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

Bill No:	SB 1165	**Hearing Date:**	4/2/2024
Author:	Padilla		
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Urgency:	No	**Fiscal:**	Yes
Consultant:	Nidia Bautista		

SUBJECT: State Energy Resources Conservation and Development Commission: certification of facilities: electrical transmission projects

DIGEST: This bill authorizes an electrical corporation that applies to the California Public Utilities Commission (CPUC) to authorize construction of a high voltage electrical transmission line, rated at 138 kilovolts (kV) or greater, to apply to the California Energy Commission (CEC) for certification of the facility pursuant to the California Environmental Quality Act (CEQA), instead of the CPUC conducting the CEQA review. This bill provides that the CEC certification authorizes the project to be eligible for the CEQA judicial streamlining afforded to Environmental Leadership Development Projects and the CEC's "Opt-in" permitting process.

ANALYSIS:

Existing law:

1) 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 necessary and convenient in the exercise of such power and jurisdiction. (Public Utilities Code §701)

2) Prohibits an electrical corporation from beginning construction of a line, plant, or system, or of any extension thereof, without having first obtained from the CPUC a certificate that the present or future public convenience and necessity requires, or will require, its construction. (Public Utilities Code §1001)

3) Establishes the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 which authorizes the Governor, until January 1, 2032, to certify Environmental Leadership Development Projects (ELDPs) that meet specified requirements for certain streamlining benefits related to the CEQA. Repeals the Act on January 1, 2032. (Public Resources Code §21178 *et seq*.)

4) Establishes the AB 205 (Committee on Budget, Chapter 61, Statutes of 2022) "Opt-in" permitting which authorized persons proposing eligible facilities, including electrical transmission lines carrying electricity from certain other facilities that are located in the state to a point of junction with any interconnected electrical transmission system, to file applications for certification, on or before June 30, 2029, with the CEC to certify sites and related facilities. Provided that the CEC's certification of sites and related facilities is in lieu of any permit, certificate, or similar document required by any state, local, or regional agency, except as specified, including the CPUC permit requirements. (Public Resources Code §25545 *et seq*.)

5) Deems the sites and related facilities certified by the CEC as ELDPs eligible for the judicial streamlining of such projects. (Public Resources Code §25545.13)

This bill:

1) Expands the facilities eligible to be certified as ELDPs as part of the AB 205 "Opt-in" permitting by the CEC to include electrical transmission projects.

2) Requires an applicant applying for certification of an electrical transmission project to take certain actions, including to avoid or minimize significant environmental impacts in any disadvantaged community.

3) Authorizes an electrical corporation that files an application with the CPUC to authorize the new construction of any electrical transmission facility rated at 138 kV or greater to simultaneously submit to the CEC an application for certification of the facility as an ELDP and AB 205 "Opt-in" permitting. Prohibits the CEC from considering the necessity of the electrical transmission facility, thereby retaining that review at the CPUC. Authorizes the CEC to consider alternative substation locations or routing of transmission lines.

4) Authorizes the CEC to recover from the electrical corporation the reasonable administrative costs incurred from evaluating an application and requires any of those fees to be deposited into the Energy Facility License and Compliance Fund.

5) Provides that an electrical corporation may file an application by no later than January 1, 2032.

6) Provides that the CEC's certification of a facility proposed by an electrical corporation satisfies and replaces the CPUC's obligations under CEQA with respect to that facility.

7) Prohibits the CPUC from approving an application for a Certificate of Public Convenience and Necessity (CPCN) until after the CEC has issued a decision on environmental review certification of the proposed facility.

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 Section 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 Section 1001 and General Order (GO) 131-D (CPCN).

Environmental review. CEQA provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. There are three general buckets of CEQA-eligible projects: exempted from CEQA, subject to a negative declaration or mitigated negative declaration, or subject to environmental impact review (EIR). If a project is not exempt from CEQA, an initial study is prepared to determine whether the project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration or mitigated negative declaration. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR. CEQA requires state and local lead agencies to establish time limits of one year for completing and certifying EIRs and 180 days for completing and adopting negative declarations. These limits are measured from the date on which an application is received and accepted as complete by the lead agency. Agencies may provide for a reasonable extension in the event that compelling circumstances justify additional time and the project applicant consents.

CPUC permitting and environmental review. Parallel to the CEQA review, the CPUC reviews the electric IOU's application for a CPCN or a Permit to the Construct (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. Most of the CPCN/PTC process is outlined in CPUC GO 131-D.

