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DOCKET
09-AFC-9
DATE July 06 2011
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July 6, 2011

California Energy Commission
Docket Unit
1516 Ninth Street
Sacramento, CA 95814-5512

Subject: **ADDITIONAL BRIEF IN SUPPORT OF MOTION FOR ORDER AFFIRMING APPLICATION OF JURISDICTIONAL WAIVER RIDGECREST SOLAR POWER PROJECT DOCKET NO. (09-AFC-9)**

Enclosed for filing with the California Energy Commission is the original of **ADDITIONAL BRIEF IN SUPPORT OF MOTION FOR ORDER AFFIRMING APPLICATION OF JURISDICTIONAL WAIVER**, for the Ridgecrest Solar Power Project (09-AFC-9).

Sincerely,

Marie Mills

Scott A. Galati
David L. Wiseman
GALATIBLEK LLP
455 Capitol Mall
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Sacramento, CA 95814
(916) 441-6575

STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of: **RIDGECREST SOLAR POWER PROJECT**	**DOCKET NO: 09-AFC-9** **ADDITIONAL BRIEF IN SUPPORT OF MOTION FOR ORDER AFFIRMING APPLICATION OF JURISDICTIONAL WAIVER**

INTRODUCTION

STA Development LLC, formerly Solar Millennium, LLC (STA) files this Additional Brief in Support of its Motion For Order Affirming Application of Jurisdictional Waiver. Since the briefing schedule did not specifically identify a time when STA would be allowed to file a Reply Brief, STA provides this additional brief in lieu of its right, as the moving party with the burden of proof, to file a Reply Brief.

ORIGINAL EXEMPTIONS AND EXCLUSIONS

The Warren-Alquist Act[1] contains certain exclusions and exemptions from its mandatory exclusive siting jurisdictional provisions. STA asserts that Section 25502.3 operates as a voluntary waiver allowing an applicant for a project that would otherwise be excluded from the definitions of "facility" and "thermal power plant" to submit to the exclusive jurisdiction

[1] Public Resources Code Section 25500 et. seq. All Section references are to the Public Resources Code.

of the California Energy Commission (Commission). The CEC Staff has argued that the Section 25502.3 waiver was part of the grandfathering provisions included in the Warren-Alquist Act when enacted in 1974. However, as demonstrated below, this cannot be the case since the Section 25502.3 waiver was, and still is, ***a separate and distinct waiver provision from any other waiver provision***, including a specific waiver intended for "grandfathered" projects which the Legislature enacted in 1974.

As discussed below, the Warren-Alquist Act as originally enacted in 1974 provided five distinct classes of projects that were excluded or exempted from the mandatory exclusive jurisdiction of the Commission.

GRANDFATHERED PROJECTS

Class 1 – Facilities With A CPCN

The first class of projects excluded or exempted from the mandatory exclusive jurisdiction of the Commission includes those facilities that already had received a Certificate of Public Convenience and Necessity (CPCN) from the California Public Utilities Commission at the time of enactment of the Warren-Alquist Act.

Class 2 – Facilities Excluded Because Ready For Construction

The second class of projects that were excluded or exempted from the mandatory exclusive jurisdiction of the Commission includes those facilities for which construction was planned to commence "within three years from the effective date" of the Warren-Alquist Act.[2]

Class 3 – Facilities Specifically Listed

The third class of projects excluded or exempted from the mandatory exclusive jurisdiction of the Commission included a list of projects that the Legislature specifically found would

[2] Section 25501 (b) of original statute.

meet the definition of Section 25501 (b). If a project was included on that list, it was specifically excluded or exempted from the mandatory exclusive jurisdiction of the Commission.

VOLUNTARY REJECTION OF EXEMPTION

Class 4 – Small Power Plant Exemption

The fourth class of projects that could be exempted from the mandatory exclusive jurisdiction of the Commission included those that met the definition of facility but had the capacity to generate no more than 100 megawatts of electricity. These projects could, at the request of an applicant, be exempted under Section 25541 – commonly known as the Small Power Plant Exemption.

