Date of Hearing: April 3, 2024

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY
Cottie Petrie-Norris, Chair
AB 3238 (Garcia) – As Introduced February 16, 2024

**SUBJECT**: Electrical infrastructure projects: endangered species: natural community conservation plans

**SUMMARY**: Modifies existing transmission planning and permitting review processes in order to accelerate transmission infrastructure development in California.

Specifically, **this bill**:

1) Requires the director of the Department of Fish and Wildlife (DFW) to publish a determination authorizing the incidental take of a species under the same terms and conditions provided under federal law if the public utility undertaking the project has obtained an incidental take statement or incidental take permit under the federal act.

2) Requires the DFW, when considering a request to amend an approved natural community conservation plan, to limit its review to any species listed under the California Endangered Species Act (CESA) that were not previously considered in the approved plan and any new activities that would result in new or more substantial impacts to covered species than previously identified in the approved plan.

3) Requires the DFW, when considering the request to amend an approved natural community conservation plan, to establish a rebuttable presumption that the mitigation and conservation measures provided in the previously approved plan have been or are being successfully implemented, and to only impose new mitigation and conservation measures that are necessary to address potential impacts to any newly listed species under CESA or any new or more substantial impacts to covered species under the approved plan.

4) Exempts the approval of an amendment to a natural community conservation plan that adds additional conservation measures, and amended permits or authorizations associated with the amendment from the California Environmental Quality Act (CEQA) review process.

5) Exempts actions by a public agency for the performance of wildfire mitigation measures by an electrical corporation performed under the electrical corporation's approved wildfire mitigation plan from the CEQA review process.

6) Exempts projects that expand existing public right-of-way across state-owned land to accommodate the construction, expansion, modification, or update of electrical infrastructure from the CEQA review process.

7) Exempts projects that would require a certificate of public necessity and convenience (CPCN) from the California Public Utilities Commission (CPUC) and any other electrical infrastructure projects, as defined, from existing requirements to compare prospective

projects with cost-effective alternatives such as energy efficiency, distributed generation, and demand response resources.

8) Specifies that the approval and siting by the CPUC of a necessary electrical infrastructure project is in lieu of any approval, concurrence permit, certificate, or similar document required by any state, local, or regional agency, or federal agency to the extent permitted by the federal law, for the use of the site and related facilities.

9) Provides a time limit for the CPUC's CEQA and permitting review of an electrical infrastructure project of up to 270 days after an application is deemed complete, except under specified circumstances.

10) Requires that in place of a proponent environmental assessment (PEA), an applicant may instead prepare and submit a draft environmental impact report, mitigated negative declaration, negative declaration, addendum, or draft analysis of the applicability of an exemption from CEQA.

11) Designates the CPUC as the lead agency for the purposes of administering the CEQA review process for the electrical infrastructure projects defined by this bill.

12) Requires a resource agency to only consider an environmental effect of the project that occurs within the resources agency's jurisdiction and is subject to the resources agency's discretionary approval related to the project.

13) Requires the San Francisco Bay Conservation and Development Commission to assume permitting authority for processing and issuing marsh development permits using the local protection programs as guidance in the Suisin Marsh Secondary Management Area and the portions of the Primary Management Area with a local protection program.

14) Requires the CPUC to consult with the San Francisco Bay Conservation and Development Commission for an electrical infrastructure project located in the geographic jurisdiction of the San Francisco Bay Conservation and Development Commission for purposes of coordinating the processing and sequencing of the applications to expedite the permitting process.

15) Requires the San Francisco Bay Conservation and Development Commission, the State Water Resources Control Board, or the applicable regional water quality control board to take final action on the electrical infrastructure project within 90 days of the commission's approval of the electrical infrastructure project if the applicant has filed a complete application for a permit or waste discharge requirement with those agencies before the approval by the commission.

16) Necessitates that the statement of objectives sought by the project applicant, including the underlying purpose and project benefits, required by CEQA, shall be those identified by the Independent System Operator's approved transmission plan.

17) Requires the DFW to amend an approved natural community conservation plan when considering a request for specified species and new activities.

18) Requires the DFW when ordering a request as above, to establish a rebuttable presumption that the mitigation and conservation measures provided in the approved plan have been or are being successfully implemented, and shall only impose new mitigation and conservation measures that are necessary to address potential impacts to identified or any new or more substantial impacts to specified covered species.

19) Adds alternative routes or locations for the construction of the project approved in the Independent System Operator's (CAISO) approved transmission plan to the list of alternatives considered as required by Section 21081 of the Public Resources Code and Section 15124 of Title 14 of the California Code of Regulations.

20) Applies a rebuttable presumption during environmental review under CEQA that there is an overriding benefit, outweighing significant effects on the environment, of a project approved in a CAISO Transmission Plan.