CPUC's GO 131-D. GO 131-D specifically addresses the procedures to be followed in applications for siting of electric transmission infrastructure. In essence, it implements the requirements of Public Utilities Code §1001. Under GO

131-D, the CPUC has established the criteria that would trigger the need for a permit to build or renovate electrical facilities, including transmission lines and substations. Of the hundreds of major capital electric transmission projects completed in California each year, on average one-two per year may trigger a permit, and thus CEQA. Most projects are reviewed through the CPUC's advice letter approval process, which tends to be more simplified and expedient than a full application for a CPCN.

The level of analysis performed by the CPUC varies with the size (measured in voltage) of the transmission project. Projects below 50 kV are considered distribution projects, rather than transmission projects, and in general do not require CPUC approval. Projects between 50 kV and 200 kV require a PTC from the CPUC, which consists primarily of an environmental review pursuant to CEQA. The CPUC process generally does not require a detailed analysis of the need for or economics of these projects. Projects over 200 kV require a CPCN from the CPUC. The CPCN process analyzes the need for the project and the economics of the project, as well as, the environmental impacts of the project.

SB 529 (Hertzberg, Chapter 357, Statutes of 2022). SB 529 exempts extensions, expansions, upgrades, or other modifications of transmission projects from the more involved CPCN review and approval process. Instead, SB 529 authorized these projects to undergo the more streamlined and expedient PTC review and approval process at the CPUC. The CPUC has an active rulemaking proceeding (R.23-05-018) to implement the changes adopted in SB 529 and has adopted the Phase I Decision in December of 2023 to modify GO-131 to conform with SB 529 requirements.

Transmission Outlook. In 2021, the California Independent System Operator (CAISO) issued a 20-Year Transmission Outlook for the electric grid, in collaboration with the CPUC and the CEC, with the goal of exploring the longer-term grid requirements and options for meeting the state's SB 100 (De León, Chapter 312, Statutes of 2018) clean energy objectives reliably and cost-effectively. The CAISO identified the system needs by mapping resources to the appropriate regions, identifying the transmission additions necessary to add those resources to the grid, and then examining the need to deliver those resources over the bulk transmission system. 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. Written in partnership with the CPUC and the CEC, the outlook estimates that more than $30 billion in new transmission capacity will be needed by 2040.

AB 205. Among its many provisions, AB 205 authorized the CEC to establish a new certification and permitting program for eligible non-fossil-fueled power plants and related facilities to optionally seek certification from the CEC, largely in lieu of local government permitting. The CEC adopted emergency regulations to implement a new optional program (opt-in) that authorizes the CEC to accept applications seeking certification of certain types of non-fossil-fueled energy generating facilities, energy storage facilities, transmission facilities connected to these generation facilities, and other related facilities. The emergency regulations set forth the process for submitting opt-in applications, reviewing applications, performing outreach, and considering whether to issue or deny a certification. As of April of this year, the CEC had officially received only one application to the AB 205 opt-in process for a wind project in Shasta County. The CEC has shared there are a few additional projects with applications in process. These projects are a mixture of battery energy storage, solar photovoltaic with battery energy storage, and geothermal projects, located in various parts of the state.

Comments

Need for this bill. This bill builds off the authority given to the CEC by AB 205 by additionally allowing an electrical corporation to apply to the CEC, not the CPUC as required by current law, for the environmental review of certain electrical transmission projects, subject to the 270-day decision timeframe found in AB 205. As such, this bill provides electrical corporations the option to select between the CPUC or CEC as their lead CEQA agency for these higher voltage transmission projects. The bill is similar to SB 619 (Padilla, 2022) which was vetoed by the Governor. In the veto message, Governor Newsome stated:

> "While I share the author's goal to improve electric transmission permitting to expedite needed project development, decentralizing permitting between two agencies creates new coordination challenges, requires duplicative staffing, disrupts the sequencing of permitting workstreams and impedes the ability of either agency to consider the full scope of an electric transmission project. Ensuring that a single agency can account for and mitigate both significant costs to electric ratepayers and environmental impacts can lead to better results for Californians."

CEQA and electric IOU transmission projects. Only larger, high-voltage projects over 200 kV, which also require a CPCN, are consistently subject to complete CEQA review. According to CPUC data (collected by the Assembly Committee on Utilities & Energy last year), from 2012 to 2023, of a total 664 projects that required CPUC review: 608 projects were exempt from CEQA, 29 projects were approved via negative declaration or mitigated negative declaration, and 27

required an EIR. As such, over 90 percent of electric IOU transmission projects over the last decade were exempt from CEQA, not counting the thousands of projects < 50 kV that do not require any review from the CPUC. Of the projects that had to go through a full EIR, over half were subject to federal environmental review; meaning, even if a specific project received a statutory exemption from CEQA, a federal environmental review would still be required. Therefore, efforts to offer CEQA streamlining impact only a small fraction of the needed transmission projects developed in California every year. However, given the potential transmission build-out expected per the CAISO 20-Year Transmission Outlook, it's very possible there may be an increasing number of transmission projects that require CEQA review.

