

Date of Hearing: April 24, 2024

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Tasha Boerner, Chair

AB 2221 (Juan Carrillo) – As Amended April 22, 2024

SUBJECT: Broadband projects: electric power design approval

SUMMARY: Establishes timelines for an electric utility, as defined, to approve or deny a complete application, as defined, for a broadband project. This bill provides that a colocation or siting application for a wireless telecommunications facility are deemed approved under specified circumstances. Additionally, this bill establishes other requirements and procedures on an electric utility and applicants regarding the submittal and review of applications for broadband projects.

Specifically, **this bill:**

- 1) Establishes definitions:
 - a. “Application” means a written request, application, or other document submitted by a broadband provider to an electrical corporation or local publicly owned electric utility for approval of an electric power design related to the construction and operation of a broadband project.
 - b. “Electric utility” includes both an electrical corporation and a local publicly owned electric utility.
- 2) Requires an electric utility to adopt and make publicly available all rules, requirements, and standards applicable to applications submitted to the electric utility. Exempts applications from any rule, requirement or standard that was not published and made publicly available before the date of submission of the application.
- 3) Requires an electric utility to approve or deny a complete application within 60 days or 90 days, depending on whether application is for installation on existing infrastructure. This bill includes limited exemptions to this requirement for projects that propose to attach to over 300 pieces of infrastructure or for applicants with outstanding safety violations.
- 4) Authorizes any timeline established by this bill to be extended upon mutual agreement of the electric utility and the applicant.
- 5) Provides that a colocation or siting application for a wireless telecommunications facility shall be deemed approved only if certain conditions are met. The conditions include that the electric utility did not approve or disapprove the application within the periods of time established in this bill, taking into account tolling of the timeline to accommodate reasonable requests for information required to complete the application; and that the applicant has provided notice to the electric utility that the application is deemed approved.
- 6) Specifies that after a cost estimate has been provided to the applicant within 30 days and accepted, the electric utility shall complete energization to the broadband project location within a time period determined by the California Public Utilities Commission.
- 7) Requires an electric utility to notify an applicant if the application is incomplete, specifying every item and information missing from the application. This bill establishes the obligation

of an applicant to resubmit the application within 30 days, and authorizes the electric utility to issue subsequent notices of incompleteness.

EXISTING LAW:

- 1) Requires local publicly owned electric utilities (POUs) to make ready infrastructure for use by a broadband service provider within 45 days of the date of receipt of the request, or 60 days if the request is to attach to more than 300 utility poles. Also requires POUs to provide a cost estimate within 14 days of a request's approval. (Public Utilities Code § 9511)
- 2) Requires the California Public Utilities Commission (CPUC) to determine criteria for timely service for electric customers by January 1, 2025 that shall include timely start of service for new connections, timely fulfillment of requests for increased load, and reenergization of customers following a power outage. (Public Utilities Code § 933.5)
- 3) Establishes guidelines for the design, cost allocation, and responsibilities of a project applicant and a utility for electric distribution line extensions necessary to finish permanent electric service. (Electric Rule 15)
- 4) Establishes guidelines for the design, cost allocation, and responsibilities of a project applicant and a utility for the extension of electric service from an investor-owned utility (IOU) distribution line (Electric Rule 16)
- 5) Requires cities and counties to process broadband projects within a reasonable period of time in accordance with the time periods and procedures established by applicable Federal Communications Commission (FCC) rules. (Government Code § 65964.1)

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

- 1) *Author's statement.* According to the author, "Billions in public and private funding for broadband projects are trying to be built as fast as possible in 2024, 2025 & 2026 to help close the digital divide. \$6 billion in federal broadband dollars need to be allocated by the end of 2024 and projects need to be built by the end of 2026 or we risk sending money back to D.C. The legislature has enacted laws in recent years ensuring that local governments streamline broadband deployment and process broadband permits within 60-90 days. Electric utilities don't have any required timeframes for broadband application timelines and typically take between 7-12 months to process the initial power design application then another 7-12 months to connect power to the broadband project. California won't be able to meet its Broadband for All objectives unless legislation is passed creating a consistent and transparent process for public and private utilities to follow when processing broadband project applications. AB 2221 creates reasonable procedures and timelines for both utilities and applicants to follow so broadband applications can be handled efficiently in a reasonable amount of time."
- 2) *Is federal funding at risk?* In recent years the federal government, through the states, has invested billions of dollars into broadband infrastructure programs. In 2021, pursuant to SB 156 (Committee on Budget and Fiscal Review. Chapter 112, Statutes of 2021) the Legislature invested \$6 billion dollars into broadband infrastructure projects and programs. This pot of money was a mix of federal pandemic relief funds and state general funds.

