AB 1575

ASSEMBLY COMMITTEE ON PLANNING AND LAND USE
CALIFORNIA LEGISLATURE

SUBCOMMITTEE ON STATE ENERGY POLICY

Charles Warren, Chairman

HEARINGS

ON

STATE ENERGY POLICY

PART VI: REVIEW OF AEC NUCLEAR SAFETY CRITERIA

State Capitol, Room 4202
Sacramento, California
March 9, 1973

#294

MR. CASE. Most of the valves that there were questions about were in auxiliary systems rather in the reactor cooling system or the ECCS system.

CHAIRMAN WARREN: Finally, the Environmental Protection Agency comments that the proposed impact statement does not include a meaningful cost-benefit analysis. Do you have any explanation for that?

MR. CASE: Yes. As part of an impact statement, one must assess in as quantitative a way as possible, the costs - environmental or from the equipment standpoint - of the change in the criteria. In the draft statement, we laid down the methodology of carrying out that cost-benefit analysis, but until we have a final recommended position as to what the criteria should be, you can't carry out the methodology. So they've commented to the affect that we've laid down the method but we haven't provided the details, and we'll do this in our final statement. I might point out, Mr. Chairman, that the EPA and other state and federal agencies routinely comment on our environmental reports, so that's part of the process. Comments on the draft, which are taken into account, amplify the final report.

CHAIRMAN WARREN: Just to go to another, perhaps unrelated, subject, but one which we have some interest in, on page three of your presentation, you comment, by way of setting forth background factors, on the AEC's requirements on population density. We're interested in that because, as we understand it, the AEC promptly considers population density prior to issuing its license, but then after the license has been issued, the AEC has no jurisdiction or concern over what happens to the population density in the critical areas thereafter, and apparently neither do most state or local goverments. It's a possible area of concern, I wonder if you could explain what the AEC requirements are with respect to population density before licensing.

MR. CASE: Our requirements are given in Part 100 of our regulations. Among other things, they specify the kind of information which should be supplied to the AEC for its review in determining site suitability and suitability of the design in light of the characteristics of the site, including population. These regulations require that not only present population be given in the application, but that population projections be provided up through 20 or 30 years from the date of initial operation. So in determining the suitability of a site, the population projections are taken into account as part of our evaluation process. That process requires that, for the population density at the time it's expected, one can compensate for the population around the reactor, by provision of engineered safety features. These include, for instance, characteristics on the leak rate of containment, the fission product removal systems, which may be placed in the reactor. So there is a balance struck and reviewed by the AEC between the population density both present and projected and the design of the facility, including its engineered safety features. The regulations also require the development and review by the AEC of emergency plans, which are of course affected by the population distribution surrounding the reactor site. These emergency plans are routinely reviewed during the lifetime of the plant, by our inspection division, our Division of Regulatory Operations. These plans must be revised to take into account changes in population distribution. So, although the AEC has no jurisdiction over the population per se it can require changes in the emergency plans of a reactor facility to take into account changes in population.

It can require additions to the design of the facility, should there be changes in population to compensate for these changes. In other words, we can require that a plant operator provide additional safety features because of changes in population, if that is determinded to be necessary. Further, in the ultimate we can require that the reactor be shut down. So, your point is correct, we have no control over the people, but we have control over those aspects of the facility, design and operation, which are critical to the relationship between the facility and the people.

CHAIRMAN WARREN: Assume that the state or local government desires to get something through to setforth some acceptable density considerations, development in some areas surrounding a nuclear plant. Is there a formula available to which it can refer?

MR. CASE: Well, we have a formula available in Part 100 but the use of this formula would require some judgment, obviously. One can develop an acceptable exclusion zone, the area surrounding the plant which must be under complete control of the owner-operator, and something that we call the low population zone as defined in Part 100, which is the density of the population surrounding the site based on calculations up to a certain distance. There is also some specificity in the regulation which would determine the minimum distance to what we call a large population center, which is defined as a population center with a number of people over 25,000.

Beyond that, Part 100 says if the reactor is to be located in an area of large population density, this also must be taken into account. We are trying to develop some specific criteria or guidance for this fourth aspect, the general population distribution surrounding

a reactor site. Our intent is after the development of these guidelines to work with the states, who are considering and have legislation such as you are considering here, and develop some criteria by which they can set aside sites in the future to take into account any possible population problem. Of course, other criteria have to be developed on geology, seismolofy, hydrology, meteorology, and we are working towards this end with our own staff. Our next step will be to work with the states in developing a system that works together.

CHAIRMAN WARREN: Have you worked with any representative from the State of California on this?

MR. CASE: I don't believe we have. We've had several meetings, or at least one meeting with the State of Maryland working in this direction quite recently.

CHAIRMAN WARREN: How can this committee be informed of the work you have done with the State of Maryland?

MR. CASE: I am not familiar with the details, but we can provide that for you for the record, sir.

CHAIRMAN WARREN: In part of the licensing procedure -- Page 4 -- you refer to a public hearing which is scheduled before a 3-member Atomic Safety and Licensing Board composed of two technical experts and a lawyer. You state that members of the public and state and local officials may participate in the hearing, may be admitted as parties to the proceeding with the same rights as the utility applicant in the regulatory staff. To your knowledge, does California have such a representative who participate in these hearings?

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STATEMENT OF THE

SOUTHERN CALIFORNIA EDISON COMPANY

BEFORE THE

ASSEMBLY COMMITTEE ON PLANNING AND LAND USE

THE CALIFORNIA STATE LEGISLATURE

JUNE 11, 1973

John Perry

Southern California Edison Company appreciates the opportunity to present its views concerning AB 1575. As you know we participated in the hearings conducted earlier this year by the Subcommittee on State Energy Policy. The position of our company on the major issues involved in AB 1575 has been presented in detail in that testimony and in our response to the Survey of Energy Programs and Policies conducted by the subcommittee.

Edison supports the basic objectives of AB 1575, the most important of which is to avoid serious electric energy problems in California and agree that the avoidance of such problems can best be accomplished through the employment of mixed strategies which will: (1) reduce growth in demand of electricity; (2) develop a better mechanism for approving additional sources

of energy; and (3) improve the technology related to energy production and utilization through research and development.

Unfortunately, AB 1575 appears to be based on the acceptance of near-term electrical energy shortages in California as an unavoidable occurrence. Such shortages are likely unless action is taken soon, yet the only provisions of AB 1575 which deal with the near-term problem are those which transfer emergency powers for rationing power during periods of shortage from the Public Utilities Commission to the Energy Resources Conservation and Development Commission. The inevitability of electric energy shortages should not be conceded at this point. Measures for insuring adequate supplies should be developed and implemented now.

In our view, the provisions of AB 1575 clearly place the greatest emphasis on demand reduction. We believe a more balanced overall approach, with greater emphasis on insuring adequate supplies should be employed. Energy conservation is an important social goal and wasteful and unnecessary uses should be effectively controlled. However, in the next five to ten years, the most pressing priority must be to meet the demands which will occur before new conservation measures are effective to reduce future demands.

In addition to the basic criticism, we would like to provide a brief summary of certain provisions of AB 1575 which we believe need to be improved.

1. The policy statements should be expanded to increase the recognition and emphasis upon the social and economic benefits of maintaining adequate energy supplies at reasonable cost.
2. The membership of the commission should provide capability to adequately deal with the issues of energy supply and make decisions which balance energy, environmental and economic considerations.
3. The responsibility within state government for planning and forecasting should be retained with existing agencies.
4. The authority of the commission relating to energy conservation measures, energy pricing, rate design and allocations of supply in the event of shortages should be restricted to policy making with implementation left to existing state agencies.
5. The certification procedure should be overhauled to provide a more effective and expeditious process for plant siting. Special attention must be given to meeting customer needs until conservation resources prove effective.
6. The state's role in research and development should be to provide coordination and additional incentives to those programs undertaken by others with prospects for special benefits to California.

These points summarize our major areas of concern with AB 1575. We are submitting herewith more intensive and specific comments regarding these and other provisions of AB 1575.

Thank you for the opportunity to present this statement.

SOUTHERN CALIFORNIA EDISON COMPANY

Comments on AB 1575

1. The policy statement in Section 25001 declares that "it is the responsibility of state government to insure that a reliable supply of electrical energy is maintained at a level consistent with the need for such energy for protection of public health and safety and for environmental quality protection."

   We believe the existing responsibilities which rest with state government require a broadening of the factors to be considered in determining the proper level of electrical energy supply. The importance of adequate energy supplies to economic vitality should be recognized in formulating state policy related to energy.

   There are subsequent references in the bill to the economic impact of adequate energy supplies which implies a recognition of the relationship between these two factors. We believe, however, that this relationship will be such a fundamental factor in the policy and decision-making activities of the state that it should be explicitely referred to in the policy statement in any bill such as AB 1575.

2. The membership of the State Energy Resources Conservation and Development Commission would be composed of five members as follows: a physical scientist; an attorney qualified in the field of government or administrative law; an ecologist; an economist; and a representative of the public at large.

We do not believe this composition includes the necessary expertise or representation to make competent decisions regarding power plant siting and to deal with the many complex issues prescribed in this bill. We believe any agency of government given authority to approve or to condition the approval of the construction of power facilities should be made directly accountable for the adequacy, reliability, and cost of electric service. Under present law, only the PUC is vested with commensurate authority and accountability.

We favor an approach to council composition which includes designation of responsible officeholders such as the Secretary of the Resources Agency and the Chairman of the PUC as voting members of the committee. This approach tends to insure background and capability appropriate for dealing with the necessary issues. In addition, it has the effect of involving throughout the certification and planning process those organizations with responsibility related to the maintainance of adequate energy supplies.

3. AB 1575 proposes to transfer responsibility for planning and forecasting function from the PUC to the new Energy Resources Conservation and Development Commission.

   We disagree with this transfer of responsibility. Since the adoption by the PUC of General Order No. 131, utilities have been required to file ten and twenty-year forecasts of loads and resources. In addition, forecast information on gas and oil requirements and availability are also filed with the commission. We believe these filings provide an adequate base for planning and forecasting the state's electrical energy development.

4. The bill establishes authority within the Energy Resources Conservation and Development Commission for establishing policies for energy conservation, many of which we regard as proscriptive in nature. In addition, the bill assigns responsibility to the commission to submit to the PUC recommendations designed to conserve energy through differential rate structures and energy pricing measures.

   We do not agree with the employment of proscriptive policies as a means of influencing energy use patterns, and furthermore, we do not believe that the responsibility for developing conservation policies should be assigned to the commission in the manner outlined in AB 1575. As a general statement, we favor energy conservation policies which are designed to elicit voluntary responses by the public. An

extensive public education program must necessarily be an integral element in the implementation of such policies. In addition, we believe conservation measures which result in economies to the energy user offer a greater promise of attaining wide-spread public acceptance than do proscriptive policies which could be construed by many as imposing arbitrary controls on man's activities.

With regard to energy pricing and rate design, we believe a system which within practical limits approximates the true cost of energy to the consumer is the most equitable in the long run. Rather than imposing non-market means for effecting the demand for energy, we believe that our economic institutions can appropriately balance the costs and benefits of alternative levels and patterns of energy use. This of course assumes that the price of energy is truly reflective of the costs. In our view, the internalization of costs of environmental controls and costs of fuels which is a function of their availability will result in prices which indeed reflect true costs.

We also believe the role of the commission with regard to energy conservation measures should be limited to an advisory capacity. AB 1575 does not provide reasonable restrictions on the powers of the commission with regard to imposing such conservation measures. We do not believe the

commission is the proper place for the authority in such matters to reside.

5. It is doubtful that the certification procedures detailed in this bill can provide a framework within adequate generating capacity can be authorized in a timely manner. Because of the composition of the commission and the nature of the certification procedures, we do not find ample opportunity or expertise for a balancing of society's needs.

