
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**

**Senator Steven Bradford, Chair
2023 - 2024 Regular**

Bill No:	SB 420	Hearing Date:	9/13/2023
Author:	Becker		
Version:	9/7/2023 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Nidia Bautista		

SUBJECT: Electricity: electrical transmission facility projects

DIGEST: This bill would, among its provisions, exempt construction of a new electrical transmission facility, or other modification, including lines and substations, by an electrical corporation serving 10,000 or more retail customers from the requirement to obtain a Certificate of Public Convenience and Necessity (CPCN) or require a permit to construct (PTC) or any other discretionary permit from the California Public Utilities Commission (CPUC), if the electrical transmission facility meets certain requirements.

ANALYSIS:

Existing law:

- 1) Establishes and vests the CPUC with regulatory authority over public utilities, including electrical corporations. (California Constitution Article XII)
- 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 necessary and convenient in the exercise of such power and jurisdiction. (Public Utilities Code §701)
- 3) Prohibits an electrical corporation from beginning the 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 require or will require its construction. (Public Utilities Code §1001(a))
- 4) Provides that the extension, expansion, upgrade, or other modification of an existing electrical transmission facility, including transmission lines and substations, does not require a certificate that the present or future public convenience and necessity requires or will require its construction. (Public Utilities Code §1001(b))

- 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 general order 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)

This bill:

- 1) States the intent of the Legislature to streamline the regulatory approval process for electrical transmission lines and equipment that are critical to maintaining electrical reliability and meeting California's renewable and zero-carbon energy goals.
- 2) Expands the existing exemption from the requirement to obtain a CPCN to include the rebuilding of an existing electrical transmission facility.
- 3) Provides that the construction of a new electrical transmission facility, or other modification, including lines and substations, by an electrical corporation serving 10,000 or more retail customers does not require a certificate that the present or future public convenience and necessity requires or will require its construction, a PTC, or any other discretionary permit from the CPUC, if the electrical transmission facility meets certain requirements, including:
 - a) It is rated at not more than 138 kV.
 - b) It will meet one of the following:
 - i) It will be located on previously disturbed land, as described in subdivision (b) of Section 25794.6 of the Public Resources Code.
 - ii) It will be located in an urbanized areas, as delineated by the U.S. Census Bureau.
 - iii) It will be part of a project that has undergone review pursuant to the California Environmental Quality Act (CEQA).
 - c) It will not be located on any of the following:
 - i) A wetland, as defined by the State Water Resources Control Board.
 - ii) Any unremediated hazardous waste site designated under the federal Comprehensive Environmental Response, Compensation and Liability Act.
 - iii) A critical habitat as designated by the U.S. Fish and Wildlife Service pursuant to the Endangered Species Act of 1973 or habitat essential to the

continued existence of an endangered or threatened species as determined by the Department of Fish and Wildlife.

- 4) Requires the CPUC, no later than January 1, 2025, to revise the general order to implement these changes so that all facilities that qualify under the provisions noted in (3) above will be treated as electric distribution facilities under the general order.

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 General Order (GO) 131-D (CPCN).

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 1-2 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.

CAISO 20-year Transmission Outlook. The California Independent System Operator (CAISO) conducts its transmission planning process to identify potential 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 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.

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 authorizes these projects to undergo the more streamlined and expedient PTC review and approval process at the CPUC. The bill requires the CPUC to update GO 131-D to authorize electric IOUs to use the PTC process or claim an exemption under Section III of the general order. GO 131-D mentions upgrades and modifications for specific types of projects (like substations in relation to PTC). The CPUC has noted it will need to define, or clarify terms, mentioned in the bill that are currently not defined (or mentioned) in the general order. These definitions include defining the thresholds under which projects may be exempted or utilize the PTC process. The existing GO 131-D was last adopted in 1994. SB 529 requires the CPUC to update GO 131-D by January 1, 2024. In May of this year the CPUC opened a proceeding (R. 2305018) and issued a Scoping Memo in July outlining the schedule for the proceeding, including a goal to adopt changes from SB 529 to GO 131-D by first quarter 2024.

Comments

SB 420. This bill is intended to expand the threshold for smaller voltage distribution lines which do not need to receive a discretionary permit at the CPUC, specifically raising the threshold from 50 kV to 138 kV, for projects meeting

specified requirements. As such, these projects would be removed from CPUC review of these transmission projects for both the CEQA review and the PTC. Given that most of these sized projects only receive a PTC, treating them as distribution line project would for practical purposes remove the requirement for a PTC.

Proponents seek expediency in reviewing and approving transmission projects. The proponents of this bill argue that the estimated of transmission project noted in the CAISO 20-year Transmission Outlook necessitate moving expeditiously with review and approval of these projects. They argue that the current requirements for a CPUC permit process hampers the ability of deploying necessary transmission projects in a timely fashion to support deployment of zero-carbon and renewable energy resources.

Concerns this bill's provisions could have unintended implications. The interest of proponents to simplify the process to review and approve transmission upgrades, modifications, and replacements to existing transmission projects is understandable, especially of those representing generating resources who have experienced frustrating delays to connect to the electrical transmission system. However, exempting these lower voltage projects from a CPUC permit could result in unintended consequences. These projects could be subject to other state agency or local agency authority over environmental review. However, the proponents of this bill contend that local jurisdictions may likely be preempted from exercising any authority granted to the CPUC, as noted in the existing GO 131-D under XIV, B. which states:

The General Order clarifies that local jurisdictions acting pursuant to local authority are preempted from regulating electric power line projects, distribution lines, substations, or electric facilities constructed by public utilities subject to the Commission's [CPUC's] jurisdiction.

