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

Bill No:	SB 1018	**Hearing Date:**	4/16/2024
Author:	Becker		
Version:	2/5/2024 Introduced		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Sarah Smith		

SUBJECT: Electrical corporation: definition: exclusion of certain solar or wind generating technologies

DIGEST: This bill exempts certain entities selling solar and wind electrical generation from the definition of an "electrical corporation" if those entities provide electric generation solely over private lines exclusively for electrolytic hydrogen production and electrifying industrial heat processes.

ANALYSIS:

Existing law:

1) Authorizes the California Public Utilities Commission (CPUC) to regulate public utilities, including electric and natural gas corporations and establish rates for these utilities. (Public Utilities Code §201 et. seq.)

2) Defines an "electrical corporation" as every corporation or person owning, controlling, operating, or managing any electric plant for compensation in the state, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others. Existing law establishes limited exemptions to the definition of an electrical corporation. Existing law generally designates any entity that sells electricity to more than two contiguous parcels or across the street as an "electrical corporation." (Public Utilities Code §218)

This bill:

1) Exempts an entity selling solar or wind electric generation of at least five megawatts (MW) from the definition of an electrical corporation, if the electricity is transmitted solely using private electric lines to a separate facility owned by a different entity that uses the electricity exclusively for the one of following:

a) Producing hydrogen from electrolysis.

b) Providing industrial process heat, including the use of a thermal energy storage system.

2) This bill specifies that exempt solar and wind generation facilities may have associated battery storage on-site, and exempt generation may not serve departing load.

Background

Bill aims to modify "over-the-fence" rules for certain new loads. Existing law generally classifies any entity selling electricity to more than two adjacent parcels as an electrical corporation, subject to full regulation by the CPUC. While existing law establishes very limited exemptions to this definition, those exemptions generally only apply to electricity generated for on-site energy consumption or electricity provided to no more than two parcels that are contiguous to the property on which the electricity is generated. These restrictions are generally known as the "over-the-fence" rules due to the requirement that parcels be adjacent to each other. This bill would establish a new exemption to the "over-the-fence" rules for certain wind and solar projects that provide electricity solely over private lines to another entity exclusively for producing electrolytic hydrogen and electrifying industrial heat process. This bill specifies that this exemption can only be provided for generation serving new electrical loads; as a result, this exemption may not be used to enable an existing electrical customer to use this exemption to remove existing demand from electric utilities' existing load profiles.

Both electrolytic hydrogen production and industrial process electrification require a substantial amount of electricity. To the extent that a hydrogen production or industrial facility seeks to co-locate new renewable generation to support their activities, it may not be feasible to site a sufficient amount of generation on just two adjacent parcels even when such parcels are available. The over-the-fence exclusion established under this bill would constitute a substantial departure from existing policy by allowing certain generators to sell electricity to off-takers that are not on adjacent properties without those generators being classified as an electrical corporation. As a result, this bill would prevent those generators and their facilities from facing CPUC regulation. This bill's exemption applies solely to those facilities that deliver the generation entirely over private electrical facilities. This limitation may reduce the likelihood that developers will establish generation facilities in distant locations from their off-takers; however, this bill does not require generation facilities to be located within a certain distance from associated off-takers.

Many obligations and protections are baked into CPUC regulatory powers. The CPUC's "over-the-fence" rules have been the subject of intense debate in recent legislation and CPUC decisions. Following the passage of SB 1339 (Stern, Chapter 556, Statutes of 2018), the CPUC opened a proceeding to implement the bill's requirements (Rulemaking R.19-09-009). As part of this proceeding, multiple parties attempted to assert that the CPUC should limit the application of the "over-the-fence" rule for determining the number of parcels a microgrid can serve. In its decision adopting measures to implement SB 1339, the CPUC responded to parties' assertions that the over-the-fence rules unduly limited microgrid deployment. The CPUC's decision (D. 21-01-018) states:

> Without our oversight, there is no way to ensure these entities operate their assets safely and reliably and are not charging unreasonable rates when providing this essential service. Yet, that is precisely the outcome sought by some. We reject their push to permit – through this docket – the establishment of private utilities to sell power under contractual arrangements to nearby third-parties without any Commission oversight and without regard to the existing regulatory and legislative requirements that are reflected in Section 218 and other parts of the Public Utilities Code.