   The certification decision process is unduly excessive in its time allotments. We do not subscribe to the belief that in any decision-making process, efficiency and quality are equatable to the amount of time spent in deliberation and analysis. In our view, competent decisions can and should be made in a much shorter time frame than outlined in AB 1575, particularly when the long-range planning activities now being conducted by the utilities are taken into account.

   The procedures and authorities granted to the commission in making siting decisions do not provide adequate relief from the existing unworkable siting mechanisms. Any agency assigned responsibility for certifying power plant sites must have greater pre-emptive authority than is provided in AB 1575. We strongly recommend a strengthening of the pre-emption powers.

6. While we are in agreement with the R & D goals outlined in this bill, we believe that in most cases the state is not the appropriate entity for undertaking the research. For example,

the provisions for research into increasing plant efficiency would be redundant to research which is an integral aspect of the competitive position of generation equipment manufactures. We believe the state's role in research and development should be limited to programs necessary to carry out regulatory responsibilities including such areas as the biological implications of various types of power plant emissions.

Inasmuch as the state is not directly a user of much of the technology proposed for R & D programs by this bill, it is unlikely that the evaluation of research results would be as accurate as those made by organizations whose existence depends upon the proper functioning of the technology in a complex system. We believe that in addition to the growing research commitment by the private sector that existing and proposed research at the federal level will provide an adequate response to the need for new, more efficient technologies.

STATEMENT ON AB 1575 (WARREN)

PRESENTED TO

ASSEMBLY COMMITTEE ON PLANNING AND LAND USE

BY

DENNY VALENTINE
CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION
JUNE 11, 1973

THE CALIFORNIA MUNICIPAL UTILITIES ASSOCIATION DESIRES LEGISLATION THAT WILL ACCOMPLISH AN EXPEDITIOUS METHOD OF REVIEWING APPLICATIONS FOR POWER PLANT SITES AND APPROVING THOSE THAT MEET ESTABLISHED CRITERIA. FURTHER, CMUA ENDORSES THE CONCEPT OF ENERGY CONSERVATION THROUGH MORE EFFICIENT USE OF APPLIANCES, IMPROVED CONSTRUCTION STANDARDS AND ADVANCED GENERATION AND TRANSMISSION TECHNOLOGY. CMUA BELIEVES RESEARCH AND DEVELOPMENT TO BE ESSENTIAL IN THE FUTURE DEVELOPMENT OF ALTERNATIVE SOURCES OF ENERGY PRODUCTION AND SUPPORTS SUCH EFFORTS, BOTH PHILOSOPHICALLY AND FINANCIALLY.

AB 1575 POSES MANY CONCERNS AND FAILS TO SATISFACTORILY ACCOMPLISH THE ABOVE STATED OBJECTIVES FOR A VARIETY OF REASONS.

LOOKING AT THE BILL SECTION BY SECTION, WE WOULD FIRST TAKE ISSUE WITH THE DEFINITION OF THERMAL POWER PLANT CONTAINED IN SECTION 25120 TO BE A FACILITY HAVING A GENERATING CAPACITY OF 50 MEGAWATTS. FACILITY APPEARS TO POTENTIALLY INCLUDE MORE THAN ONE UNIT, THEREFORE, FOUR 20 MEGAWATT PEAKING UNITS LOCATED ON ONE SITE WOULD REQUIRE THE SAME REVIEW AS IS GIVEN A NUCLEAR FACILITY.

WE ARE CONCERNED THAT THERE IS NO MEMBER EITHER APPOINTED TO THE COMMISSION, SECTION 25201, OR SERVING EX OFFICIO TO THE COMMISSION, SECTION 25202, HAVING KNOWLEDGE AND EXPERIENCE OF PUBLICLY OWNED UTILITIES.

SECTION 25216.3 (A) IS OF GREATEST CONCERN TO CMUA IN THAT IT DESTROYS THE CONCEPT OF A ONE STOP SITING AGENCY. IT PROVIDES THAT THE COMMISSION WILL ENFORCE LOCAL, REGIONAL, STATE AND FEDERAL LAND USE, PUBLIC SAFETY, ENVIRONMENTAL, AND OTHER STANDARDS IN THE DESIGNING, SITING, AND OPERATION OF ELECTRICAL FACILITIES. THIS INDICATES THAT THE COMMISSION HAS NOT BEEN GRANTED THE AUTHORITY TO PREEMPT ALL OTHER AGENCIES, BOARDS AND COMMISSIONS CURRENTLY INVOLVED IN THE SITING PROCESS. FURTHER, THAT SECTION SPECIFIES THAT THE COMMISSION SHALL ADOPT STANDARDS MORE STRINGENT THAN THOSE OF LOCAL, REGIONAL OR OTHER STATE AGENCIES IN THE DESIGN AND

OPERATION OF FACILITIES TO SAFEGUARD PUBLIC HEALTH AND SAFETY. WE QUESTION THE REASON FOR THAT PROVISION.

SECTION 25402 (B) AND (C) WOULD APPEAR TO BE MORE DIFFICULT TO ACCOMPLISH IN THAT IT IS DEPENDENT UPON A KNOWLEDGE OF FUTURE PRICE RATES FOR ELECTRICITY AND SUGGESTS A STANDARD APPLIANCE EFFICIENCY WHEN, IN FACT, EFFICIENCY DECLINES WITH AGE.

SECTION 25403 ESTABLISHES THE COMMISSION AS THE AGENCY RESPONSIBLE FOR THE SERVICE ULTIMATELY RECEIVED BY THE CONSUMER WHEN, IN FACT, THIS IS THE FUNCTION OF THE UTILITY. FURTHER, THERE IS NO REASON TO BELIEVE THAT THE COMMISSION WILL HAVE THE EXPERTISE NECESSARY TO ACCOMPLISH THIS AIM.

SECTION 25503 REQUIRES THAT AN APPLICATION PROPOSE AT LEAST THREE SITE LOCATIONS. SUCH A REQUIREMENT IS UNREASONABLE WHEN ONE CONSIDERS THE DIFFICULTY THE LOS ANGELES DEPARTMENT OF WATER AND POWER HAS HAD IN IDENTIFYING ONE SUCH SITE.

SECTION 25511, PROVIDING FOR THE SAFETY REVIEW BY THE COMMISSION, DUPLICATES THE ATOMIC ENERGY COMMISSION SAFETY HEARINGS AND, THEREFORE, APPEARS UNNECESSARY.

SECTION 25531 EXCLUDES CERTAIN AREAS FROM CONSIDERATION FOR POWER PLANT SITING. IT IS BELIEVED THAT SUCH AN EXCLUSION SHOULD NOT EXIST PER SE BUT THAT THE COMMISSION SHOULD HAVE THE AUTHORITY TO APPROVE SITE APPLICATIONS WHICH BEST MEET THE OVERALL NEEDS OF THE AREA TO BE SERVED AS WELL AS THE STATE AS A WHOLE.

SECTION 25534 PROVIDES THAT THERE BE AN AREA ACQUIRED AND MAINTAINED BY THE APPLICANT FOR PUBLIC USE WITHOUT DEFINING THE LIMITS OR RELATIONSHIP SUCH ADDITIONAL SPACE SHOULD HAVE TO THE FACILITY. THIS COULD RESULT IN THERE BEING PLACED ON THE UTILITY EXORBITANT DEMANDS FOR PURCHASE OF OPEN SPACE.

SECTION 25600 OUTLINES AREAS TO BE CONSIDERED BY THE COMMISSION FOR RESEARCH AND DEVELOPMENT AND, WHILE IT SPECIFIES THAT PRIORITY BE GIVEN THESE FORMS OF RESEARCH HAVING UNIQUE BENEFITS TO CALIFORNIA, THE EXAMPLES THEREIN LISTED GO WELL BEYOND CONCERNS UNIQUE TO CALIFORNIA.

CMUA HAS NOT YET HAD THE TIME TO PREPARE A DETAILED ANALYSIS OF AB 1575 AND HAS, THEREFORE, NOT YET TAKEN A FORMAL POSITION ON THIS MEASURE. THE PREVIOUS COMMENTS REFLECT CONCERN OVER THOSE ASPECTS OF THE LEGISLATION THAT ARE IN CONFLICT WITH EXISTING ASSOCIATION POLICY.

Statement for Presentation Before The Assembly Subcommittee On
State Energy Policy Regarding AB 1575 (Warren) - Los Angeles - Aug. 2, 1973

Robert L. Jordan, Manager - Public Affairs Operation - General Electric Company

Mr. Chairman and Subcommittee Members:

My name is Robert Jordan and I appear here on behalf of the General Electric Company. In your July 9th notice of these meetings, you requested a review of concepts of AB 1575.

The concept running throughout the bill which causes us the most concern is its anti-nuclear bias. This bias was clearly enunciated by you, Mr. Chairman, in your statement of May 23, to the news media when you introduced AB 1575. In that statement, you said - and I quote - "Before detailing the bill, let me set forth some general observations, based on our study, which are reflected in the bill itself." Then, your fourth observation was - and I quote again -

"Fourth, nuclear fission reactors present serious problems, which as yet have not been satisfactorily resolved. These problems concern the reliability of the essential emergency core cooling systems, radioactive waste disposal and security against external hostile forces. Until these and other problems are resolved, it appears foolhardy to continue on a course of action which will result in an increase of the number of operating nuclear reactors from the present two to anywhere from 80 to 100 in the next 25 years."

Then, your sixth point was - and I quote again -

"Sixth, by wisely using electrical energy, we can buy time in order to develop more acceptable and desirable forms of electricity generation, such as geothermal and solar."

We are concerned with this anti-nuclear bias for several reasons. First, it is my opinion that a future governor who personally favored a moratorium on new nuclear plants in California could use his appointive control of the members of the Commission, set-up by AB 1575, to effect such a moratorium. Second, we believe that, if all available information had been given adequate consideration, the bias might not have developed. Nuclear power reactors and their emergency core cooling systems are highly complex

mechanisms which cannot be adequately explained in the relatively short, verbal testimony usually possible in legislative hearings. Since the authors of the Rand Report, upon which AB 1575 is based, and which is also anti-nuclear in concept, did not visit any major manufacturers of nuclear steam supply systems to obtain first hand information before the Rand Report was published, I attempted to correct this alarming oversight by inviting the Subcommittee to visit General Electric's Nuclear Equipment Products Division in San Jose for a lengthy review of this entire subject before AB 1575 was written. This invitation was not accepted because of "lack of time."

So General Electric's views concerning nuclear power in general and nuclear safety in particular were presented to the Subcommittee during the hearings held last February in Sacramento. In addition, A. P. Bray, Manager - Application Engineering for G.E.'s Atomic Power Equipment Department met with you personally, Mr. Chairman, to answer the major charges against nuclear power made at the hearings by others. He followed this visit with his letter to you of March 6, explaining the General Electric ECCS in detail and verifying its adequacy. But all of this is, I know, no substitute for personal and lengthy exposure to this highly complex matter at a manufacturer's facility. So the anti-nuclear bias in AB 1575 has resulted.

We are concerned about this bias for another reason. We have 11,000 employees and their families in California who depend on an adequate supply of electric power for their well-being. In addition, we operate many major facilities in California whose output of goods and services are important to people everywhere. These facilities require an adequate, continuing and reliable supply of electric power. Now, most competent and knowledgeable persons closely associated with the energy field generally agree that nuclear power must be heavily relied upon if California's electric power needs are to be met for the foreseeable future, even if reasonable conservation measures are adopted. Fossil fuels for power plants are either in short supply or environmentally objectionable. Hydro-power can no longer be fruitfully exploited in California. Most reliable studies, made by competent people, including those made by state organizations, agree that geothermal, solar

and fusion sources of energy cannot be developed to commercial application in time to meet the developing energy problems. If AB 1575 is enacted into law with the anti-nuclear bias it now contains, I have grave concern for California in the years ahead.