21) Includes findings that specify that changes to this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

**EXISTING LAW**:

1) Designates certain species as fully protected, and prohibits the taking of these species, with exceptions for necessary scientific research and, for fully protected bird species, the protection of livestock. (Fish and Game Code (FGC)§§ 3511, 4700, 5050, 5515)

2) Allows for the take of fully protected species for any fully protected species conserved and managed as a covered species under an approved Natural Community Conservation Plan (FGC § 2835)

3) Authorizes DFW to permit the take of certain fully protected species in specific cases, with restrictions (FGC §§ 2081.4, 2081.5, 2081.6, 2081.7, 2081.9, 2081.10, 2081.11, 2081.12)

4) Prohibits the taking of an endangered species, threatened species, or candidate species, except in certain situations, including through the issuance of a permit commonly known as an incidental take permit, if all of the following conditions are met:

    a) The take is incidental to an otherwise lawful activity;

    b) The impacts of the authorized take are minimized and fully mitigated. The measures required to meet this obligation shall be roughly proportional in extent to the impact of the authorized taking on the species. Where various measures are available to meet this obligation, the measures required shall maintain the applicant's objectives to the greatest extent possible. All required measures shall be capable of successful implementation. For purposes of this section only, impacts of taking include all impacts on the species that result from any act that would cause the proposed taking; and;

c) The applicant ensures adequate funding to implement the measures required by paragraph and for monitoring compliance with, and effectiveness of, those measures [FGC § 2081 (b)].

5) Prohibits the issuance of a permit if issuance of the permit would jeopardize the continued existence of the species. Requires DFW to make this determination based on the best scientific and other information that is reasonably available, and includes consideration of the species' capability to survive and reproduce, and any adverse impacts of the taking on those abilities in light of (1) known population trends; (2) known threats to the species; and (3) reasonably foreseeable impacts on the species from other related projects and activities.[FGC § 2081 (c)]

6) Specifies the permit application fees applicable to incidental take permits. (FGC § 2081.2)

7) Defines "conserve," "conserving," and "conservation" to mean to use, and the use of, methods and procedures within the plan area that are necessary to bring any covered species to the point at which the measures provided pursuant to the California Endangered Species Act (CESA) are not necessary, and for covered species that are not listed pursuant to CESA, to maintain or enhance the condition of a species so that listing pursuant to CESA will not become necessary. (FGC § 2805)

8) States that any person, or any local, state, or federal agency, independently, or in cooperation with other persons, may undertake natural community conservation planning (NCCP) (FGC 2809).

9) Provides the scope of findings that CDFW must make to approve an NCCP.( FGC 2820)

10) Requires, pursuant to CEQA, lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA. (Public Resources Code §§ 21000, et seq.)

11) Defines "project" as an activity that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, including an activity that involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (Public Resources Code § 21065)

12) Requires the CPUC to certify the "public convenience and necessity" for a transmission line over 200 kilovolts (kV) before an electrical corporation may begin construction (This process is known as a CPCN). The CPCN process includes CEQA review of the proposed project. The CPCN confers eminent domain authority for construction of the project. 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)

11) Requires an electrical corporation to obtain a discretionary 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. 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. (CPUC General Order (GO) 131-D)

12) 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)

13) Requires the California Energy Commission (CEC) to adopt a strategic plan for the state's electric transmission grid, which recommends actions required to implement investments needed to ensure reliability, relieve congestion, and meet future growth in load and generation. (Public Resources Code § 25324)

14) Authorizes the CEC to designate electric transmission corridor zones (TCZs) in order to identify and reserve land that is suitable for high-voltage transmission lines. Specifies the CEC may designate a TCZ on its own motion or in response to an application from a person seeking a TCZ designation based on its future plans to construct a high-voltage electric transmission line. Makes the CEC the lead agency, for purposes of CEQA, for the designation of any TCZ. (Public Resources Code §§ 25330-25341)

15) Pursuant to the Warren-Alquist Act of 1974, grants the CEC exclusive authority to license thermal powerplants 50 megawatts (MW) and larger (including related facilities such as fuel supply lines, water pipelines, and electric transmission lines that tie the plant to the grid). The CEC must consult with specified agencies, but the CEC may override any contrary state or local decision. The CEC process is a certified regulatory program (determined by the Secretary of the Natural Resources Agency to be the functional equivalent of CEQA), so the CEC is exempt from having to prepare an EIR. The certified program, however, does require environmental analysis of the project, including an analysis of alternatives and mitigation measures to minimize any significant adverse effect the project may have on the environment. The Warren-Alquist Act originally limited judicial review of a CEC powerplant license decision to the California Supreme Court, based on the procedures for CPUC judicial review at the time. However, original jurisdiction by the Supreme Court was overturned by a 2021 decision (*Communities for a Better Environment v. Energy Resources Conservation and Development Commission (S266386)*), so CEC powerplant license decisions are now subject to writ review by the superior courts. The Warren-Alquist Act defines "electric transmission line" as any electric powerline carrying electric power from a thermal powerplant located within the state to a point of junction with any interconnected transmission system. (Public Resources Code §§ 25500, et seq.)

