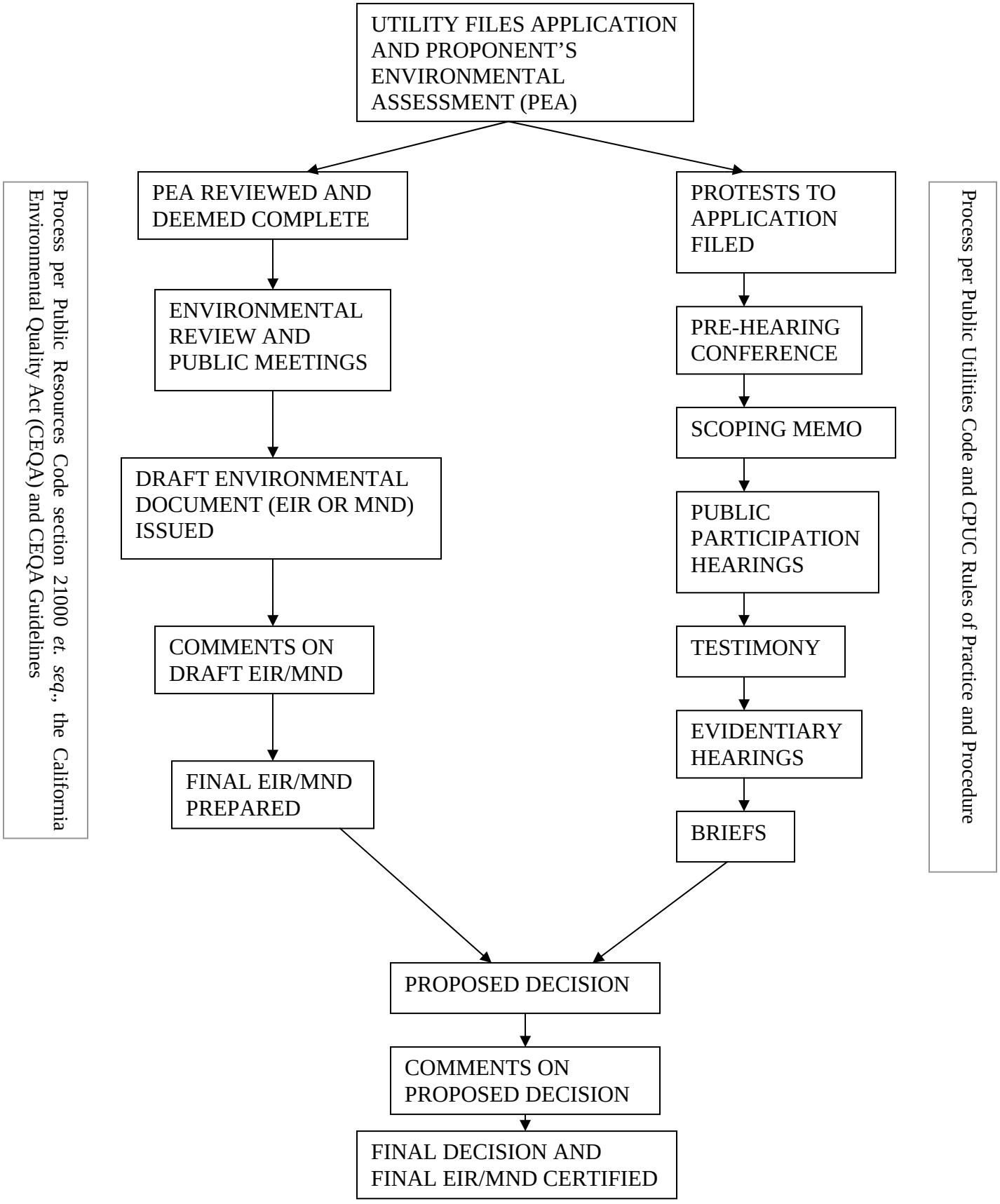
ELECTRIC TRANSMISSION SITING AT THE CALIFORNIA PUBLIC UTILITIES COMMISSION



CPUC process for typical contested application. January 30, 2009

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Introduction

This is a very brief overview of the CPUC's process for siting of electric transmission lines. The CPUC's process follows two concurrent tracks, one to perform the required environmental review under the California Environmental Quality Act (CEQA), while the other one performs the required review under the Public Utilities Code. This process is designed to comply with California law, allow for public participation, and be adjustable to fit each individual project.

