

Senate Bill No. 110

Passed the Senate September 9, 1999

Secretary of the Senate

Passed the Assembly September 7, 1999

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 1999, at _____ o'clock ____M.

Private Secretary of the Governor

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CHAPTER _____

An act to amend Sections 25305, 25308.5, 25309, 25520, 25523, 25524, 25525, 25540.6, and 25541 of, and to add Sections 25009, 25309.3, and 25543 to, and to repeal Section 25523.5 of, and to repeal and add Section 25541.5 of, the Public Resources Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 110, Peace. Energy conservation: power facility and site certification.

(1) Existing law, the 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 act requires the commission to prepare and distribute a specified draft electricity report setting forth its findings and conclusions regarding the electric utilities' forecasts, and requires that the 5- and 12-year forecasts or assessments established by the commission serve as the basis for planning and certification of electric transmission or thermal powerplant facilities.

This bill would eliminate the requirement that those 5- and 12-year forecasts established by the commission serve as the basis for the planning and certification of electric transmission and thermal powerplant facilities.

(2) The existing act requires the commission, every 2 years, to transmit to the Governor and the Legislature a comprehensive report designed to identify emerging trends related to energy supply, demand, and conservation and public health and safety factors, and to provide the basis for state policy and actions in relation thereto, including specified information.

This bill would make various changes with regard to the information and analyses to be contained in that report, as specified.



This bill would also require a report with recommendations and a work plan to be submitted, as prescribed, on or before March 31, 2000, concerning data collection in the restructured electricity market. The bill also would require the commission to file a report every 2 years commencing July 1, 2001, concerning the environmental performance of the electric generation facilities, as prescribed.

The act requires that an application for certification of a power facility submitted to the commission pursuant to the act contain specified information that the commission may require by regulation. The act also requires that the commission prepare a written decision after a public hearing on an application for certification, which contains specified information.

This bill would make various changes with respect to the information required to be provided in an application for certification, and to be contained in the commission's written decision concerning the application, as prescribed.

(3) The existing act prohibits the commission from certifying any facility contained in the application for certification, unless it makes specified findings relating to conformity of the proposed facility with an integrated assessment of need for the new facility.

This bill would eliminate that prohibition.

(4) The existing act authorizes the commission to exempt from those certification requirements thermal powerplants with a generating capacity of up to 100 megawatts and modifications to existing generating facilities that do not add capacity in excess of 100 megawatts, if the commission finds that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility or from the modification, and that generating capacity will not be added that is substantially in excess of the integrated assessment of need for new resource additions, as determined.

This bill would eliminate, for purposes of that exemption, the requirement that the commission find



that generating capacity will not be added that is substantially in excess of the integrated assessment of need for new resource additions, as determined.

The act would require the Secretary of the Resources Agency, by January 1, 2001, to review the facility certification program to determine whether that program meets specified criteria for state regulatory programs under the California Environmental Quality Act, and if the secretary determines the regulatory program meets those criteria, the bill would require the secretary to continue the certification of the program. The bill would also, under those circumstances, require the commission to amend the regulatory program from time to time, as necessary to permit the secretary to continue to certify the program.

The bill would also make various related conforming changes and legislative findings and declarations.

(5) Existing law requires the commission not to certify a facility that does not meet applicable standards unless the commission determines the facility is required for public necessity.

This bill would require the commission to consider specific factors in making this determination.

(6) Existing law establishes an application and certification process for siting and licensing thermal electric powerplants.

This bill would require that the commission prepare a report to the Governor and the Legislature on or before March 31, 2000, identifying improvements in this process and making recommendations, as prescribed. The commission immediately may implement any administrative recommendations.

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

SECTION 1. Section 25009 is added to the Public Resources Code, to read:

25009. The Legislature finds and declares that Chapter 854 of the Statutes of 1996 restructured the California electricity industry and created a competitive



electricity generation market. In a competitive generation market, the recovery by powerplant owners of their private investment and operating costs is at risk and no longer guaranteed through regulated rates. Before the California electricity industry was restructured, the regulated cost recovery framework for powerplants justified requiring the commission to determine the need for new generation, and site only powerplants for which need was established. Now that powerplant owners are at risk to recover their investments, it is no longer appropriate to make this determination. It is necessary that California both protect environmental quality and site new powerplants to ensure electricity reliability, improve the environmental performance of the current electricity industry and reduce consumer costs. The success of California's restructured electricity industry depends upon the willingness of private capital to invest in new powerplants. Therefore, it is necessary to modify the need for determination requirements of the state's powerplant siting and licensing process to reflect the economics of the restructured electricity industry and ensure the timely construction of new electricity generation capacity.

