

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Eduardo Garcia, Chair

AB 914 (Friedman) – As Amended April 10, 2023

**SUBJECT:** Electrical infrastructure: California Environmental Quality Act: exemptions: review time period

**SUMMARY:** *As proposed to be amended, per amendments from the Committee on Natural Resources to strike the entirety of Section 2 from the bill:* Establishes a two-year time limit, from the date the application is submitted, for a lead state agency to complete California Environmental Quality Act (CEQA) review and approve or deny an application for an electrical infrastructure project.

**EXISTING LAW:**

- 1) 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. CEQA includes several statutory exemptions, as well as categorical exemptions in the CEQA guidelines. (Public Resources Code §§ 21000, et seq.)
- 2) Defines “project” as an activity which 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)
- 3) For such projects subject to state agency review, requires the lead state agency to establish time limits that do not exceed one year for completing and certifying EIRs and 180 days for completing and adopting negative declarations. Requires these time limits to be measured from the date on which an application is received and accepted as complete by the state agency. (Public Resources Code § 21000.2)
- 4) Requires the CEQA Guidelines to include a list of classes of projects that have been determined by the Secretary of the Natural Resources Agency to not have a significant effect on the environment and that shall be exempt from CEQA. (Public Resources Code § 21084)

The list of "categorical exemptions" includes:

- a) Repair and maintenance of existing public or private facilities, involving negligible or no expansion of use, including existing facilities of both investor and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services. (Guidelines 15301)

- b) Replacement or reconstruction of existing facilities on the same site with the same purpose and capacity, including existing utility systems and/or facilities involving negligible or no expansion of capacity. (Guidelines 15302)
  - c) New construction or conversion of small structures, including electrical, gas, and other utility extensions of reasonable length to serve such construction. (Guidelines 15303)
- 5) Establishes the Permit Streamlining Act (PSA), which establishes time limits within which state and local government agencies must either approve or disapprove permits. (Government Code §§ 65920, et seq.)
  - 6) Requires the California Public Utilities Commission (CPUC) to certify the public convenience and necessity require a transmission line over 200 kilovolts (kV) before an investor-owned utility (IOU) may begin construction (Certificate of Public Convenience and Necessity, or 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)
  - 7) IOU electrical power line projects between 50-200 kV require a discretionary permit to construct (PTC) from the CPUC, but may be exempt from CEQA pursuant to CPUC orders and existing provisions of CEQA. IOU 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. (General Order (GO) 131-D)
  - 8) 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)
  - 9) 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)
  - 10) Authorizes the CEC to designate electric transmission corridor zones (TCZ) 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)

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

**BACKGROUND:**

*The CEQA Process* – As detailed in the Assembly Committee on Natural Resources’ analysis of this measure, 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 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.

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.

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

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.

As noted above, electrical transmission line projects are eligible for a number of CEQA exemptions pursuant to the CEQA Guidelines and GO 131-D. GO 131-D specifically addresses the procedures to be followed in applications for siting of electric transmission infrastructure. GO 131-D establishes the distinction in the levels of review based on the voltage level of the project (under 50 kV, 50 to 200 kV, and above 200 kV) as described above. It also sets out public notice requirements for proposed 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 (the CPCN or PTC) pursuant to PUC § 1001 et seq. and GO 131-D.

Only larger, high-voltage projects over 200 kV, which also require a CPCN, are consistently subject to complete CEQA review, including an EIR. According to CPUC data shown in Table 1 below, 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. This represents that over 90% of 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.

**Table 1:** CPUC CEQA Report<sup>1</sup>

Years	Categorical Exemption <sup>2</sup>	Statutory Exemption	Negative Declaration/Mitigated Negative Declaration	EIR	Joint EIR/NEPA	Total
2012-2023	602	6	29	27	14	664

**COMMENTS:**

- 1) *Author’s Statement.* According to the author, “The state has set ambitious goals for decarbonization and increased reliance on clean energy, largely predicated on electrification of the transportation industry, greener buildings, increased reliance on renewable generation and development of energy storage. To meet the state’s climate and air quality goals, especially in areas where there is a concentration of medium- and heavy-duty vehicles and other goods movement equipment, electrical corporations and local publicly owned utilities must be able to proactively plan and build electrical grid upgrades to accommodate the level of electric vehicle charging associated with these goals and projections. Utilities must also be able to interconnect renewable energy sources to the broader grid as efficiently as possible. Despite these objectives, the regulatory process for reviewing, siting and permitting the electrical infrastructure

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<sup>1</sup> From a data request to the CPUC by this committee on March 29, 2023

<sup>2</sup> 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.

necessary to interconnect, transmit and transform the energy needed to power California more cleanly can lead to unwanted delays, roadblocks and bottlenecks. In particular, environmental review under the California Environmental Quality Act [Division 13 (commencing with Section 21000) of the Public Resources Code] (“CEQA”), while important to the state’s overall environmental policies, is often the “long pole in the tent” that prevents worthy projects from being developed for many years, or sometimes being developed at all, given the expense and uncertainty associated with such review. This has been the case even in instances where infrastructure projects would have minimal environmental impacts and/or would provide far greater environmental benefits than impacts. This bill would exempt from the CEQA process certain electrical infrastructure projects that would help spread and more efficiently utilize clean energy, so as to enable such infrastructure to be constructed and operational in time to help California meet its clean energy goals.”

