

Date of Hearing: July 12, 2023

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Eduardo Garcia, Chair

SB 619 (Padilla) – As Amended June 21, 2023

**SENATE VOTE:** 37-0

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

**SUMMARY:** Adds “electrical transmission projects” to the opt-in permitting process at the California Energy Commission (CEC) established by AB 205 (Budget Committee, Chapter 61, Statutes of 2022), which includes authorizing transmission permitting pursuant to the California Environmental Quality Act (CEQA) to go through the CEC rather than at the California Public Utilities Commission (CPUC). Specifically, **this bill:**

- 1) Adds “an electrical transmission project that supports the state’s efforts to achieve the goals set forth in” SB 100 (De Leon, Chapter 312, Statutes of 2018) to the AB 205 opt-in permitting process at the CEC.
- 2) Authorizes the CEC, when evaluating applications for electrical transmission projects, to consider whether the applicant certifies that a capital investment of at least \$250 million will be made over a period of five years.
- 3) 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. Authorizes the CEC to consider alternative substation locations or routing of transmission lines. For these projects, authorizes an application to be filed until December 31, 2039, notwithstanding AB 205’s 2029 deadline.

**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. (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) 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)
- 4) 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)
- 5) 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)
- 6) Requires the 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)
- 7) 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)
- 8) 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* (\$266386)), 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.)

- 9) Authorizes, pursuant to AB 205, 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 megawatthours 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)
- 10) 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.)

- 11) 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)

**FISCAL EFFECT:** Unknown. According to the Senate Committee on Appropriations, this bill would result in unknown, potentially significant ongoing costs for the CEC. However, this bill has been substantially amended since its review in the Senate. It is keyed fiscal and will be referred to the Assembly Committee on Appropriations for its review.

#### **BACKGROUND:**

*Transmission Needs and Urgent Actions* – California has ambitious clean energy goals: 100% renewable and zero-carbon energy-producing resources by December 31, 2045. For state agencies that mandate is accelerated by a decade, to December 31, 2035.<sup>1</sup> The state has had some success in this effort, though, arguably, the greatest challenges (and costs) lie ahead. Meeting these targets requires rapid actions to shift every sector of California’s economy away from fossil fuels which coincides with the need to decarbonize our electrical grid. In March 2021, the CEC, the CPUC, and CARB released the SB 100 report, to determine how best to implement the 100% Clean Energy Policy, and found that in order to meet our goals, California will need to roughly triple its current electricity power capacity.<sup>2</sup> The report has also found 6 gigawatts (GW) of new solar, wind, and battery storage resources were needed annually, roughly triple the build rate for solar and wind and an eightfold increase for battery storage.<sup>3</sup>

In early 2022, the California Independent System Operator (CAISO) published a study outside their normal transmission planning cycle to explore the longer-term grid requirements and options for meeting the State’s 100% Clean Energy Policy reliably and cost-effectively.<sup>4</sup> The CAISO embarked on this study to evaluate what transmission needs would be necessary to meet new resource development as required under SB 100 and the increase in demand from electrification of transportation and other industries. The CAISO noted the projected

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<sup>1</sup> Public Utilities Code § 454.53

<sup>2</sup> Pg. 10, CEC, CPUC, & CARB; “Achieving 100% Clean Electricity in California,” *2021 SB 100 Joint Agency Report Summary: An Initial Assessment*, March 2021.

<sup>3</sup> Pg. 11, *Ibid.*

<sup>4</sup> CAISO *20-Year Transmission Outlook*, January 31, 2022; <http://www.caiso.com/InitiativeDocuments/Draft20-YearTransmissionOutlook.pdf>

“transmission needs will range from high-voltage lines that traverse significant distances to access out-of-state resources, as well as major generation pockets, including offshore wind and geothermal resources located inside the state. 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,”<sup>5</sup> as used in the annual transmission plans. The CAISO collaborated with the CEC and CPUC on the analysis. The resulting plan estimated over \$30 billion in cost would be needed to meet our 2045 clean energy goals; \$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.<sup>6</sup> 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.