16) Authorizes additional facilities not subject to the CEC's thermal powerplant licensing process to "opt-in" to a CEC process for CEQA review until June 30, 2029, in lieu of review by the appropriate local lead agency. These opt-in permitting procedures apply to the following energy-related projects:

a) A solar photovoltaic or terrestrial wind electrical generating powerplant with a generating capacity of 50 MW or more and any facilities appurtenant thereto.

b) An energy storage system capable of storing 200 megawatt-hours or more of electrical energy.

c) A stationary electrical generating powerplant using any source of thermal energy, with a generating capacity of 50 MW or more, excluding any powerplant that burns, uses, or relies on fossil or nuclear fuels.

d) A project for the manufacture, production, or assembly of an energy storage, wind, or photovoltaic system or component, or specialized products, components, or systems that are integral to renewable energy or energy storage technologies, for which the applicant has certified that a capital investment of at least $250 million will be made over a period of five years.

e) An electric transmission line carrying electric power from an eligible solar, wind, thermal, or energy storage facility to a point of junction with any interconnected electrical transmission system. (Public Resources Code §§ 25545-25545.13)

17) Provides the CEC exclusive power to certify the site and related facility, and provides that the CEC's approval preempts state, local, or regional authorities, except for the authority of the State Lands Commission (SLC) to require leases and receive lease revenues, if applicable, or the authority of the California Coastal Commission (CCC), the San Francisco Bay Conservation and Development Commission (SFBCDC), the State Water Resources Control Board (SWRCB), or the applicable regional water quality control boards, and, for manufacturing facilities, the authority of local air quality management districts or the Department of Toxic Substances Control (DTSC). Requires the CEC to determine whether to certify the EIR and to issue a certificate for the site and related facilities no later than 270 days after the application is deemed complete, or as soon as practicable thereafter. Applies to these facilities the procedures and requirements applicable to Environmental Leadership Development Projects (ELDPs, Public Resources Code §§ 21178, et seq.), including mitigation of greenhouse gas (GHG) emissions, requiring applicants to pay the costs of expedited administrative and judicial review, and requiring the courts to resolve lawsuits within 270 days, to the extent feasible. (Public Resources Code §§ 25545, et. seq.)

18) Establishes the policy (100% Clean Energy Policy, or SB 100 Policy) of the state that eligible renewable energy resources and zero-carbon resources supply 90% of all retail sales of electricity to California end-use customers by December 31, 2035, 95% of all retail sales of electricity to California end-use customers by December 31, 2040, 100% of all retail sales of electricity to California end-use customers by December 31, 2045, and 100% of electricity procured to serve all state agencies by December 31, 2035. (Public Utilities Code § 454.53)

19) Designates CARB, via the California Global Warming Solutions Act of 2006, as the state agency responsible for monitoring and regulating sources emitting greenhouse gases (GHGs). Requires CARB to prepare and approve a scoping plan for achieving the

maximum technologically feasible and cost-effective reductions in GHG emissions and to update the scoping plan at least once every five years. Requires CARB to conduct a series of public workshops to give interested parties an opportunity to comment on the plan and requires a portion of those workshops to be conducted in regions of the state that have the most significant exposure to air pollutants, including communities with minority populations, communities with low-income populations, or both. (Health and Safety Code § 38561)

**FISCAL EFFECT**: Unknown. This bill is keyed fiscal and will be referred to the Committee on Appropriations for its review.

**BACKGROUND:**

*California's Ambitious Goals*. SB 100 (De León, Chapter 312, Statutes of 2018) established the state policy that renewable and zero-carbon resources supply 100% of retail sales and electricity procured to serve all state agencies by 2045.[1] This policy was recently updated under SB 1020 (Laird, Chapter 361, Statutes of 2022) by accelerating the requirement on state agencies to 100% by 2035, and establishing interim targets to meet the sector-wide 100% goal. The updated 2022 Scoping Plan[2] released by the California Air Resources Board (CARB) in December 2022 calls for targets of 38 million metric tons of carbon dioxide equivalent (MMTCO2e) in 2030 and 30 MMTCO2e in 2035 in the electricity sector.[3] These sector-wide targets establish the planning goal that informs all subsequent electricity procurement and transmission planning. While California has made some strides towards a clean energy future, meeting these ambitious goals would require focused, strategic, and bold actions.