And there's no real rationale for an anti-nuclear attitude in this State. As pointed out during the Sacramento hearings last February, there has been a very definite turn throughout the world to nuclear power - a turn which represents a clear-cut expression of the world's electric utility's acceptance of nuclear power as the major bulk-power source for the remainder of this century. In short, it is the "now" of the utility industry and not some promise of a better-yet unproven-method, off somewhere in the future. In 25 years the United States has witnessed the installation and operation of hundreds of nuclear reactors. During this period, no single member of the public has ever been harmed by reactor operation. This record was achieved by purposeful design of nuclear equipment and an almost obsessive attention to safety considerations. Today's nuclear power plant, with its high level of safety is certainly a good neighbor - the record proves it. We are convinced that nuclear technology offers great potential to meet the future energy requirements of California as well as the country as a whole, in an environmentally acceptable manner.

I have reviewed the public statements made by representatives of the public and private utilities at the Assembly Planning and Land Use Committee Hearing on AB 1575 and we continue to support their objections to this bill and suggestions for improvement. At that hearing, I made a detailed statement of objections and suggested corrections for the appliance-efficiency standards provisions of AB 1575. I continue this position without change at this time. Since copies of that statement were given to you, Mr. Chairman, to your consultant and to two members of the press at that time, I will not repeat my position here.

I would like to add however, that we found concern with three (3) specific details of AB 1575, which we interpret the language of this bill to provide, and which to my knowledge, have not been covered in previous statements by others:

(1) Provision for safety review of power plants which, in the case of nuclear power plants, would attempt to duplicate the AEC safety reviews for each proposed site, is undesirable. Such reviews could not be adequately conducted by the technically unqualified Commission established by AB 1575, which is specifically set up to lack expertise in the energy field. Such reviews would only delay the siting and construction of nuclear plants. In my opinion, this provision reflects the anti-nuclear bias of AB 1575.

(2) Provision for the Commission to mandate modifications in the design of power plants are unacceptable. Again, the Commission set up by AB 1575 could not be technically competent to mandate such changes and this provision could be used as a vehicle to unnecessarily delay or stop construction of new nuclear plants in California -- another anti-nuclear bias of the bill.

(3) Californian's would be taxed two-tenths of a mil per kilowatt hour on their electric bills to raise $32 million per year, most of which would be used by the Commission to finance research and development. Much of this would be beneficial to the rest of the nation if not to the world at large. Such research and development should not be borne by Californians alone, but should, if done, be funded at the national level, so that its cost can be borne by all Americans who benefit from it.

I thank you, Mr. Chairman and members, for this opportunity to express these views.

Statement by

Mr. Bernard D. Haber
Vice Chairman
Assembly Science and Technology Advisory Council
and
Chairman, Panel on Energy Planning and Programs

to

Subcommittee on State Energy Policy
California State Assembly

August 2, 1973

Gentlemen:

I am Bernard Haber, Vice Chairman of the Assembly Science and Technology Advisory Council, and Chairman of the Council's Panel on Energy Planning and Programs. Another member of our Panel, Professor Lester Lees, Director of the Environmental Quality Laboratory at the California Institute of Technology, will testify after me. We will be open to questions following Professor Lees' testimony.

I am pleased to be able to say at the outset that in the judgment of the Energy Panel, Assembly Bill 1575 represents by and large the most far reaching, integrated, conceptually sound and complete power facility siting and energy conservation measure produced by any legislative body in the country. I shall amplify this statement in the remarks that follow.

The Panel on Energy Planning and Programs was established in 1970 by the Assembly Science and Technology Advisory Council for the purpose of responding to energy related issues raised by Assembly members. Since its inception, the Energy Panel has issued

seven reports all dealing with California-related electrical power matters, the first in June 1971 and the last in May 1973.

Our first report, Meeting the Electrical Energy Requirements for California, dated June 1971, contains recommendations calling for a single siting authority, an energy conservation authority and an authority responsible for research and development on energy matters. Our report, California's Projected Electrical Energy Demand and Supply, dated November 1971, concludes that if the growth rate of demand is 7%, the state is likely to be confronted by power shortages by the mid-1970's; this situation will be aggravated if serious power plant construction delays occur. The need for an energy conservation authority was reiterated, as was the need to reduce the lead time required for bringing new power plants on stream. In our report, Considerations in Viewing the Role of State Government in Energy Planning and Power Plant Siting, February 1973, an independent California electrical power authority is recommended having the broad functions of regulatory responsibility to site generating plants and transmission facilities, developing conservation policies, and administering a research and development program.

Assembly Bill 1575 responds fully to these conclusions and recommendations of the Assembly Science and Technology Advisory Council and its Panel on Energy. It pulls together the purpose of a number of ideas, and combines them in a logical and coherent whole. In particular, the measure is commendable for its recognition of importance of:

(a) Alternative sites for each site required.

(b) An open planning process.

(c) Provision for institutionalized environmental advocacy.

(d) Insofar as possible, one-step decision making, but with attention to local interests.

(e) Payments in lieu of property taxes by municipal and county utilities.

(f) Dedication of the areas for public use, and control of development in areas adjacent to sites in order to protect health and safety, as well as controlled growth

(g) Forecasting of demand and supply factors on a periodic basis.

(h) Energy conservation measures.

(i) Research and development on energy related matters.

(j) A meaningful and adequately financed funding mechanism.

To applaud each of the above is not to imply that provisions with respect to some of the central features could not be improved; the point is that, taken as a whole, AB 1575 provides in admirable fashion a means for objective and independent decision making about the many balances that must be struck between environmental protection and electrical energy provisions now and in the future.

I would like at this time to introduce Professor Lester Lees.

Gene
See my note.

ENVIRONMENTAL
DEFENSE
FUND

2728 DURANT AVENUE, BERKELEY, CALIFORNIA 94704/415 548-6906

August 2, 1973

TESTIMONY OF THE ENVIRONMENTAL DEFENSE FUND
ON AB 1575 BEFORE THE SUBCOMMITTEE ON
STATE ENERGY POLICY OF THE ASSEMBLY
PLANNING AND LAND USE COMMITTEE

In accordance with the committee's request, what follows are the section-by-section comments of the Environmental Defense Fund on Assembly Bill 1575, as amended in the Assembly May 29, 1973.

Remarks of a more general nature encompassing the whole bill have been set forth in a separate statement accompanying this section-by-section analysis.

CHAPTER 1. TITLE AND GENERAL PROVISIONS.

25000. As will be evident later in this testimony, we question the wisdom of placing conservation and development authority in the same body. Assuming, however, that the Legislature does intend to create a broad energy commission with a multiple mandate, we would prefer that the commission be entitled "The State Energy Conservation and Siting Commission." The word "resources" is superfluous and it is more accurate to describe the facility certification portion of the commission's mandate as a siting rather than as a development authority.

25001. In our view, energy conservation should be the focus of this legislation and a statement of purpose affirming the essentiality of energy conservation should come first in Chapter 1. It would then be appropriate to continue with a section stating that reliable supplies of electrical energy are to be provided to the people of the State after all feasible conservation measures have been adopted and to the extent that no appreciable risks to human health and safety or degradation of the environment result. Unfortunately, in AB 1575, these priorities are reversed, and the statement of purpose in this section is less than felicitous.

To state that "electrical energy is essential to the health, safety and welfare of the people" and that government is responsible for insuring reliable supply of electrical energy is to state the obvious. It begs the question, however, to state

that such a reliable supply should be "maintained at a level consistent with the need for such energy for protection of public health and safety and for environmental quality protection," since it will often be the case that the need for energy and public health or environmental protection are in conflict.

We recommend a revision of this section which ensures that a reliable supply of electrical energy:

> is provided to the people of this state to the extent that no appreciable risks to human health and safety or degradation of the environment result.

25002. As stated above, we believe that an energy conservation statement of purpose should precede the statement that it is the responsibility of government to provide a reliable supply of electrical energy. Assuming then that sections 25001 and 25002 are reversed, the new section 25001 should be rewritten to insert the language:

> that energy conservation is essential to the health, safety and welfare of the people of this state and

after the word "declares" on what is now line 22 of page 3.

25003. "Coastal preservation" should be added to the rest of the plans with which plans for facilities are to be coordinated.

25004. It might be worthwhile to point out that not only the federal and state governments, but also <u>private industry</u>,

has an obligation to accelerate its research and development into alternative sources of energy, improved siting and design technology, and also pollution control technology.

25006. As will be pointed out later, AB 1575 is not clear in stating the extent to which the new commission shall have the power to regulate the oil and gas industries, as well as the electrical utilities industry. In this policy section, it is stated that responsibility for managing the State's energy resources is to be consolidated within state government, but the body of AB 1575 does not even make it clear that the new commission will have authority over the provision of fuels to electric generating facilities, much less over other uses of the fossil fuels. As will be argued later in our comments on Chapter 8, emergency powers should include fuel allocation powers. If, however, the commission is to be given power to allocate fuels in an emergency, then it must have companion power to obtain supply forecasts and assessments from the companies supplying oil and gas in the State.

Perhaps

If it is the Legislature's intent to provide any of these powers to the commission, then it should be clearly stated not only in Chapter 8, but also in Chapter 1.

25007. This statement of policy is much too weak. The same purpose could be stated in a much more forthright fashion in the following way:

It is further the policy of the state and the intent of the Legislature to mandate the use of a range of measures to reduce wasteful, uneconomical and unnecessary uses of energy and to conserve energy resources.

why not?

CHAPTER 2. DEFINITIONS.

25104. As noted above, we recommend that the commission be titled the "State Energy Conservation and Siting Commission."

25107. "Electric transmission line" should be defined broadly enough that replacement of facilities at an existing site with equivalent facilities is within the purview of the definition, since undergrounding of transmission lines is a subject to which the new commission should address itself.

25108. "Electrical utility" as now defined includes any person engaged in generating electric power for his own purposes. This may not be intended, but it is probably an appropriate definition since the new commission should have complete knowledge of all electric generation capacity in the event of a fuels or electrical shortage.

25114. Although "party of interest" is defined in this section, the term is not thereafter used. It is essential that the public, including individual citizens and citizen groups, should have a full opportunity to participate in all commission actions and, if necessary, to seek judicial review of the commission's decisions. Thus, although "party of interest" nowhere else is used, the presence of the definition, which has a restrictive tone to it, should be stricken.

Correct Correct

25120. Thermal energy is nowhere defined in the bill. Thus, it will not be clear to laymen and perhaps even to experts

whether it is intended that hydroelectric and nuclear plants, for example, are within the purview of AB 1575.

CHAPTER 3. STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION.

Not acceptable

25200. Most recently, in the coastal initiative, the people of the State of California approved the creation of commissions as to which the power to appoint members was spread among the Governor, the Speaker of the Assembly, and the Senate Rules Committee. There is no reason that a similar provision should not appear in AB 1575. Assuming, however, that gubernatorial appointment is to be the method chosen, we approve of the provision that powers of confirmation be given both to the Senate and to the Assembly.

Correct

25204. This section is inconsistent with Section 25214, which provides that the first meeting of the commission shall be held within 75 days after the bill's effective date. Under this section, it may not be evident until 90 days after the effective date of the bill whether the persons appointed by the Governor have been confirmed or rejected by the Legislature. Since the whole time schedule of the remainder of the bill hinges upon an early start to the commission's business, it probably would be best to limit the time for confirmation or rejection of appointments by the two houses of the Legislature to 45 days from the date of appointment by the Governor. An alternative to the method of confirmation adopted in Section 25204, which we would prefer, is to require that a gubernatorial appointee receive the majority vote of all members of both houses in order to take his seat. This will assure broader consultation of the Legislature in the appointment process.

25205(a). It is not clear whether the restrictions on commission membership include derivation of income from or employment with electrical utilities outside the State of California.

It is clear that the Executive Director and legal counsel of the commission should be subject to the same restrictions as commission members.

(b) This provision may be too restrictive, since it is possible that a member of the commission may wish to serve in an advisory capacity to a multi-state or federal organization.