DEFINITIONAL EXCLUSION

Class 5 – Facilities Excluded By Definition

The fifth class includes all sites, facilities or thermal power plants that were excluded from the definition of facility and thermal power plant. According to the 1974 Legislative Counsel Opinion (attached):

> "Facility" would include any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto (Secs. 25110, 25120) . . . . Also, there would be certain designated sites and facilities which would be ***excluded*** from the power facility and site certification provisions (Secs. 25501, 25501.3, 25501.5), and there would be an authorization for the commission to exempt certain thermal powerplants from such provisions (25541). ***As to an excluded or exempted site and facility or thermal powerplant***, the authority of local governments would not be superseded, unless the person proposing to construct it waives the exclusion or exemption. (see Secs. 25501.7, 25502.3, 25542). (***Emphasis added***)

It is important to note that the Legislative Counsel in 1974 read Sections 25110[3] and 25120[4] ***together*** – in the same manner recommended in our Motion. Therefore, the class of projects excluded by definition from the Commission's mandatory exclusive siting jurisdiction include (1) any electrical generating facility not using a source of thermal energy, or (2) an electrical generating facility that is using a source of thermal energy but with a generating capacity less than 50 megawatts . In 1988 the Legislature expanded this class to include solar photovoltaic electrical generating facilities.[5]

ORIGINAL WAIVERS

As discussed below, the Legislature included waiver provisions for each of the classes of projects identified above.

Grandfathered Projects Waiver

Section 25501.7 was the original waiver of exemption provision and applied to all of the exemptions or exclusions that were enacted by the Section 25501 series (25501 (a); 25501 (b) as demonstrated by an applicant proving the elements of 25501.3; and the list of projects included in 25501.5). Section 25501.7 as originally enacted stated:

> "Any person proposing to construct a facility or a site to which Section 25501 applies may waive the exclusion of such site and related facility from the provision of this chapter by submitting to the commission a notice to that effect on or after July 1, 1976, and any and all of the provision of this chapter shall apply to the construction of such facility."

This waiver was included in the Section 25501 series which also supports its application to those facilities excluded or exempted under the Section 25501 series.

---

[3] Definition of Facility, which includes the term "thermal power plant".
[4] Definition of thermal power plant.
[5] It is important to note that the Legislature used the term "facilities" in this definition clearly using the common meaning of the word and not the definition applicable to the division. Otherwise, the exclusion would apply only to "solar photovoltaic ***thermal power plants with generating capacities greater than 50 MW***", which is nonsensical.

It's important to note that the Section 25502 series is <u>not</u> part of the grandfathering provisions. Instead, the Section 25502 series addresses the general need to submit a Notice of Intention and Application for Certification in the form prescribed by the Commission. Section 25502.3 therefore contains a broader, more general waiver (as contrasted with the very specific waiver presented in Section 25501.7). Section 25502.3 also includes the qualifying language "***Except as provided in Section 25501.7***," which clearly demonstrates that the Legislature did <u>not</u> intend Section 25502.3 to apply to "grandfathered" projects in 1974 – because those projects already had their own specific waiver provision (Section 25501.7).

In 1994, the Legislature, with the help of the Commission Staff, amended the Warren-Alquist Act to, among other things, <u>remove obsolete provisions</u>. AB 446 (Sher, 1994) deleted Section 25501.5 which contained the list of "grandfathered" projects because they were already constructed or abandoned. The Legislature also deleted Subsection (b) of Section 25501 which included the "within 3 years of construction" exclusion because more than 3 years had passed. Section 25501 was amended to apply only to projects that had received a CPCN prior to 1975 and those that had received municipal approval prior to 1975. Notably, when it amended Section 25501.7 in 1994 to be consistent with the other amendments to the Section 25501 series – ***the Legislature did not delete or amend Section 25502.3 but instead left Section 25502.3 completely intact***.

The courts have held that when a subject is before the Legislature and within its power to enact a statute, any interpretation of the statute ***must*** presume the Legislature acted consciously. "We must assume that the Legislature has existing laws and judicial decisions in mind when it enacts a new law."[6] In other words, the Commission cannot assume the Legislature made a mistake or overlooked deletion of Section 25502.3. Since Section 25502.3 did not apply to the "grandfathered" projects because all of these projects had their own waiver authority (Section 25501.7) and since Section 25502.3 specifically includes the language "Except as provided in Section 25501.7" the only logical

[6] Estate of McDill (1975) 14 Cal.3d 831, 837. Also see *People v. Olsen* (1984) 36 Cal.3d 638, 647, fn. 19 "failure of the Legislature to change the law in a particular respect when the subject is generally before it indicates an intent to leave the law as it stands in the aspects not amended."

interpretation is that ***Section 25502.3 was always intended to apply to something other than the "grandfathered" projects***.