*Recent Integrated Resource Planning (IRP) framework.* To achieve procurement targets for SB 100, the California Public Utilities Commission, adopted an Integrated Resource Plan (IRP)[4] planning process that runs on a two-year cycle. In February 2024, the CPUC adopted a decision in its integrated resource planning that meets a statewide 25 million metric ton (MMT) greenhouse gas (GHG) target for the electric sector by 2035.[5] The decision represents the most aggressive *end of the range identified by CARB, and has identified* 56,000 megawatts of clean new resources are needed by 2035. The CPUC also recommended to the California Independent System Operator (CAISO) that the resource portfolio achieving the 25 MMT GHG goal be the foundation for planning transmission investments – utilized as both the reliability base case and the policy-driven base case for study in its 2024-2025 Transmission Planning Process (TPP).

*California's Transmission Development Process.* Transmission lines are connected to substations that "step-down" the power to a lower-voltage so that it can be delivered to customers through distribution lines, although some large industrial customers receive their electricity at transmission or sub-transmission voltage. A recent study by the Clean Air Task Force and the

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[1]Public Utilities Code §454.53
[2] In its previous draft plan, CARB set the electric sector targets at 38 million metric tons of carbon dioxide equivalent (MMTCO2e) in 2030 and 30 MMTCO2e in 2045.
[3] Pg.75, CARB, "DRAFT 2022 Scoping Plan Update," May 10, 2022
[4] IRP provides the umbrella process by which the CPUC oversees long-term procurement for its regulated load-serving entities (electrical corporations, community choice aggregators, and electric service providers), which serve approximately 75% of the state. The intent of this process is to ensure system needs are being met by the sum actions of the many LSEs in that system. The IRP looks a decade or more into the future.
[5] Proposed Decision issued 2/15/2021 in IRP Proceeding, Rulemaking 20-05-003

Environmental Defense Fund concluded a doubling—at a minimum—of transmission capacity is needed to interconnect new renewables by 2045.[6] Unfortunately, the current transmission development process is lengthy and complex and can take over a decade from conception to completion. Without modifying the current planning process for transmission, it is unlikely that California will meet its clean energy and climate goals.

*CAISO 20-year Transmission Outlook.* In January 2022, CAISO in collaboration with the CPUC and the CEC created a 20-Year Transmission Outlook to examine longer-term grid requirements and options for meeting the State's clean energy and climate goals reliably and cost-effectively.[7] Given the lead times needed for these facilities primarily due to right-of-way acquisition and environmental permitting requirements, the CAISO has found that the "longer-term blueprint is essential to chart the transmission planning horizon beyond the conventional 10-year timeframe,"[8] as used in the annual transmission plans. The resulting plan estimated over $30 billion in cost would be needed to meet our 2045 clean energy goals including:[9]

- $10.7 billion for upgrades to existing infrastructure,
- $8.1 billion for offshore wind integration, and;
- $11.6 billion for out-of-state wind integration.

The CAISO noted the *20-Year Outlook* would provide a baseline to guide long-term planning, but cautioned that resource planning and procurement will likely differ over the years relative to the assumptions made in the report.

*CAISO's 2022-2023 Transmission Plan.* The CAISO's TPP released in May 2023, calls for 40,000 megawatts of new resources in the next decade. The plan is centered on the following projections:

- 45 transmission projects with a total cost of $7.3 billion, ranging in individual cost from $4 million to $2.3 billion. These needed projects were weighed against a large variety of alternatives and found to be needed to meet reliability, policy, and economic requirements, particularly reflecting the potential of increased electrification occurring notably in the building and transportation sectors.[10]
- Pursuant to CAISO's FERC tariff, only 3 of these projects were eligible for competitive solicitation.
- The reliability and policy projects included 12 that specifically serve to reduce natural gas generation in locally-constrained portions of the grid.

*The Transmission Permitting Process.* Usually, utilities 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:

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[6] Lucid Catalyst, Clean Air Task Force, and the Environmental Defense Fund, "California's Clean Energy Transition: Understanding Today's Challenges to Reach Tomorrow's Goals," presentation January 18, 2022.
[7] CAISO 20-Year Transmission Outlook, January 31, 2022; http://www.caiso.com/InitiativeDocuments/Draft20-YearTransmissionOutlook.pdf
[8] Pg. 1, *Ibid*
[9] Pg. 3, *Ibid*
[10] Pg. 2, CAISO; "2022-2023 Transmission Plan," May 2023.

1) An environmental review of applicable projects pursuant to CEQA and CPUC environmental rules. To prepare for the environmental review, the utility first conducts and submits a Proponents Environmental Assessment (PEA). The PEA is a preliminary assessment of the project's potential environmental impacts and alternatives. Some projects may trigger a federal National Environmental Policy Act (NEPA) review if they cross federal land or use federal funds.
2) The review of project needs and costs according to Public Utilities Code §1001 and General Order (GO) 131-D, also known as a Certificate of Public Convenience and Necessity (CPCN), or—depending on project size—a Permit to Construct (PTC).