The CAISO’s most recent transmission planning process (TPP) was released in May 2023, and reflects a more coordinated and strategic approach in studying and recommending new infrastructure as stipulated in a recent joint-entity Memorandum of Understanding between the CAISO, CPUC, and CEC.<sup>7</sup> The 2022-20233 TPP is centered on state projections that call for more than 40 GW of new resources in the next decade and a study projections of 70 GW by 2032.<sup>8</sup> This evaluation reflects the potential of increased electrification occurring notably in the building and transportation sectors.<sup>9</sup> To meet this target requires 45 new transmission projects for a total infrastructure investment of about \$7.3 billion with a vast majority of them being located in California.<sup>10</sup> Almost half of the identified projects were selected to achieve a state policy objective; a departure from past TPPs.<sup>11</sup>

*The Transmission Permitting Process* – Usually, utilities proposing the construction of new transmissions facilities are required to obtain approval from the CPUC for construction of certain specified infrastructure, pursuant to Public Utilities Code §1001. The CPUC reviews permit applications under two concurrent processes:

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<sup>5</sup> Pg. 1, *Ibid.*

<sup>6</sup> Pg. 3, *Ibid.*

<sup>7</sup> California ISO; “Memorandum of Understanding between the California Public Utilities Commission (CPUC), the California Energy Commission (CEC) and the California Independent System Operator (ISO) regarding Transmission and Resource Planning and Implementation,”

<http://www.caiso.com/planning/Pages/TransmissionPlanning/Default.aspx>, December 2022

<sup>8</sup> Via CAISO 2022-2023 Transmission Plan. In planning for the new resources required to meet system-wide resource needs, CPUC portfolios also took into account the announced retirements of approximately 3700 MW of gas-fired generation to comply with state requirements for thermal generation relying on coastal water for once-through cooling, and the planned retirement of the Diablo Canyon Power Plant. The ISO is not relying on the gas fired generation or Diablo Canyon Power Plant to meet any local capacity or grid support purposes beyond the planned retirement dates. However, the ISO must continue to ensure that they are reliably interconnected and can continue to operate through any potential extension period, so the resources are modeled in the ISO’s studies for those purposes only.

<sup>9</sup> Pg. 2, CAISO; “2022-2023 Transmission Plan,” May 2023.

<sup>10</sup> Pg. 3, *Ibid.*

<sup>11</sup> Pg. 19, *Ibid.*

- 1) An environmental review of applicable projects pursuant to CEQA and CPUC environmental rules. However, some projects may trigger a federal National Environmental Policy Act (NEPA; the federal equivalent of CEQA) 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).

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 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 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's GO 131-D* – GO 131-D establishes the criteria to be followed to trigger the need for a permit to build or renovate electrical facilities, including transmission lines and substations, and also sets out public notice requirements for proposed transmission projects.<sup>12</sup> The level of analysis performed by the CPUC pursuant to GO 131-D varies with the scale (measured in voltage) of the transmission project.

- 1) Projects below 50 kV are considered distribution projects, rather than transmission projects, and in general, do not require CPUC approval. These projects also do not require discretionary approval from local governments, and therefore are not subject to CEQA.
- 2) 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 an analysis of the need for nor economics of these projects.
- 3) 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, in addition to, the environmental impacts of the project covered under a concurrent CEQA review.

Only larger, high-voltage projects over 200 kV, which also require a CPCN, are consistently subject to complete CEQA review. 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. These data showcase that efforts to offer CEQA streamlining impact only a small fraction of the needed transmission projects developed in California every year.

**Table 1:** CPUC CEQA Report<sup>13</sup>

Years	Categorical Exemption <sup>14</sup>	Statutory Exemption	ND/MND	EIR	Joint EIR/NEPA	Total
2012-2023	602	6	29	27	14	664

<sup>12</sup> Subject to Public Utilities Code § 451,701,702,761, 762,768,770, and 1001.

<sup>13</sup> From a data request to the CPUC by this committee on March 29, 2023

<sup>14</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. The CPUC does not track the type of exemptions claimed per Advice Letter.