This perspective may be further bolstered by Article XII of the California Constitution, Section 8 which states: "A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission [CPUC]." The supporters of the bill state that SB 420 does not shift the discretionary permit authority to another entity. It strictly moves the voltage threshold for the need for a permit from the CPUC.

Judicial review. According to the CPUC, historically court review of CPUC environmental review for PTC or CPCN have not been a significant issue for transmission projects. If parties wish to challenge a CPUC CEQA decision, the challenge follows a unique judicial process, as set forth in the Public Utilities

Codes §1756 *et seq.* Among its provisions, parties must file an application for rehearing at the CPUC, then wait 60 days or until the CPUC issues a decision resolving the applicant's complaint. Parties can then file a petition for review in the Court of Appeal or the California Supreme Court which generally processes all petitions in a 90-day timeframe. The CPUC shared they are unaware of the California Supreme Court overturning a CPUC PTC or CPCN decision based on a CEQA challenge. Additionally, most transmission projects are exempted from CEQA review and the CPUC finds most transmission projects that require a CEQA review to have the potential to cause little or no environmental damage. As such, the CPUC issues a negative declaration or a mitigated negative declaration for such projects. However, such streamlined judicial processes are not afforded to challenges to the CEQA decisions of other state agencies or local governments. Additionally, these projects may also be subject to federal environmental review under National Environmental Policy Act (NEPA). In this regard, it is not clear whether this bill will help expedite permitting of transmission projects as intended. Nonetheless, the proponents of the bill, including electric utilities, suggest there may be much to be gained by the proposed changes.

Prior/Related Legislation

AB 914 (Friedman, 2023) establishes a two-year time limit, from the date the application is accepted as complete, for a lead state agency to complete the CEQA review and approve or deny an application for an electrical infrastructure project. The bill was held in the Senate Committee on Appropriations.

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, 2023) requires 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 requires these state energy agencies to jointly develop an electrical transmission infrastructure development guidebook. The bill is pending on the Assembly Floor.

SB 619 (Padilla, 2023) authorizes an electrical corporation that applies to the CPUC to authorize a construction of a new electrical transmission line rated at 138 kV or greater to apply to the CEC for certification of the facility pursuant to

CEQA, instead of the CPUC conducting the CEQA review. The bill is pending in the Senate.

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 resolved within 270 days to the extent feasible.

SB 529 (Hertzberg, Chapter 357, Statutes of 2022) exempts 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) required 15-year projections of energy resource portfolios and energy demand to inform transmission planning to achieve the state's clean energy goals, among other provisions.

SB 1174 (Hertzberg, Chapter 229, Statutes of 2022) added consideration of transmission to some renewable and clean energy reports that existing statute requires retail electricity suppliers provide to the CPUC.

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

SUPPORT:

American Clean Power Association, (source)
350 Bay Area Action
350 Humboldt: Grass Roots Climate Action
350 Sacramento
Advanced Energy United
American Council of Engineering Companies
Bay Area Council
BOMA California
California Building Industry Association
California Business Property Association
California Business Roundtable
California Chamber of Commerce
California Construction and Industrial Materials Association
California Electric Transportation Coalition

California Environmental Voters
California Grain and Feed Association
California Manufacturers & Technology Association
California Municipal Utilities Association
California Retailers Association
California State Association of Electrical Workers
California Warehouse Association
California Wind Energy Association
Carlsbad Chamber of Commerce
Chico Chamber of Commerce
Clean Air Task Force
Clean Power Alliance
Clean Power Campaign
Climate Action California
Coalition of California Utility Employees
Elders Climate Action, NorCal Chapter
Elders Climate Action, SoCal Chapter
Electric Vehicle Charging Association
Environmental Defense Fund
Family Business Association of California
Garden Grove Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater Escondido Chamber of Commerce
Greater High Desert Chamber of Commerce
Harbor Association of Industry and Commerce
Independent Energy Producers Association
Indivisible San Jose
Large-Scale Solar Association
La Verne Chamber of Commerce
Livermore Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
NAIOP California
Oceanside Chamber of Commerce
Pacific Gas & Electric
Redding Chamber of Commerce
Redondo Beach Chamber of Commerce
Sacramento Municipal Utility District
San Pedro Chamber of Commerce
Silicon Valley Leadership Group

Silicon Valley Youth Climate Action
South Bay Association of Chambers of Commerce
Southern California Edison
Southern California Leadership Council
Southern California Public Power Authority
Terra-Gen Development Company
The Chamber Newport Beach
The Climate Center
The Climate Reality Project-Silicon Valley Chapter
Torrance Chamber of Commerce
Vista Chamber of Commerce
Walnut Creek Chamber of Commerce
Waste Management
Western Growers Association

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to the author:

To meet California's target of 100% clean electricity by 2045, California will need to build out an unprecedented amount of new transmission and distribution capacity to connect the grid to where we are generating clean energy. Unfortunately, these lines aren't being built quickly enough to meet California's goals. Prior to the adoption of a 1994 Public Utilities Commission decision, the construction of small-voltage transmission projects below 200 kilovolts did not require utilities to obtain a discretionary permit from the Public Utilities Commission. Today, this discretionary permit exemption is only applied to lines under 50 kilovolts. These inconsistently applied permits result in substantial delays, lawsuits, and increases to the costs of projects such as distribution substations that are needed to expand the grid to accommodate demand electrification. SB 420 aims to reduce the time of transmission buildout by reverting this threshold, while still maintaining all other environmental protections provided by the state.

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