*California Environmental Quality Act (CEQA) Review Process.* CEQA was enacted in 1970 and requires public agencies[11] to evaluate the environmental impacts of development projects before approving plans, policies, or development projects. CEQA generally requires state and local government agencies to inform decision-makers and the public about the potential environmental impacts of proposed projects, ways to reduce those environmental impacts to the extent feasible and to indicate alternatives to the project.

A proposal will only trigger CEQA review if it involves the exercise of discretionary powers by the CPUC and results in a direct, or reasonably foreseeable indirect, physical impact in the environment.[12] 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 impact on the environment are exempt from CEQA) or a statutory exemption (projects that have been granted exemptions by the Legislature). The public agency may file a notice of exemption, and no further actions are required.[13]

- Subject to a Negative Declaration (ND) or Mitigated Negative Declaration (MND) – If a project does not qualify for an exemption, it must undergo an initial review to determine if it may have a "significant" environmental impact, based on 21 environmental factors. If the agency finds that the project would not have a significant impact on the environment or that revisions to the project will mitigate potential impacts, the lead agency may file a negative declaration (ND) or mitigated negative declaration (MND).[14]

- Subject to an Environmental Impact Report (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 the National Environmental Policy Act (NEPA), the federal equivalent of CEQA. For projects that are subject to both CEQA and NEPA, the lead agency may file a joint document that covers both. The EIR process involves the lead agency producing a draft document outlining the environmental impacts of a project, any available mitigation measures, and a consideration of less environmentally impactful

[11]Public Resources Code, § 21063 defines Public agency as any state agency, board, or commission, any county, city and county, city, regional agency, public district, redevelopment agency, or other political subdivision.
[12] 14 CCR Section 15060 (c)
[13] 14 CCR Section 15062
[14] Gentry v. City of Murrieta (1995) 36 Cal.App. 4th 1359

> alternatives. The draft document must then be released for public comment. The lead agency must revise the EIR or submit a response to the comments prior to certifying the final EIR.[15]

CEQA directs public agencies to complete and certify an EIR within one year of the project application and 180 days for completing and adopting negative declarations. The failure to properly consider a project's impacts is what typically results in litigation. 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. In the event a lead agency fails to properly conduct an EIR, they may be subject to litigation challenging the validity of the document and the overarching approval of the project. Most CEQA lawsuits must be brought within 30 days of the approval of the final EIR[16] As with most court proceedings questioning government decision-making and actions, CEQA litigation is heavily reliant on official government records as well as communications between stakeholders and government officials.

*Permit/Certificate Review*. Parallel to environmental review (CEQA), the CPUC reviews the utility's application for a CPCN or a 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 General Order (GO) 131-D.

*CPUC CEQA Report.* According to CPUC data shown in Table 1 below, from 2012 to 2023, of a total of 664 projects that required CPUC review: 608 projects were exempt from CEQA, 29 projects were approved via ND/MND, and 27 required an EIR. This represents that over 90% of Investor-owned utility (IOU) projects over the last decade were exempt from CEQA, not even 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. 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.

***Table 1****:* CPUC CEQA Report[17]

| Years | Categorical Exemption[18] | Statutory Exemption | Negative Declaration/Mitigated Negative Declaration | EIR | Joint EIR/NEPA | Total |
|---|---|---|---|---|---|---|
| 2012-2023 | 602 | 6 | 29 | 27 | 14 | 664 |

[15] 14 CCR Section 15088
[16] Public Utilities Code § 451,701,702,761, 762,768,770, and 1001
[17] From a data request to the CPUC by this committee on March 29, 2023
[18] According to the CPUC, this column represents categories for projects where the applicant utility filed at the CPUC via Advice Letter to note they were taking an exemption to a CEQA document requirement process. There are a variety of exemptions claimed, including categorical exemptions. They CPUC does not track the type of exemptions claimed per Advice Letter.

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*CPUC's GO 131-D*. GO 131-D was first adopted in 1970 and last updated in 1995. It establishes the criteria to be followed to trigger the need for a permit to construct (PTC) or renovate electrical facilities, including transmission lines and substations, and also sets out public notice requirements for proposed transmission projects.[19] The level of analysis performed by the CPUC pursuant to GO 131-D 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, 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 and are consistently subject to complete CEQA review, including an EIR. The CPCN process analyzes the need for the project and the economics of the project, as well as, the environmental impacts of the project.

*GO 131-D Reforms*. Since the last update of GO131-D in 1995, the energy landscape and infrastructure planning process have evolved significantly. In the last decade, there has been the energy crisis, energy deregulation, formation of CAISO, and significant increase in new renewable energy generation. SB 529 (Hertzberg, Chapter 357, Statutes of 2022)[20] sought to revise the permitting process at the CPUC. The bill directed the CPUC to revise GO 131-D to authorize a utility to use the PTC process or claim an exemption to seek approval to construct an extension, expansion, upgrade, or other modification to its existing transmission facilities regardless of the voltage level by January 1, 2024. However, CEQA still applies. In May 2023, the CPUC opened a rulemaking to solicit comments that would revise the GO 131-D rules to accommodate this legislation.[21] Based on the feedback, the assigned commissioner determined the issues to be considered in the proceeding should be separated into two phases.