25206. We recommend that commissioners' terms of office should be less than six years, preferably four, but in any event no more than five. In any event, terms should be staggered so that the incumbent Governor at the time the legislation is passed cannot saddle his successor with an unrepresentative commission for too long a period of time. If a five-year term is selected, one appointment each year could be obtained by selecting five members at the outset of the commission who have terms of one, two, three, four and five years respectively. In the event that a six-year term is retained, this same staggered appointment schedule could still be adopted. If the present system is preferred, at least two of the original appointees should come up for reconfirmation within a two-year period.

25216(b). As was noted above, and will be noted further below, AB 1575, as currently drafted, is ambiguous as to the extent of its concern with oil and gas resources. Here in this

section, AB 1575 appears to give the commission a mandate to forecast future supplies of "all" energy sources. There can be no gainsaying that the various energy resources are closely interrelated with each other and that an agency with electrical facility certification powers, as well as electrical energy forecasting and assessment responsibility, should have the mandate and power to develop information on energy resources other than electrical energy. It should be noted, however, that in Chapter 4, where "Planning and Forecasting" are discussed, responsibilities are put upon electric utilities to prepare and transmit reports specifying their forecasts and assessments of loads and resources for their service areas, whereas no such requirements are placed upon oil or gas suppliers. Without the power to require oil and gas suppliers to provide the commission with forecasts of their supplies, the commission will not be able effectively to carry out its mandate under this section.

25216.3(a). This section, taken together with Section 25529, is one of the most important in the bill. As currently drafted, it is incomprehensible and thus renders nugatory the meritorious purposes it apparently legislates.

First, the work 'facilities' is missing after the word 'operating' in line 27.

Second, it probably is impossible to compile local, regional, state and federal land use, public safety, environmental and other standards in relation to all facilities in the State. It would be preferable to require the commission to seek infor-

True

mation on all these standards once the procedures for obtaining facility certification had been invoked with respect to a particular site.

Third, a major problem with this section is its failure to distinguish between standards set by regulation and laws passed by local, regional, state and federal governments. Section 25529 exempts federal law and regulations from its general scope when it allows the commission to override otherwise applicable standards under certain conditions. Therefore, it appears that AB 1575 gives the commission power to override all other laws and regulations (not including the coastal zone legislation) regardless of their origin.

If this is so, we deplore this prospective repeal of environmentally protective legislation in areas other than the coastal zone. At the very least, if the commission finds a conflict with another <u>state law</u>, it should be required to seek further legislative guidance to whether that law is to be repealed in a particular circumstance.

As we point out in our accompanying statement, we question the concept of "one-stop shopping" in its entirety, and recommend that at a minimum air and water quality standards should be enforced by the relevant state agencies, rather than by the newly created commission. Assuming for the moment that the committee does not accept our recommendation, we think in any event AB 1575 should not by implication repeal any other laws respecting air

and water quality or other health and safety measures. It is one thing to override a state, regional or local regulation, or a local law. It is quite another to have the commission override a specific act of the Legislature.

Fourth, if the commission is to be given the power to adopt standards to safeguard public health and safety which are more stringent than those adopted by other agencies, it should also have the power to adopt environmental protection standards which are more stringent than those adopted by other agencies.

Fifth, it should be noted, however, that a statement that the standards shall be "at least as stringent as" those adopted by other agencies would probably create less confusion than, and be just as effective as, the section as it is now written.

25216.5(b). AB 1575 at times speaks about "energy" in general, while at other times referring solely to "electrical energy." We are not opposed to giving the commission power to adopt and implement a plan which specifies actions that are to be taken in the event of an energy shortage, but it should be spelled out clearly that an energy shortage encompasses a shortage of such primary fuels as oil and gas, as well as a shortage of electrical energy.

Moreover, the use of the language "impending serious shortage" is probably too restrictive and the word "impending" should be stricken.

25216.5(c). As we will note later, we disapprove of the relationship established by AB 1575 between the new commission and the Public Utilities Commission. Assuming for the moment, however, that the energy commission-P.U.C. relationship is not significantly altered, this section should be broadened to allow the new commission to take account of goals and policies without the scope of AB 1575, as well as within. This is particularly important, because, as written, such social objectives as the elimination of regressive pricing structures might not be considered an appropriate policy for the energy commission to consider.

25218(c). The power of the commission to sue should be broadened to include litigation other than the obtaining of remedies to restrain violations of the statute. Accordingly, the subsection should be amended to read "Sue and be sued."

25221. This section does not take account of situations in which the Attorney General, without any conflict of interest, can represent the commission and another state agency. We would suggest a redraft in which on line 33, after the word "action" the period be dropped and the following language be inserted:

> . . . and its interest and that of the commission are, in the opinion of the counsel of the commission, potentially in conflict.

OK?

25222. This section should be expanded to include not only the planning and site certification functions of the commission, but also its other functions, including energy conservation and emergency powers.

25224. There is no reason to limit exchange of information to state agencies. We would recommend the insertion of the words "regional and local" after the word "state" on line 16 and for the sake of consistency with other provisions in AB 1575 recommend that the words "power facilities" be stricken from line 19 and the word "facility" be inserted in their place.

CHAPTER 4. PLANNING AND FORECASTING

25300. The words "loads" and "resources," as they are used in this section, are nowhere defined in the bill. This chapter is thus ambiguous as to whether it requires utilities to provide projections of fuel requirements for their facilities. We would approve of a requirement which clearly calls upon utilities to make these projections, but would point out that, in order to get a complete picture of the fuel resources picture, it is also necessary to require oil and gas suppliers to provide the commission with forecasts and assessments.

Can we handle?

Under Section 25302, the commission is required to provide copies of the report that Section 25300 mandates be prepared to numerous other interested parties. Accordingly, we recommend that Section 25300 require of electric utilities that they provide multiple copies of the reports they have prepared. To accomplish this purpose we suggest the following change in language in line 27, immediately following the word "commission":

> . . . such a number of copies of a report as the commission may request specifying . . .

Another potential ambiguity in using the word "resources" is whether it encompasses cooling water, a necessary resource for all fossil fuel and nuclear power plants. For inland plants, cooling water will often be a resource in short supply, and a projection of water availability will thus be a key siting factor.

We thus recommend that it be made clear that "resources" does include cooling water.

25300(a) and (d). One way in which system efficiency may be improved in the future is by distributing peak loads better over the entire system. Accordingly, we recommend that "load distribution" be added to the list of possible areas in which improvements in system capacity may be achieved under subsection (d) and also add load distribution to the matters as to which tabulations are required under subsection (a).

25300(f). Nowhere in the statute is "load duration curve" defined. Such a definition should be added in Chapter 2.

25300(g). The word "projected" should be added after the word "of" in line 24, and the words "and the bases for such projections." should be added after the word "energy" in line 26. Too often in the past have public utilities made projections based on a false set of assumptions, which cannot be analyzed or effectively criticized, because the assumptions have not been set forth.

25301. Throughout the remainder of this chapter, AB 1575 sets forth specific dates by which certain actions shall have been taken both by the utilities and by the commission. In this section, however, no date certain is fixed for the commission's actions. We recommend that the words "by September 1, 1974" be inserted in line 27 immediately after the section number.

We also recommend a wording change at lines 37-38, replacing the words "the approach is considered more accurate" with the words "it prefers its methodology." So long as AB 1575 permits utilities to file reports using two different methodologies, there is no reason why the utility should be burdened with showing that its preferred methodology is more accurate. Suffice it to require the utility to set forth the reasons for preferring its own methodology.

25302. This section is subject to great abuse by a commission and counsel not sympathetic to public participation in the commission's proceedings. If the Legislature is insistent upon requiring that citizens purchase reports, rather than giving them out freely where appropriate, it should also provide that the reports be made available for inspection without necessity of purchasing them. In this regard, we recommend the insertion of the following sentence at line 8, following the word "individuals":

> Copies shall also be made available for inspection at the commission's offices during regular business hours and at such other sites as will afford the public a reasonable opportunity to review the reports.

25303. We pointed out earlier that "electric utility" is defined in Section 25108 to encompass persons who are generating electric power for their own use, and approved that broad definition of the term. It is obvious, however, that if all electric utilities thus defined are required to submit reports under Sections 25300 *et seq.*, the commission would be overburdened by the requirement

in Section 25303 that it hold public hearings in respect of each report that would thus be submitted. Accordingly, we recommend that this section be amended to require hearings only in respect of those electric utilities which generate more than a specified amount of power.

Assuming our amendment has been adopted, we recommend two slight wording changes in the section. First, we would replace the word "the" with the word "each" in line 17 and we would follow the word "hold" in line 18 with this language:

> two or more public hearings of which one shall be in the City of Sacramento and another in a county served by the utility.

Finally, in order to ease the burden of the commission we recommend that an additional sentence be added to the section, which provides that hearings as to various reports may be consolidated, should the commission deem this appropriate.

25304. An additional subsection (e) should be added to those delineated in this section which provides that in its review and evaluation of forecasts, the commission should also examine the implications of the "conservation of energy."

As will be pointed out later, one of our principal complaints about AB 1575 as currently drafted is that the energy conservation functions of the commission are not adequately integrated into its planning and site certification functions. One of the ways in which this integration can be accomplished is by re-

quiring that energy conservation considerations be considered when forecasts of "loads and resources" are evaluated.

25305. This section, as it is currently written, appears to require of the commission the preparation of a single preliminary report which assesses the accuracy and acceptability of the forecasts of all electrical utilities in the State. Given that this is the case, it may be physically impossible to comply with the section if over the years various utilities submit their reports at different times. Accordingly, we recommend that this section be amended by striking the words "within six months after the hearings specified in Section 25303" and by inserting in there stead the words:

> . . . by October 1, 1975, and every two years thereafter.

Possible mech'l here.

More importantly, this section is the guts of the planning and forecasting chapter of AB 1575 and deserves a general re-evaluation. In our view, the principal justification for providing reform legislation in the energy field is the failure of the P.U.C. to obtain information and to provide analysis independent of that supplied by the utilities themselves. This section, as now written, may result in the new commission's falling into the same trap that has caught the P.U.C. The whole emphasis of the section is misplaced, because it continues to rely in large measure on the utilities' forcasts as the basis upon which the commission's planning and forecasting should be carried out. We recommend a different focus, one in which the commission's

independent analysis is given the emphasis it deserves. Thus, we recommend that Section 25305 be rewritten to reflect the importance of the commission's independent analysis. One possible manner of doing this would be to rewrite the first paragraph of the section to state:

> The Commission shall prepare a preliminary report, based on its independent analysis and evaluation of the forecasts provided by the electric utilities, based upon its own research and upon information and views presented at public hearings on the electric utilities' forecasts, which shall contain all of the following:

Should be accepted in subsection

25305(a). Similarly, in this subsection, AB 1575 appears to concede the reliability of the utilities' forecasts more than it should. The last clause of the subsection seems to assume that the facilities proposed by the utilities will indeed be constructed and that the function of the commission is merely to describe measures that are necessary to avoid adverse impacts of that construction. Preferable would be a provision which requires that the commission evaluate not the impacts of constructing and operating facilities proposed by the utilities, but rather the impacts of constructing and operating facilities which the commission's independent analysis of the utilities' forecasts suggests are required.

25305(b). Again, too much credence is given to the utilities' projections in this section. Much better would be this alternative:

> The proposed alternative methods for meeting the electrical energy requirements

> identified by the commission's independent analysis of the utilities' forecasts.

25305(c). This is perhaps the most disastrous provision in AB 1575, for it assumes that energy conservation policies and actions have relevance only over the long term (i.e., over a twenty-year period, rather than the shorter five and ten-year periods) and that energy conservation is thus not to be utilized in relation to the site certification process. This downgrading of the effectiveness of energy conservation makes a mockery of any claim that AB 1575 is an energy conservation measure.

The fact is that energy conservation measures adopted immediately will have an impact on five and ten-year levels of demand for energy, as well as upon the twenty-year level of demand. No-one questions the apparent underlying assumption of this section as now written that energy conservation measures will have a greater impact over the long term than over shorter terms. Nevertheless, it is absolutely unacceptable to assume that energy conservation can have no impact within a ten-year period.

