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

Senator Steven Bradford, Chair

2023 - 2024 Regular

Bill No:	SB 619	Hearing Date:	9/12/2023
Author:	Padilla		
Version:	9/1/2023 Amended		
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 a construction of a new 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.

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 necessary and convenient in the exercise of such power and jurisdiction. (Public Utilities Code §701)
- 3) 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)
- 4) Authorizes 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 State Energy Resources Conservation and Development Commission (also known as the California Energy Commission (CEC)) to certify sites and related facilities. Provides 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, or federal agency to the extent permitted by federal law, for the use of the sites and related facilities, and supersedes any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law, 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 environmental leadership development projects, as specified. (Public Resources Code §25545.13)
- 6) 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. The Act establishes CEQA administrative and judicial review procedures for an "environmental leadership development project". Repeals the Act on January 1, 2032. (Public Resources Code §21178 *et seq.*)
- 7) Finds and declares that it is the policy of the state that public agencies should not approve discretionary projects, as specified, if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. Finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof. (Public Resources Code §21108)

This bill:

- 1) Expands the facilities eligible to be certified as ELDPs 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 (Committee on Budget, Chapter 61, Statutes of 2022) “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.
- 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 Necessity and Convenience (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 §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 (G.O.) 131-D (CPCN).

Environmental review of transmission projects. 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 – projects that either have a categorical exemption (projects that belong to a category that have been found by the Secretary of Natural Resources to not have a significant effect on the environment are exempt from CEQA) or a statutory exemption (projects that belong to a class that have been granted exemptions by the Legislature).
- Subject to a Negative Declaration (ND) or Mitigated Negative Declaration (MND) – a process granted to certain projects that allow a statement describing the reasons a proposed, non-exempt project will not have a significant effect on the environment ND or a statement describing how a project’s plans have been modified to avoid potentially significant effects on the environment that were identified in an initial review MND.
- Subject to an environmental impact review (EIR) – a detailed statement describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects. Of the projects for which an EIR was prepared, many may also be subject to National Environmental Policy Act (NEPA). For projects that are subject to both CEQA and NEPA, the lead agency may file a joint document that covers both.

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 an ND or MND. 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.

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 General Order (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 authorizes these projects to undergo the more streamlined and expedient PTC review and approval process at the CPUC.

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 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 20-Year Transmission Outlook was released in September 2021 and the CAISO intends for the expanded planning horizon to provide valuable input for resource planning processes conducted by the CPUC and CEC, and to provide a longer-term context and framing of pertinent issues in the CAISO's ongoing annual 10-Year Transmission Plan. 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 (Committee on Budget, Chapter 61, Statutes of 2022). 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, using emergency rulemaking authority. The proposed emergency regulations 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 and other related facilities. The CEC adopted emergency regulations last fall and the Office of Administrative Law reviewed and approved the regulations soon after. 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.

AB 205 "opt-in" permitting. As of April of this year, the CEC has officially received only one application to the AB 205 opt-in process for a wind project in Shasta County. However, the project application has not been accepted as complete, as such, the 270-day permitting clock in AB 205 has not begun. The CEC has shared there are a few additional projects with applications in process, including two that have held pre-filing meetings, and an additional two have only held preliminary informational meetings with the CEC. 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

Energy infrastructure. Energy infrastructure, including the buildout of transmission lines, has received much attention from stakeholders for the last several years. Much attention and legislative focus has been given to streamline or accelerate clean energy projects. These various efforts involve either administrative acceleration (time agencies must take to act on a project application) or judicial streamlining (time to resolve litigation, normally CEQA litigation; as well as CEQA record streamlining) or both.

SB 619. This bill builds off the authority given to the CEC by AB 205 by additionally allow 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. The bill could apply the 270-day timeframe to the CPUC's environmental review of electrical transmission facilities. Thereby providing electrical corporations the option to select between the CPUC or CEC as their lead CEQA agency.

