("CEQA"), while important to the state's overall environmental policies, is often the "long pole in the tent" that prevents worthy projects from being developed for many years, or sometimes being developed at all, given the expense and uncertainty associated with such review. This has

been the case even in instances where infrastructure projects would have minimal environmental impacts and/or would provide far greater environmental benefits than impacts.

AB 914, would establish a timeline of two years for the lead agency to complete its environmental review and to issue a final decision on an application for an electrical infrastructure project – and if the lead agency fails to meet this time period, the bill would require the state agency to submit to the Legislature a report explaining why. This reporting requirement would give policymakers information on why state agencies are unable to complete environmental review in a timely manner.

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