Small Power Plant Exemption Waiver

The next type of waiver of exemption is for thermal power plants with generating capacities greater than 50 megawatts but no more than 100 megawatts; the Small Power Plant Exemption[7]. This waiver is exercised by the applicant when applying to the Commission. An applicant is not required to apply for a Small Power Plant Exemption. An applicant can elect to waive its right to seek a Small Power Plant Exemption and instead elect to file an Application For Certification thereby submitting to the full exclusive jurisdiction of the Commission.

Definitional Waiver

It is clear that Section 25502.3 does not apply to those projects that were grandfathered by having a CPCN (Section 25501 (a)). It does not apply to those projects that could have demonstrated they were within 3 years of construction at the time of enactment of the Warren-Alquist Act (25501 (b)). It also does not apply to those projects included on the Section 25501.5 list. All of these "grandfathered" projects could elect to voluntarily submit to the exclusive jurisdiction of the Commission by invoking the specific waiver designed for them in Section 25501.7. The section also cannot apply to Small Power Plant Exemptions, because no waiver is needed by an applicant since an applicant can simply elect to file an AFC and not apply for a Small Power Plant Exemption. Therefore Section 25502.3 is a stand-alone provision that can only apply to the fifth class of projects; those that are ***excluded*** from the Commission's mandatory jurisdiction, such as a facility that will generate electricity using solar photovoltaic technology.

[7] Section 25541.

1988 AMENDMENT TO SECTION 25120

In 1988, the Legislature amended Section 25120 to include the following sentence at the end:

> "Thermal powerplant" does not include any wind, hydroelectric, or solar photovoltaic electrical generating facility.

The CEC Staff has argued that the 1988 amendment to Section 25120 (1988 Amendment) can be read to exclude wind, hydroelectric and solar photovoltaic facilities from the scope of the Section 25502.3 waiver. However, the 1988 Amendment had a singular purpose – to assure renewable energy developers that they were not subject to Commission's mandatory and exclusive jurisdiction.[8] The 1988 Amendment simply revised the definition to specifically exclude wind, hydroelectric and solar photovoltaic electrical facilities from the Commission's ***mandatory*** siting jurisdiction. [9] The 1988 Amendment did not address the Section 25502.3 waiver and, just as important, ***the Legislature did not delete or amend Section 25502.3 in 1988.***

Additionally, if the Section 25502.3 waiver does not apply to wind, hydroelectric or solar photovoltaic facilities, then to what type of facility does the waiver apply? If one attempts to argue that it applies ***only*** to Thermal Powerplants with less than 50 megawatts of generating power, STA believes such a claim would be arbitrary and overly narrow. Recall that "Thermal powerplant" means any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of ***50 megawatts or more***, and any facilities appurtenant thereto. Hence, "Thermal powerplant" ***excludes any facility which uses thermal energy***, regardless of the technology employed, ***with a generating capacity of less than 50 megawatts***. So to argue that the waiver applies to one type of excluded facility but not to another type of excluded facility using just part of the definition –

[8] Bill No. SB 928 (Regular Session 1988) Governor's Chaptered Bill File, Legislative Counsel's Bill Analysis for Governor George Deukmejian (Pages 2-3)
[9] Bill No. SB 928 (Regular Session 1988) Assembly Republican Caucus Bill Analysis (Page 1)

when the waiver makes ***no such distinction*** – is completely arbitrary. ***The waiver either applies to all excluded facilities – or none***.

STA asserts that Section 25110 and 25120, when read together, establish which facilities and plants are ***included*** within the Commission's mandatory jurisdiction and which facilities and plants are ***excluded*** from the Commission's mandatory jurisdiction. Once it has been established that a certain facility or plant has been ***excluded*** from the Commission's mandatory jurisdiction, only then does it make logical sense to review the language of the Section 25502.3, which allows facilities and plants which are "***excluded*** from the provisions" of the Warren-Alquist Act to "***waive such exclusion*** by submitting to the commission a notice of intention to file an application for certification." (***Emphasis added)***

DEFINITION OF FACILITY

In rejecting the way that STA contends Section 25502.3 should be interpreted, Staff has contended that the Commission is bound by the definitions of the words "facility" and "thermal powerplant" even if their use in context would lead to an indecipherable or illogical portion of the statute. However, the Commission is not required to take Staff's recommended narrow approach. In fact, the Legislature has provided guidance directly on point. When interpreting how the definitions in the Warren Alquist Act are to be used, the Legislature included Section 25100 which states:

> 25100 ***Unless the context otherwise requires***, the definitions in this chapter govern the construction of this division. ***(Emphasis Added)***

This admonishes the reader to not simply use the definitions if the use of the definition would, when read in context, lead to an illogical result. The Legislature (and the Commission itself) has routinely used the term "facility" both as a defined term (as set forth in Section 25510) and as a general, common sense term. To do otherwise would lead to

rendering multiple sections of the Warren-Alquist Act meaningless or illogical.[10] For instance, the definition of "Thermal Powerplant" contained in Section 25120 uses the term "facility" or "facilities" ***five times***. If the definition of "facility" in Section 25110 were inserted every time into this definition, it would result in a definition that would be nonsensical. Section 25120 in its entirety states:

> 25120. "Thermal powerplant" means any stationary or floating electrical generating ***facility*** using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any ***facilities*** appurtenant thereto. Exploratory, development, and production wells, resource transmission lines, and other related ***facilities*** used in connection with a geothermal exploratory project or a geothermal field development project are not appurtenant ***facilities*** for the purposes of this division.
>
> "Thermal powerplant" does not include any wind, hydroelectric, or solar photovoltaic electrical generating ***facility***. ***(Emphasis Added)***

STA asserts that the Legislature did not intend the Section 25110 definition to be inserted each time the word "facility" or "facilities" is used above. For example, if the defined term were used in the last sentence of Section 25120 relating to specifically excluded facilities, the language would read:

> "Thermal powerplant" does not include any wind, hydroelectric, or solar photovoltaic electrical generating "***electric transmission line or thermal powerplant, or both electric transmission line and thermal powerplant". (definitions inserted)***

Did the Legislature intend to exclude from the definition of "thermal powerplants" only those wind, hydroelectric and solar photovoltaic projects ***which are also thermal powerplants***? STA believes the answer is no – the Legislature must have intended that the common sense use of the word "facility" be employed whenever such use was typical

[10] Public Resources Code Section 25008 (using facility in a general sense); 25303(b) (facility/facilities used to encompass electrical generating facilities); 25524.1(b) (describing nuclear waste reprocessing location); Public Resources Code Section 25305(b) ("Identification of emerging trends in the renewable energy industry. In addition, the commission shall evaluate the progress in ensuring the operation of existing facilities, and the development of new and emerging, in-state renewable resources.")

or logical. If the Legislature intended otherwise, it would render this section and Section 25502.3 to be meaningless.

CONCLUSION

There is only one interpretation of Section 25502.3 that is reasonable, logical, is consistent with case law mandating how statutes should be interpreted and gives meaning to the Legislature's intent in 1974 and again in 1994 – An applicant for a solar photovoltaic electrical generating facility can voluntarily waive its right to obtain its entitlements from another local or state agency and can instead submit to the exclusive siting jurisdiction of the Commission even though such facility would otherwise be excluded from the definitions of "facility" and "thermal power plant".

Dated: July 6, 2011

_____
David L. Wiseman, Counsel to STA

_____
Scott A. Galati, Counsel to STA

Attachments

Attachment A

1974 Legislative Counsel Opinion

STATE OF CALIFORNIA

OFFICE OF LEGISLATIVE COUNSEL

COPY

Sacramento, California
May 13, 1974

Honorable Raymond Gonzales
Assembly Chamber

Energy Resources: Powerplants
(A.B. 1575) - #9867

Dear Mr. Gonzales:

You have directed our attention to Assembly Bill No. 1575, as amended in Senate May 2, 1974, relating to energy resources, and have asked the following two questions which are considered below.

QUESTION NO. 1

Would the authority of local governments be superseded in respect to regulating the location of nuclear thermal powerplants which are subject to the jurisdiction of the State Energy Resources Conservation and Development Commission?[1]

OPINION NO. 1

With certain exceptions, the authority of local governments would be superseded in respect to regulating the location of nuclear thermal powerplants which are subject to the commission's jurisdiction.

---

[1] Hereinafter referred to as the "commission."