The CPUC's decision underscores the extent to which a number of obligations and protections in the energy sector stem from the CPUC's authority to regulate electrical corporations. While this bill directly addresses the statutory requirements of Public Utilities Code §218 and is not related to microgrid commercialization, it poses similar questions about the extent to which broader exemptions to over-the-fence requirements weaken CPUC oversight and limit the extent to which the state can ensure that certain facilities and electricity consumption are aligned with state goals. Concerns about expanding over-the-fence exemptions to properties that are not contiguous may be particularly acute for utility safety requirements. While both public and private electrical facilities have ignited catastrophic wildfires in the past, the CPUC's authority over electrical corporations enables the commission to direct electrical corporations to take certain steps to mitigate the potential for ignitions and catastrophic fires. It is unclear if the interests of project developers wishing to create larger off-site generation opportunities without CPUC regulation can be balanced against the manner in which regulatory oversight in the electric utility sector is the primary mechanism through which the state ensures the reliability, safety and affordability of electrical services and facilities.

Prior/Related Legislation

SB 993 (Becker, 2024) requires the CPUC to consider establishing a new tariff to encourage new grid-responsive electricity consumption for electrolytic hydrogen production and electrifying industrial heat processes. The bill is pending in the Senate Energy, Utilities and Communications Committee.

AB 2083 (Berman, 2024) requires the California Energy Commission (CEC) to assess the state's potential to reduce emissions from high-heat industrial processes. The bill is currently pending in the Assembly.

AB 841 (Berman, 2023) would have required the CEC to develop an Industrial Heat Electrification Roadmap to identify opportunities to decarbonize certain high-heat industrial processes through electrification. The bill was held in the Senate Appropriations Committee.

AB 2667 (Friedman, 2022) would have established an incentive program to encourage the development of distributed energy generation. The bill also included provisions affirming the definition of an electrical corporation in Public Utilities Code §218.

SB 1339 (Stern, Chapter 556, Statutes of 2018) required the CPUC and local publicly owned electric utilities to take a number of steps to encourage the commercialization of microgrids, including adopting tariffs to support microgrids.

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

SUPPORT:

350 Humboldt
350 Sacramento
Advanced Energy Economy
California Hydrogen Coalition
California State Association of Electrical Workers
California State Pipe Trades Council
Climate Action California
Coalition of California Utility Employees
Green Hydrogen Coalition
Industrious Labs
Intersect Power
Natural Resources Defense Council and NRDC Action Fund
Rondo Energy

Sierra Club California
The Climate Reality Project: Silicon Valley

OPPOSITION:

Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Edison

ARGUMENTS IN SUPPORT: According to the author:

> Powering hydrogen production or thermal batteries by connecting them directly to renewable energy ("off-grid") would give them access to some of the cheapest sources of energy. It would also guarantee that the hydrogen or heat is powered by clean energy without adding stress to the grid. Unfortunately, this off-grid option is blocked today. Renewable energy can only be supplied directly "behind-the-meter" if it falls within one of the exceptions within PUC 218, the so-called "over-the-fence rule." Otherwise, the renewable generator is treated as a public utility, subject to extensive regulatory oversight. Today, this is generally restricted to generation that is on the same parcel of land or an adjacent parcel ("over-the-fence"). That works fine for rooftop solar on a home but is not sufficient for the megawatts of solar, spread across many acres of land, that would be needed for even a modest hydrogen facility.
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> SB 1018 solves this problem by creating a narrow, new exception within PUC 218 that allows a large solar or wind generator (spread across many parcels) to sell their output directly to a single customer who will use that power for producing hydrogen or providing industrial heat. This change will support the growth of green hydrogen and industrial electrification in a way that will ensure it makes use of clean energy and does not impact electricity rates or grid reliability.

ARGUMENTS IN OPPOSITION: The three large electric investor-owned utilities (IOUs) oppose this bill, and they argue that it would create a market for unregulated utilities, limit consumer protections, and undermine grid reliability and safety. In opposition, the IOUs state:

> The bill would enable any number of private companies that generate wind and solar to run private power lines without limitations to service area boundaries. This could severely hamper the Joint Utilities' ability to forecast for increased demand or construct new facilities to connect future energy

resources that would service the vast majority of Californians who remain utility customers. State policy has historically focused on building an efficient, safe grid that will meet customer needs. This bill directly contradicts that policy and could threaten reliability and clean energy goals. SB 1018 attempts to achieve a number of objectives toward a clean energy future—promotion of on-site hydrogen production and clean industrial process heat—that can be addressed through existing pathways. For example, the Joint Utilities already provide renewable energy to customers, subject to the amount in their procurement portfolios. There is no need to modify the scope of "electrical corporation" and threaten reliability and clean energy goals.

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