Specifically, SB 156 appropriated \$2 billion dollars to the California Public Utilities Commission (CPUC) over a 3 year period, of which only a portion¹ was federal funds. Pursuant to SB 156, those funds must be spent corresponding with federal rules and requirements. For example, federal guidelines applicable to those funds require them to be encumbered by December 31, 2024 and spent down by December 31, 2026. In addition to SB 156, California will in the near future receive an additional \$1.86 billion from the federal government through the Broadband Equity, Access, and Deployment (BEAD) Program. Those funds will also be administered by the California Public Utilities Commission, under the authority and supervision of the National Telecommunications and Information Administration (NTIA). The NTIA will establish its own timelines for awarding the funds to project, which is expected to be a one year process.

In summary, there will be pressure in the state in the coming years to fully permit, construct, and make operational new broadband infrastructure within federal timelines. Awarding such a large sum of funding will be a huge undertaking on its own, and unfortunately the CPUC has been over 18 months delayed in awarding funds. Under current estimates, the first projects from SB 156 will not be awarded funding until June 2024. In turn, entities that are awarded the funding will be under pressure to permit and construct their projects before 2026. If they do not meet those deadlines, the federal funding that is supporting those projects may have to be returned to the federal government. Given this potential risk, by placing timelines on electric utilities to complete electrical design review and energize broadband projects that might be funded by those federal funds, this bill may help alleviate some of that pressure for the broadband projects covered by this bill.

A final point on federal funds, it is worth noting that broadband projects are not the only infrastructure projects being funded with federal funds that may also have a need for expedited electrical permitting. For example, the Infrastructure Investment and Jobs Act (IIJA) will also fund a slew of other electric projects such as vehicle chargers and energy efficiency projects for homes, and those projects may also benefit from expedited treatment to meet federal deadlines. While this bill does not intend to include all types of projects, from a statewide policy perspective it is worth pondering whether a more comprehensive strategy would also be reasonable.

- 3) *What “applications” are covered by this bill?* This bill establishes a narrow definition for the term “application” that specifically pertains to approval of an electric power design related to the construction and operation of a broadband project. Notably, electric power design is not the only phase of a broadband project lifecycle and it is not the only phase of a project lifecycle that requires coordination between an electric utility and project applicant. To complicate matters further, each step in the application process is not necessarily a separate formal filing from the applicant to the electric utility. Nonetheless, thinking of a project lifecycle is useful for understanding how this bill is intended to apply to different segments of a project lifecycle. Generally speaking, the phases of a project can be broken-up into distinct steps as follows:

¹ The specific breakdown of federal and state general funds has shifted since the signing of SB 156. As of the 2023-2024 budget year, of the \$2 billion dollars appropriated to the CPUC, only \$550 million consists of federal funds with the rest being general fund.

- I. **Application Submittal:** A broadband provider [“applicant”] prepares to submit a request for approval, which could include fees, construction drawings, pole loading calculations, and other documents per the utility’s submittal requirements. If one or more of those elements is missing from the application package, the utility responds to the applicant informing them that a document is missing and must be submitted prior to the next step in the utility power process. Provisions of this bill would apply to this phase.
- II. **Design Review Phase:** A utility engineer reviews the application to confirm that the utility can deliver power to the proposed site consistent with the utility’s published standards. If the utility engineer determines that the application does not meet the utility standards and the utility cannot deliver power as proposed by the applicant, the application may be rejected and sent back to the applicant for revision and resubmittal. Sometimes resubmittal of a corrected application may result in additional issues arising, which reflects the complex and dynamic nature of a design review process. Provisions of this bill would apply to this phase.
- III. **Utility Cost Estimate:** If the utility approves the application, and, if the utility must perform activities to deliver power to the applicant, a cost estimate is prepared by the utility and sent to the applicant. The applicant reviews and approves the cost estimate, then informs the utility to proceed with the project. Existing law and regulations govern this process.
- IV. **Construction Phase:** Upon approval of the power application, the applicant performs applicable construction activities on its side of the utility meter/demarcation point. The applicant’s construction activities may be subject to other jurisdictional approvals, for example if the project is being constructed on a city owned pole instead of a utility owned pole. In that case, the utility or local jurisdiction may also be required to perform construction activities [“make ready work”] to deliver power to the applicant’s location, such as pole replacements, power line extensions, transformer additions, etc. Existing law and regulations govern this process.
- V. **Power Delivery/Energization:** Upon completion of construction activities by the applicant and utility, as necessary, the applicant must obtain inspections from either the utility and/or a jurisdiction prior to requesting energization from the utility. Existing law and forthcoming regulations govern this process.