ANALYSIS NO. 1

The provisions of A.B. 1575 would, if enacted, among other things, enact the Warren-Alquist State Energy Resources Conservation and Development Act (Div. 15 (commencing with Sec. 25000), P.R.C.[2]). Very generally, such provisions would provide for the establishment of the commission (Sec. 25200, et seq.), the forecasting and assessment of energy demands and supplies (Sec. 25300, et seq.), for conservation of energy resources by designated methods (Sec. 25400, et seq.), and for certification of power sites and facilities (Sec. 25500, et seq.); require the commission to develop and coordinate a program of research and development in energy supply, consumption, and conservation and the technology of siting facilities (Sec. 25600, et seq.), and provide for the development of contingency plans to deal with possible shortages of electrical energy or fuel supplies (Sec. 25700, et seq.).

Initially, we note that any city or county may enact reasonable zoning ordinances which are not in conflict with the general law under the police power of Section 7 of Article XI of the California Constitution (Lockard v. City of Los Angeles, 33 Cal. 2d 453). This would generally include the authority to issue permits for the construction of powerplants.

Section 25500 would provide as follows:

"25500. In accordance with the provisions of this division, the commission shall have the exclusive power to certify all sites and related facilities in the state, except for any site and related facility proposed to be located in the permit area[3], whether a new site and related facility or a change or addition to an existing facility. The issuance of a certificate by the commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency

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2 All section references, unless otherwise indicated, are to sections of the Public Resources Code, as proposed to be added by A.B. 1575.

3 The area in which permits for developments are required under the California Coastal Zone Conservation Act of 1972 (Sec. 27000, et seq.; and particularly Sec. 27104).

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> to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law.
>
> "After the effective date of this division, no construction of any facility or modification of any existing facility shall be commenced without first obtaining certification for any such site and related facility by the commission, as prescribed in this division." (Emphasis added.)

The term "site" would mean "any location on which a facility is constructed or is proposed to be constructed" (Sec. 25119). "Facility" would include any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto (Secs. 25110, 25120).

Generally, as can be seen from the above, A.B. 1575 would, except as to sites and related facilities proposed to be located in the permit area, grant to the commission the exclusive power to certify all locations for electrical generating facilities, including nuclear thermal powerplants, with a generating capacity of 50 megawatts or more. The issuance of a certificate by the commission would be in lieu of any permit, certificate or similar document required by any state, local or regional agency, and after the effective date of this bill, no construction of any facility or modification of any existing facility would be permitted without obtaining certification for any such site and related facility from the commission.

Therefore, we think that, generally, the authority of local governments would be superseded in respect to regulating the location of nuclear thermal powerplants which are subject to the commission's jurisdiction.

At this point, it is observed that local governments would be provided an opportunity to participate in the process of forecasting and assessment of energy demands and supplies by A.B. 1575 (see Secs. 25302, 25303, 25305, and 25307) and to provide information, data, and their views in

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connection with the approval of a notice of intention to file an application and the certification of any site and related facilities (see Secs. 25505, 25506, 25509, 25510, 25512, 25513, 25514, 25519, 25523, and 25536). Furthermore, the commission would not be permitted to certify any facility contained in an application if 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 (Sec. 25525).

It is also noted that the commission would not be authorized to approve a site for a facility at a state, regional, county or city park, wilderness, scenic, or natural reserve, area for wildlife protection, recreation, or historic preservation, or natural preservation area in existence on the effective date of this bill, or any estuary in an essentially natural and undeveloped state, unless it finds that such use is not inconsistent with the primary uses of any such land and that there will be no substantial adverse environmental effects and the approval of any public agency having ownership or control of such lands is obtained (Sec. 25527).

Also, there would be certain designated sites and facilities which would be excluded from the power facility and site certification provisions (Secs. 25501, 25501.3, 25501.5), and there would be an authorization for the commission to exempt certain thermal powerplants from such provisions (Sec. 25541). As to an excluded or exempted site and facility or thermal powerplant, the authority of local governments would not be superseded, unless the person proposing to construct it waives the exclusion or exemption (see Secs. 25501.7, 25502.3, 25542), as more fully discussed in Analysis No. 2.

In summary, therefore, it is our opinion that with certain exceptions, the authority of local governments would be superseded in respect to regulating the location of nuclear thermal powerplants which are subject to the commission's jurisdiction.

QUESTION NO. 2

Would the authority of local governments be superseded in respect to regulating the location of an excluded

or excepted site and facility, including the nuclear thermal powerplant referred to in subdivision (e) of Section 25501.5[4]

OPINION NO. 2

The authority of local governments would not be superseded in respect to regulating the location of an excluded or exempted site and facility, including the nuclear thermal powerplant referred to in subdivision (e) of Section 25501.5, unless the person proposing to construct such a facility waives the exclusion of the site and related facility from the power facility and site certification provisions.