SEC. 2. Section 25305 of the Public Resources Code is amended to read:

25305. Within nine months after receipt of the reports specified in Section 25300, the commission shall prepare and distribute a draft electricity report, setting forth its findings and conclusions regarding the electric utilities' forecasts. The report shall be based upon information and views presented in the comments received under Section 25303 and the commission's independent analysis, and shall contain all of the following:

(a) The commission's evaluation of the probable service area and statewide, environmental, and economic impact and the health and safety aspect of constructing and operating the facilities proposed by the electric utilities and a description of the measures considered



necessary by the commission to avoid or ameliorate any adverse impacts.

(b) Discussion of reasonable alternative technologies to those proposed by the electrical utilities for consideration pursuant to Section 25604.

(c) After consideration of the utility reports, public and agency comments, and forecasts prepared by the commission staff, the commission's 5- and 12-year forecasts of demand for electrical energy and capacity. Conservation, load management, or other demand-reducing measures reasonably expected to occur shall be explicitly taken into account only in the determinations made pursuant to this subdivision, and shall not be considered as alternatives to a proposed facility during the siting process specified in Chapter 6 (commencing with Section 25500).

(d) An analysis and evaluation of the means by which the projected annual rate of demand growth of electrical energy may be reduced, together with an estimate of the amount of the reduction to be obtained by each of the means analyzed and evaluated, including a statement of the impact of the reduction on the factors reviewed by the commission set forth in Section 25304 and subdivision (a).

(e) A statement of the level of statewide and service area electrical energy demand for the forthcoming 5- and 12-year forecast or assessment period which, in the judgment of the commission, will reasonably balance requirements of state and service area growth and development, protection of public health and safety, preservation of environmental quality, maintenance of a sound economy, and conservation of energy and resources reasonably expected to occur.

(f) A statement, on a statewide and service area basis, of the probable capacity additions consistent with the level of demand determined by the commission pursuant to subdivision (e).

(g) The anticipated level of statewide and service area electrical energy demand for 20 years, which shall serve as the basis for recommendations by the commission to



the Governor, the Legislature, and other appropriate public and private agencies in all of the following categories:

- (1) Demand-reducing policies.
- (2) Conservation of energy.
- (3) Development of potential sources of energy.
- (4) Other policies and actions designed to affect the rate of growth in demand for electrical energy.

(h) A list, including maps, of existing electrical power generating sites, indicating those where the commission has determined that expansion is feasible within the forthcoming 12-year period.

(i) A list, including maps, of possible areas appropriate for additional electrical generating sites, including the generating capacity to be installed at the sites and the type of fuel and other general characteristics of the facilities which, as determined by the commission, will be required to meet the 12-year level of electrical energy demand established by the commission pursuant to subdivision (a).

(j) A list, including maps of sites and potential multiple-facility sites which have been found to be acceptable by the commission pursuant to Sections 25516 and 25516.5, including the generating capacity to be installed at each site and the type of fuel and other general characteristics of the facilities at each site.

SEC. 3. Section 25308.5 of the Public Resources Code is amended to read:

25308.5. In issuing the final electricity report, the commission shall describe how the hearing record supports its policy decisions.

SEC. 4. Section 25309 of the Public Resources Code is amended to read:

25309. Beginning May 1, 1985, and every two years thereafter, notwithstanding Section 7550.5 of the Government Code, the commission shall transmit to the Governor and the Legislature a comprehensive report designed to identify emerging trends related to energy supply, demand, and conservation and public health and safety factors, and to provide the basis for state policy and

actions in relation thereto, including, but not limited to, approval of new sites for additional facilities. The report shall include, but not be limited to, all of the following:

(a) An overview, looking 20 years ahead, of statewide growth and development as they relate to future requirements for energy, including patterns of urban metropolitan expansion, statewide and service area economic growth, shifts in transportation modes, modifications in building types and design, and other trends and factors which, as determined by the commission, will significantly affect energy consumption and need to be considered in formulating state energy policy and programs.

(b) The anticipated level of statewide and service area electrical energy demand for 20 years, which shall serve as the basis for recommendations by the commission to the Governor, the Legislature, and other appropriate public and private agencies.