Questions

1) What is the CPUC's process for approving electric transmission lines?
2) What analysis does the CPUC perform?
3) How long does the CPUC's process take?
4) Why does the CPUC follow this process?

Answers

1) What is the CPUC's process for approving electric transmission lines?

Filing

The formal CPUC process starts when an investor-owned utility files an application with the CPUC, requesting approval to construct a specific transmission line. The filing of the application opens a proceeding, and the Commission assigns an Administrative Law Judge (ALJ) and an Assigned Commissioner to run the proceeding.

The utility is required to send notice of its application to local governments, and to post notices in the area of the project and in local newspapers. For larger projects, the utility must also send notice to landowners within 300 feet of the project right-of-way and certain state agencies. The ALJ may also order the utility to provide additional public notice.

Along with the application, the utility also files a Proponent's Environmental Assessment (PEA) that describes the project and its potential environmental impacts. The Commission's Energy Division reviews the PEA to see if it provides enough information for the Commission to begin analyzing the environmental impacts of the project, as required by the California Environmental Quality Act (CEQA). Utilities often meet with Energy Division staff before filing to expedite the environmental review process.

Protests
The filing of the application triggers a 30-day protest period, when other parties can file a protest to the application. Some applications are not protested, while others draw multiple protests. For transmission lines, protests may come from businesses and residents located near the project, local governments, state and federal governmental agencies, environmental and consumer groups, and proponents of competing projects. Issues raised in protests include project costs, impacts on plant and animal habitats, elimination of agricultural land, interference with airport flight paths, inconsistency with land use or zoning, visual impacts, diminution of property values, health effects of electric and magnetic fields, choice of route, availability of non-wires alternatives, and impacts on recreational and park areas.

Process (contested application)
If a protest is received, the assigned ALJ will hold a pre-hearing conference (PHC), at which the parties have an opportunity to discuss the issues to be addressed and the schedule for the proceeding. Subsequently, the assigned Commissioner and ALJ will issue a Scoping Memo that sets forth the issues and schedule for the proceeding.

Protests vary widely in their significance and validity, and the resulting schedule will typically reflect the strength of any protests. If there is a strong protest, the schedule would typically allow for the protesting party to submit more detailed written testimony, and the utility is given an opportunity to respond. Evidentiary hearings are held that provide parties with the opportunity for cross-examination and allow evidence to be admitted into the record. These hearings are usually held in San Francisco, but are sometimes held near the project. Once the evidentiary record is complete, parties file legal briefs arguing their respective positions.

In addition, public participation hearings are commonly held in communities located near the proposed project. Although the public comments are not part of the formal evidentiary record, the public participation hearing gives the public an opportunity to directly address the CPUC and inform it of any concerns regarding the project.

The environmental review required by CEQA, including public meetings (focusing on environmental issues, and held in communities near the project) and the preparation of any CEQA document, proceeds on a separate track, but concurrently with the testimony/hearing/briefing process, so once the litigation process is complete, the ALJ will have both a complete evidentiary record and a final CEQA document, such as an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND).

Once there is a complete record and a final EIR/MND, the ALJ will write and issue a proposed decision. In some cases, a commissioner may propose an alternate decision. After comments are received on the proposed decision (and any alternate decision), the Commission can issue a final decision certifying the environmental document and approving the project.

Process (uncontested application)
If no protests are received, and the application is adequate to support a decision approving the project, the ALJ can begin to write a proposed decision approving the project, pending finalization of any CEQA document.

In some cases, protests are received, but are subsequently resolved, with the result that the protest is withdrawn. This effectively changes the process from a contested application to an uncontested application at the time that the protest is withdrawn.

Once the required CEQA review is completed, the proposed decision is placed on the Commission agenda so that the Commission can issue a final decision certifying the environmental document and approving the project.

2) What analysis does the CPUC perform?

The level of analysis performed by the CPUC varies with the size (measured in voltage) of the transmission project. Projects below 50 kV are considered to be distribution projects, rather than transmission projects, and in general do not require Commission approval.

Projects between 50 kV and 200kV require a Permit to Construct from the CPUC, which consists primarily of an environmental review pursuant to CEQA. The Commission process generally does not analyze the need for or economics of these projects.