ANALYSIS NO. 2

Section 25501, a part of the power facility and site certification provisions, would read as follows:

> "25501. The provisions of this chapter do not apply to any site and related facility which meets either of the following requirements:
>
> "(a) For which the Public Utilities Commission has issued a certificate of public convenience and necessity before the effective date of this division.
>
> "(b) For which construction is planned to commence within three years from the effective date of this division." (Emphasis added.)

As can be seen from the above, if any site and related facility meets the requirement of subdivision (b) of Section 25501, it would be excluded from the power facility and site certification provisions of A.B. 1575.

---

[4] The proposed San Joaquin Nuclear Project of the Department of Water and Power of the City of Los Angeles, to be located in Kern County near the City of Wasco.

Section 25501.3 enumerates conditions under which a proposed site and related facility would be deemed to be one for which construction is planned to commence within three years from the effective date of A.B. 1575 within the meaning of subdivision (b) of Section 25501. Section 25501.5 would provide that the Legislature finds and declares that various designated proposed sites and facilities, including the proposed site and facility referred to in subdivison (e) of that section, meet the requirements of subdivision (b) of Section 25501.

It is a well established principle that the courts will accord great weight to legislative declarations (Monterey County Flood Control and Water Conservation Dist. v. Hughes, 201 Cal. App. 2d 197, 209).

Therefore, we think that a court, applying the above principle, could determine that there was a reasonable basis for the legislative findings in Section 25501.5 and thus uphold such exclusions. Thus, it is our opinion that the sites and facilities referred to in Section 25501.5, including the one referred to in subdivision (e), would be excluded from the power facility and site certification provisions of A.B. 1575, and the authority of local governments in respect to the location of such facilities would not be superseded (Sec. 25542).

In addition to the exclusions pursuant to Sections 25501, 25501.3, and 25501.5, the commission is authorized to exempt thermal powerplants with a generating capacity of up to 100 megawatts if it makes certain findings (Sec. 25541). As to any such exempted powerplant, the authority of local governments in respect to its location would not be superseded (Sec. 25542).

However, we observe that any person proposing to construct a facility which is excluded or exempted may waive, as prescribed, the exclusion or exemption of such site and related facility from the power facility and site certification provisions; and, if so, any and all of such provisions would apply to the construction of such facility (Secs. 25501.7, 25502.3). Therefore, any person proposing to construct a facility on an excluded or exempted site, including the

site referred to in subdivision (e) of Section 25501.5, could waive the exclusion of such site and related facility from the power facility and site certification provisions, and, in that case, the commission, as discussed generally in Analysis No. 1, would have the exclusive power to certify such site and facility.

Very truly yours,

George H. Murphy
Legislative Counsel

By
Victor Kozielski
Deputy Legislative Counsel

VK:mcj

Two copies to Honorable Charles Warren, pursuant to Joint Rule 34.

Attachment B

Bill No. SB 928 (Regular Session 1988) Governor's Chaptered Bill File, Legislative Counsel's Bill Analysis for Governor George Deukmejian

3021 State Capitol
Sacramento, CA 95814
(916) 445-3057

3011 State Building
107 South Broadway
Los Angeles, CA 90012
(213) 620-2550

Legislative Counsel of California

BION M. GREGORY

Sacramento, California
September 12, 1988

Honorable George Deukmejian
Governor of California
Sacramento, CA 95814

Senate Bill No. 928

Dear Governor Deukmejian:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Rogers and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory
Legislative Counsel

By Jimmie Wing
Jimmie Wing
Principal Deputy

JW:wld

Two copies to Honorable Don Rogers, pursuant to Joint Rule 34.

DEPARTMENT	BILL NUMBER
Finance	SB 928
AUTHOR	**AMENDMENT DATE**
Rogers	August 1, 1988

SUBJECT

This bill, an urgency measure, would revise the definition of thermal powerplant in existing law to clarify that wind, hydroelectric, and solar photovoltaic electrical generating facilities are not thermal powerplants for purposes of site certification by the California Energy Commission (CEC).

SUMMARY OF REASONS FOR DEFERRAL

It is uniquely within the expertise of the CEC to determine what should be included in the definition of a "thermal power plant" for siting purposes. Therefore, the Department of Finance defers to the Resources Agency regarding this bill.

