

AMENDED IN SENATE JULY 18, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

SENATE BILL

No. 86

Introduced by Senators Peace and Burton

June 12, 2001

An act to amend Section 25534 of the Public Resources Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 86, as amended, Peace. Powerplant facility and site certification.

The existing Warren-Alquist State Energy Resources Conservation and Development Act requires the State Energy Resources Conservation and Development Commission to certify sufficient sites and related facilities that are required to provide a supply of electric power sufficient to accommodate projected demand for power statewide. The commission administers existing law with respect to energy conservation. Existing law authorizes the commission, after hearings, to amend the conditions of, or revoke the certification for, any facility for specified reasons and to administratively impose a civil penalty for specified violations of a certification of up to \$50,000 per violation, as prescribed.

Existing law establishes in state government, the California Consumer Power and Conservation Financing Authority, with powers and responsibilities as prescribed, including the power to issue revenue bonds, for the purpose of augmenting electric generating facilities and to ensure a sufficient and reliable supply of electricity, financing incentives for investment in cost-effective energy-efficient appliances

and energy demand reduction, achieving a specified energy capacity reserve level, providing financing for the retrofit of inefficient electric powerplants, renewable energy and conservation, and, where appropriate, developing strategies for the authority to facilitate a dependable supply of natural gas at reasonable prices to the public.

This bill would authorize the commission to administratively impose a civil penalty for specified violations of up to \$75,000, as prescribed.

The bill would require a project owner to commence construction of a project within 6 months after the project has been certified by the commission. The bill would require a project owner to submit preconstruction and construction milestones within 30 days after project certification. The bill would specify that the failure of the project owner to meet preconstruction or construction milestones, without a finding of good cause, is cause for possible revocation of certification or the imposition of other penalties.

This bill would require the commission to revoke the certification and provide immediate notice of its decision to the authority if the project owner fails to commence construction, without good cause, within 6 months after the project has been certified. The bill would require the authority, within 90 days, to evaluate whether to pursue the revoked project independently or in conjunction with any other public or private entity, including the original licensee. If the authority informs the commission, within the 90 day period, that it will construct the project, the bill would require the commission to promptly issue a new certification for the project to the authority.

The bill would authorize the commission and authority to jointly adopt emergency regulations for the purposes of the bill.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Reliable, reasonably priced electricity service is essential
4 for California's economic growth and for the health and welfare
5 of its citizens.

6 (b) The federal Energy Policy Act of 1992 undermined the
7 incentive of California's regulated utilities to build new generation
8 plants and caused a decade-long lag in powerplant construction in



California. This federally-driven construction lag has contributed to a tight supply situation where unregulated electricity marketers and generators have exercised market power to extort high electricity prices and undermine the economic welfare and electric system reliability of California and other western states.

(c) The Legislature, through Assembly Bill 970 of the 1999-2000 Regular Session and Senate Bill 28 of the 2001-02 First Extraordinary Session, and the Governor, through Executive Orders issued pursuant to his emergency powers, have acted to expedite the construction of in-state electric generation facilities by accelerating the State Energy Resources Conservation and Development Commission's powerplant licensing process, signed long-term contracts for the electricity production of planned facilities, and provided incentives for rapid powerplant construction.

(d) However, since it is critical for the welfare of the state and its citizens that entities that obtain licenses to construct new powerplants and to expand or re-power existing powerplants do so with all due speed, it is the policy of the state to condition the issuance of powerplant licenses to require prompt, continuous, good faith efforts to construct the licensed project within its original construction schedule.

(e) It is further the policy of the state that, in the event a license holder fails to demonstrate prompt, continuous, good faith efforts to construct new powerplants or to expand or repower existing powerplants, the commission shall revoke the license of the original project owner and issue a new license to the California Consumer Power and Financing Authority to construct the project if the authority timely informs the commission that it will construct the project either independently or in conjunction with any other public or private entity, including the original licensee.

SEC. 2. Section 25534 of the Public Resources Code is amended to read:

25534. (a) The commission may, after one or more hearings, amend the conditions of, or revoke the certification for, any facility for any of the following reasons:

(1) Any material false statement set forth in the application, presented in proceedings of the commission, or included in supplemental documentation provided by the applicant.

(2) Any significant failure to comply with the terms or conditions of approval of the application, as specified by the commission in its written decision.

(3) A violation of this division or any regulation or order issued by the commission under this division.

(b) The commission may also administratively impose a civil penalty for a violation of paragraph (1) or (2) of subdivision (a). Any civil penalty shall be imposed in accordance with Section 25534.1 and may not exceed seventy-five thousand dollars (\$75,000) per violation, except that the civil penalty may be increased by an amount not to exceed one thousand five hundred dollars (\$1,500) per day for each day in which the violation occurs or persists, but the total of the per day penalties shall not exceed fifty thousand dollars (\$50,000).

(c) A project owner shall commence construction of a project within six months after the project has been certified by the commission. The project owner shall submit preconstruction and construction milestones to the commission within 30 days after project certification. Preconstruction milestones shall require the start of construction within the six month period established by this subdivision. If the 30 day deadline to submit preconstruction and construction milestones to the commission is not met, the commission shall establish milestones for the project.

(d) The failure of the project owner to meet preconstruction or construction milestones, without a finding by the commission of good cause, shall be cause for revocation of certification or the imposition of other penalties by the commission. A finding by the commission that there is good cause for failure to meet milestones will be made if the commission determines that any of the following criteria are met:

(1) The change in any milestone does not change the established milestone for the start of commercial operation.

(2) The milestone is changed due to circumstances beyond the project owner's control.

(3) The milestone will be missed but the project owner demonstrates a good faith effort to meet the project milestone.

(4) The milestone will be missed due to unforeseen natural disasters or acts of God that prevent timely completion of the project milestone.

1 (e) If the project owner fails to commence construction,
 2 without good cause, within six months after the project has been
 3 certified by the commission, the commission shall revoke the
 4 certification and provide immediate notice of its decision to the
 5 California Consumer Power and *Conservation* Financing
 6 Authority. The authority shall, within 90 days, evaluate whether
 7 to pursue the revoked project independently or in conjunction with
 8 any other public or private entity, including the original licensee.
 9 If the authority informs the commission, within the 90 day period,
 10 that it will construct the project either independently or in
 11 conjunction with any other public or private entity, including the
 12 original licensee, the commission shall promptly issue a new
 13 certification for the project to the authority.

14 (f) To implement this section, the commission and the
 15 California Consumer Power and *Conservation* Financing
 16 Authority may jointly adopt emergency regulations in accordance
 17 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
 18 Division 3 of Title 2 of the Government Code. For purposes of that
 19 chapter, including, without limitation, Section 11349.6 of the
 20 Government Code, the adoption of the regulations shall be
 21 considered by the Office of Administrative Law to be necessary
 22 for the immediate preservation of the public peace, health and
 23 safety, or general welfare.

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