Projects over 200kV require a Certificate of Public Convenience and Necessity (CPCN) from the Commission. The Commission's CPCN process analyzes the need for the project and the economics of the project as well as the environmental impacts of the project.

In examining the need for a particular project, the Commission will examine the applicant's assertion of why the project is needed. If the project is claimed to be needed for reliability purposes, the Commission will analyze reliability. For example, in the case of PG&E's application for its Jefferson-Martin line, the Commission looked at issues including load forecasts, local generation capacity, other transmission capacity, and the potential for distributed generation and demand reductions. These issues were analyzed using load serving capability studies (by CAISO) and power flow analyses (by PG&E), and by applying industry-standard reliability criteria. (D.04-08-046, pp. 21-48.)

If the project is claimed to be needed for economic reasons, the Commission will analyze the economics of the line. In approving SDG&E's application for its Miguel-Mission line, the Commission reviewed and considered cost-benefit analyses that looked at various factors, including project construction costs, reduced congestion management costs, and the effect of additional generation. (D. 04-07-026, pp. 19-23.)

More recently, lines have been proposed as needed for interconnecting with new sources of renewable generation, and the Commission has accordingly analyzed this basis for need for a transmission line. For example, in response to SCE's application for part of its Tehachapi

project, the Commission identified and considered specific renewable energy projects that would utilize the line, as well as the potential for additional renewable energy generation in the Tehachapi area. (D.07-03-045, pp.11-18.)

Concurrently with its need analysis, the Commission analyzes the environmental impacts of the proposed project, as required by CEQA.

3) How long does the CPUC's process take?

In general, it takes around 18 months for the CPUC to approve a transmission line, but approval of lines that are particularly contentious can take longer. Because a high proportion of transmission lines require the preparation of an EIR, it would be difficult to approve a project much faster than this while remaining in compliance with CEQA and the other statutory requirements described below.

Much of the variation in how long it takes to approve a particular project comes from variations in the quality of the application/PEA. While some applications and PEAs are of very high quality, if important information is missing, the CPUC cannot effectively start its analysis until it obtains adequate supplemental information from the utility.

Other factors that may affect how long it takes to approve a project include the location of the project, the cost of the project, and the strength of any protests. A transmission line proposed to be built in a sensitive habitat or a heavily populated area is typically going trigger more opposition than one that crosses only open land in an existing transmission right of way. In addition, projects involving federal land require coordination with federal agencies, and preparation of an environmental document under the National Environmental Protection Act (NEPA). To avoid duplication, a joint CEQA/NEPA document may be prepared.

For transmission proceedings, the CPUC is generally required to resolve the issues raised in a scoping memo within 18 months from the date of the scoping memo. While the law allows the CPUC to take longer in certain circumstances, the CPUC has taken affirmative steps to accelerate its own process, such as its 2006 "Transmission Project Review Streamlining Directives" that established pre-filing guidelines for project applicants to follow to obtain a streamlined process, improved coordination of internal CPUC processes, and formalized the process for coordination with other agencies. The CPUC endeavors to ensure transparent, efficient and coordinated procedures for transmission facility siting and permitting.

4) Why does the CPUC follow this process?

As a state agency, the CPUC is subject to the California Constitution and numerous California laws, including the Public Utilities Code and CEQA. Article XII of the California Constitution provides the fundamental basis for the Commission's authority and structure. There are California laws that specifically address facility siting, and other laws that address the general processes that the CPUC is to follow in its proceedings. In addition, the CPUC has issued regulations in the area of transmission siting, and has rules of practice and procedure that are generally applicable to proceedings before the CPUC. Court decisions provide additional

guidance as to the procedures that the CPUC needs to follow. Finally, the legislature has stated its intent to encourage "the effective and efficient participation of all groups that have a stake in the public utility regulation process" in Public Utilities Code section 1803.1, and has accordingly provided for intervenor compensation for participation in Commission proceedings.

California Constitution

Article XII of the California Constitution established the CPUC and gives the CPUC broad authority. The CPUC is authorized to establish its own procedures under Section 2 of Article XII. Section 6 authorizes the CPUC to "fix rates, establish rules, examine records, issue subpenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction."

