

STATE OF CALIFORNIA

Public Utilities CPUC
San Francisco

M e m o r a n d u m

Date: May 3, 2011

To: The CPUC
(Meeting of May 5, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1214 (Skinner) – Transmission**
As amended: April 26, 2011¹

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE

SUMMARY OF BILL:

This bill would remove the California Public Utilities Commission's (CPUC) discretion to consider whether a transmission facility under the CPUC's review is "necessary to facilitate achievement" of the RPS program pursuant to existing PUC §399.2.5. Instead, if the California Independent System Operator (ISO) finds a facility "necessary" and also finds that it would serve at least 250 megawatts (MW) of RPS resources that have CPUC-approved power purchase agreements, the CPUC would be required to find the facility as needed, "*absent a showing of good cause based either upon information provided by the CPUC to the ISO prior to its determination or upon newly developed information that was not available at the time the ISO made its determination*".

The bill would also require the CPUC and the ISO to jointly identify, by March 31, 2012, new and upgraded electric transmission facilities that would serve interconnection requests from solar generators and that could be in service by December 31, 2016.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

By eliminating the CPUC's discretion to determine whether individual transmission facilities are needed to meet RPS program goals, the bill would prevent the CPUC from carrying out its mandate to support state policies while ensuring just and reasonable rates. The bill may also remove the CPUC's authority to perform review under the California Environmental Quality Act (CEQA), leaving it uncertain as to what agency would perform the review. The conditions under which the CPUC would retain

¹ This analysis was prepared based on amendments not yet in print. The April 26 amendments contain additional language not analyzed in this memo.

discretionary authority are confusing and would lead almost inevitably to litigation and delay. The report mandated by the legislation would be at best redundant, and could be confusing to the market.

EXPLANATION OF BILL'S IMPACT ON CPUC PROGRAMS, PRACTICE & POLICY:

The bill's removal of the CPUC's discretion to determine need is extremely problematic. First, review under CEQA is triggered by a "discretionary action" by a government agency.² As the agency responsible for determining whether an investor-owned utility (IOU) may construct a transmission project, the CPUC also performs the environmental review required for the proposed project under CEQA. By removing the CPUC's discretion to determine whether a transmission project is needed, the proposed bill could remove the CPUC's authority to conduct CEQA review. Because the ISO is not a government agency and therefore not required to comply with CEQA, it is not clear who would. CPUC staff expects that this confusion would lead to drawn-out litigation and significant delays in project permitting.

Second, removing state oversight of potentially billions of dollars of infrastructure investment has far-reaching implications for the achievement of state policy goals and the CPUC's mandate to ensure just and reasonable rates. The CPUC already relies heavily on the ISO's technical expertise to identify the transmission infrastructure needed to serve load reliability and efficiently, and to meet state policy goals such as the Renewables Portfolio Standard (RPS). Transmission "need" is driven, however, by assumptions regarding where and when generation will be developed, what electricity demand will be in the future, what existing plants will soon retire for environmental and other reasons, etc. In developing these assumptions, the ISO – as an entity regulated by the Federal Energy Regulatory Commission (FERC) rather than a state agency – does not have the obligations that the CPUC does to uphold state policy preferences, to implement the state's adopted energy "loading order" and its prioritization of energy efficiency and distributed generation, to implement resource planning priorities adopted after extensive stakeholder involvement and consideration of resource options and trade-offs, and, perhaps most importantly, to ensure just and reasonable rates.

For example, the ISO's focus has historically been on large-scale generation and transmission planning, with relatively conservative consideration of demand-side

² **Title 14. California Code of Regulations, Chapter 3. Guidelines for Implementation of the California Environmental Quality Act**

15002(i) Discretionary Action. CEQA applies in situations where a governmental agency can use its judgment in deciding whether and how to carry out or approve a project. A project subject to such judgmental controls is called a "discretionary project." (See: Section 15357.)

(1) Where the law requires a governmental agency to act on a project in a set way without allowing the agency to use its own judgment, the project is called "ministerial," and CEQA does not apply. (See: Section 15369.)

(2) Whether an agency has discretionary or ministerial controls over a project depends on the authority granted by the law providing the controls over the activity. Similar projects may be subject to discretionary controls in one city or county and only ministerial controls in another. (See: Section 15268.)

alternatives. Additionally, under its current FERC-approved tariff, the ISO cannot perform a cost/benefit assessment of transmission projects that are identified solely in response to generation interconnection requests, and instead approves these facilities as a matter of course. Removing the CPUC's ability to weigh the need for such a facility against its proposed cost, its environmental impact, and other alternatives, could result in an inefficient, expensive build-out of the transmission grid. This problem is not addressed by the bill's stipulation that the CPUC would have to defer to the ISO only if the facility would serve at least 250 MW of projects with PPAs approved by the CPUC. The CPUC reviews PPAs for projects in various stages of development. Quite often, the developer, utility and CPUC have incomplete information about a project's transmission needs at the time of PPA review, because of the timing of the ISO planning procedures relative to the developer's PPA negotiation schedule.