**COMMENTS:**

- 1) *Author's Statement.* 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. If California hopes to meet its ambitious climate goals, transition transportation to clean vehicles and end our addiction to fossil fuels we must undertake unprecedented efforts to modernize and expand our electrical grid. New high-voltage cables, modernized existing cable networks, and new infrastructure connecting a grid with a far larger capacity to carry clean electrons to power our homes and economy is critical to keeping the lights on in California. CAISO estimates we need 7,000 megawatts of new power capacity every year for the next decade, but we're only adding a fraction of that, raising the threat of summer black-outs. Delays in project approval are also resulting in significantly higher costs to ratepayers for those critical projects. Finally, long permitting delays may also make it impossible for California to access substantial federal assistance currently available to modernize our grid and reduce ratepayer costs. SB 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."
- 2) *Proposed Amendments.* *The bill before this committee includes proposed amendments from the Assembly Committee on Natural Resources to strike the requirement that electrical transmission projects eligible for AB 205 streamlining must support SB 100 goals in §25545 (b)(6); strike the \$250 million threshold for CEC consideration of transmission projects in §25545.1 (c); move the timeline for applications to be filed at the CEC (rather than the CPUC) in Public Utilities Code § 1003.7 (a)(4) to January 1, 2032, to align with SB 149 (Caballero, 2023); and add protections for disadvantaged communities as part of the requirements for eligible projects, as aligned with SB 149 .*
- 3) *The Changing Rules to Streamline Transmission.* Infrastructure, particularly clean energy infrastructure, has been the topic *du jour* for the last several years. Much attention and legislative focus has been given to streamline or accelerate clean energy projects, such that it may be difficult to track what all has been done or what remains to do given the various policies that have been enacted. 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. As shown in Table 2, various transmission project types and aspects of their development have received streamlining in recent years, or are subject to further changes if this bill and other proposed legislation are adopted.



**Table 2:** Recent Policy Actions to Streamline Transmission Development

	Eligible Transmission Projects	Expedited Administrative Timeline	Lead CEQA Agency	CEQA Judicial Streamlining	Needs Assessment (CPCN or PTC)	Additional Project Requirements	Sunset
<b>AB 205</b> <sup>15</sup>	<p>Transmission needed to connect specified eligible energy resources to the larger grid.</p> <p>Not dependent on voltage.</p> <p>All: electrical corporations (IOU or 3<sup>rd</sup> party developer) and publicly owned utility (POU) projects.</p>	No later than 270 days after application deemed complete	<p><i>“Opt-in” Developer choice:</i> CEC or locals (as applicable)</p> <p>Preserves authority of SLC, CCC, SFBCDC, SWRCB, local water boards or air districts, or DTSC, as applicable.</p>	<p>270 days to resolve litigation, to the extent feasible. (initial filing in superior courts)</p> <p>Concurrent preparation of documents.</p> <p>Applicants pay the costs of expedited administrative and judicial review.</p>	<p>Generally no.</p> <p>But yes, at CPUC if an investor-owned utility (IOU) project.</p>	Yes, the procedures and requirements applicable to ELDPs including mitigation of GHG emissions and specified labor standards. <sup>16</sup>	Application deadline: June 30, 2029
<b>SB 529</b> <sup>17</sup>	<p>Modifications to existing transmission facilities (including lines and substations)</p> <p>Not dependent on voltage.</p> <p>Only electrical corporation projects.</p>	None.	CPUC	<p>Unchanged – Challenges to CPUC CEQA are taken directly to the Courts of Appeal or the California Supreme Court,<sup>18</sup> and receive judicial calendar preference.<sup>19</sup></p>	<p>Only PTC</p> <p><i>[Prior to passage of SB 529, projects on existing infrastructure above 200kV had to go through a CPCN]</i></p>	None.	None.