California Law re Siting

California law specifically directs that the Commission is responsible for approving construction of utility facilities, including transmission lines. California law also directs how the Commission is to review and approve construction of utility facilities. Public Utilities Code section 1001 states (among other things) that no electric utility shall begin the construction of a line "without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction…"

The legislature further specifically instructed the Commission, in Public Utilities Code section 1002, that: "The commission, as a basis for granting any certificate pursuant to Section 1001 shall give consideration to the following factors:

(1) Community values.
(2) Recreational and park areas.
(3) Historical and aesthetic values.
(4) Influence on environment…"

Public Utilities Code section 1002.3 additionally directs that the Commission, when considering an application for a certificate for an electric transmission facility pursuant to Section 1001, "shall consider cost-effective alternatives to transmission facilities that meet the need for an efficient, reliable, and affordable supply of electricity, including, but not limited to, demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation…, and other demand reduction resources."

Public Utilities Code section 1003 tells the utilities what information must be included in their applications under section 1001, including preliminary engineering and design information, a project implementation plan (with a detailed timetable) that describes how the project will be constructed, a cost estimate that includes the costs of financing, construction, and operation, a cost analysis comparing the project with alternative sources of power and including the financial impact of the proposed construction, and a design and construction management and cost control plan. The Commission accordingly ensures that the application contains this information, so that it can be reviewed by the Commission.

When the Commission issues a certificate for the new construction of a facility such as an electric transmission line, Public Utilities Code section 1005(b) requires the Commission to

specify the operating and cost characteristics of the facility, including its size, capacity, cost, and other characteristics.

If the estimated cost of the facility is over $50 million (which is not unusual for transmission projects), the Commission also has to specify a "reasonable and prudent' maximum cost for the facility, as required by Public Utilities Code section 1005.5(a).

California Law re Environmental Review

In addition to the Public Utilities Code, as a governmental agency that approves projects such as transmission lines, the CPUC is also subject to the requirements of the California Environmental Quality Act (CEQA). Because electric transmission lines frequently have significant environmental impacts that cannot be reduced to insignificant levels, the Commission is often required to prepare environmental impact reports (EIRs) in order to approve proposed electric transmission projects.

Commission Rules of Practice and Procedure

The specific rules governing CPUC processes are set forth in the Commission's Rules of Practice and Procedure. These Rules were implemented pursuant to state law, particularly Article XII of the California Constitution and Public Utilities Code section 1701. The Rules were revised and updated in 2006, after obtaining input from the utilities and other parties, and after review and approval by the state Office of Administrative Law. The Rules spell out the details of participating in Commission proceedings, such as the format of pleadings, filing deadlines, conduct of hearings, motion and settlement processes, and more.

General Order 131-D

The Commission issues decisions of general applicability on specific topics in the form of General Orders. General Order 131-D specifically addresses the procedures to be followed in applications for siting of electric transmission infrastructure. In essence, it implements Public Utilities Code section 1001 in the context of electric transmission projects.

General Order 131-D establishes the distinction in the levels of review based on the voltage level of the project (under 50 kV, 50 to 200 kV, and above 200 kV) as described above. It also sets out public notice requirements for proposed transmission projects.

California Court Decisions

Commission decisions can be challenged in the California Courts of Appeal and California Supreme Court. Accordingly, the Commission must comply with many published court decisions (involving both the Commission and other agencies), and has designed its rules and process to ensure compliance with these legal requirements.

For example, there are court decisions that reversed CPUC decisions where the court found that the CPUC did not consider and evaluate all relevant evidence presented to it. In *United States Steel Corp. v. Public Util. Com.* (1981) 29 Cal.3d 603, 608, the court held that "[c]oncomitant with the discretion conferred on the commission is the duty to consider all facts that might bear on the exercise of that discretion." Thus the "commission must consider alternatives presented and factors warranting adoption of those alternatives." In *Northern California Power Agency v.*

Public Util. Com. (1971) 5 Cal.3d 370, 380, the court held that the CPUC: "may and should consider *sua sponte* every element of public interest affected by facilities which it is called upon to approve."

There are numerous other court decisions applicable to the Commission; but these examples indicate that the Commission, in a proceeding such as one approving a transmission line, must adequately consider all of the evidence. The Commission's processes are designed accordingly.

Conclusion

This has been a very brief overview of the CPUC's process for siting of electric transmission lines. If you would like more information, please look on the CPUC's web site at http://www.cpuc.ca.gov/PUC/energy/Environment/index.htm, or contact the CPUC's Office of Governmental Affairs at (916) 327-8441.