AMENDED IN SENATE JUNE 25, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 435

Introduced by Assembly Member De La Torre

February 24, 2009

An act to add Section 327.1 to*, and to add Chapter 3 (commencing with Section 3260) to Part 4 of Division 1 of,* the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 435, as amended, De La Torre. Public utilities: transmission facilities: environmental ~~review.~~ *review: infrastructure.*

Under existing law, the Public Utilities Commission *(CPUC)* has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process.

This bill would require the ~~commission~~ *CPUC* to study the efficacy of conducting concurrent environmental review of proposed *electricity* transmission facilities by federal and state agencies.

Existing law establishes the State Energy Resources Conservation and Development Commission (Energy Commission) in the Natural Resources Agency. Existing law requires the Energy Commission to conduct biennial assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices. The Energy Commission is required to adopt a biennial integrated energy policy by November 1 that contains an overview of major energy trends and issues facing the state. Existing

law requires the Energy Commission to adopt a strategic plan for the state's electrical transmission grid using existing resources, to be included in the integrated energy policy report adopted on November 1, 2005, which identifies and recommends actions required to implement investments needed to ensure reliability, relieve congestion, and to meet future growth in electrical load and generation, including renewable resources, energy efficiency, and other demand reduction measures.

Existing law authorizes the CPUC to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. 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.

The existing restructuring of the electrical industry within the Public Utilities Act provides for the establishment of an Independent System Operator (ISO) as a public benefit nonprofit corporation. Existing law requires the ISO to ensure efficient use and reliable operation of the transmission grid consistent with achieving planning and operating reserve criteria no less stringent than those established by the Western Electricity Coordinating Council and the American Electric Reliability Council.

This bill would enact the Electrical Transmission Infrastructure Investment Act. The bill would require that every electrical corporation that owns electrical transmission facilities plan for, and provide, sufficient electrical transmission facilities and any upgrades or expansion of those facilities as are necessary to ensure reliable transmission service to its customers, while achieving certain renewable power goals. The bill would require every electrical corporation that owns electrical transmission facilities, by July 1, 2011, and each July 1 thereafter, to provide a report to the CPUC identifying any electrical transmission facility, upgrade, or enhancement that the electrical corporation determines is necessary to ensure reliable transmission service to its customers, while achieving certain renewable power goals, in coordination with the ISO.

This bill would require the ISO to identify upgrades and expansions of the electrical transmission system as are necessary for its control area. The bill would require the ISO, beginning July 1, 2011, and each July 1 thereafter, to provide a report to the CPUC, the Energy Commission, and the Electricity Oversight Board identifying upgrades

and expansions of the electrical transmission system as are necessary for its control area.

The bill would require the CPUC, in acting upon any application for a certificate of public convenience and necessity, to approve those investments in electrical transmission infrastructure that it determines are reasonable and necessary to maintain or enhance grid reliability, to maintain or enhance efficient use of the grid, or that facilitate achievement of renewable energy resource goals pursuant to a specified law, if those investments meet all other applicable standards and requirements for approval. The bill would require the CPUC, in acting upon any application for a certificate of public convenience and necessity, to consider the most recent report of the ISO. The bill would require the CPUC to streamline the transmission permitting and siting process by eliminating regulatory overlap and duplication within the commission's processes, to reduce the time needed to review and approve a certificate of public convenience and necessity for transmission facilities and systems, to expedite the review of new or expanded transmission facilities and systems located within state or federally designated transmission corridors. The bill would authorize the CPUC, if it finds that the costs were prudently incurred in accordance with a specified law, to allow recovery in rates of any increase in transmission costs incurred by an electrical corporation or other public utility in planning, designing, and engineering the reconfiguration, replacement, expansion, or construction, of transmission facilities to the extent that those costs are not otherwise authorized for recovery in rates approved by the Federal Energy Regulatory Commission. The bill would require the CPUC to report to the Legislature beginning in 2011, summarizing the status of every application for a certificate of public convenience and necessity filed by an electrical corporation or other public utility for a transmission facility, upgrade, or enhancement and to annually update its transmission report as part of its annual workplan.

The bill would require every local publicly owned electrical utility, as defined, that owns electrical transmission facilities to plan for, and provide, sufficient electrical transmission facilities and any upgrades or expansion of those facilities as are reasonably necessary to ensure reliable transmission service to its customers.