Phase 1 includes consideration of changes to GO 131-D necessary to conform it to the requirements of SB 529 and updates to outdated references. Phase 2 includes consideration of all other changes to GO 131-D that may be proposed by Commission staff or other stakeholders during the course of this proceeding. Phase 1 was to be considered on an expedited basis to ensure compliance with the SB 529 deadline. As such, phase 1 decision was approved on December 14, 2023.

*Settlement Agreement*. According to the CPUC, a settlement agreement is a compromise of disputed claims with the goal of minimizing time, expense, and uncertainty of any further enforcement proceedings, and/or any subsequent appeals. In September 2023, SCE, PG&E, and

[19] Public Utilities Code § 451,701,702,761, 762,768,770, and 1001
[20] Public Utilities Code §564
[21] CPUC, "CPUC To Update Transmission Siting Regulations To Address Electricity Reliability and Climate Goals"; https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-to-update-transmission-siting-regulations-2023

SDG& E filed a proposed settlement agreement on behalf of several stakeholders[22] that necessitates additional reforms to GO-131 D. These stakeholder-driven reforms include:

- Implement the rebuttable presumption for CAISO-approved transmission projects during CPCN review by the CPUC, thereby eliminating duplicate analyses of a project's purpose and need. This requirement is derived from AB 1373 (Garcia, Chapter 367, Statutes of 2023), which established a rebuttable presumption for the expected need for a transmission project within the CPUC's CPCN licensing review if that project is deemed necessary during the CAISO's Transmission Planning Process ("TPP").

- Eliminate the requirement that applicants draft a Proponent's Environmental Assessment (PEA) *in addition to* the CPUC drafting an Environmental Impact Report (EIR) under CEQA. The stakeholders argue this revision would obviate duplicative and often time-consuming and expensive process whereby CPUC staff and retained consultants preparing CEQA documents essentially re-write the entire environmental analysis already contained in the PEA.

- Allow CAISO's findings in the Transmission Planning Process to support the CPUC's CEQA process rather than having CPUC start over with new "project objectives", "reasonable range of alternatives", and "overriding considerations"—all of which drive the scope, timeframe, and cost of CEQA review.

- Apply a 270-day time limit for the CPUC's CEQA process – the same that AB 205 applied to the CEC.

AB 205 (Committee on Budget, Chapter 61, Statutes of 2022) established a new opt-in environmental review certification program at the CEC, including for solar photovoltaic, terrestrial wind, geothermal, and other non-fossil, non-nuclear power plants with a generating capacity of 50 MW or more, for energy storage systems capable of storing 200-megawatt hours or more of electricity, and for transmission lines from those facilities to a point of connection with an electrical transmission system. Before AB 205, the CEC's siting authority was limited to thermal power plants with capacities of 50 megawatts (MW) or more.

**COMMENTS**:

1) *Author's Statement.* According to the author, "California is on the precipice of a clean energy transition that is poised to bring vast new clean energy projects, jobs, and economic development to the state. Achieving the state's ambitious climate goals will require unprecedented construction of electrical infrastructure to provide reliable renewable energy to electrify homes, commercial buildings, and transportation.

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[22] The settling parties are SCE, PG&E, SDG&E, San Diego Gas & Electric Company (SDG&E), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), Bear Valley Electric Service, Inc., Liberty Utilities (CalPeco Electric) LLC, PacifiCorp, American Clean Power, Independent Energy Producers Association, Center for Energy Efficiency and Renewable Technologies, Environmental Defense Fund, LS Power Grid California LLC, REV Renewables, LLC, Large-Scale Solar Association, California Energy Storage Alliance (CESA), Horizon West Transmission, LLC, Trans Bay Cable LLC, GridLiance West LLC, and the City of Long Beach, California, a municipal corporation acting by and through its Board of Harbor Commissioners.

Unfortunately, our existing permitting and environmental review processes—necessary steps in thoughtfully building electrical infrastructure—are inefficient and lead to unnecessary delays. We need to build a runway for electrical infrastructure projects to move efficiently through the permitting and environmental review processes so they can reach operation quickly and begin serving our citizens. AB 3238 removes unnecessary red tape and provides clear direction to the agencies working hard to help the state reach its climate goals."