Proponents of this bill have specifically raised concerns about Steps I and II, claiming that the electrical design review process could take months because existing timelines for other steps don’t necessarily apply to those steps. Additionally, proponents have raised their concerns to staff noting that there is sometimes a lack of clarity around whether an application is complete. In response, electric utilities have noted that because electric design review has significant safety and therefore legal liability implications, sometimes applications may take multiple steps of revisions before approved. Further, the utilities have claimed that sometimes the applicants are responsible for delays because of missing or incomplete information.

- 4) *How this bill fits into the complex landscape of project permitting.* The aim of this bill is to establish timelines for the electrical design review process for a broadband project conducted

by an electrical utility. While electric utilities, both public and private, may already have timelines applicable to them for certain steps in a project lifecycle, as discussed above, those rules do not apply to portions of the process targeted by this bill. To put this bill in context, it is worth reviewing how this bill fits into the landscape of the laws and regulations applicable to different stages in permitting and constructing a project.

In September 2018 the Federal Communication Commission adopted an order² (“FCC Small Cell Order”) in a proceeding focused on streamlining the rollout of infrastructure for broadband services, specifically small cell wireless. The order summarily had two parts: the first was a new set of regulations that govern “shot-clocks” and other aspects of the rollout of small cells; the second part of the order was regarding the fees governments may charge to provide access to local government infrastructure, such as street light poles. The order established several shot-clocks, or permit review time frames, by which local governments should respond to applications to install small cells on public property. In summary, the FCC shot-clocks gave local governments 60-days to act on applications to collocate small cells on existing sites or 90-days for applications to construct new small cell facilities. The order also provided for the resetting or pausing of the shot clock when a local government determines that an application is incomplete.

For application and use fees, the FCC did not place a specific cap on fees, however, the FCC did make other notable determinations in this space. For example, the FCC provided a “safe-harbor” rate³, or a rate that is presumed to be reasonable for local governments to use. The Public Utilities Code⁴ also establishes requirements for fees charged by a publicly owned electric utility (POU) for attachments by communications service providers. Notably, this bill would require an applicant to respond to a cost estimate within 30 days.

Following the decisions by the FCC, in 2021 California adopted AB 537 (Quirk) Chapter 467, Statutes of 2021 which updated state statute to reflect the FCC’s small cell order. That bill included a deemed approved standard as a remedy, however it specifically was about the siting and construction phase. More recently, two bills address the energization phase of a project lifecycle. Two bills last year, SB 410 (Becker) and AB50 (Wood), passed and directed the CPUC to establish timelines for the energization process. While neither bill specifically adopted timelines for reviewing applications, the bills punted the decision to the CPUC. In that proceeding, the CPUC will consider to the energization needs of various industries and weigh the factors that impact an electric utility’s ability to provide safe and reliable service, as well as aspects of the energization process that may outside their control. Given the existence of this process, some have argued that this bill is not necessary.

In between the varied perspectives on a complex set of laws and regulations, what seems to be clear is that this bill is attempting to legislate a particular stage in a process for which there has not previously been standards applied. By establishing timelines for the electrical design review

² 2018 FCC Small Cell Order. <https://docs.fcc.gov/public/attachments/FCC-18-133A1.pdf>

³ The safe harbor amounts are: (a) \$500 for a single up-front application that includes up to five small cell wireless facilities, with an additional \$100 for each small cell beyond five, (b) \$270 per small cell facility per year for all recurring fees, including any possible right-of-way (ROW) access fee or fee for attachment to municipally-owned structures in the ROW, and (c) \$1,000 for non-recurring fees for a new pole.