<sup>15</sup> Budget Committee, Chapter 61, Statutes of 2022; Public Resources Code §§ 25545, et seq

<sup>16</sup> Public Resources Code §§21178-21189.3

<sup>17</sup> Hertzberg, Chapter 357, Statutes of 2022; Public Utilities Code §1001

<sup>18</sup> Public Utilities Code § 1756

<sup>19</sup> Public Utilities Code § 1767

<p><b>SB 149</b> <sup>20</sup></p>	<p>Transmission that facilitates delivery of electricity from renewable energy resources, zero-carbon resources, or energy storage projects, and are:</p> <p>1) identified by CAISO in its annual plan; or</p> <p>2) a POU project, as specified.</p> <p>Not dependent on voltage.</p>	<p>None.</p>	<p>Unchanged –</p> <p>Generally for these transmission projects, the CPUC.</p> <p>Or for POU projects, the POU or local government.</p>	<p>270 days to resolve litigation, to the extent feasible. (initial filing in superior courts)</p> <p>Concurrent preparation of documents.</p> <p>Excludes certain documents from record.</p> <p>Applicants pay the costs of expedited administrative and judicial review.</p> <p>For CPUC-jurisdictional projects: challenges will still go directly to the Courts of Appeal or the California Supreme Court,<sup>21</sup> and receive judicial calendar preference.<sup>22</sup></p>	<p>Unchanged –</p> <p>CPCN, PTC, or none, depending on project voltage for electrical corporation projects.</p> <p>POU projects subject to their own local procedures.</p>	<p>Yes, CAISO-identified projects cannot result in any net additional GHG emissions, including employee transportation. [POU projects are excluded from this requirement.]</p> <p>Must avoid or minimize significant environmental impacts in any disadvantaged community</p>	<p>Project certification by Governor: January 1, 2032.</p>
<p><i>Pending Legislation:</i></p>							
<p><b>This bill</b></p>	<p>Transmission to “support the state’s efforts to achieve” SB</p>	<p>If developer chooses CEC as lead: No later than</p>	<p>“Opt-in” <i>Developer choice:</i> CEC or CPUC (as applicable)</p>	<p>If developer chooses CEC as lead:  CPUC judicial</p>	<p>Unchanged –  CPCN or PTC depending on</p>	<p>Yes, the procedures and requirements applicable to ELDPs including</p>	<p>Application deadline: December 31, 2039.  <i>As</i></p>

<sup>20</sup> Caballero, 2023

<sup>21</sup> Public Utilities Code § 1756

<sup>22</sup> Public Utilities Code § 1767

	<p>100 goals.</p> <p><i>As proposed to be amended – all transmission projects.</i></p> <p>Not dependent on voltage.</p> <p>All: electrical corporations (IOU or 3<sup>rd</sup> party developer) and publicly owned utility (POU) projects.</p>	<p>270 days after application deemed complete</p>		<p>preference is removed,</p> <p>but projects will be eligible for all AB 205 protections as noted above.</p>	<p>voltage.</p> <p>CPUC would still conduct a needs assessment even if CEC is lead agency for CEQA.</p>	<p>mitigation of GHG emissions and specified labor standards.<sup>23</sup></p> <p><i>As proposed to be amended – must also avoid or minimize significant environmental impacts in any disadvantaged community.</i></p>	<p><i>proposed to be amended – January 1, 2032.</i></p>
<p><b>SB 420</b> <sup>24</sup></p>	<p>New construction</p> <p>&lt;138kV</p> <p>Specific to only 6 IOUs</p> <p>Located on: previously disturbed land, an urbanized area, or part of a project that has undergone CEQA.</p> <p>Excludes certain protected locations, as specified.</p>	<p>None.</p>	<p>Not CPUC.</p> <p>Potential for CEQA review to then revert to other agencies, depending on project.</p> <p>[Bill does not explicitly exclude CEQA review, just excludes CPUC CEQA review.]</p>	<p>Unchanged –</p> <p>Challenges to CPUC CEQA are taken directly to the Courts of Appeal or the California Supreme Court,<sup>25</sup> and receive judicial calendar preference.<sup>26</sup></p>	<p>Unchanged –</p> <p>This bill explicitly removes the requirement for a needs assessment; however current CPUC practice does not usually subject these projects to a needs assessment.</p>	<p>None.</p>	<p>None.</p>

The impact of this recent legislation is that for most transmission projects the administrative review, lead CEQA agency, and requirement for a needs assessment