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 this 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 ND/MND, 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 of them were subject to NEPA; meaning, even if a specific project received a statutory exemption from CEQA, a federal NEPA review would still be required. This data showcase that 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 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 and supporters of this bill, including many electric IOUs, contend a CEC CEQA review may be preferred over the CPUC's review, even as the CPUC retains the CPCN review process.

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 420 (Becker, 2023) exempts construction of certain low-voltage electrical lines and associated equipment from the need to receive a discretionary permit from the CPUC. The bill is pending on the Assembly Floor.

AB 205 (Committee on Budget, Chapter 21, Statutes of 2022) allows 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 permit to construct process for these approvals.

SB 887 (Becker, Chapter 358, Statutes of 2022) directed, among other provisions, 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.

SB 1274 (McGuire, 2022) would have made a clean energy transmission project that upgrades existing transmission infrastructure to bring renewable energy from an offshore wind project located within or adjacent to the County of Humboldt eligible for ELDP certification. The bill was held in the Senate Environmental Quality Committee without a hearing.

SB 1174 (Herzberg, Chapter 229, Statutes of 2022) required certain CPUC reports and assessments, including reporting relating to the California Renewables Portfolio Standard Program, to consider the role of transmission.

SB 7 (Atkins, Chapter 19, Statues of 2021) extended the Jobs and Economic Improvement Through Environmental Leadership Act, specifically providing the Governor until January 1, 2024, to certify a project and the Act will be repealed by its own provisions on January 1, 2026.

AB 900 (Buchanan, Chapter 354, Statutes of 2011) established the Jobs and Economic Improvement Through Environmental Leadership Act of 2011.

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

SUPPORT:

350 Humboldt: Grassroots Climate Action
Advanced Energy United
Bay Area Council
Building Owners and Managers Association
California Apartment Association
California Association of Winegrape Growers
California Building Industry Association
California Business Roundtable
California Business Properties Association

California Retailers Association
California State Association of Electrical Workers
California Trucking Association
California Wind Energy Association
California Chamber of Commerce
Can Manufacturers Institute
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Clean Air Task Force
Clean Power Campaign
Coalition of California Utility Employees
Danville Area Chamber of Commerce
Elders Climate Action, NorCal Chapter
Elders Climate Action, SoCal Chapter
Electric Vehicle Charging Association
Fremont Chamber of Commerce
Gateway Chamber Alliance
Greater Coachella Valley Chamber
Greater High Desert Chamber of Commerce
Independent Energy Producers Association
Lake Elsinor Valley Chamber of Commerce
Large-Scale Solar Association
Liberty Utilities
Livermore Valley Chamber of Commerce
Mission Viejo Chamber of Commerce
Modesto Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
NAIOP of California
Norwalk Chamber of Commerce
Oceanside Chamber of Commerce
Pacific Gas & Electric Company
Palm Desert Area Chamber of Commerce
Palos Verdes Peninsula Chamber of Commerce
Rancho Cordova Area Chamber
San Diego Community Power
San Leandro Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Simi Valley Chamber of Commerce
Southern California Edison
Terra-Gen
The Chamber Newport Beach

The Torrance Area Chamber of Commerce
The Walnut Creek Chamber of Commerce
Vista Chamber of Commerce
Yuba-Sutter Chamber of Commerce

OPPOSITION:

Judicial Council of California

ARGUMENTS IN SUPPORT: According to the author:

While the state has enacted some of the world's most aggressive climate goals 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...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 619 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: In opposition to this bill, the Judicial Council of California opposes the expansion of the administrative and judicial streamlining benefits from the ELDP program. The Judicial Council of California contends that the 270 days limit to resolve CEQA challenges and appeals is an extremely tight timeline that is: (1) unworkable and unnecessary given the existing calendar preference for CEQA actions; (2) will likely impact other cases in the courts, pushing those cases to the back of the line; and (3) may not lead to a faster resolution of the entire case, as non-CEQA causes of actions are frequently brought together with CEQA claims.

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