The bill would require an electrical corporation or a local publicly owned electric utility that owns electrical transmission facilities to investigate and evaluate, the cost and feasibility of using

high-technology conductors and other advanced transmission technology in new and upgraded transmission projects, thereby imposing a state-mandated local program on local publicly owned electric utilities that own electrical transmission facilities.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

The people of the State of California do enact as follows:

SECTION 1. Section 327.1 is added to the Public Utilities Code, to read:

327.1. The commission shall study the efficacy of conducting concurrent environmental reviews of proposed *electricity* transmission facilities by federal and state agencies.

SEC. 2. Chapter 3 (commencing with Section 3260) is added to Part 4 of Division 1 of the Public Utilities Code, to read:

CHAPTER 3. TRANSMISSION OF ELECTRICITY

3260. (a) This chapter shall be known, and may be cited, as the Electrical Transmission Infrastructure Investment Act.

(b) For purposes of this chapter, the following terms have the following meanings:

(1) "ISO" means the Independent System Operator established pursuant to Article 2 (commencing with Section 334), and operating pursuant to Article 3 (commencing with Section 345), of Part 1.

(2) "Local publicly owned electric utility" has the same meaning as set forth in Section 224.3.

(c) The Legislature finds and declares the following:

(1) Planning for, and investing in, electrical transmission infrastructure to ensure its continued efficient use and reliable

operation is essential to the health, safety, and economic well-being of California consumers and businesses.

(2) Additional investments in electrical transmission infrastructure may be necessary to ensure reliability, relieve transmission congestion, and meet future growth in load and energy resources, including renewable energy resources, energy efficiency, and other demand reduction measures.

(3) The responsibility for planning and investing in electrical transmission infrastructure has historically been carried out as part of the obligation of an electrical corporation or local publicly owned electric utility to provide reliable, reasonably priced, electric service.

(4) Changes that have occurred over the last decade in the structure, operation, and regulation of the electrical industry make it appropriate and necessary to clarify and affirm the respective responsibilities and obligations of industry participants for planning and investing in electrical transmission infrastructure, to ensure that adequate investments are made in a timely manner so that the state's electrical transmission grid system continues to operate in an efficient and reliable manner.

(5) Planning and investing is specifically needed for the electrical transmission infrastructure required to facilitate achievement of the renewable power goals established in Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1.

(6) While recognizing the urgency of meeting California's renewable energy goals and associated transmission needs, the California Environmental Quality Act (CEQA) is the cornerstone of California's environmental regulations.

(7) CEQA provides opportunities for meaningful public participation and enables multiple stakeholders to engage in the siting and permitting process.

(8) It is equally important that the process have a high level of transparency so that interested stakeholders may track the process of the project each step of the way.

(d) It is the policy of this state and the intent of the Legislature that the commission, the Energy Commission, the ISO, and electrical corporations ensure that adequate investments are made in a timely manner so that the state's electrical transmission system continues to operate in an efficient and reliable manner while

achieving the renewable power goals established in Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1.

3261. (a) Every electrical corporation that owns electrical transmission facilities shall plan for, and provide, sufficient electrical transmission facilities and any upgrades or expansion of those facilities as are necessary to ensure reliable transmission service to its customers, consistent with Sections 380 and 451, while achieving the renewable power goals established in Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1. This obligation of an electrical corporation includes those customers that receive distribution service from the electrical corporation, without regard to whether the customer receives electric service through a direct transaction with an electric service provider.

(b) Every electrical corporation that owns electrical transmission facilities shall, by July 1, 2011, and each July 1 thereafter, provide a report to the commission identifying any electrical transmission facility, upgrade, or enhancement that the electrical corporation determines is reasonably necessary to ensure reliable transmission service to its customers, while achieving the renewable power goals established in Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1. In identifying necessary transmission investments, the electrical corporation shall coordinate with the ISO and act consistent with Sections 380 and 451. Each report shall include those transmission facilities, upgrades, or enhancements identified by the Independent System Operator pursuant to Section 3262. Each report shall include projections for at least the next 10 years and shall consider the resources that are being and are likely to be procured to achieve the renewable power goals established in Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1, the Energy Commission's most recent electricity supply and demand outlook forecast, any relevant investments identified pursuant to Section 25324 of the Public Resources Code, and any relevant transmission corridor zone designated pursuant to Chapter 4.3 (commencing with Section 25330) of Division 15 of the Public Resources Code.

3262. (a) Consistent with its obligations pursuant to Article 3 (commencing with Section 345) of Chapter 2.3 of Part 1, the ISO shall identify upgrades and expansions of the electrical transmission system as are necessary for its control area,

considering the changes in the electrical generation and transmission infrastructure that will occur as a result of the attainment of the renewable power goals established in Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1.