(c) Based upon the commission's 20-year forecasts or assessment of growth trends in energy consumption and production, identification of potential adverse social, economic, or environmental impacts which might be imposed by continuation of the present trends, including, but not limited to, the costs of electricity and other forms of energy to consumers, significant increases in air, water, and other forms of pollution, threats to public health and safety, and loss of scenic and natural areas.

(d) Assessment of the energy resources available to the state, including, among others, fossil fuels and nuclear, solar, geothermal, cogeneration, and purchased power resources and power pooling; assessment of the potential of, and examination of the availability of, commercially developable fuels, including imported fuels, during the forthcoming 12- and 20-year periods; and recommendations regarding measures to be applied to conserve energy and fuels.

(e) An analysis and evaluation of the means by which the projected annual rate of demand growth of energy may be reduced, together with an estimate of the amount



of the reduction to be obtained by policies and programs evaluated pursuant to Section 25401.1.

(f) An indication of those technologies which merit continued consideration or support in the commission's long range assessment efforts and its research and development program. The report shall also indicate those electrical generation and nongeneration technologies which have been found to be commercially available or reasonably expected to become available pursuant to Section 25604.

(g) A description of the commission's responsibilities and recommendations for emergency measures to be applied in the event of impending serious shortage of electrical and other forms of energy as provided in Chapter 8 (commencing with Section 25700) and evaluated under subdivision (b) of Section 25358.

(h) Recommendations to the Governor and the Legislature for administrative and legislative actions based on the results of commission studies and evaluations.

SEC. 5. Section 25309.3 is added to the Public Resources Code, to read:

25309.3. (a) It is the intent of the Legislature to change the energy reporting and forecasting responsibilities of the commission to meet the information needs of the public and the policy development needs of the Governor and the Legislature in the restructured electricity market.

(b) Notwithstanding Section 7550.5 of the Government Code, the commission shall prepare a report to the Governor and Legislature on or before March 31, 2000, that contains all of the following:

(1) Recommendations for consolidating and clarifying the reporting obligations contained in Sections 25300 to 25310.4, inclusive, and revising the authority of the commission to collect data from private parties. The recommendations shall include a discussion of public information and policy development objectives; the relationship between these objectives, proposed reporting requirements, and specific data needs; and the



costs and benefits of obtaining data through alternate means, including imposing requirements on private parties, collecting data from public sources, including, but not limited to, filings with other government agencies, and purchasing data from private data collection services.

(2) A work plan for completing the reporting obligations contained in subdivision (c) by July 1, 2001, including a description of the data and the sources of the data the commission proposes to rely upon, the scope of the commission's proposed report, a schedule of public workshops or hearings to solicit public input on the draft report or intermediate work products, and recommended budget changes.

(c) Notwithstanding Section 7550.5 of the Government Code, commencing July 1, 2001, and every two years thereafter, the commission shall submit a report to the Governor and Legislature, developed in consultation with the State Air Resources Board and other appropriate agencies. The report shall contain all of the following:

(1) An assessment of the current status and historic trends in the environmental performance of the electric generation facilities of the state, to include all of the following:

(A) Generation facility efficiency.

(B) Air emission control technologies in use in operating plants.

(C) The extent to which expected or recent resource additions are likely to displace or reduce the operation of existing facilities, including the environmental consequences of these changes.

(2) An assessment of the geographic distribution of statewide environmental, efficiency, and socioeconomic benefits and drawbacks of existing generation facilities, including, but not limited to the impacts on natural resources including wildlife habitat, air quality, and water resources, and the relationship to demographic factors. The assessment shall describe the socioeconomic and demographic factors that existed when the facilities were



constructed and the current status of these factors. In addition, the report shall include how expected or recent resource additions could change the assessment through displacement or reduced operation of existing facilities.

(3) Commencing with the report due on or before July 1, 2003, the commission shall include an assessment of the extent to which the displacement or reduced operation of existing facilities has occurred.

(d) The commission shall comply with the requirements of Section 25543 in addition to the requirements of this section and shall utilize existing commission resources.

SEC. 6. Section 25520 of the Public Resources Code is amended to read:

25520. The application shall contain all of the following information and any other information that the commission by regulation may require:

(a) A detailed description of the design, construction, and operation of the proposed facility.

(b) Safety and reliability information, including, in addition to documentation previously provided pursuant to Section 25511, planned provisions for emergency operations and shutdowns.