Expanding electric IOUs' permitting options. If electric IOUs select the CEC CEQA review process, the projects are granted a 270 day administrative review timeline in exchange for lesser judicial streamlining, with legal challenges headed to the superior court, and with the additional project requirements in AB 205 related to workforce, greenhouse gas emissions reductions, and reduced impacts in disadvantaged communities. Such an option could increase exposure to litigation that may be more limited via the existing CPUC process which requires that legal appeals are taken directly to the Courts of Appeal or the California Supreme Court (Public Utilities Code §1756). According to the CPUC, the average transmission project that went through an EIR at the CPUC took approximately 29 months for a complete decision (CEQA and CPCN/PTC review) from the date the application was received; the average for all projects was 23 months. As such, the proposal in this bill may result in a few months of time savings. Nonetheless, the author contends a CEC CEQA review may be preferred over the CPUC's review, even as the CPUC retains the CPCN review process.

Dual Referral. Should this bill be approved by this committee, it will be re-referred to the Senate Committee on Environmental Quality.

Prior/Related Legislation

SB 619 (Padilla, 2022) would have authorized an electrical corporation that applies to the CPUC to authorize construction of a high voltage electrical transmission line, rated at 138 kV or greater, to apply to the CEC for certification of the facility pursuant to the CEQA, instead of the CPUC conducting the CEQA review. This bill provides that the CEC certification authorizes the project to be eligible for the CEQA judicial streamlining afforded to ELDPs and the CEC's "Opt-in" permitting process. The bill was vetoed.

SB 149 (Caballero, Chapter 60, Statutes of 2023) among its provisions, revised the procedures regarding CEQA administrative records and expedited administrative

and judicial review procedures for ELDPs for specified projects, including transmission projects, that required the courts to resolve CEQA litigation within 270 days to the extent feasible and extends the ELDP sunset to January 1, 2034.

SB 319 (McGuire, Chapter 390, Statutes of 2023) required the CEC and the CPUC, in coordination with the CAISO, to better and regularly coordinate planning and permitting of energy transmission infrastructure to ensure the state meets its clean energy goals and to evaluate and report on that planning and related infrastructure development. The bill also required these state energy agencies to jointly develop an electrical transmission infrastructure development guidebook.

SB 420 (Becker, 2023) would have exempted construction of certain low-voltage electrical lines and associated equipment from the need to receive a discretionary permit from the CPUC. 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 directed the CPUC to revise its GO, by January 1, 2024, to instead use its permit to construct process for these approvals.

AB 205 (Committee on Budget, Chapter 21, Statutes of 2022) allowed certain energy projects, including electric transmission lines between certain non-fossil fuel energy generation facilities to become certified leadership projects under the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 through a certification process through the CEC. With this certification, actions or proceedings related to the certification of an environmental impact report need to be resolves within 270 days to the extent feasible.

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

SUPPORT:

None received

OPPOSITION:

California Farm Bureau

ARGUMENTS IN SUPPORT: According to the author:

> California has enacted some of the world's most aggressive climate goals, but its transition away from fossil fuels is being threatened by slow siting and

permitting processes that delay critical transmission projects necessary to deliver clean energy to consumers. These long delays undermine reliability and lead to increased costs to ratepayers. If California hopes to meet its ambitious climate goals, transition transportation to clean vehicles, and end our addiction to fossil fuels, we must undertake unprecedented efforts to modernize and expand our electrical grid. New high-voltage cables, modernized existing cable networks, and new infrastructure connecting a grid with a far larger capacity to carry clean electrons to power our homes and economy is critical to keeping the lights on in California. CAISO estimates we need 7,000 megawatts of new power capacity every year for the next decade, but we're only adding a fraction of that, raising the threat of summer black-outs. Delays in project approval are also resulting in significantly higher costs to ratepayers for those critical projects. Finally, long permitting delays may also make it impossible for California to access substantial federal assistance currently available to modernize our grid and reduce ratepayer costs. SB 1165 would expand the CEC's alternative opt-in certification process to ensure faster review of key projects without sacrificing critical economic and environmental analyses of those projects.

ARGUMENTS IN OPPOSITION: The California Farm Bureau writes in opposition to the bill that, as the Governor's veto letter stated on SB 619 last year, duplicating the effort to site transmission does not accomplish the goal of a functional transmission system that adapts to the changing nature of generation resources. The Farm Bureau expresses concerns that agricultural landowners may face from the impacts of expanding transmission lines on their properties. They state that they will happily champion other methods for speeding up transmission that does not unduly burden landowners and their ability to adequately participate in those proceedings.

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