<sup>23</sup> Public Resources Code §§21178-21189.3

<sup>24</sup> Becker, 2023

<sup>25</sup> Public Utilities Code § 1756

<sup>26</sup> Public Utilities Code § 1767

remain unchanged (except for transmission work on existing transmission facilities where higher voltage projects would not be subject to a needs assessment, depending on CPUC implementation of SB 529.) The impact of this bill, should it be adopted, would be to allow developers to choose between the CPUC or CEC as their lead CEQA agency. If they choose the CEC, the projects are granted a 270 day administrative review timeline in exchange for lesser judicial streamlining (challenges would now go to superior court even though they would receive an expedited, 270-day timeline there) and additional project requirements related to workforce, GHG emission reductions, and reduced impacts in disadvantaged communities. For POU transmission projects, this bill would not provide much in the way of streamlining that is not already offered via SB 149 (Caballero, 2023) or AB 205 (Committee on Budget, Chapter 61, Statutes of 2022).

- 4) *The Likeliest Outcome.* This bill may present a quandary for electrical corporation applicants: trade a potentially faster administrative review for greater exposure to litigation. The author contends that the concurrent CEQA/CPCN review process at the CPUC takes too long;<sup>27</sup> however, it is unclear how bifurcating the environmental review (CEQA) and needs assessment (CPCN/PTC) between two separate agencies may accelerate project approval. In the ideal scenario envisioned by this bill's proponents, the CEC's CEQA review would take 270 days or less, as proposed by this bill. The CEC's CEQA documents would then go to the CPUC for its CPCN/PTC analysis which would resolve in a year or so (current average timeline), so that transmission project approvals would be under 2 years. This ideal scenario does not account for any potential delays caused by litigation, which would be much lengthier for projects under this bill. Moreover, 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.<sup>28</sup> So the time savings afforded by this measure, even in the ideal scenario, may be at most a few months.

However, it is unclear how realistic or common this ideal scenario would be. Equally plausible is the CPCN/PTC process at the CPUC being drawn out due to waiting for the CEC's CEQA documentation, or the CPUC determining the CEC's CEQA documentation is inadequate and having to adopt their own modified analysis.<sup>29</sup> It is

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<sup>27</sup> The author describes an average 2-4 year completion timeline for EIRs at the CPUC versus a year at the CEC. However, these data have not been verified. Importantly, the CEC EIRs to date have not included long-distance transmission projects; rather they usually site stationary powerplants. It is unclear what project types went into the "average" calculation provided by the author.

<sup>28</sup> Pg. ii, Table 1; Average calculated from 1996-2019; CPUC Energy Division; *Guidelines for Energy Project Applications Requiring CEQA Compliance: Pre-filing and Proponent's Environmental Assessments*; November 2019; <https://www.cpuc.ca.gov/-/media/cpuc-website/files/legacyfiles/c/6442463239-ceqa-pre-filing-guidelines-pea-checklist-nov-2019.pdf>

<sup>29</sup> Under this bill, the CPUC would still be the agency to file the Notice of Determination (Public Resources Code § 21108) on behalf of both the CPUC and CEC. It is unclear if the CPUC will be required to defend the CEC's CEQA equivalent document as a result.

unclear if the CPUC will have the authority to amend or supplement the CEC's environmental analysis if the CPUC considers additional alternatives than those considered by the CEC. Moreover, advocates would now have two venues—the CEC's CEQA process and the CPUC's CPCN/PTC process—to contest a permit. This uncertainty could not only stretch the administrative review of these projects, but exposes these project approvals to greater litigation risk, compounding the delays for projects undergoing the review process under this bill even further.

As an example, the CPUC recently contracted with the CEC to prepare the CEQA documents through a cooperative agreement for two pilot projects: the Vierra 115kV Loop<sup>30</sup> and the Ravenswood-Cooley Landing 115 kV Reconductoring.<sup>31</sup> According to the CPUC, several delays and added costs occurred in the preparation of the Initial Study-MND that adversely impacted the permit decision schedule by several months. However, it is unclear to the committee the cause of these delays and whether the CPUC leading the CEQA preparation would have solved the underlying issues in these applications.