FISCAL SUMMARY--STATE LEVEL

Code/Department Agency or Revenue Type	SO LA CO RV	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) FC 1988-89	FC 1989-90	FC 1990-91	Code Fund
3360/CEC	SO	----------NO FISCAL IMPACT----------			

Impact on State Appropriations Limit--No.

HISTORY, SPONSORSHIP, AND RELATED BILLS

Assembly Floor: 77-0
Senate Floor: 35-0

ANALYSIS

A. Specific Findings

Under existing law, the CEC is responsible for siting thermal power plants that are 50 megawatts or greater generating capacity. Thermal generation fuels include gas, oil, nuclear, coal, geothermal steam, and industrial or residential waste products. Currently, electrical generating facilities which are not thermally powered are exempt from the CEC's siting authority.

(Continued)

RECOMMENDATION: Defer to Resources Agency

Department Director: Richard Ray — Date: SEP 08 1988

Principal Analyst (552)	Date 9/6	Program Budget Manager (5) DSMC	Date 9/6	Governor's Office: Position noted / Position approved / Position disapproved — by: date:

Thomas Parker

BILL ANALYSIS/ENROLLED BILL REPORT--(Continued) Form DF-43

AUTHOR	AMENDMENT DATE	BILL NUMBER
Rogers	August 1, 1988	SB 928

ANALYSIS

A. Specific Findings (continued)

This bill, an urgency measure, would revise the definition of thermal powerplant to specifically exclude any wind, hydroelectric, or solar photovoltaic electrical generating facility. Since the CEC does not include these types of facilities within the definition of thermal powerplant for siting purposes, the author's intent is to clarify existing law and assure renewable energy developers (wind, hydro, and solar) that they will not be subject to the CEC siting jurisdiction.

We believe that it is uniquely within the expertise of the CEC to determine what should be included in the definition of a "thermal power plant." Therefore, the Department of Finance defers to the Resources Agency regarding this bill.

B. Fiscal Analysis

CEC staff indicate that this bill would have no fiscal or programmatic impact on the Commission's existing programs.

HW:1393g/3

Attachment C

Bill No. SB 928 (Regular Session 1988)
Assembly Republican Caucus Bill Analysis

ASSEMBLY NATURAL RESOURCES COMMITTEE

BILL NO: SB 928

FISCAL: YES

BYRON D. SHER, CHAIRMAN

URGENCY: NO

STATE CAPITOL, ROOM 2136
(916) 445-9367

HEARING DATE: 6/20/88
6/21/88

BILL NO: SB 928 (As Amended June 6, 1988)

AUTHOR: ROGERS

PRIOR ACTION:

Senate Energy & Public Utilities	(7-0)	5/6/88
Senate Appropriations	Rule 28.8	5/18/88
Senate Floor	(35-0)	5/28/88 Consent

SUBJECT:

1) SHOULD THE ENERGY COMMISSION BE REQUIRED TO APPROVE PROPOSED SOLAR ENERGY POWERPLANTS WITHIN 12 MONTHS AFTER THE FILING OF AN APPLICATION?

2) SHOULD THE DEFINITION OF "THERMAL POWERPLANT" UNDER THE WARREN-ALQUIST ACT BE CLARIFIED TO EXCLUDE WIND, HYDROELECTRIC AND SOLAR PHOTOVOLTAIC GENERATING FACILITIES?

DIGEST

Current law, under the Warren-Alquist Act:

1) Makes the California Energy Commission (CEC) responsible for siting thermal powerplants of a size equal or greater than 50 megawatts (MW).

2) Exempts powerplants involving modifications to an existing facility, plus cogeneration, geothermal, research and demonstration projects, or thermal plants with a generating capacity of up to 100 megawatts, from the CEC's regular 30-month siting process. Such projects must be approved within 12 months from the filing of an application.

3) Does not generally require CEC approval for electric generating facilities that are not thermally powered, including wind, hydroelectric or solar photovoltaic facilities.

This bill:

1) Exempts "solar energy powerplants" from the CEC's regular siting process and requires such projects to be approved within 12 months from the filing of an application. This exemption would apply regardless of the singular or "aggregated" electric generating capacity of the project.

- continued -

2) Revises the definition of "thermal powerplant" to specifically exclude wind, hydroelectric or solar photovoltaic electrical generating facilities.