Not True

In our view, the section may err in an even more fundamental manner than just described in that it seems to make energy conservation policies and actions contingent upon some kind of a finding that the anticipated twenty-year level of demand for energy is too great. Stated another way, the words "to be utilized as a basis for energy conservation policies and actions" seem to make energy conservation contingent upon projected demand levels, rather than inherently desirable in itself.

We recommend a wholesale revision of the concepts which underlie this section and in line with concepts which we prefer, recommend the following language:

> An evaluation and projection of savings in electrical energy requirements which may be obtained through the adoption of all energy conservation measures the commission deems reasonable and appropriate including, but not limited to, those set forth in Chapter 5 of this division, which evaluations and projections shall be utilized in making analyses and evaluations of projected 5-, 10-, and 20-year levels of demand for energy in the state, which in turn shall be utilized as the bases for certification of facilities.

Without an amendment incorporating the language just set forth or other language similar thereto, the statute will fail to integrate its energy conservation purpose with its forecasting and site certification purposes and will thus fail of what we see to be its principal mission. That mission is to decrease the demand for energy wherever feasible in order that the reliable supply of electrical energy for which the Legislature holds the State responsible can be delivered consistently with an appropriate concern for public health and safety and environmental values.

25305(d). Presumably, the word "regional" is missing after the word "and" on line 31.

25305(e). If subsection (c) has been amended as recommended above, subsection (e) can probably be dropped altogether from the statute. If, however, it is deemed advisable to retain subsection (e) in some form, we would recommend a number of changes in this subsection.

First, we would delete the words "the current" in line 35 and add the letter "s" to the word "rate" in that same line.

Second, again assuming that subsection (c) is not amended as recommended above, line 1 of page 18 of the bill should be amended to read:

(a) and (c) of this section.

25307. In order to be consistent with our prior recommendations regarding deadlines under the statute, we recommend that the words "within three months after distribution of the commission's preliminary report pursuant to section 25306" be deleted and the words "by January 1, 1976," be inserted in their stead.

25308. Similarly, in this section, the words "within three months after completion of the hearings specified in section 25307" should be deleted and the words "by April 1, 1976," should be inserted in their stead. It should be noted in this regard that this date is inconsistent with the one set forth at the beginning of section 25309. However, if the commission takes the full period it is allotted for each of the various steps it is required to undertake in preparing its comprehensive report, the final deadline does appear to be April 1, rather than March 1.

25308(a) and (b). As was noted earlier in our comments on section 25305, and particularly 25305(c), we are firmly opposed to any relegation of energy conservation to a secondary

stature among the purposes to be effectuated by AB 1575. In this regard, conservation of energy seems to have at least an equivalent status among the various purposes set forth in subsection (a), certainly an improvement over the situation pertaining in section 25305(c).

Whereas energy conservation is included as a consideration to be balanced in subsection (a), however, it again seems to be downgraded in subsection (b). The problem, as we see it, is that the 20 year forecast which is to serve as the basis for action by the commission does not appear to have factored into it the energy conservation requirements and demand reducing policies which are mandated by Chapter 5. Critics of our approach might point out that subsection (b) does go on to state that the 20 year forecast should serve as a basis for the commission and other agencies to take action to reduce demand and conserve fuels. In response, we would again assert that energy conservation and demand reducing policies must be implemented as swiftly as possible and their impact must be evaluated as an integral part of the 20 year forecast. If this is not done and a 20 year forecast is made without taking energy conservation into account, we are fearful, even though later provisions may be inconsistent with this view, that the commission will adopt siting and development policies which seek to meet the 20 year forecast as stated.

To allay these fears, we would recommend a redrafting of subsection (b) to read as follows:

> The anticipated level of statewide and service area electrical energy demand for 20 years, which level shall take into account the adoption by the commission and other public and private agencies of the following actions:
>
> 1) Demand reducing policies;
> 2) Conservation of energy fuels;
> 3) Development of potential sources of energy;
> 4) Other policies and actions designed to diminish (~~affect~~) the rate of growth in demand for electrical energy.

25308(c) and (d). Given that the commission will anyway be making a 20 year forecast, as well as a 10 year forecast, we see no reason why lists of existing sites where expansion is feasible and of additional sites should not be made for the 20 year forecast period as well as for the 10 year forecast period now specified.

25309. As noted above, to avoid inconsistancy, the date specified in this section should be made April 1, 1976, rather than March 1, 1976.

More fundamentally, we question the fact that various elements in the comprehensive report required by this section are not required to be tested by the preliminary report and hearing procedures required of the elements included in sections 25305 and 25308. That is to say if the comprehensive report submitted to the Governor and the Legislature is to have included those considerations listed in subsections (a) through (j), so should

the preliminary report required under section 25305. This insures that members of the public and other agencies will have the opportunity to comment upon the commission's tentative conclusions prior to their final submission to the Governor and the Legislature.

25309(d). This subsection should be amended consistent with our recommended amendment of section 25308(d).

25309(e). This subsection is currently garbled beyond comprehension. We have no objection to the inclusion of applicable air and water quality, environmental protection and land use standards in the comprehensive report, but would suggest that it be made clear that applicable standards be subdivided according to the law under which they were promulgated (i.e., local, regional, state or federal) and also that it be specified whether the standards were adopted by legislation or by administrative regulation.

25309(f). The words "sites for facilities" in line 17 should be deleted and the word "values" inserted in their stead. To be consonant with the other considerations in the subsection, we assume it was intended that the commission identify threats to aesthetic values and not a threat to the preservation of "scenic sights for facilities."

25309(j). As we have noted above, and will note again in

our comments on Chapter 8, we believe that Chapter 8 should be substantially revised. If Chapter 8 is revised, this subsection should be amended accordingly.

CHAPTER 5. ENERGY [~~RESOURCES~~] CONSERVATION.

25400. We take this section to be a veiled attempt by the Legislature to discourage overreliance on nuclear energy as a primary source of the State's energy requirements. Whereas we do not object to the policy embodied in the section, we query the need to state the policy so indirectly and query further its placement in Chapter 5.

We would much prefer that the subject of energy conservation not be confused with the question of choosing among alternative sources of supply and thus recommend that section 25400 either be deleted entirely or be transferred to some other part of the bill. Perhaps an appropriate place for this policy statement would be in section 25216, where it could be added to other specified commission duties.

25401. Again, the first sentence in this section is inappropriate in a chapter devoted to energy conservation. We would much prefer an affirmative beginning to the chapter, for this is the chapter of the bill which we believe has the greatest potential of benefiting the general public.

Similarly, in the last paragraph of the section, we question the appropriateness of including in this chapter a statment that requires the commission to recommend policy in respect of the <u>development</u> of energy resources.

Finally, we believe that the five lettered subsections of section 25401 are incomplete, and that at least the following

specific additions should be made to those policies already enumerated:

(f) Shifts in transportation modes toward the greater use of those modes which are more energy efficient;

(g) Expanded recycling of materials;

(h) Revision of government subsidies and taxation and rate-setting policies which have artificially deflated energy prices; and

(i) Promotion of energy efficient industrial processes, including those which are more labor-intensive and thus create a greater potential for full employment.

25402. The words "to be reviewed at least every two years thereafter" should be inserted after the word "division" on line 8, in order to insure that the commission will continue to pursue energy conservation techniques actively after its initial year of operation.

25402(a). We question the requirement that standards to be set by the commission shall be "economically feasible." Economic feasibility should of course be one factor for the commission to consider, but there may well be circumstances in which economic feasibility in all buildings cannot be assured. In this regard, the subsection as currently drafted is ambiguous as to whether the minimum standards must be economically feasible in all buildings or whether economic feasibility in a majority of buildings would suffice to meet the Legislature's will. This in fact is an ambiguity of considerable significance, since,

because of variations in the price of energy, the climate, and other factors, a particular standard may make economic sense in some portions of the State, but not be economic elsewhere. If economic feasibility is to be required, it should be made clear that the commission has considerable flexibility in setting the parameters upon which to determine whether a particular standard is economically feasible.

25402(c). A similar problem to the one we noted in relation to section 25402(a) is present in this subsection. We recommend simply that the word "average" be inserted after the word "the" and before the word "consumer" on line 5 of page 23.

25403. As will be outlined in our accompanying separate statement, we believe that the commission should be given the power to set rates and that this power should be taken away from the Public Utilities Commission. We take this view both because we believe that rate-setting cannot rationally be separated from the other functions of the new commission and because the P.U.C. has not been responsive to public needs in the recent past.

Assuming, however, that the Legislature determines not to take the rate-making power away from the Public Utilities Commission, we do approve the method by which this section places the burden upon the Public Utilities Commission and publicly owned electric utilities more generally to specify why the commission's recommendations are not feasible. We do have one specific recommendation to make. We would add the words:

> Within one year after the effective date of this division, and periodically thereafter,

at the beginning of the section.

CHAPTER 6. POWER FACILITY CERTIFICATION.

25500. If AB 1575 passes with the "grandfather clause" contained in this section intact, the bill will have failed of its purpose to give the new commission power over power facility siting in this State. We trust that the committee is unaware of the P.U.C.'s Rule 18 which permits it to entertain applications for certificates of public convenience and necessity and grants permits upon those applications before the applicant has obtained health and safety permits from other agencies with jurisdiction over the facility. For, if the committee were aware of Rule 18, then it would be evident to the committee that the P.U.C. is legally entitled to go on a facility approval spree prior to the effective date of AB 1575 which would leave the new commission without applications to review for years to come.

This cannot be countenanced. We believe that an appropriate grandfather clause would exempt from the application of the bill only those facilities already under construction, or at worst those facilities for which all permits, not just the P.U.C. certificate, had been obtained prior to a particular date -- preferably the date of signature by the Governor, rather than the effective date of the bill.

Anything less will create a rush to avoid the review of the new commission of utility applications, a rush which can only result in a number of ill-considered siting decisions not in the public interest.

25501. Whereas we have no objection to the requirement that a person filing a notice of intent in respect of a proposed facility should pay a fee in connection with that filing, we note there is no indication later in the chapter for what purposes such a fee is to be used by the commission.

25503. As will be further set forth in our accompanying separate statement, we have grave doubts about the method chosen by AB 1575 to insure that electric utilities do indeed consider alternatives in proposing sites for facilities. We concur with the judgment underlying this chapter that utilities should be required to investigate multiple alternatives before narrowing their choice to a particular site, but we have no confidence that the formal procedure set forth in Chapter 6 is the best means by which to accomplish that purpose, particularly in light of the fact that the environmental impact report required to be submitted under this chapter is not to be prepared until the process is already well along towards completion and attention has by that time focused primarily upon one site.

Assuming for the moment, however, that the basic structure of Chapter 6 will remain intact, we do have particular suggestions to make in respect of the current language employed therein. One problem we foresee is that the requirement of proposing three site locations is vague enough to permit a proposal in which two, or even three, locations may be very closely contiguous. Although some flexibility must be afforded to the utilities in

making applications and to the commission in evaluating them, we recommend that the words "separate and distinct" be inserted after the word "three" in line 38 on page 24. No language could be perfect in this circumstance, but the Legislature could evidence a firm resolve to require the utility to think in a broad-gauged fashion, considering alternatives in various separate locales.

25504. As if to confirm our skepticism of the three-site requirement, beginning with this section, AB 1575 fails to enunciate clearly the apparent requirement that at all times an applicant shall have three separate sites in mind. For example, at line 6 at page 25, the singular is used in speaking of "the proposed facility." We think that in order to be consistent with the three site concept, the plural "facilities" should have been used, or perhaps some variation such as "the three proposed alternative facilities." Similarly, at lines 8-9 on page 25, we think that the word "site" would be pluralized, and perhaps that the whole phrase should be rewritten to read "the sites proposed for the three alternative facilities."

AB 1575 must make its choice. If it is indeed to opt for the three site alternative method of siting, then it should do so consistently throughout this chapter.

