

Date of Hearing: April 26, 2023

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Eduardo Garcia, Chair

AB 1533 (Committee on Utilities and Energy) – As Amended April 13, 2023

**SUBJECT:** Electricity

**SUMMARY:** This bill is the Utilities and Energy Committee’s omnibus code clean-up measure. It moves the statutory requirements for reports by the California Public Utilities Commission (CPUC) to a more suitable code section, sunsets CPUC reporting requirements on certain programs once the programs have ended, reintroduces provisions chaptered out in 2022, and provides code cleanup in various other sections.

Specifically, **this bill:**

- 1) Clarifies that “firm zero-carbon resources”, for the purposes of the California Energy Commission (CEC)’s Integrated Energy Policy Report (IEPR), must be “zero carbon”.
- 2) Moves various CPUC reports called for under SB 846 (Dodd, Chapter 239, Statutes of 2022) to new code sections within the Public Utilities Code chapter on “Reports to the Legislature” for ease of tracking.
- 3) Specifies that for certain CPUC reports to the Legislature, the CPUC may cease its reporting obligation two years after the program on which it is reporting has ended.
- 4) Reintroduces two provisions from SB 846 (Dodd, Chapter 239, Statutes of 2022) that were chaptered out after the passage of SB 1020 (Laird, Chapter 361, Statutes of 2022). These provisions include:
  - a. A requirement that electricity produced by the Diablo Canyon nuclear power plant does not count toward California’s statutory renewable energy mandates, zero-carbon resource targets, or climate goals beyond its current retirement date of 2025.
  - b. The creation of a rebuttable presumption during the CPUC’s review of transmission projects for those projects that the California Independent System Operator’s (CAISO) governing board has already approved as needed, with certain conditions.
- 5) Provides various code clean-up:
  - a. Adjusts program requirements of the Demand Side Grid Support Program, established under AB 209 (Committee on Budget, Chapter 251, Statutes of 2022), to align with the current program structure.
  - b. Extends the Diablo Canyon Independent Peer Review Panel for the duration of the power plant’s potential operation until 2030, rather than 2025.
  - c. Clarifies that the Diablo Canyon Independent Safety Committee was established by the CPUC, and that the Committee may discontinue once Diablo Canyon power plant operations cease, in or before 2030.

**EXISTING LAW:**

- 1) Requires the CEC incorporate firm zero-carbon resources into the integrated energy policy report (IEPR) and defines “firm zero-carbon resources” as electrical resources that can deliver electricity with high availability for the expected duration of multiday extreme or atypical weather events and facilitate integration of eligible renewable energy resources into the electrical grid and the transition to a zero-carbon electrical grid. (Public Resources Code § 25305.5)
- 2) Creates the Demand Side Grid Support Program, implemented and administered by the CEC, to incentivize dispatchable customer load reduction and backup generation operation as on-call emergency supply and load reduction for the state’s electrical grid during extreme events. (Public Resources Code § 25729)
- 3) Establishes the policy that all of the state's retail electricity be supplied with a mix of RPS-eligible and zero-carbon resources by December 31, 2045, for a total of 100% clean energy. (Public Utilities Code § 454.53)
- 4) Establishes the Independent Safety Committee for Diablo Canyon and empowers the Committee to conduct annual examinations of the Diablo Canyon power plant and make additional site visits, and states that the committee shall cease operations when the United States Nuclear Regulatory Commission operating permit for the Diablo Canyon power plant has ceased and when all spent nuclear fuel has been moved to dry storage at the Diablo Canyon Independent Spent Fuel Storage Installation. (Public Utilities Code § 712.1)
- 5) Requires the CPUC to report to the Joint Legislative Budget Committee and appropriate fiscal and policy committees of the Legislature on all sources and amounts of funding and actual and proposed expenditures related to various entities or programs established by the CPUC. (Public Utilities Code § 910.4)

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal and will be referred to the Committee on Appropriations for its review.