- 2) *Proposed Amendments.* *The bill before this committee includes proposed amendments from the Assembly Committee on Natural Resources to strike Section 2, which establishes a new CEQA exemption for electrical substations and transmission line facilities. Because of the tight legislative timeline, this committee agreed to adopt the amendments in our hearing so this bill could be heard.*
- 3) *A Contradictory Position.* The remaining substantive provision of this bill is in Section 3, which establishes a new, two-year time limit for CEQA review of electrical infrastructure projects. This provision applies whenever a state agency is the lead agency for an electrical infrastructure project, so its application is broader than IOU transmission lines subject to CPUC review. “Electrical infrastructure” is not defined, but it would seem to apply to the CEC’s Application for Certification (AFC) process for power plants. The AFC process is a certified regulatory program, the functional equivalent of CEQA.

Regardless of whether it applies to the CPUC CPCN process or the CEC AFC process, two years to complete CEQA review and make a decision on the project seems reasonable and consistent with the agencies’ own procedures and timelines. However, unlike other statutory permit review time limits, the bill’s clock starts when the application is filed, rather than when it is accepted as complete by the agency. Because the point is to hold the agency accountable, it seems unfair to start the clock if the application the agency receives is not sufficient to permit the agency to begin review.

Curiously, the supporters of this bill (the large IOUs) have raised this point of unfairness in discussions on bills currently before this committee regarding customer applications to the IOUs for interconnection or energization. They note in those circumstances that starting any clock for application processing prior to the IOU deeming an application complete would be unfair and impractical. It is unclear why a distinction should be made when the utility is the filer of the application, as is the case proposed in this bill, but not the reviewer of the application, as put forward in the interconnection and energization measures.

This provision also includes confusion around the use of “directory” when “discretionary” seems more appropriate. The author has noted that “directory” was the intent and cited case law to support its use in this measure; however the term is undefined and unclear. A seemingly larger issue is the requirement that the CEQA time limit

imposed on state agencies by this bill is “mandatory,” without any guidance as to what occurs when that time limit is not met. Specifically, is the utility CEQA application held in limbo, or does this new requirement imply an alternative fate? The time constraints of hearing this measure did not afford clarity on these points to be attained in time. *As a result, the author and committee may wish to consider an amendment to replace “directory” with “discretionary,” and to clarify that the time period for agency review of CEQA applications begins when the agency deems the application complete.*

4) *Related Legislation.*

SB 319 (McGuire) would require the CEC, CPUC, and CAISO to jointly develop and recommend an expedited permitting roadmap that describes timeframes and milestones for a coordinated, comprehensive, and efficient permitting process for electrical transmission infrastructure. Status: *pending hearing* in the Senate Committee on Energy, Utilities and Communications.

5) *Prior Legislation.*

AB 2696 (Garcia, 2022) would have required the CEC, in consultation with other agencies, to conduct a study to review potential lower cost ownership and alternative financing mechanisms for new transmission facilities. Status: Died – Senate Committee on Appropriations.

SB 529 (Hertzberg) requires the CPUC to update its rules to allow each electric IOU to use an accelerated process for approval to construct an extension, expansion, upgrade or other modification to its existing electric transmission facilities. Status: Chapter 357, Statutes of 2022.

6) *Double Referral.* This bill was previously heard in the Assembly Committee on Natural Resources on Monday, April 24, 2023.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

350 Humboldt: Grass Roots Climate Action  
 American Clean Power Association  
 Bay Area Council  
 California Building Industry Association  
 California Chamber of Commerce  
 California Manufacturers and Technology Association  
 California Wind Energy Association  
 Civicwell (formally the Local Government Commission)  
 Edison International and Affiliates, Including Southern California Edison  
 HNTB  
 Independent Energy Producers Association  
 Inland Empire Economic Partnership (IEEP)  
 Large Scale Solar Association  
 Los Angeles Business Council  
 Pacific Gas & Electric Company

Rural County Representatives of California (RCRC)  
San Diego Gas & Electric

**Oppose**

Defenders of Wildlife  
Fission Transition  
Sierra Club

**Analysis Prepared by:** Laura Shybut / U. & E. / (916) 319-2083