

M e m o r a n d u m

Date: May 9, 2008

To: The Commission
(Meeting of May 15, 2008)

From: Pamela C. Loomis, Deputy Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1755 (Fuentes) – Electricity: rates: transmission assets.
As amended April 14, 2008**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED

SUMMARY OF BILL:

This bill would give the California Public Utilities Commission (“CPUC” or “Commission”) flexibility to establish appropriate new guidelines and policy regarding the time period over which utilities may carry in their rate base and thus recover from customers the cost of real property acquired for potential transmission development within transmission corridor zones designated by the State Energy Resources and Conservation Commission (California Energy Commission or “CEC”). The commission is directed to review its present guidelines and determine if such guideline revisions should be made.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

Designation of transmission corridor zones and facilitation of utilities’ proactive acquisition of land in such corridors can streamline and expedite the process of subsequently siting and permitting needed transmission in such corridors, in support of California’s energy policy goals such as regarding renewable energy. Overly stringent guidelines for ratebasing and recovering the costs of such property acquisition may discourage proactive land acquisition, while overly lenient guidelines may result in excessive or otherwise inefficient land acquisition and unreasonable ratepayer costs. Therefore it is desirable that the commission be able to set appropriately balanced guidelines for including such real property purchases in utilities’ “plant held for future use” accounts, so that ratepayer costs and property owner impacts are justified by overall benefits.

SUMMARY OF SUGGESTED AMENDMENTS:

Sections 464.5 (a) and (b) has been stricken from the current version of the bill. The Commission recommends replacing the stricken portion with the following amendments:

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

SECTION 1. Section 464.5 is added to the Public Utilities Code, to read:

464.5. (a) ~~Reasonable expenditures by T~~transmission owners that are electrical corporations to ~~may~~ acquire interests in real property in order to secure transmission rights within a transmission corridor zone designated by the State Energy Resources Conservation and Development Commission pursuant to Chapter 4.3 (commencing with Section 25330) of Division 15 of the Public Resources Code, ~~are in the public interest and shall be deemed prudent.~~ *subject to the approval of the California Public Utilities Commission (Commission). Reasonable expenditures, as determined by the commission pursuant to criteria that it shall define, shall be deemed to be in the public interest and prudent. The Commission shall promptly establish the criteria to implement this legislation.*

(b) Commission-approved ~~Reasonable and prudent~~ expenditures by transmission owners that are electrical corporations to acquire interests in real property that secure transmission rights within a transmission corridor zone designated by the State Energy Resources Conservation and Development Commission pursuant to Chapter 4.3 (commencing with Section 25330) of Division 15 of the Public Resources Code, shall be a transmission asset in the electrical corporation's Commission-jurisdictional rate base until such time as the Federal Energy Regulatory Commission (FERC) approves the asset's inclusion in the electrical corporation's FERC-jurisdictional rate base.

(c) If the interests in real property acquired pursuant to this subdivision are subsequently sold or otherwise reassigned, all net proceeds from such sale and/or reassignment shall be credited for the sole benefit of the electrical corporation's ratepayers.

(d) The requirements of this subdivision are inapplicable when the State Energy Resources Conservation and Development Commission terminates the transmission corridor zone designation.

In order to protect against unreasonable ratepayer costs for extensive acquisition and prolonged holding of land for potential future use, the bill should provide for a process to define what reasonable costs mean in this context. Below, the CPUC suggests amended language to provide for such a process. The suggested process will require the California Public Utilities Commission (CPUC) to develop criteria to define reasonableness of such expenditures, considering both the land acquired and its cost. This is consistent with the CPUC's role in regulating charges to utility customers in California, and its role in approving in-state transmission facilities. Furthermore, the bill should clarify that such prospective land acquisition and its costs are matters of state (CPUC) jurisdiction until the land becomes part of an actual transmission project, at which point cost recovery jurisdiction passes to the federal government (FERC). In addition, the bill should provide that any gain on sale of assets acquired but not used

under this legislative provision should go to ratepayers 100% to remove any incentive for the transmission owners to buy assets for speculative gain purposes.

DIVISION ANALYSIS (Energy Division):