**COMMENTS:**

- 1) *Author’s Statement.* “This bill is the Assembly Utilities and Energy Committee omnibus that includes various code clean up provisions. It clarifies a statutory definition, moves the statutory location of various California Public Utilities Commission (CPUC) reports, sunsets certain CPUC reports pursuant to program closures, reintroduces policy that was adopted—then chaptered out—last session, and provides additional code-clean up.”
- 2) *A Deal with Diablo.* SB 846 (Dodd, Chapter 239, Statutes of 2022), authorizes the extension of operating the Diablo Canyon Nuclear power plant (DCPP) beyond the

current expiration dates (of 2024 for Unit 1 and 2025 for Unit 2), to up to five additional years (no later than 2029 and 2030, respectively), under specified conditions. This bill reintroduces a measure from SB 846 which specifies that electricity produced by the DCPD does not count toward California's statutory renewable energy mandates, zero-carbon resource targets, or climate goals beyond its current retirement date of 2025. This provision contextualizes the role of the DCPD extension in California's clean energy goals as a necessary, temporary measure to ensure short-term grid reliability, rather than a significant portion of California's long term zero-carbon energy strategy. The provision also seeks to eliminate the possibility that the carbon-free electricity from DCPD slows or otherwise limits the development of zero-carbon energy generation elsewhere in the state.

This bill contains two other revisions related to DCPD. The first extends the Diablo Canyon Independent Peer Review Panel for the duration of the DCPD's potential operation until 2030, rather than disbanding the panel in 2025, thereby ensuring the continued review of seismic data relevant to the ongoing operation of DCPD. The second revision clarifies that the Diablo Canyon Independent Safety Committee was established by a CPUC decision and stipulates that the Committee shall continue working until operations at DCPD cease, rather than upon the expiration of the U.S. Nuclear Regulatory Commission (NRC) operating permit for DCPD expires. This bill corrects these drafting issues with SB 846. However, the implementation of SB 846 is already underway, with PG&E requesting an application deadline extension from the federal Nuclear Regulatory Commission in October 2022 and stating their intention to file an application for an extension of their operating license for DCPD by the end of 2023.<sup>1,2</sup> As the CPUC opening a proceeding, R.23-01-007, to evaluate the authorization for PG&E to seek said extension, in January 2023, it may be prudent to ensure the corrections made under this omnibus measure occur expeditiously. *As such, the committee may wish to consider an amendment adding an urgency clause to this measure to ensure the necessary corrections to the implementation of the DCPD extension occur as soon as possible.*

- 3) *The Power of Presumption.* The swift development of electrical transmission infrastructure is critical to reaching California's climate goals. There is a protracted, multistep, and multiagency planning and permitting process for transmission projects.<sup>3</sup> This bill would streamline one piece of the transmission project development process by requiring the CPUC to, when evaluating the issuance of a certificate of public convenience and necessity for a transmission project, establish a rebuttable presumption with regard to the need for a transmission project in favor of a CAISO governing board-

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<sup>1</sup> U.S. Nuclear Regulatory Commission; "Diablo Canyon - License Renewal Application"; December 2022; <https://www.nrc.gov/reactors/operating/licensing/renewal/applications/diablo-canyon.html>

<sup>2</sup> PG&E; "Nuclear Regulatory Commission Approves PG&E Request Related to Continued Operations at Diablo Canyon Power Plant (DCPD)"; March 2023; [https://www.pge.com/en\\_US/about-pge/media-newsroom/news-details.page?pageID=6d6b7ef1-276a-4fe1-b44c-0d9ff2d1c484&ts=1677790906833](https://www.pge.com/en_US/about-pge/media-newsroom/news-details.page?pageID=6d6b7ef1-276a-4fe1-b44c-0d9ff2d1c484&ts=1677790906833)

<sup>3</sup> Clean Air Task Force; "Transmission Development in California – What's the Slowdown?"; March 2023; <https://www.catf.us/resource/transmission-development-california-slowdown/>

approved need evaluation, so long as certain conditions are met. This change essentially enables to CPUC to accept the recommendations of the CAISO project study rather than being required to conduct an additional, largely duplicative study. In the case that substantial concerns arise at CPUC about the need for a proposed transmission project, the “rebuttable presumption” may be challenged and a full re-evaluation of project necessity can still occur. This policy change was originally authorized by the Legislature under SB 846, and is reintroduced here after being chaptered out by a subsequent statute.