(c) Available site information, including maps and descriptions of present and proposed development and, as appropriate, geological, aesthetic, ecological, seismic, water supply, population, and load center data, and justification for the particular site proposed.

(d) Any other information relating to the design, operation, and siting of the facility that the commission may specify.

(e) A description of the facility, the cost of the facility, the fuel to be used, the source of fuel, fuel cost, plant service life and capacity factor, and generating cost per kilowatthour.

(f) A description of any electric transmission lines, including the estimated cost of the proposed electric transmission line; a map in suitable scale of the proposed routing showing details of the rights-of-way in the vicinity of settled areas, parks, recreational areas, and scenic



areas, and existing transmission lines within one mile of the proposed route; justification for the route, and a preliminary description of the effect of the proposed electric transmission line on the environment, ecology, and scenic, historic, and recreational values.

SEC. 7. Section 25523 of the Public Resources Code is amended to read:

25523. The commission shall prepare a written decision after the public hearing on an application, which includes all of the following:

(a) Specific provisions relating to the manner in which the proposed facility is to be designed, sited, and operated in order to protect environmental quality and assure public health and safety.

(b) In the case of a site to be located in the coastal zone, specific provisions to meet the objectives of Division 20 (commencing with Section 30000) as may be specified in the report submitted by the California Coastal Commission pursuant to subdivision (d) of Section 30413, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or that the provisions proposed in the report would not be feasible.

(c) In the case of a site to be located in the Suisun Marsh or in the jurisdiction of the San Francisco Bay Conservation and Development Commission, specific provisions to meet the requirements of Division 19 (commencing with Section 29000) of this code or Title 7.2 (commencing with Section 66600) of the Government Code as may be specified in the report submitted by the San Francisco Bay Conservation and Development Commission pursuant to subdivision (d) of Section 66645 of the Government Code, unless the commission specifically finds that the adoption of the provisions specified in the report would result in greater adverse effect on the environment or the provisions proposed in the report would not be feasible.

(d) (1) Findings regarding the conformity of the proposed site and related facilities with standards adopted by the commission pursuant to Section 25216.3



and subdivision (d) of Section 25402, with public safety standards and the applicable air and water quality standards, and with other relevant local, regional, state, and federal standards, ordinances, or laws. If the commission finds that there is noncompliance with any state, local, or regional ordinance or regulation in the application, it shall consult and meet with the state, local, or regional governmental agency concerned to attempt to correct or eliminate the noncompliance. If the noncompliance cannot be corrected or eliminated, the commission shall inform the state, local, or regional governmental agency if it makes the findings required by Section 25525.

(2) The commission shall not find that the proposed facility conforms with applicable air quality standards pursuant to paragraph (1) unless the applicable air pollution control district or air quality management district certifies that complete emissions offsets for the proposed facility have been identified and will be obtained by the applicant prior to the commission's licensing of the project, to the extent that the proposed facility requires emission offsets to comply with local, regional, state, or federal air quality standards.

(e) Provision for restoring the site as necessary to protect the environment, if the commission denies approval of the application.

(f) In the case of a geothermal site and related facility, findings on whether there are sufficient commercial quantities of geothermal resources available to operate the proposed facility for its planned life.

(g) In the case of a site and related facility using resource recovery (waste-to-energy) technology, specific conditions requiring that the facility be monitored to ensure compliance with paragraphs (1), (2), (3), and (6) of subdivision (a) of Section 42315 of the Health and Safety Code.

(h) In the case of a facility, other than a resource recovery facility subject to subdivision (g), specific conditions requiring the facility to be monitored to ensure compliance with toxic air contaminant control



measures adopted by an air pollution control district or air quality management district pursuant to subdivision (d) of Section 39666 or Section 41700 of the Health and Safety Code, whether the measures were adopted before or after issuance of a determination of compliance by the district.

SEC. 8. Section 25523.5 of the Public Resources Code is repealed.

SEC. 9. Section 25524 of the Public Resources Code is amended to read:

25524. The commission shall not certify any geothermal site and related facility unless it finds that the geothermal field dedicated to the proposed powerplant is reasonably capable of providing geothermal resources in sufficient commercial quantities to supply the powerplant over its planned life.

SEC. 10. Section 25525 of the Public Resources Code is amended to read:

25525. The commission shall not certify any facility contained in the application when it finds, pursuant to subdivision (b) of Section 25523, that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that such facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving such public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability. In no event shall the commission make any finding in conflict with applicable federal law or regulation. The basis for these findings shall be reduced to writing and submitted as part of the record pursuant to Section 25523.