Importantly, this bill does not mandate all transmission projects go through this bifurcated review process. The transmission project developer has the option to choose between the CPUC or the CEC as the lead CEQA agency. This will likely lead to a frustrated few exercising the option proposed by this bill in the hope efficiencies will be gained; while the remaining developers will wait and see whether the scenarios promised by this bill prove realistic and just how high the litigation risk might be.

5) *Related Legislation.*

AB 914 (Friedman) 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. Status: *pending* hearing in the Senate Committee on Energy, Utilities, and Communications after passage in the Senate Committee on Environmental Quality on a 7-0-0 vote.

AB 1358 (Muratsuchi) directs the joint agencies—the CEC, the CPUC, and CARB—to include in the periodic report they produce with California balancing authorities on achieving the state's clean and renewable energy goals a statewide transmission plan to facilitate the timely attainment of those goals. Status: Held in the Assembly Committee on Appropriations.

SB 149 (Caballero) revises procedures regarding CEQA administrative records and expedited administrative and judicial review procedures (i.e., requiring the courts to resolve CEQA litigation within 270 days, to the extent feasible) for ELDPs for specified projects. Relevant to this bill, includes transmission

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<sup>30</sup> A. 18-06-004

<sup>31</sup> A. 17-12-010

projects, as defined, in the list of infrastructure projects eligible for new expedited (270 days, if feasible) judicial review procedures subject to being certified by the governor, approved by the lead agency on or before January 1, 2033, and meeting specified environmental and labor requirements. Status: In engrossing and enrolling.

SB 319 (McGuire) codifies a December 2022 memorandum of understanding between the CPUC, CEC, and CAISO regarding transmission and resource planning and implementation. Status: *set for hearing* in this committee on July 12, 2023.

SB 420 (Becker) removes the requirement on new electrical transmission facility projects less than 138 kilovolts (kV) proposed by the state's six largest IOUs<sup>32</sup> from a determination of need from the 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 CEQA review. Excludes from eligibility projects that are located in wetlands, any unremediated hazardous waste site, or critical habit, as specified. Status: *set for hearing* in this committee on July 12, 2023.

6) *Prior Legislation.*

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.

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<sup>32</sup> Pacific Gas and Electric, Southern California Edison, San Diego Gas and Electric, PacifiCorp, Bear Valley Electric Service, and Liberty Utilities.

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.

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

- 7) *Double Referral*. This bill was heard in the Assembly Committee on Natural Resources on July 10, 2023, where it passed out on an 11-0 vote.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

350 Humboldt: Grass Roots Climate Action  
Bay Area Council  
Building Owners and Managers Association  
California Apartment Association  
California Association of Winegrape Growers  
California Building Industry Association  
California Business Properties Association  
California Business Roundtable  
California Chamber of Commerce  
California Retailers Association  
California State Association of Electrical Workers  
California Trucking Association  
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  
Edison International and Affiliates, Including Southern California Edison  
Elders Climate Action, Norcal and Social Chapters  
Fremont Chamber of Commerce  
Gateway Chambers Alliance  
Greater Coachella Valley Chamber of Commerce  
Greater High Desert Chamber of Commerce  
Independent Energy Producers Association  
Lake Elsinore 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 California  
Norwalk Chamber of Commerce  
Oceanside Chamber of Commerce  
Pacific Gas and Electric Company  
Palm Desert Area Chamber of Commerce  
Palos Verdes Peninsula Chamber of Commerce  
Rancho Cordova Area Chamber of Commerce  
San Diego Community Power  
San Leandro Chamber of Commerce  
Santa Barbara South Coast Chamber of Commerce  
Santa Maria Valley Chamber of Commerce  
The Chamber Newport Beach  
Torrance Area Chamber of Commerce  
Vista Chamber of Commerce  
Walnut Creek Chamber of Commerce  
Yuba Sutter Chamber of Commerce

**Other**

Sempra Energy and Its Affiliates: San Diego Gas & Electric Company and Southern California Gas Company

**Opposition**

None on file.

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