2) *What's the Right Timeline?* As eluded earlier, the CEC's recently-created opt-in siting authority allows those proposing to construct certain types of facilities (including transmission lines from certain generation or storage facilities but only to a point of junction with the electrical grid) to file an application for certification (AFC) with the CEC. The CEC is required to review and make a determination on the AFC within 270 days, but can extend that period under specified circumstances. This bill would establish a similar timeline for the CPUC's environmental review of an electrical infrastructure project, as defined, of no later than 270 days after an application is deemed complete, except under specified circumstances. While this time period largely duplicates the approach taken in the CEC opt-in siting process, it is unclear if that is prudent given the differences in the underlying projects being sited.

   For example, all new power plant projects must go through environmental review, typically at the local level or through the new opt-in process at the state level. But as noted above, over 90% of investor owned utility transmission projects are already exempt from CEQA, leaving largely the most complicated and biggest as the few still subject to environmental review by the CPUC. As of yet, while four generation and storage projects have filed to use the CEC opt-in siting process, none have yet been certified through that process. For the first project to file to use this process in early 2023, the CEC has had to extend the review period due to substantial changes, consistent with existing law.[23] Given that the opt-in siting process is relatively new, and the CPUC will have numerous responsibilities as provided by the bill, it is unclear whether duplicating this 270-day timeline is practical for the CPUC in this case.

3) *Many Challenges. Many Solutions.* There is broad consensus that the transmission development process is generally marked by complexities and delays, and may increasingly become difficult for California to connect new generations to the electrical grid. This has been reflected in discussions in multiple oversight hearings held by this Committee in recent years. Uncertainty remains on how best to solve the present challenges of accelerating the permitting and siting process while ensuring the protection of human and environmental health. Many reforms are underway, either through better coordination amongst the energy entities to streamline planning, or through efforts to expedite permitting. As such, it is worthwhile for decision-makers to carefully consider solutions that foster transparency, multilateral communication, and collaboration between numerous stakeholders such as local, state, and federal governments, tribal governments, community members, community organizations, developers, and environmental advocacy organizations.

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[23] CEC, Letter on *Applicability of Public Resources Code Section 25545.4(e)(2) and Schedule Change for the Fountain Wind Project*, CEC Docket No. 23-OPT-01, dated March 28, 2024.

4) *CEQA Exemptions - Wildfire Mitigation Plans (WMPs).* The 2016 -2017 wildfire season was one of the most destructive in state record as it saw multiple fires burning across the state. As a result, the California Legislature passed several bills increasing oversight of Load Serving Entities' (LSEs) efforts to reduce utility-related wildfires. Chief among them was SB 901 (Dodd, Chapter 626, Statutes of 2018) which requires LSE's to prepare and submit Wildfire Mitigation Plans (WMPs), which are now sent to the Office of Energy Infrastructure Safety (Energy Safety) for review and approval per AB 1054 (Holden, Chapter 79, Statutes of 2019). WMPs are required to describe how a LSE is constructing, maintaining, and operating its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire.

   As discussed in the background, if a public agency determines that a proposed activity is a project under CEQA, it will usually take the following three steps:

   (i) Determine whether the project falls under a statutory or categorical exemption from CEQA;
   (ii) If the project is not exempt, prepare an initial study to determine whether the project might result in significant environmental effects;
   (iii) Prepare a negative declaration, mitigated negative declaration, or EIR, depending on the initial study.

   There are two types of CEQA exemptions: (1) statutory exemptions and (2) categorical exemptions. There are 15 statutory exemptions to CEQA in PRC 21080 (among other stand-alone statutory exemptions), including for "specific actions necessary to prevent or mitigate an emergency."[24]

   Wildfire mitigation plans are considered part of wildfire mitigation measures. However, this bill proposes to re-write the existing categorical CEQA exemption to prevent or mitigate emergencies in reference to actions performed under the umbrella of the wildfire mitigation plan. However, this Committee understands that work to prevent or mitigate wildfires, as an emergency, would be included in the existing categorical CEQA exemption. *As such, the committee may wish to strike the unnecessary reference to wildfire mitigation plans in the categorical exemption to CEQA for work to prevent or mitigate emergencies.*

5) *Licensing Process Exemptions.* This bill includes an exemption for projects requiring a CPCN or for any electrical infrastructure project, as defined in this bill, from several requirements in existing law in separate sections of the Public Utilities Code. These provisions currently require a comparison of prospective projects against cost-effective alternatives, such as energy efficiency, distributed generation, and demand response resources. For example, the CPUC must include this comparison in their consideration of a request for a project license. This is separate from environmental review under CEQA by the CPUC. This provision casts an expansive net, given the manner in which necessary electrical infrastructure is defined in this bill to include both projects approved

[24] Public Resources Code § 21080(b)(4).

by the third-party, CAISO transmission planning process *and* any project that serves an increase in demand or any storage or generation project.