- Currently, pursuant to CPUC decision D.87-12-066, interests in land acquired for future transmission development may be placed in the rate base for up to five years. Such land is required to be part of a plan for transmission development, and land rights associated with a specific, completed transmission project subsequently become part of that project for purposes of approving and allocating transmission costs. Approval of cost recovery for transmission projects falls under the jurisdiction of the FERC.
- California must build considerable new electric transmission to meet its energy goals, in particular, its goals to expand the use of renewable energy generation. Acquiring the necessary land rights for that transmission is an important challenge. The proposed bill addresses this challenge by directing the commission's to determine if it should change its guidelines regarding the amount of time over which real property acquisitions for future use may be carried in a utility's rate base, specifically for property located in CEC-designated transmission corridor zones. Such proactive acquisition of land or land rights can support the CPUC's objectives of efficiently reviewing and permitting transmission projects that are needed to advance the development of new renewable generation sources, or to otherwise support energy goals.
- However, the need to develop new transmission must be balanced by the need to proceed in a manner that is financially and environmentally prudent, and not wasteful or speculative. Recently estimated land acquisition costs for a large transmission development by a major California utility amounted to \$260,000 per mile for a 180-foot wide right-of-way. Thus, for example, the cost for 400 miles of new transmission (e.g., within the Central Valley, or connecting northern California to Oregon), could amount to over \$100 million, just for the acquisition of land or land rights.
- It is uncertain which potential transmission route or routes within a corridor zone might ultimately be developed. The specific route ultimately chosen will necessarily depend on detailed environmental assessment and permitting when a specific project is considered at some time in the future, possibly many years after the CEC designates a transmission corridor. For this reason, a utility could target for land rights acquisition a considerably wider path than the right of way that is ultimately needed for new transmission, thereby imposing potentially unnecessary and wasteful expenditures on the utility's ratepayers. Thus it is desirable that the commission have the flexibility to establish or maintain balanced guidelines that enable appropriate proactive land acquisition in CEC-designated corridors while preventing excessive or inefficient land acquisition.

- Assuming that the CPUC determines that such guideline changes are warranted and subsequently applies those guidelines, there would likely be increases in (1) real property acquisition for transmission development, (2) the period of time (and thus dollar impact to ratepayers) for holding this property, and (3) uncertainty regarding whether particular property acquisitions would be used to site a future transmission facility. This situation would foreseeably entail CPUC staff effort to review the reasonableness of such property acquisitions. The actual CPUC staff effort would depend on what specific guidelines are developed and applied, and on the magnitude and nature of future corridor designations and property acquisitions within those corridors.
- More proactive property acquisition in CEC-designated corridors could facilitate siting, which is a difficult and contentious part of developing a transmission project, especially since land for transmission routes can only be expected to become more costly and problematic to acquire as time passes. More proactive land acquisition would likely have some effect in reducing CPUC staff and contractor effort for subsequent environmental review and permitting of specific transmission projects using that land, under the CPUC's role of permitting transmission projects. This is because land rights and land use issues can slow the permitting and environmental review process, so that resolving or clarifying such matters in advance can expedite permitting.
- Legal/Pending Litigation. See D-06-05-041, specifically relating to the "FERC Jurisdictional Property," in which it requires the utilities post all gains/losses from FERC-jurisdictional transmission property to a single account.

PROGRAM BACKGROUND:

- Four CPUC activities or responsibilities foreseeably impacted by the proposed legislation include
 - holding a formal proceeding to consider and possibly revise guidelines for carrying, within the plant held for future use account, real property acquired in CEC-designated corridors;
 - applying existing or new guidelines to subsequent property acquisitions, in CPUC jurisdictional proceedings;
 - assessing and arguing before FERC in transmission rate cases the reasonableness of those property acquisitions for cost recovery in FERC jurisdictional rates; and
 - permitting, including environmental review, of major transmission projects developed by electrical corporations in California.
- The proposed bill may require CPUC staff efforts in activities 1 and 2 above. Appropriate, balanced guidelines could reduce future efforts otherwise required to

address case-specific property purchases in both CPUC and FERC proceedings (activities 2 and 3). If new guidelines are established that facilitate proactive real property acquisition in CEC-designated corridors, then CPUC efforts in activity 4 (permitting) may be reduced due to resolution or simplification of transmission siting issues and challenges earlier in the process of developing and permitting a transmission project.

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

- \$186, 588 for 1 PY for a PURA V and ½ PY for an Administrative Law Judge to conduct a proceeding as required by the bill.
- Implementation of this bill requires two kinds of proceedings to develop and apply reasonableness criteria. There are no legally and practically viable alternatives to these proceedings:
 - a public proceeding and Commission rulemaking to develop fair, transparent and effective reasonableness criteria for placing land acquisitions into the rate base as provided for under this bill, and
 - subsequent application of those criteria, with review and analysis by CPUC staff, in a public rate case proceeding, to determine which actual land or land rights acquisitions should go into the rate base as provided for under this bill.
- CPUC staff work required by the bill is unlike existing work in that it concerns evaluating the reasonableness of land or lands rights acquisitions under circumstances in which the actual future value to the public, for transmission development, is uncertain, more distant in time, and less constrained geographically (since the actual transmission route is unknown), compared to historic treatment of land for transmission development. However, this difference from previous staff activity is a matter of degree and not of the fundamental type of staff work, since staff is already routinely involved in CPUC-jurisdictional and FERC-jurisdictional (transmission) rate cases, in transmission permitting including analysis of the routing of transmission projects, and in evaluation of the need for transmission facilities.
- The only foreseeable way to amend the bill to reduce CPUC workload in assessing reasonableness of land acquisition is to explicitly limit the amounts and/or longevity (in the rate base) of land acquisition, which if implemented to a significant degree would be contrary to what appears to be the basic intent of the legislation.
- Redirection from other transmission related activities is not practical given the current workload of staff.

STATUS:

AB 1755 is currently on the Assembly Appropriations Suspense File.

SUPPORT/OPPOSITION:

None on file.