The CPUC and ISO are today working more closely than ever before to address gaps between the transmission planning and permitting processes, with the CPUC considering transmission needs in its resource planning proceedings, and the ISO considering the state's resource planning priorities in its transmission planning process. Through this coordination, staff hopes to address the "double jeopardy" problem that this bill apparently attempts also to address, in which a transmission project is subject to two un-related need determinations, creating uncertainty for renewable generation developers. The proposed bill, however, would inappropriately remove the state's final authority to ensure that the billions of ratepayer dollars potentially needed to invest in transmission to meet a 33% RPS are invested in ways that support state policies at reasonable cost.

The proposed bill stipulates that the CPUC would only have defer to the ISO "*absent a showing of good cause based either upon information provided by the CPUC to the ISO prior to its determination or upon newly developed information that was not available at the time the ISO made its determination*". This language could invite litigation over nearly every aspect of this clause: 1) what would qualify as "information provided by the CPUC to the ISO" – any and all staff-to-staff communications, official CPUC decisions, CPUC comment in an ISO planning process, or something else; 2) what would qualify as "newly developed"; and 3) what would qualify as "not available at the time the ISO made its determination." For example, an affected landowner – who would be notified during the CPUC's permitting process but was not notified of the ISO's planning process – might identify a land use issue at the CPUC. It is not clear if that information would be "newly developed." If the information had existed, but the land owner had not known about the planning process, the landowner may be able to make a credible due process legal challenge.

Finally, it is unclear what value would be provided by the report that the bill requires the CPUC and ISO to jointly develop by March 31, 2012, identifying new and upgraded electric transmission facilities that would serve interconnection requests from solar generators and that could be in service by December 31, 2016, and discussing how to reduce or eliminate barriers to development of those facilities. 25,000 MW of solar

facilities are currently seeking interconnection to the ISO system.³ It is not clear how the CPUC and ISO should prioritize those requests for the required report, except through the existing processes – the scenario analysis that the CPUC performs in the biannual Long-Term Procurement Plan proceeding, and the annual Transmission Planning Process and ongoing interconnection studies that the ISO performs. A report that simply repackages the results of those existing processes into another format would be redundant and of little use. However, if the report somehow contradicted the outcomes of those existing formal processes – despite being developed by the entities running those processes – it would again be of little use, having no official weight, and would simply create confusion.

BACKGROUND INFORMATION ON IMPACTED PROGRAMS, PRACTICE OR POLICY:

The RPS program was adopted in SB 1078 (2002), and subsequently modified by SB 107 (2006), SB 1036 (2007), and SBx1 2 (2011). The CPUC is statutorily responsible for 1) requiring each utility to submit an RPS Procurement Plan, 2) adopting a process that utilities must use to evaluate renewable energy projects bid into their solicitations, 3) adopting RPS compliance rules, 4) reviewing and approving or rejecting utilities' RPS contracts, and 5) reporting to the Legislature, on a quarterly basis, on the RPS program. To date, the CPUC has adopted approximately 40 decisions to implement these aspects of the RPS program and has approved over 180 RPS contracts for over 16,000 megawatts.

The CPUC oversees long-term planning for all IOU procurement, including RPS, though a biannual Long-Term Procurement Plan proceeding.

The CPUC permits transmission pursuant to PUC sections 1001 et seq., which requires the CPUC to consider, among other things, community values, recreational and park areas, historical and aesthetic values, and “demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation... and other demand reduction resources” before determining a project as needed. The CPUC can also permit transmission if it is specifically “necessary to facilitate achievement” of the RPS program pursuant to PUC section 399.2.5. The CPUC has adopted a three-prong test for determining whether a facility is “necessary to facilitate achievement” of the RPS, and has permitted several transmission facilities on those grounds.

STATUS:

AB 1214 is awaiting consideration in the Assembly Utilities and Commerce Committee.

SUPPORT/OPPOSITION:

None on file

³ CAISO Interconnection Queue as of 4/20/2011, <http://www.caiso.com/2826/2826b8435fe20.xls>.

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BILL LANGUAGE:

BILL NUMBER: AB 1214 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 26, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011

INTRODUCED BY Assembly Member Skinner

FEBRUARY 18, 2011

An act to add Section 1103 to the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1214, as amended, Skinner. Electrical transmission.

Under existing law, the Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations, as defined. The Public Utilities Act prohibits any electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the CPUC a certificate that the present or future public convenience and necessity require or will require that construction (certificate of public convenience and necessity).