As a separate matter, we recommend the insertion of additional material in this section requiring of a utility (a) that it inform the commission of all energy conservation measures it has adopted and intends to adopt, (b) that it report upon the effectiveness to date of the measures it has adopted, and (c) that it recommend

to the commission additional measures which are beyond the scope of its authority, but which are within the power of the commission or other agencies to effectuate. It perhaps is a general failing of AB 1575 that it places the burden of energy conservation solely upon the commission's shoulders, when at least some of the burden should be borne by private industry and the public at large. At this juncture a statement affirming the utilities' responsibility to conserve energy would, in our view, be worthwhile.

25505. Again, at least in the first sentence of this section, AB 1575 is ambiguous as to whether it is intended that the commission publish a summary of the notice in every county which may be involved in respect of any of the three alternative proposed sites. To remedy this ambiguity the same language used in the second sentence of this section could simply be placed in the first as well. We recommend inserting the words "at any of the alternative sites" after the word "thereof" in line 22 at page 25.

25506. Again in this section, it is not clear that other agencies should be commenting on all three proposed alternative sites, or whether "facility" as used in this section can be construed to mean only a single proposed site.

We also separately recommend that the words "the need for," be inserted after the word "regarding" in line 31 of page 25, so that other agencies may question altogether whether a facility is required and thus are not forced to assume that a

facility will be constructed at one of the sites proposed.

25509. Earlier provisions of AB 1575 dealing with public hearings were rather generous in stating that any person may participate in such hearings. There is absolutely no justification for restricting public participation in the power facility certification process and the potential limitation of public participation provided for in this section and later sections of this chapter should be stricken.

Second, we note that the subsections of 25509 are wholly inconsistent in referring to "site" and "facility" in subsection (a), then in referring to "facilities" and "sites" in subsection (b), in referring to "facility" and "sites" in subsection (c), and then finally in referring to "sites" in subsection (d). A common terminology should be adopted, in order that it be crystal clear what it is that AB 1575 requires first the utility, and then the commission, to do.

Finally, as was pointed out previously in respect of Chapter 4, the legislation should spell out a policy which calls upon the commission to obtain independent information in respect of the proposed alternatives and that the commission have the power, and indeed the duty, to question representatives of the utility in respect of all applications filed under this chapter.

25511. This section is poorly drafted at lines 17-18 and needs revision. We would recommend that the words "in determining a more appropriate site alternatives" [sic] be

deleted and in their stead be inserted the words:

> in reviewing the appropriateness of each of the alternative sites,

25514. This section is wholly incongruous and inappropriate. The concept of requiring the consent of an applicant for the commission to exercise its power is totally obnoxious. We recommend an alternative approach which permits an applicant to petition the commission, subject to the commission's consent, any time prior to the completion of a preliminary report, that it be allowed to amend its proposal or add thereto. We would caution, however, that if such a petitioning procedure is to be countenanced, it should not used as a method for avoiding public hearings on a newly proposed alternative. Accordingly, we recommend an addition to this section which requires that at least one public hearing be held to obtain public comments and review of a proposal amended by the utility after public hearings have been held.

25515. As was noted earlier, our accompanying separate statement argues for the preparation of an environmental impact report, under the provisions of the California Environmental Quality Act, at a much earlier stage in the process of power facility certification than is now provided. Our preference would be to require that an initial EIR be submitted along with the preliminary report required by section 25515, to be supplemented thereafter if necessary to account for changes in circumstances and the greater specificity which is possible when a detailed description of the design of a proposed facility is

available. We fear that the environmental impact report required by section 25522 will be prepared too late to have significant bearing upon the decision-making process and we further believe that the late preparation of an EIR is inconsistent with CEQA as now written and with the State Guidelines promulgated thereunder. Thus, both law and policy, in our view, dictate that the EIR requirement be moved up to a time contemporaneous with the preparation of the preliminary report.

Should our recommendation in respect of the earlier preparation of EIRs be adopted, consideration should further be given to extending somewhat the time limits set forth in sections 25517 and 25518. In some cases it may not be feasible for the commission to prepare both an environmental impact report and the preliminary report required by section 25515 within the time frame allotted in section 25517.

25516(b). This subsection is incomprehensible. If what it intended is a rating by the commission of the alternative sites proposed, it should be simple enough to require that the commission include findings and conclusions as to the relative merits of each site proposal.

25516(c). This subsection refers only to the sites designated in the notice, while section 25515 permits the commission to consider other alternatives proposed by the commission or presented at a public hearing which were not designated in

the applicant's notice. We recommend that this section therefore be brought into conformity with the language in section 25515.

25517. Our comments in respect of the public hearings mandated by section 25509 are equally applicable in respect of section 25517. We see no justification for any legislative restrictions whatsoever upon the participation of members of the public in hearings to be held by the commission.

We also note the use of the word "facility" at line 8 of page 29, when what no doubt is meant is that hearings shall be held in each county in which any of the proposed alternative sites is located.

25518(a)(2). It seems clearly preferable to us to replace the words "or law" on line 35 of page 29 with the words "and laws." Surely what is intended here is that the commission make findings in respect of all applicable laws, not just some particular law.

25519. The final sentence of this section has the potentiality of becoming an explosive issue, for which the Legislature may ultimately be severely criticized. Read strictly, what it means is that if the commission finds only one site acceptable, a utility may not seek further to develop that site until it has retraced its steps through the entire set of procedures mandated by sections 25502 et seq., a course of action which will likely take a minimum of one year and may take well

over two years. In such a circumstance, the utility and others would no doubt question the need for such a delay, in view of the finding of the commission that at least one alternative was acceptable.

To take the provision to its logical conclusion, it does not offer any hope of developing the last acceptable site. In essence, what is requires is that the last acceptable site never be developed, since in order to develop one site, there must always be at least one additional site that the commission finds acceptable.

We should make clear that a thorough analysis of alternatives by both the utility and the commission is absolutely essential before any facility is constructed. What we question is the efficacy of AB 1575's attempt to require such an analysis. As will be noted in our accompanying statement, we prefer a system in which a full analysis of proposed alternatives is set forth not only in a preliminary report but also in an environmental impact report, with the commission then being fully authorized to approve the site it considers most desirable, or to disapprove all sites, if it finds none acceptable.

This would also avoid what appears to us to be another unwarranted restriction on the commission's power in section 25520, under which the utility is given unfettered discretion to choose among acceptable alternatives in making its final application for certification to the commission.

25520. As just noted, we do not believe that a utility

should have the sole discretion to choose among acceptable sites. The final decision among potential alternatives should reside in the commission. Assuming that the utility has identified a legitimate need for a new facility in view of a properly adopted projected 10 year forecast of demand, and that some site should therefore be developed, it is incumbent upon the state, and not the utility, to make the final decision as to where the most appropriate location for that facility may be.

25522. As was noted earlier, in respect of 25501, there is no indication in the bill as drafted how the fees required in section 25501 can be used by the commission. We recommend that it be made specific that these fees, at a minimum, can be applied to the preparation of the environmental impact report required by section 25522. In situations where EIRs can reasonably be expected to be more costly than the fee paid pursuant to section 25501, the commission should have the power to assess the applicant an additional fee to cover all EIR preparation expenses.

Another serious deficiency in this section, as well as in section 25526 hereafter, is that the bill as drafted does not seem to comprehend the nature of CEQA's requirements vis-a-vis the preparation of environmental impact reports. As currently interpreted by the Resources Agency's Guidelines, all environmental impact reports must be publicly circulated in draft form for comments prior to their finalization. In addition, where

appropriate, and we would submit that in all cases involved under this statute it would be appropriate, public hearings are to be held on the draft EIRs, so that the input of other agencies and members of the public can be assured prior to final adoption of the EIR by the lead agency.

Given these requirements, we believe that the one year limitation on EIR preparation specified in this section is too short, and should be lengthened to a minimum of eighteen months.

25524. In addition to having the opportunity to comment upon the application itself, all agencies of government, as well as the public, should clearly be afforded the opportunity to comment upon a draft environmental impact report, and it should further be made clear that the final impact report must respond to comments by other agencies and the public.

25526. Since section 25522 provides that except as otherwise authorized by CEQA, an environmental impact report must be completed within one year after receipt of an application for site certification, there is no necessity for the time limit set forth in this section. Indeed, given the timing requirements built into the EIR review structure, which include time for comment upon a draft report and a hearing on the draft report, the time restraints set forth in this section are wholly unrealistic. Moreover, although we have no objection to the holding of further public hearings after a final environmental impact report

has been completed, we think it obvious that the significant public hearings are those which are held earlier on the application itself and on the draft report, when public input has some potential value.

In addition to these complaints about apparent restrictions of public input into the site certification process, we also reiterate here our concern about the potential restriction of public participation in hearings which is implicit in the language adopted by this section at lines 12-14 at page 32.

25527. As we have indicated earlier, more thought should be given to the appropriate timing and interrelationship of the environmental impact report requirement, the holding of the hearings, and the ultimate commission decision on applications for site certification. We applaud, however, so much of this section as affords the commission a considerable period of time in which finally to consider the merits of a particular application.

25527(b). We recommend the deletion of the word "or" in line 27 of page 32 and the insertion in its stead of the word "and."

25529. This section is likely the most important in the bill, and it has numerous flaws, even if one agrees with its general thrust.

First, we should say that we have grave doubts about the wisdom of a provision which permits a commission, not popularly

elected, to override provisions of state and local law, without further consultation of the Legislature. We are not sympathetic to the problems which may arise in the event of the adoption of local laws or ordinances that are unreasonably stringent. We wonder, however, why a commission should have the authority to override otherwise valid state laws that have been duly adopted by the Legislature.

Accordingly, our first recommendation with respect to this section is to expand the last sentence to read as follows:

> In no event shall the commission make any finding in conflict with applicable federal law or regulation, or state law, nor shall the commission make any finding in conflict with an applicable state regualtion or local law unless the commission determines that this division compels a finding that the Legislature has determined the applicable state regulation or local law should be overridden.

Second, we believe that that portion of the first sentence of the section which precedes the semicolon is defective in its draftsmanship. We suppose that what is meant to be said is that;

> The commission shall not certify any facility contained in the application when it has made a finding under subdivision (b) of section 25527 that the proposed facility does not conform with one or more of the standards, ordinances, or laws specified therein;

As that portion of the section currently reads, this meaning is not clear.

Third, and perhaps most importantly, we fear a possible abuse of the powers the commission is given by that portion of the first sentence which follows after the semicolon. A commission unsympathetic to environmental concerns might easily use this provision to go on a site certification binge, something we believe would not be in accordance with the general intent of AB 1575 as currently drafted. Accordingly, we recommend that as many restrictions be placed upon this grant of power as can reasonably be done. Among these we would recommend at least that the following sentence be inserted after the word "necessity" on line 7:

> Such a determination that a facility is required for public convenience and necessity and that there are not more prudent and feasible means af achieving such public convenience and necessity shall be supported by detailed written findings and shall be reviewable in the courts of this state as provided in Chapter 10 of this division.

We cannot emphasize enough our apprehensions of potential abuse of the commission's powers based on this section, and we can only suggest in addition to the above amendments that the Legislature, if it passes AB 1575 with this section substantially unchanged, should maintain a vigilant eye upon the commission's administration of this section's provisions.

25530. Lines 14-16 of this section are ambiguous in that they permit of the reading that the commission may certify a facility even if the State Coastal Zone Conservation Commission

has disapproved the facility, where a regional commission has approved that application. We recommend a redrafting of this section which would delete all words in the first sentence of this section following the word "from" on line 13, and insert in their stead the following words:

> the California Coastal Zone Conservation Commission, or, if the permit has not been appealed, the appropriate regional coastal zone conservation commission.

25538. Pending completion of the commission's initial forecast of electric power demands, it does appear appropriate that the commission should feel free to avail itself of the projections already made in this area by the Public Utilities Commission. We think it should be absolutely clear, however, that the commission should also be free to depart from the Public Utilities Commission's forecasts, wherever it deems this to be appropriate, and would thus recommend the following language be inserted after the word "Commission" on line 18 at page 35:

> but it shall also independently assess the forecasts of loads and resources prepared by the Public Utilities Commission in light of evidence and information it has obtained in the course of its own investigations pursuant to Chapter 4 of this division.