(b) The ISO shall, beginning July 1, 2011, and each July 1 thereafter, after public review and comment consistent with Section 345.5, provide a report to the commission, the Energy Commission, and the Electricity Oversight Board. The report shall identify upgrades and expansions of the electrical transmission system pursuant to subdivision (a). Each report shall include projections for at least the next 10 years and shall consider the Energy Commission's most recent electricity supply and demand outlook forecast, any relevant investments identified pursuant to Section 25324 of the Public Resources Code, and any relevant transmission corridor zone designated pursuant to Chapter 4.3 (commencing with Section 25330) of Division 15 of the Public Resources Code.

3263. (a) In acting upon any application for a certificate of public convenience and necessity pursuant to Chapter 5 (commencing with Section 1001) of Part 1, the commission shall approve those investments in the electrical transmission infrastructure that it determines are reasonable and necessary to maintain or enhance grid reliability, to maintain or enhance efficient use of the grid, or that facilitate achievement of renewable power goals established in Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1, if those investments meet all other applicable standards and requirements for approval.

(b) In acting upon any application for a certificate of public convenience and necessity pursuant to Chapter 5 (commencing with Section 1001), the commission shall consider the most recent report of the ISO made pursuant to Section 3262.

(c) Consistent with all applicable environmental laws and those laws and commission rules providing for public review and participation, the commission shall do all of the following:

(1) Streamline the transmission permitting and siting process by eliminating regulatory overlap and duplication within the commission's processes.

(2) Reduce the time needed to review and approve a certificate of public convenience and necessity for transmission facilities and systems.

(3) Expedite the review of new or expanded transmission facilities and systems located within state or federally designated transmission corridors.

(d) The commission may, if it finds that the costs were prudently incurred in accordance with subdivision (a) of Section 454, allow recovery in rates of any increase in transmission costs incurred by an electrical corporation or other public utility in planning, designing, and engineering the reconfiguration, replacement, expansion, or construction of transmission facilities to the extent that those costs are not otherwise authorized for recovery in rates approved by the Federal Energy Regulatory Commission.

(e) The commission shall, beginning in 2011, report to the Legislature summarizing the status of every application for a certificate of public convenience and necessity filed by an electrical corporation or other public utility for a transmission facility, upgrade, or enhancement. The report shall include actions the commission has taken to facilitate the permitting and siting of the facilities and a schedule to ensure adequate investments are made in a timely manner in electrical transmission infrastructure to ensure that the state's electrical transmission system continues to operate in an efficient and reliable manner. The commission shall annually update its transmission report as part of its annual workplan.

(f) Nothing in this section shall affect the planning, designing, engineering, permitting, siting, or construction of any transmission improvement for which a certificate of public convenience and necessity has been filed with the commission before January 1, 2010.

3264. (a) Every local publicly owned electric utility that owns electrical transmission facilities shall plan for, and provide, sufficient electrical transmission facilities and any upgrades or expansion of those facilities as are reasonably necessary to ensure reliable transmission service to its customers.

(b) Every local publicly owned electric utility that owns electrical transmission facilities shall plan for, and provide, sufficient electrical transmission facilities and any upgrades or expansion of those facilities in a manner that recognizes the intent of the Legislature, in accordance with this chapter, to ensure that adequate investments are made in a timely manner so that the

state's electrical transmission system continues to operate in an efficient and reliable manner.

3265. Nothing in this chapter diminishes or expands any existing authority of a local publicly owned electric utility, electrical corporation, other public utility, person, or corporation, either alone or together with any other public or private entity, to plan for and provide electrical transmission facilities.

3266. (a) Each electrical corporation or local publicly owned electric utility that owns electrical transmission facilities shall investigate and evaluate the cost and feasibility of using high-technology conductors, including, but not limited to, ceramic conductors, and other advanced transmission technology in new and upgraded transmission projects. An electrical corporation shall also evaluate the cost and feasibility of retrofitting existing transmission facilities with high-technology conductors and other advanced transmission technology, and whether using high-technology conductors or other advanced transmission technology will expedite the delivery of electricity generated by eligible renewable energy resources and enable the utility to increase transmission capacity without building new transmission towers.

(b) An electrical corporation shall report the results of the investigation and evaluation made pursuant to subdivision (a) to the commission by July 1, 2011.

(c) A local publicly owned electric utility shall report the results of the investigation and evaluation made pursuant to subdivision (a) to the Energy Commission by July 1, 2011.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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