Date: May 9, 2008

BILL LANGUAGE:

BILL NUMBER: AB 1755 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 14, 2008

INTRODUCED BY Assembly Member Fuentes

JANUARY 7, 2008

An act to ~~add Section 464.5 to~~ amend
Section 728.1 of the Public Utilities Code, relating to
electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1755, as amended, Fuentes. Electricity: rates:
~~transmission assets.— plant held for future use
account.~~

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law ~~provides, relative to the implementation of electrical restructuring, that reasonable expenditures by transmission owners that are electrical corporations to plan, design, and engineer reconfiguration, replacement, or expansion of transmission facilities are in the public interest and are deemed prudent if made for the purpose of facilitating competition in electric generation markets, ensuring open access and comparable service, or maintaining or enhancing reliability, whether or not these expenditures are for transmission facilities that become operational—~~ authorizes the commission to establish rules, and prescribe a uniform system of accounts, for all public utilities. Pursuant to this authority, the commission has adopted a uniform system of accounts for public utilities and licensees, including an account for plant held for future use, and established guidelines for the account. Existing law requires the commission to review the status of all property of a gas or electrical corporation carried in its plant held for future use account at least once every 3 years or during a ratemaking proceeding, for purposes of fixing the rates of the gas or electrical corporation, and prescribes manner in which gain accruing from the sale of property held in the account is to be allocated between the utility and ratepayers .

This bill would make a nonsubstantive clarifying change to existing law relative to how gain accruing from the sale of property carried in the plant held for future use account is to be allocated between the gas or electrical corporation and ratepayers.

Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to adopt a strategic plan for the state's electric transmission grid and requires that the plan identify and recommend actions required to implement investments

needed to ensure reliability, relieve congestion, and to meet future growth in load and generation. Existing law authorizes the Energy Commission to designate a transmission corridor zone on its own motion or by application of a person ~~who~~ that

plans to construct a high-voltage electric transmission line within the state and provides that the designation of a transmission corridor zone shall serve to identify a feasible corridor where a future transmission line can be built that is consistent with the state's needs and objectives as set forth in the strategic plan adopted by the Energy Commission.

~~This bill would provide that reasonable expenditures by transmission owners that are electrical corporations to acquire interests in real property in order to secure transmission rights within a transmission corridor zone designated by the Energy Commission are in the public interest, shall be deemed prudent by the commission, and, unless the Energy Commission terminates the transmission corridor zone designation, are required to be a transmission asset in the electrical corporation's rate base~~

require the commission to review its guidelines for the plant held for future use account and determine whether it needs to open a proceeding to adjust the time period allowed for a property to be held in the account. The bill would require the commission to consider whether it should amend the guidelines, or add a separate guideline to allow a distinct time period for real property located within a transmission corridor zone designated by the Energy Commission .

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 728.1 of the Public Utilities Code is amended to read:

728.1. (a) For purposes of this section, "plant held for future use account" means account number 105 of the Uniform System of Accounts Prescribed for Public Utilities and Licensees, as adopted by the commission.

(b) The commission shall review the status of all property owned by a gas or electrical corporation and ~~held~~ *carried* within the plant held for future use account at least once every three years or during a proceeding conducted pursuant to Section 728, for the purpose of determining and fixing the rates of that gas or electrical corporation, as determined by the commission.

(c) If a gas or electrical corporation sells property which was included in determining the rates of the corporation, the commission shall determine what portion of any gains from the sale shall be allocated to the customers of the corporation in a manner consistent with the procedures specified in account number 105 of the Uniform System of Accounts Prescribed for Public Utilities and Licensees. The portion of the gains allocated to customers shall not be less than the amount the corporation has recovered through rates for the carrying costs and other expenses of the property during the period it was carried in the plant held for future use account , and shall not exceed the gain on the sale, net of any tax, resulting from the sale.

SEC. 2. The commission shall review its Plant Held for Future Use Guidelines and determine whether it needs to open a proceeding to adjust the time period allowed for a property to be carried in the plant held for future use account. The commission shall consider whether it should amend the guidelines, or add a separate guideline to allow a distinct time period for real property located within a transmission corridor zone designated by the State Energy Resources Conservation and Development Commission pursuant to Chapter 4.3 (commencing with Section 25330) of Division 15 of the Public Resources Code.

~~SECTION 1. Section 464.5 is added to the Public Utilities Code, to read:~~

~~464.5. (a) Reasonable expenditures by transmission owners that are electrical corporations to acquire interests in real property in order to secure transmission rights within a transmission corridor zone designated by the State Energy Resources Conservation and Development Commission pursuant to Chapter 4.3 (commencing with Section 25330) of Division 15 of the Public Resources Code, are in the public interest and shall be deemed prudent.~~

~~(b) Reasonable and prudent expenditures by transmission owners that are electrical corporations to acquire interests in real property that secure transmission rights within a transmission corridor zone designated by the State Energy Resources Conservation and Development Commission pursuant to Chapter 4.3 (commencing with Section 25330) of Division 15 of the Public Resources Code, shall be a transmission asset in the electrical corporation's rate base. The requirements of this subdivision are inapplicable when the State Energy Resources Conservation and Development Commission terminates the transmission corridor zone designation.~~