6) *CEQA Exemptions – New Electrical Infrastructure*. This bill seeks to codify a settlement agreement filed on September 29, 2023, by a group of parties in the CPUC proceeding who seek to have GO 131-D further updated. However, it includes issues beyond the scope of that settlement agreement, including changes to the Fish & Game Code discussed below. Currently, the CPUC is in Phase 2 of this proceeding, which includes consideration of changes to GO 131-D not addressed in the Phase 1 decision issued late last year in that proceeding. As discsussed, the current transmission development process in California is complex and, as some have argued, "[w]ithout revisions to current planning and permitting processes, it will be tremendously difficult for California to authorize new transmission capacity, to connect new clean generation to the grid, and meet its clean energy and climate goals."[25] Currently, to prepare for CEQA review, the transmission applicant conducts and submits a Proponents Environmental Assessment (PEA) to the CPUC. The PEA is a preliminary assessment of the project's potential environmental impacts. If the project is anticipated to have a significant impact on the environment, the CPUC will issue an Environmental Impact Report (EIR). The CPUC proceeds to create iterations of an EIR by incorporating findings from the PEA, feedback from other agencies, and public comments. The timeline of this phase varies greatly based on the quality of the application and PEA, project location, cost, strength of public opposition, and coordination required with federal agencies.[26]

   The author considers the process of submitting a PEA and CPUC creating iterations of an EIR by incorporating findings from the PEA as duplicative. This bill eliminates this two-step review process and only allows the submittal of a preliminary EIR for CPUC review. As noted earlier in the background, CEQA generally requires public agencies to inform decision-makers and the public about the potential environmental impacts of proposed projects, ways to reduce those environmental impacts to the extent feasible, and to indicate alternatives to the project. This legislation calls for numerous CEQA exemptions and the author might want to tread carefully so that the outcome of this bill does not compromise the public trust responsibilities given to public agencies and the Legislature. *As such, the committee may wish to include a sunset provision that will make this section be operative beginning January 1, 2025, until January 1, 2035, to enable legislative review by appropriate committees of the Legislature in the future.*

7) *Fish & Game Code Provisions.* This bill includes various substantive changes in the Fish & Game Code, including provisions modifying or limiting actions by the California Department of Fish & Wildlife over electrical infrastructure, as defined. These provisions are primarily within the jurisdiction of the Assembly Committee on Water, Parks & Wildlife, to which this bill has been double-referred. The analysis in this Committee does not focus on those issues.

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[25] Pg. 2, "Clean Air Task Force, "Transmission Development in California – What's the Slowdown?"; January 2023
[26] California Public Utilities Commission (CPUC), "Electric Transmission Siting at the California Public Utilities Commission", January 2009. https://www.cpuc.ca.gov/-/media/cpuc-website/files/legacyfiles/t/5073-transmission-siting-flow-chart.pdf

8) Prior Legislation

SB 420 (Becker, 2023) Removes the requirement on new electrical transmission facility projects less than 138 kilovolts (kV) proposed by the state's six largest investor-owned utilities (IOUs)1 from a determination of need from the California Public Utilities Commission (CPUC) before construction. These new projects must either be located on previously disturbed land, located in an urbanized area or be part of a project that has undergone a California Environmental Quality Act (CEQA) review. Excludes from eligibility projects that are located in wetlands, any un-remediated hazardous waste site, or critical habit, as specified. Status: Vetoed By Governor

SB 619 (Padilla, 2023) Authorizes an electrical corporation, at the time it files an application with the CPUC for a Certificate of Public Convenience and Necessity (CPCN) or Permit to Construct (PTC) for new construction of any electrical transmission facility 138 kilovolts (kV) or greater to, at the same time, submit an application for that facility to the CEC. Prohibits the CEC from considering the necessity for the electrical transmission facility. Status: Vetoed By Governor

AB 1373 (Garcia) among other things, requires the CPUC, in a proceeding when evaluating the issuance of a certificate of public convenience and necessity for a proposed transmission project, to establish a rebuttable presumption with regard to the need for the proposed transmission project in favor of an Independent System Operator governing board-approved need evaluation if specified requirements are met. Status: Chapter 367, Statutes of 2023.

AB 205 (Committee on Budget) 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. Status: Chapter 61, Statutes of 2022

SB 529 (Hertzberg) exempted 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. Status: Chapter 357, Statutes of 2022.

SB 887 (Becker) 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. Status: Chapter 358, Statutes of 2022.

SB 7 (Atkins) 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. Status: Chapter 19, Statutes of 2021.

9) *Double Referral.* This bill is double-referred; upon passage in this Committee, this bill will be referred to the Assembly Committee on Water, Parks, and Wildlife.

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

Environmental Defense Fund
Large Scale Solar Association
San Diego Gas and Electric Company
Silicon Valley Leadership Group

**Opposition**

California Coastal Protection Network
Center for Biological Diversity
Defenders of Wildlife
Endangered Habitats League
Planning and Conservation League
Sierra Club California

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