This bill would ~~—, when— require the Independent System Operator (ISO) —determines that building or upgrading of electrical transmission is necessary and that determination has been approved by the Federal Energy Regulatory Commission, require the commission to find that the construction or extension is necessary for the present or future public convenience and necessity absent a showing of good cause based upon newly developed information that was not available at the time of the determination by the ISO. The bill would require that a transmission project sponsor be given the option of filing a single application for a certificate of public convenience and necessity with respect to a transmission plan or generator interconnection agreement that has multiple stages if the project is for the purpose of achieving the renewables portfolio standard, as specified and the CPUC to jointly evaluate all electrical transmission facilities that have been identified in the ISO transmission process that serve solar development areas. The bill would require the CPUC and ISO, by March 31, 2012, to publish a report identifying new and upgraded electrical transmission facilities that serve solar development areas that can potentially be placed in service by December 31, 2016, including an analysis of any barriers to permitting, construction, or placement into service of each facility by December 31, 2016, and the means to eliminate or minimize the effects of those barriers. The bill would require the CPUC and the ISO to coordinate the ISO's transmission planning process and identification of needed transmission facilities with the CPUC's issuance of certificates of public convenience and necessity for transmission facilities .~~

Existing law provides that an application by an electrical corporation for a certificate of public convenience and necessity for new transmission facilities is necessary to the provision of electric service if the CPUC finds that the new transmission facility is necessary to facilitate achievement of the procurement requirements of the California renewables portfolio standard program (RPS program).

This bill would, if the ISO determines that the building or upgrading of electrical transmission facilities is necessary, and if the CPUC determines that those transmission facilities will serve at least 200 megawatts of eligible renewable energy resources, as defined, for which the CPUC has approved a purchase agreement pursuant to the RPS program and that the facilities would assist in achievement of resource adequacy requirements, as defined, that absent a showing of good cause based either upon information provided by the CPUC to the ISO prior to its determination or upon newly developed information that was not available at the time the ISO made its determination, require that the CPUC find that the construction or extension of certain transmission facilities is necessary to facilitate achievement of the procurement requirements of the RPS program if specified conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1103 is added to the Public Utilities Code, to read:

~~1103. (a) When the Independent System Operator (ISO) has determined that the building or upgrading of electrical transmission is necessary, and that determination has been approved by the Federal Energy Regulatory Commission (FERC), absent a showing of good cause based upon newly developed information that was not available at the time of the determination by the ISO, the commission shall find that the construction or extension is necessary for the present or future public convenience and necessity pursuant to this chapter. The commission shall find that the construction or extension is necessary for purposes of Section 399.2.5 if the commission finds that the construction or extension is for the purpose of achieving the renewables portfolio standard established pursuant to Article 16 (commencing with Section 399.11) of Chapter 2.3, or adopted by a local publicly owned electric utility pursuant to Section 387.~~

~~(b) With respect to a transmission plan or generator interconnection agreement that is for the purpose of achieving the renewables portfolio standard, that has multiple stages, and that been approved by the FERC, a project sponsor shall have the option of filing a single application for a certificate of public convenience and necessity.~~

1103. (a) (1) In order to maximize benefits to the state of the federal investment tax credit, the Independent System Operator (ISO) and the commission shall jointly evaluate all electrical transmission facilities, including new facilities or upgrades of existing facilities, that have been identified in the ISO transmission planning process as being facilities that serve solar development areas, as indicated by interconnection requests by solar

facility project developers.

(2) By March 31, 2012, the ISO and the commission shall publish a report identifying new and upgraded electrical transmission facilities that serve solar development areas that can potentially be placed in service by December 31, 2016. The commission shall consult with transmission project developers in identifying the new and upgraded electrical transmission facilities that serve solar development areas. The report shall include a time frame for obtaining all governmental approvals for, construction of, and placement into service of, each transmission project. The report shall include an analysis of any barriers to permitting, construction, or placement into service of each transmission facility by December 31, 2016, and the means to eliminate or minimize the effects of those barriers.

(b) If the ISO determines that the building or upgrading of electrical transmission facilities is necessary, and the commission determines that those transmission facilities will serve at least 200 megawatts of eligible renewable energy resources for which the commission has approved a purchase agreement pursuant to Article 16 (commencing with Section 399.11) of Chapter 2.3 and additionally determines that those facilities assist in achievement of resource adequacy requirements, absent a showing of good cause based either upon information provided by the commission to the ISO prior to its determination or upon newly developed information that was not available at the time the ISO made its determination, the commission shall find that the construction or extension is necessary for purposes of Section 399.2.5. For purposes of this subdivision, "resource adequacy requirements" means the resource adequacy requirements established for load-serving entities pursuant to Section 380 or for local publicly owned electric utilities pursuant to Section 9620.

(c) (1) The commission and the ISO shall coordinate the ISO's transmission planning process and identification of needed transmission facilities with the commission's issuance of certificates for transmission facilities pursuant to this chapter.

(2) The commission and the ISO shall evaluate alternatives for building or upgrading transmission facilities that may enhance achievement of the objectives of the California renewables portfolio standard program (Article 16 (commencing with Section 399.11) of Chapter 2.3) and the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).

(3) The ISO shall provide the commission with a formal assessment of the new or upgraded transmission facilities needed within its balancing authority area for each alternative identified pursuant to paragraph (2).

(4) The commission shall give substantial weight to applications for certificates for transmission facilities that are consistent with the ISO's final approved transmission plan if the plan considers the alternatives identified pursuant to paragraph (2).