- 4) *Demand Side Grid Support Program.* The CEC administers the Demand Side Grid Support Program (DSGS) to incentivize dispatchable customer load reduction and backup generation operation (i.e., demand response, renewable, zero-emission, or near zero-emission resources, biomethane or natural gas resources, diesel backup generators or other conventional resources, or any combination of the above) to bolster the reliability of California’s electrical grid during extreme events.<sup>4</sup> The CEC also operates the Distributed Electricity Backup Assets (DEBA) Program, which incentivizes the construction of cleaner and more efficient distributed energy assets (i.e., efficiency upgrades, fuel cells, or energy storage) that serve as on-call emergency supply or load reduction for the state’s electrical grid during extreme events.<sup>5</sup> This bill eliminates the requirement that entities with generation or load reduction assets that are incentivized pursuant to the DEBA Program also participate in the DSGS Program, as the two programs have closely aligned objectives. This bill also eliminates the requirement that energy produced under the DSGS program be settled at a relevant reference energy price. In the implementation of the DSGS program, the participating utilities generally do not consider these emergency resources to be a significant market transaction and therefore these price incentives are not a significant factor in their decision making. Additionally, the administrative process for this mechanism creates additional uncertainty and burden on participants, potentially disincentivizing utility participation in the program. The removal of these two requirements reorients the statutory description of the program to more accurately reflect the program’s current structure.
- 5) *Zeroing in on Zero-carbon.* This bill clarifies that “firm zero-carbon resources” must be “zero carbon” for the purposes of the CEC’s IEPR study of firm zero-carbon resources, ameliorating a statutory drafting error and closing a potential loophole in California’s pathway to achieving its zero-carbon energy goals.
- 6) *Reorganizing Reports.* This bill relocates multiple CPUC reporting requirements to a section of the Public Utilities Code entitled “Reports to the Legislature” for ease of reference and general organization of the codes. This action follows precedent established by previous legislative actions to compile agency reporting requirements in a single

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<sup>4</sup> CEC; “Demand Side Grid Support (DSGS) Program Guidelines”; August 2022

<sup>5</sup> CEC; “Distributed Electricity Backup Assets Program”; <https://www.energy.ca.gov/programs-and-topics/programs/distributed-electricity-backup-assets-program>

location, including SB 1222 (Hertzberg, Chapter 842, Statutes of 2016). This bill also removes an unnecessary burden from the CPUC by eliminating the commission's obligation to submit reports to the Legislature on certain programs more than two years after the specified programs have ended.

7) *Prior Legislation.*

AB 209 (Committee on Budget) adjusted the eligibility requirements for the Demand Side Grid Support Program and authorized the CEC to adopt additional participation requirements or limitations, among other provisions. Status: Chapter 251, Statutes of 2022.

SB 846 (Dodd) authorized the extension of operating the Diablo Canyon Nuclear power plant (DCPP) beyond the current expiration dates to up to five additional years, authorized a loan of \$1.4 billion from the state to Pacific Gas & Electric (PG&E), the operator of DCPP, to facilitate the extension of the plant, and appropriated \$600 million of that loan. Status: Chapter 239, Statutes of 2022.

SB 1222 (Hertzberg) reorganized sections of the Public Utilities Code to move a wide variety of CPUC reports in a single section for ease of reference. Status: Chapter 842, Statutes of 2016.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Wind Energy Association

**Support If Amended**

NRG Energy

**Opposition**

None on file.

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