CHAPTER 7. RESEARCH AND DEVELOPMENT.

25600. We recommend the addition of the words "and conservation" after the word "resources" in line 40 of page 35, since we believe that energy conservation ought to have at least as great a priority in research as resource development is given.

25602. While we approve of the list of problems to which attention should be given in the commission's research and development program, we would add one additional problem that should be studied by the commission:

(k) Implications of government subsidies and taxation and rate setting policies.

CHAPTER 8. EMERGENCY POWERS.

As our accompanying statement emphasizes, we believe that Chapter 8 is the weakest chapter in AB 1575. If the recent protestations of the major utilities and oil and gas suppliers before the P. U. C. are accepted and a new commission is set up in 1974, it will immediately be faced with shortages that will trigger the operation of Chapter 8. Therefore, it is essential that the Legislature give to the commission adequate powers and direction in respect of the fuel shortages that are projected. Moreover, although the major utilities do not project energy shortages from insufficient generating capacity, as distinct from fuel resources, before 1975 or 1976, the planning that is required to meet projected shortages of generating capacity is nearly as important a problem as solving the immediate problems posed by the projected shortages of fuels in 1974.

We believe that there are good reasons to doubt the accuracy of the projections of the fuel suppliers, reasons which have prompted the Federal Trade Commission and various Attorneys-General and district attorneys throughout the country to challenge the practices of the oil and gas industry. Nevertheless, at this time, the agencies of state government, not to speak of the agencies of federal government, do not have either the authority, or perhaps more importantly the will, to get behind the data spoon-fed to them by industry to determine the true facts behind the alleged fuel shortages.

It is in this context that the provisions of Chapter 8 must be assessed, for the ultimate test of the worth of the new commission may in fact be measured in its first year or two of operation as it attempts to cope with these projected shortages of fuels and generating capacity. As currently written, Chapter 8 does not contain the sense of urgency which the situation warrants, and is not sufficiently explicit in setting standards for the commission to implement in the event that the emergencies projected do indeed occur.

25700. This is the key section of this chapter, yet it supplies no more guidance to the commission than simply to state the obvious: that the commission shall restrict the use and availability of energy in the event of a shortage. The only basis upon which the commission is to implement its authority is that it is directed "to protect the public health, safety, and welfare." This broad authority should be restricted by the adoption of legislative standards for the commission to meet in promulgating emergency restrictions.

Among these standards should be directions which classify the end uses of energy in terms of a hierarchy of values (for example, supplying a hospital with electricity should be rated higher than supplying recreational drivers with gasoline).

Second, standards should also be set which guarantee that such brown-outs or black-outs as may occur will be spread among the citizens of a service area or perhaps even of the state in

an equitable fashion which does not permit discrimination in favor of some areas over others.

Third, to the extent possible, the commission should be given the authority to guarantee the equitable allocation of fuels and energy, so that competition, particularly in the fuels industry, is preserved as much as possible.

Fourth, in order to add greater authority to the commission's final recommendations in respect of emergency allocations, we recommend that it be given the authority to appoint an advisory committee, consisting of persons representing a broad cross-section of the state's population, that would review and comment upon the commission's plans.

25701(a). First, it should be noted that the word "fuel" is not defined in the statute, nor are the words "fuel manufacturer."

Second, we recommend that the words "and fuel supplier" be inserted in the statute after the word "manufacturer" on line 4 of page 38, and that precise definitions be inserted in Chapter 2 explicating who is required to submit proposed emergency plans to the commission.

Third, we see no reason whatsoever to qualify the commission's authority to cope with shortages of fuels or generating capacity to include only those situations in which a " sudden" shortage has taken place. Although in many areas of our national life, contingency planning has come into disrepute, the contingency of a "sustained" and serious shortage must be planned for. We therefore recommend strongly that the word "sudden" be stricken

from line 8 of page 38.

25702. We hope that it is unintentional that this section fails to provide for the public hearings that are elsewhere mandated by AB 1575. The views of the public, and of their representatives, should be an essential part of the emergency allocation system. To rely solely on the utilities and fuel suppliers and on commission staff is to misinterpret the importance of the commission's functions in this area. Not only should the public have ample opportunity to participate in the preparation of the commission's plan, but, as we have recommended above, the commission should also call upon a blue ribbon advisory committee to assist it in performing this crucial function.

25703. Again we would recommend the deletion of the word "sudden", this time from line 29 of page 38.

We also note the absence of a mechanism by which the commission declares that a shortage has taken place. This should be included in this section.

25705. Here again, the irony of refusing to give the commission authority over rate-setting is apparent. To limit its authority to that of making recommendations is to deny it the tools to avert the shortages for which it will surely be held responsible.

Finally, in line with our earlier remarks about the

urgency that we feel is lacking from the chapter as now drafted, we believe that an additional section should be added to the chapter which makes provision for commission action in the event that shortages occur prior to the adoption of an "emergency load curtailment and energy distribution plan."

CHAPTER 9. STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT FUND.

25800. While we do not oppose the specific use of an electrical energy tax to fund the commission's activities, we do express a note of caution in respect of this practice, since it does have the effect of making the commission's budget at least partially contingent upon the amount of electricity that is consumed in the state. For a commission whose principal mandate is to conserve energy, this may eventually pose a conflict that will result in our seeking a new method for funding the commission's activities.

CHAPTER 10. ENFORCEMENT AND JUDICIAL REVIEW

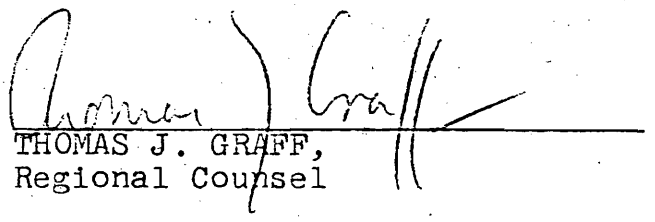
25901. As was noted earlier in our comments on Chapter 2, a definition is given therein of the words "party of interest." Nowhere in the statute are those words used again. Instead, here in this section, the words "any aggrieved person" are used. We recommend not only that the definitions chapter be made consistent with the judicial review chapter, but that it be made crystal clear that any person with a substantial interest, not just an economic interest but also an interest in health, environment, and aesthetics, may judicially challenge a determination of the commission.

Given the extensive time periods otherwise provided in AB 1575 for commission action and given also the complicated nature of many of the commission's decisions, a thirty-day statute of limitations, as provided in this section, is absurdly short. We recommend that it be extended to a minimum of ninety days.

Although we concur in the bill's determination to place initial review of commission actions in the Superior Courts, we think that the bill should specify those counties in which review may be had. Perhaps a provision allowing review in the Superior Court of the County of Sacramento, as well as the Superior Court of any county in which a facility is located, would be appropriate.

Finally, we see no justification whatever for the implied limitation in this section which permits review only of the commission determinations on applications for certification. If the commission has committed errors of law in respect of any other of its functions, those also should be reviewable in the courts, and Chapter 10 should so provide.

Respectfully submitted,



THOMAS J. GRAFF,
Regional Counsel

City Council of the City of Los Angeles

KEN SPIKER
CHIEF LEGISLATIVE ANALYST

February 8, 1974

File

Assemblyman Charles Warren
Room 2126 State Capitol
Sacramento, Ca. 95814

Dear Assemblyman Warren:

The City Council of the City of Los Angeles at its meeting of January 30, 1974 took action to support your measure AB 1575. Attached is a copy of that action.

If we may answer any questions or be of any assistance, please contact me or Jim Williams at 446-0759.

Yours very truly,

Norman D. Boyer
Legislative Representative

NDB/lv

cc: Senator Alfred Alquist, Chairman
Senate Public Utilities & Corporations Committee
All Members of the Senate Public Utilities & Corporations Committee

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MAIL ADDRESS:
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SACRAMENTO CA 95805

February 14, 1974

The Honorable Charles Warren
Member of the California Assembly
State Capitol
Sacramento, California 95814

Dear Charlie:

Last Fall we discussed the provisions of AB 1575 and at that time I expressed the Association's opposition to the measure. Our latest study of the bill reveals many of the same objections.

They are technical in nature and will be explained to you at your convenience by Robert E. Burt of our staff.

Until these objections are met we must remain opposed to AB 1575.

Sincerely,

Emmons McClung
Executive Vice President

EMC:llh

c.c. Mr. Donald Livingston
Honorable Alfred Alquist, Chairman
Senate Public Utilities and Corporations Committee

THE PLANNING AND CONSERVATION LEAGUE 1225 EIGHTH STREET, SUITE 310 SACRAMENTO, CA 95814 (916) 444-8726

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February 18, 1974

The Honorable Alfred E. Alquist
California State Senate
State Capitol
Sacramento, CA 95814

Dear Senator Alquist:

Re: Assembly Bill 1575

The Planning and Conservation League is in full support of AB 1575 (Warren), which will be before your committee on Tuesday, February 19.

This legislation provides a sound, comprehensive approach to the complex energy problem facing California and the nation. With the passage of AB 1575, long-range energy planning for California can begin.

Essential to the bill is its recognition of the need for the state to independently assess both our energy growth demands and our existing and potential energy supplies.

Also critical to this legislation is its recognition of the need to reduce our wasteful consumption of energy. The Energy Resources Conservation and Development Commission is empowered to require efficiency labeling of appliances, to encourage more efficient lighting and construction techniques, and to recommend new electricity rate structures.

With passage of AB 1575, California will finally be able to fully explore the exciting potential of geothermal, solar, and other new energy sources.

California now faces the energy problem without an energy policy and without an agency capable of

dealing with the problem. For these reasons, PCL considers enactment of AB 1575 the most important item of business before the State Legislature.

We strongly urge your support of AB 1575.

Respectfully yours,

David L. Hirsch

David L. Hirsch
President

cc: Assemblyman Charles Warren
Members, Senate Public Utilities and Corporations Committee

CITY HALL
LOS ANGELES 90012
485-3311

OFFICE OF THE MAYOR

TOM BRADLEY
MAYOR

February 18, 1974

The Hon. Charles Warren
Chairman, Subcommittee on
Energy Resources,
The Assembly of the California
State Legislature,
State Capitol,
Sacramento, Ca. 95814

Dear Mr. Warren:

I am writing to you in support of your legislation, A.B. 1575, creating the State Energy Resources Conservation and Development Act. I consider this legislation vital, as does the Los Angeles City Council, which recently endorsed its provisions in a unanimous vote.

In recent months, the citizens of Los Angeles have undergone an ordeal which may well prove to have been a harbinger of similar experiences throughout the state and the nation. Because of an unusually high dependence on imported Arabian oil, our Department of Water and Power, last November, found itself confronted with a shortfall of 48% in its anticipated supply of residual fuel oil for the coming year. Under these circumstances it was our inescapable responsibility to design and enact ordinances providing for mandatory curtailment of the use of electricity in the city. While our goal in drafting these ordinances was to minimize social and economic dislocation, the Phase II measures would unquestionably have caused such disruption. Fortunately, the extraordinary efforts of our citizens to curtail unnecessary or inessential uses of electricity, combined with purchase of a single shipment of residual oil at the exhorbitant price of approximately $25 per barrel, has delayed the necessity of invoking the harsher Phase II measures.

Had an institution such as that created by A.B.1575, with the powers and duties provided therein, been in existance in recent years, much of the difficulty and great expense that we have incurred here in Los Angeles might well have been averted.

Sincerely,

TOM BRADLEY
Mayor

TB:gos

File

February 18, 1974

The Honorable Alfred E. Alquist
California State Senate
State Capitol
Sacramento, CA 95814

Dear Senator Alquist:

Re: Assembly Bill 1575

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dealing with the problem. For these reasons, PCL considers enactment of AB 1575 the most important item of business before the State Legislature.

We strongly urge your support of AB 1575.