⁴ Public Utilities Code §9512

process, this bill may help expedite the entire project lifecycle by building off previous efforts in other bills and regulatory decisions. On the other hand, prioritizing safety is of course a paramount goal of public policy that has been carefully weighed in previous bills, especially regarding the electric utility sector. For that reason, and in the interest of finding balance between safety and timeliness, it is worth being thoughtful about whether this bill provides sufficient time for a design review and whether a deemed approved standard is the most appropriate remedy when a utility fails to meet their obligations. There are certainly other alternatives to deemed approved, such as meeting and conferring, which this bill does lay out a process for.

5) *Overview of recent amendments.* Significant amendments were agreed to and adopted in the Assembly Utilities & Energy (U&E) Committee. The following is a summary of the amendments, which are reflected in the current version of this bill:

- I. Aligns application review period for power design approval to AB 537: 60 days for installation on existing infrastructure, 90 days for all others. Aligns additional time provided to applications requesting attachment to over 300 pieces of infrastructure: 15 days for installation on existing infrastructure, 30 days for all others. The amendments also provided some exemptions and qualifications as follows:
 - a. If a broadband provider has outstanding safety violations, requires broadband applicants to provide a plan to address those violations, and allows mutually agreed upon modification of timelines for new applications if broadband applicants are limited in ability to address those timely.
 - b. Removes 10 day shot clock for notification of incompleteness
 - c. Limits deemed-approved to colocation or siting applications, but provides utilities recourse if the timeline is not sufficient, including public notice and judicial review.
 - d. Removes fee waivers for resubmission by broadband providers.
 - e. Give utilities and broadband providers the same amount of time, 30 days, to provide and accept a cost estimate, respectively.
- II. Aligns shot clocks for the energization step to the forthcoming timeline that the CPUC will establish in their existing rulemaking (R. 24-01-018).
- III. Strikes a provision of the bill specifying that applications are only subject to rules published 12 months prior to their submission.

The U&E committee amendments significantly altered the previous procedures in this bill in the interest of balancing timeliness with safety and the reality that design review can be an iterative, not linear, process. These changes to this bill were necessary and reasonable. Nonetheless, in the interest of providing greater clarity to the intent of those amendments, staff suggests the author continue to work with both committees to consider revisions that may provide more clarity to the language.

6) *Similar/related legislation.*

- a) AB 965 (Carrillo) requires local governments to utilize batch broadband permit processing. Status: Chapter 553, Statutes of 2023.
- b) AB 50 (Wood) requires the CPUC to determine the criteria for customers to receive timely electricity service when requesting new service connections or

upgraded service. Also proposes several policies to address delays in connecting customers to the electrical grid, including improved information sharing with local governments and reporting by IOUs. Status: Chapter 317, Statutes of 2023.

- c) SB 410 (Becker) establishes targets by which electrical utilities are to energize and authorizes such a utility to annually recover the costs of energization from its ratepayers. Status: Chapter 394, Statutes of 2023.
- d) AB 537 (Quirk) updates existing law establishing a timeline and process through which broadband applications will be deemed approved. Status: Chapter 467, Statutes of 2021.
- e) SB 378 (Gonzalez) prohibits local governments from denying microtrenching projects for fiber installation. Status: Chapter 677, Statutes of 2021.
- f) AB 1027 (Buchanan) requires local publicly owned electric utilities to make accommodations on their utility poles or support structures for communications service providers, pursuant to reasonable terms and conditions. Establishes timelines for local publicly owned electric utilities to respond to such requests. Status: Chapter 580, Statutes of 2011.

REGISTERED SUPPORT / OPPOSITION:

Support

Calbroadband
 California Apartment Association
 California Communications Association
 California Retailers Association
 California Wireless Association
 Crown Castle
 CTIA
 Los Angeles County Business Federation (BIZ-FED)
 Los Angeles County Business Federation (BIZFED)
 Pasadena Chamber of Commerce
 Pasadena Chamber of Commerce and Civic Association
 Rural County Representatives of California
 San Francisco Chamber of Commerce
 San Mateo County Economic Development Association (SAMCEDA)
 Silicon Valley Leadership Group
 United States Telecom Association DbA Ustelecom - the Broadband Association
 Wireless Infrastructure Association

Opposition

Burbank/Burbank Redevelopment Agency; City of
 California Municipal Utilities Association (CMUA)
 California Special Districts Association
 Coalition of California Utility Employees
 Edison International and Affiliates, Including Southern California Edison

Environmental Defense Action Fund
Pacific Gas and Electric Company
San Diego Gas & Electric
Southern California Edison

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