COMMENTS

1) Purpose Of The Bill. According to information from the sponsors of the bill, Luz International, Inc., the purpose of the bill is to save the Energy Commission and developers of solar powerplants time and money without losing any environmental or regulatory safeguards in the siting process. The bill does this by preventing the CEC from considering the "aggregated" generating capacity of several adjacent solar thermal powerplants proposed by a single developer which might exceed the 100 MW threshold for siting under the commission's abbreviated 12-month application process.

2) Luz Solar Energy Generating Systems (SEGS) Projects. Luz International, Inc., is currently in the process of developing multiple solar thermal electric generating projects east of Los Angeles in the desert areas of San Bernardino County. One of these projects consist of five 30 MW units of which three are already constructed and operating, one is under construction and one is in the planning stage. The CEC reviewed the project for licensing because the five co-located units exceed 50 MW in net generating capacity. Units III through VII were certified by the CEC on May 25, 1988.

3) Luz Proposes The World's Largest Solar Powerplant. Unit VIII of Luz SEGS will be an 80 megawatt power plant constructed near Harper Dry Lake in San Bernardino County. According to the Energy Commission, SEGS VIII is the first of five proposed SEGS units which will be located in the Harper Dry Lake area. If constructed, the CEC indicates that SEGS Unit VIII will be the single largest solar powerplant in the world and comprise approximately 400 acres. When finished, the Luz SEGS complex at Harper Dry Lake will have an integrated or "aggregated" generating capacity exceeding 300 MW and occupy about 2,000 acres, or more than three square miles.

4) Environmental Impacts Of The Luz SEGS Solar Projects. According to the CEC, the technology used in the Luz SEGS projects involves parabolic reflectors that focus the sun's rays on evacuated tubes carrying a heat transfer fluid (HTF). The heat exchange unit is used to generate steam, which is then superheated in a supplementary gas-fired boiler. The super-heated steam produces electric energy in a steam-turbine generator. HTF is considered toxic and past spills of this material by Luz SEGS have required clean-up measures supervised by the Department of Health Services.

- continued -

The CEC also indicates that the Luz SEGS solar energy powerplant projects involve major issues affecting air quality, biological resources, water supply, energy demand conformance, electrical transmission systems planning, hazardous waste and cumulative environmental impacts. Luz SEGS Units III through VII have required relocation of desert tortoises.

5) CEC Engaged In Current Rulemaking Defining Siting Jurisdiction. According to CEC staff, the Energy Commission will soon be adopting new rules addressing both how the 50 megawatt threshold in current law is defined and how "aggregated" (e.g., multiple unit) projects will be reviewed for purposes of determining CEC jurisdiction. Depending on the outcome of this pending rulemaking process, the exemption for solar powerplants authorized by this bill may be premature or rendered unnecessary.

6) No Limit On The Size Of Solar Powerplants Affected By The Bill's Provisions. Under current law, thermal powerplants employing cogeneration technology and less than 300 MW must be approved by the CEC under the abbreviated 12-month siting process. Such facilities may exceed 300 MW only if the commission, by regulation, specifically authorizes a greater capacity. However, this bill contains no similar limit on the individual or "aggregated" generating capacity of solar energy powerplants that would also have to be approved under the 12-month siting process.

SOURCE: Luz International, Inc.

SUPPORT: None on file

OPPOSITION: None on file

Jeff Shellito
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6/27/88:anatres

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA
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APPLICATION FOR CERTIFICATION
For the *RIDGECREST SOLAR POWER PROJECT*

Docket No. 09-AFC-9

PROOF OF SERVICE
(Revised 7/5/2011)

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DECLARATION OF SERVICE

I, Marie Mills, declare that on July 6, 2011, I served and filed copies of the ADDITIONAL BRIEF IN SUPPORT OF MOTION FOR ORDER AFFIRMING APPLICATION OF JURISDICTIONAL WAIVER, dated July 6, 2011. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [http://www.energy.ca.gov/sitingcases/solar_millennium_ridgecrest].

The document has been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

(*Check all that Apply*)

FOR SERVICE TO ALL OTHER PARTIES:

_X_ sent electronically to all email addresses on the Proof of Service list;

____ by personal delivery;

_X_ by delivering on this date, for mailing with the United States Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses NOT marked "email preferred."

AND

FOR FILING WITH THE ENERGY COMMISSION:

_X_ sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (***preferred method***);

OR

___ depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION
Attn: Docket No. 09-AFC-9
1516 Ninth Street, MS-4
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I declare under penalty of perjury that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

Marie Mills