SEC. 11. Section 25540.6 of the Public Resources Code is amended to read:

25540.6. (a) Notwithstanding any other provision of law, no notice of intention is required, and the commission shall issue its final decision on the application,



as specified in Section 25523, within 12 months after the filing of the application for certification of the powerplant and related facility or facilities, or at any later time as is mutually agreed by the commission and the applicant, for any of the following:

(1) A thermal powerplant which will employ cogeneration technology, a thermal powerplant that will employ natural gas-fired technology, or a solar thermal powerplant.

(2) A modification of an existing facility.

(3) A thermal powerplant which it is only technologically or economically feasible to site at or near the energy source.

(4) A thermal powerplant with a generating capacity of up to 100 megawatts.

(5) A thermal powerplant designed to develop or demonstrate technologies which have not previously been built or operated on a commercial scale. Such a research, development, or commercial demonstration project may include, but is not limited to, the use of renewable or alternative fuels, improvements in energy conversion efficiency, or the use of advanced pollution control systems. Such a facility may not exceed 300 megawatts unless the commission, by regulation, authorizes a greater capacity. Section 25524 does not apply to such a powerplant and related facility or facilities.

(b) Projects exempted from the notice of intention requirement pursuant to paragraph (1), (4), or (5) of subdivision (a) shall include, in the application for certification, a discussion of the applicant's site selection criteria, any alternative sites that the applicant considered for the project, and the reasons why the applicant chose the proposed site. That discussion shall not be required for cogeneration projects at existing industrial sites. The commission may also accept an application for a noncogeneration project at an existing industrial site without requiring a discussion of site alternatives if the commission finds that the project has a strong relationship to the existing industrial site and that



it is therefore reasonable not to analyze alternative sites for the project.

SEC. 12. Section 25541 of the Public Resources Code is amended to read:

25541. The commission may exempt from this chapter thermal powerplants with a generating capacity of up to 100 megawatts and modifications to existing generating facilities that do not add capacity in excess of 100 megawatts, if the commission finds that no substantial adverse impact on the environment or energy resources will result from the construction or operation of the proposed facility or from the modifications.

SEC. 13. Section 25541.5 of the Public Resources Code is repealed.

SEC. 14. Section 25541.5 is added to the Public Resources Code, to read:

25541.5. (a) On or before January 1, 2001, the Secretary of the Resources Agency shall review the regulatory program conducted pursuant to this chapter that was certified pursuant to subdivision (k) of Section 15251 of Title 14 of the California Code of Regulations, to determine whether the regulatory program meets the criteria specified in Section 21080.5. If the Secretary of the Resources Agency determines that the regulatory program meets those criteria, the secretary shall continue the certification of the regulatory program.

(b) If the Secretary of the Resources Agency continues the certification of the regulatory program, the commission shall amend the regulatory program from time to time, as necessary to permit the secretary to continue to certify the program.

(c) This section does not invalidate the certification of the regulatory program, as it existed on January 1, 2000, pending the review required by subdivision (a).

SEC. 15. Section 25543 is added to the Public Resources Code, to read:

25543. (a) It is the intent of the Legislature to improve the process of siting and licensing new thermal electric powerplants to ensure that these facilities can be



sited in a timely manner, while protecting environmental quality and public participation in the siting process.

(b) Notwithstanding Section 7550.5 of the Government Code, the commission shall prepare a report to the Governor and the Legislature on or before March 31, 2000, that identifies administrative and statutory measures that, preserving environmental protections and public participation, would improve the commission's siting and licensing process for thermal powerplants of 50 megawatts and larger. The report shall include, but is not limited to, all of the following:

(1) An examination of potential process efficiencies associated with required hearings, site visits, and documents.

(2) A review of the impacts on both process efficiency and public participation of restrictions on communications between applicants, the public, and staff or decisionmakers.

(3) An assessment of means for improving coordination with the licensing activities of local jurisdictions and participation by other state agencies.

(4) An assessment of organizational structure issues including the adequacy of the amounts and organization of current technical and legal resources.

(5) Recommendations for administrative and statutory measures to improve the siting and licensing process.

(c) The commission may immediately implement any administrative recommendations. Regulations, as identified in paragraph (5), adopted within 180 days of the effective date of this section may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code. For purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.



Approved _____, 1999

Governor

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