Respectfully yours,

David L. Hirsch
President

cc: Assemblyman Charles Warren
Members, Senate Public Utilities and Corporations Committee

Clark's COIN LAUNDRY SERVICE, INC.
1846 ROLLINS ROAD - BURLINGAME, CALIFORNIA 94010
OFFICE 697-5593 - SERVICE 697-8805

File 1575

February 22, 1974

The Honorable Alfred E. Alquist
The State Senate
State Capital, Sacramento
California 95814

Dear Senator Alquist,

Your S.B. 1479 as written has my support. Your approach to the energy situation is a reasonable and sensible method.

A. B. 1575, as amended, is far too extreme. Please maintain your position; even the amended version is the door to a new bureaucracy. We have under the law the necessary bureaus to accomplish what is needed.

Yours truly,

Harry Clark

Harry Clark, President

President; Northern California Route Operators Association
Vice-Chairman; California Route Operators Association

cc National Federation of Independent Business

CALIFORNIA MANUFACTURERS ASSOCIATION
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MAIL ADDRESS: P.O. BOX 1138 SACRAMENTO CA 95805

March 12, 1974

Al - F.Y.I Evan McCleary

File AB 1575

The Honorable Charles Warren
Member of the California Assembly
State Capitol
Sacramento, California 95814

Dear Charlie:

AB 1575 as amended Feb. 19, 1974

The CMA has supported the need for a state powerplant siting body for several years, with full support for participation by all interested and affected elements. We, therefore, agree with the basic intent of AB 1575. Our comments concentrate on those elements of the bill where we feel that undesirable distortions would be introduced in the process or where clarification would be desirable.

We still find one significant omission in the bill: "one-stop hearings" are still not especially encouraged. If this is considered too radical a step, we suggest a declaration of legislative intent encouraging local authorities to combine their hearings with those of the commission. For example, at the end of par 25003 (page 4 line 1) the following might be added: To facilitate joint consideration, the Legislature favors joint hearings by local bodies on subjects directly related to the hearings mandated herein.

MAJOR COMMENTS (in order as they appear in AB 1575)

A - Environmental Impact Report Requirement

Suggested Change: page 2, lines 14-16 - Insert period after impact and delete all remaining.
page 24, lines 23-29 - delete all.

Comment: The deleted material would require that mitigation measures discussed in Environmental Impact Reports (EIR) include measures to reduce wasteful, etc., consumption of energy. An EIR is required for most projects of any size, including a factory extension. Another massive element would be added to an EIR and, with it, further grounds for court challenge and ensuing delay. If the EIR is to serve a useful social function, it cannot be expanded indefinitely.

B - Priority of Local Rules

Suggested Change: page 12, line 10-11 - public health and safety, which may be ~~more stringent than~~ different from those adopted .....

Comment: Leaving in existing language would provide argument to the effect that the commission was required to conform, in its decisions, to all local rules and regulations. Since the intent of the bill is to avoid such hamstringing, the above is a vital clarification.

C - Efficiency Mandates

Suggested Change: page 23, lines 10-18 - delete, line 19 ~~(c)~~ (b)

Comment: The deleted material directs the commission to prescribe standards of the allowable energy per square foot of new buildings "which are technically feasible." It is technically feasible to neither heat nor air condition a building. We feel that the guidance which is directed in Subparagraph (a) is ample to ensure reasonable consideration of energy saving in new buildings.

Suggested Change: page 23, lines 19-33 - delete.

Comment: The Federal government has moved into this area with respect to air conditioners and is considering further such action. As manufacturers who market nationwide, California industry faces difficulties when each of the several states mandates different standards. This is especially true of items which are mass-produced in very large numbers for the consumer market. We therefore favor deferring to federal action in this field. The language also raises questions as to what would be covered. "Appliance" is not defined in the bill and possible interpretations could affect a wide variety of things not normally referred to as appliances. Another problem we find is in too rigorous a pursuit of energy use efficiency, that the energy used in manufacture be forgotten. For example, rigorous efficiency standards would require that motor manufacturers create a far larger number of models, thus creating great inefficiencies in the manufacturing process, including greater energy use.

Suggested Change: page 23, lines 34-40 - delete.

Comment: The suggested deletion requires the commission to prescribe standards of efficiency for the operation of a new facility. For the commission to develop reasonable expertise in this field would quickly use far more than the substantial funds made available. A major portion of the $10 billion Federal research program is directed to research on efficiency improvements. We have seen

no indications that the utilities of the state have failed to utilize improvements in the state of the art as fast as prudence would allow. Since the law allows conditions to approval of each construction permit, the commission would still have authority to curb any actual abuse in this area.

D - Delay in Unrelated Modifications

Suggested Change: page 25, line 9 - of any facility or modification of any existing facility creating substantial new capacity shall .....

Comment: As written, the bill would require the full three-year plus drill to allow modifications unrelated to new capacity, many highly desirable. Examples: modification to provide better control of oxides of nitrogen required by pollution control authorities; modification to allow crude oil as a fuel (which may be necessary because of refining capacity shortages); modifications to increase efficiency.

E - Unnecessary Funds

Suggested Change: page 46, line 19 - surcharge of ~~two-tenths~~ one-tenth of a mill (~~$0.0002~~ $0.0001) per kilowatt ...

Comment: The original bill would provide a fund in excess of $35 million per year. This is far too much for a commission staff. The First Law of the Civil Service ("Spend all allocated funds every year") would take over and the money would be dissipated. We suggest that the reduced amount would provide substantial funds, including earnest money for research while the very substantial Federal research committment is evaluated, California's impact upon it is considered and a long range program is developed. If added funds are needed at some later date, another Legislature can vote them.

MISCELLANEOUS COMMENTS

The following comments are largely items for clarification which we have noted in our reading of the bill.

Suggested Change: page 10, line 12-19 - delete.

Comment: The original provides for complete authority to allow minority action to become the routine control of commission functions. These men are full-time members and should all be expected to take part in commission decisions. We see no objection to formal authority for designation of hearing officers from among board members, to allow an officer of stature to conduct a lengthy hearing and make recommendations thereon.

Suggested Change: page 11, line 27 - ... and resources for all significant sources of ...

Comment: Since energy is very broadly defined in the bill, the original language could be a mandate to seek trivia at great expense.

Suggested Change: page 22, line 39 - shall be economically ~~feasible~~ desirable ~~in that the~~
page 22, line 40 - delete.
page 23, line 1 - delete.
page 23, line 2 - ~~amortized ever~~ considering the designed life of the building. .....

Comment: The original language does not easily allow numerous proper considerations, such as the going interest rate and the cost and feasibility of maintenance.

Suggested Change: page 26, lines 5-17 - suggest this language be rewritten by counsel to ensure that normal common law permission to substitute "or" for "and" does not create a situation dramatically altering the intent.

Suggested Change: page 32, line 31:25517 - Except as provided in paragraphs 25501 and 25501.3, after ~~After~~ the effective date .....

Comment: Without the reference added, this paragraph could be construed to cancel some of the intent of the two referenced paragraphs.

Suggested Change: page 37, line 35: (a) - Any of the following in existance on the effective date of this division and remaining in existance at the time of consideration: State, regional, ...
page 37, line 38 - delete all after "areas".

Comment: Without the suggested change, adverse interpretation could confine the "existance clause" to refer only to natural preservation areas and future action could be restricted even where the land in question had long since been diverted to other uses.

Suggested Change: page 43, line 13 - other state agencies, select some proposed structures and undertake for research purposes .....

Comment: The suggested change would prevent the creation of a monument without functional state need.

Suggested Change: We suggest the author and Legislative Counsel consider and correlate paragraphs 25531 (page 39) and 25901 (page 47). It is our understanding of existing law and practice that these paragraphs create a conflict in both allowing and not allowing judicial review in lower courts.

We feel that the concept of "wheeling" deserves serious consideration for inclusion in this bill. This concept, briefly, is that utilities be required to move electricity and natural gas developed by others (and like in nature to that being served by the utility) to customers on the utility service network. Past arguments against this concept lose their validity in the present (and at least near-term future) situation where utilities find themselves unable to serve their customers. Wheeling would allow free enterprise to seek and develop additional sources of energy. As one example of the likely effect, consider natural gas. PG&E offers 48¢ per thousand cubic feet for natural gas found in its territory. This price is less than a third of the price which one would be forced to pay in the open market for a competitive fuel. At a higher price, many prospects which do not now appear worth drilling would suddenly become so. The utility has very large quantities of natural gas under contract at lower prices ansd seeks to maintain this price structure as long as possible. This is small consolation to the large customer who is not allowed to use very much of this lower-priced gas. Similar arguments could be cited with respect to geothermal energy.

Please feel free to contact either myself or Robert E. Burt of our office for any discussion or clarification of the foregoing points.

Sincerely yours,

Emmons McClung
Executive Vice President

EMC:jcw

State of Califor
LIEUTENANT GOVERNOR'S OF
SACRAMENTO 95814

ED REINECKE
LIEUTENANT GOVERNOR

FILE
1575

April 24, 1974

The Honorable Ronald Reagan
Governor of California
State Capitol
Sacramento, California 95814

Dear Ron:

Assembly Bill 1575, Warren's Energy Resources Legislation, contains very serious and dangerous implications for the future of the State of California. My overall consideration is that the bill must be drastically changed, or, if not changed, I urge that it be vetoed.

This bill dangerously concentrates authority in a virtually independent state commission. This virtually unlimited authority gives the Commission the ability to control the entire economy of the state, region by region, through the means of turning on or off at will, the supply of energy. The bill, in effect, vests control of the state's economy in an independent commission not answerable directly to the people of California.

Once established, the Commission becomes permanent. There is no way to remove the commissioners except by majority vote of the Legislature, because they are term appointments, rather than appointments at the pleasure of the Governor. Accordingly, the Commission would not be responsible to any elected official; it would be accountable only to itself. The extent of its authority leaves substantial confusion as to what authority, if any, would remain to other agencies now in being. It would appear that the Commission would supercede all existing agencies in the fields of energy and in every other field dependent on the supply of energy. The Commission even supercedes the authority of the Governor's office in making representations to the federal government on matters under its cognizance.

The bill places undue emphasis on electrical energy without appropriate consideration of the other broad aspects of energy which are inseparably interrelated to the need for electricity.

COPY

The funding provided the Commission is excessive, even at .1 mil (about $14 million per year), and this could go to a .2 mil surcharge even before the Commission becomes fully operative. As the result of this taxing authority, the Commission becomes self-sustaining.

The bill authorizes the Commission to set building standards, and the standards set by the Commission are required to be enforced by local agencies.

The original intent of the legislation was to expedite the siting of power plants by preempting local government and other state agencies in siting matters. AB 1575 does nothing towards this original purpose; it in fact, exacerbates the problem. A review of the procedures that are provided for indicate that as much as seven years would be required for approval of a site; judicial review at two separate points could be required. A more detailed analysis by my office is attached.

Because of these deficiencies, among others, and especially in view of the fact that an independent, self-sustaining Commission is being give authority which can control the state's economy, determine land use, and, in effect, function as a total and independent state government, I strongly oppose AB 1575. I urge that you veto the bill should it come down without extensive amendment to correct the serious implications that are outlined above.

Sincerely,

ED REINECKE

ER:mj
Attachment

bcc: Mr. Edwin Meese
Mr. Donald Livingston
The Honorable Randolph Collier
Senate Finance Committee Members
The Honorable Robert H. Burke
Mr. Frank Walton

Ed Reinecke
Lt. Gov.

April 19, 1974

ANALYSIS - ASSEMBLY BILL NO. 1575

Assembly Bill 1575 was introduced by Assemblyman Warren; its co-author is Senator Alquist. The bill is an act to amend Section 21100 of and to add Division 15 to the Public Resources Code relating to energy resources. Specifically, the bill enacts the Warren-Alquist Energy Resources and Conservation and Development Act.

Overall, the bill concentrates broad, sweeping authority into a 5-man Energy Resources and Development Commission. In effect, the Commission would have the authority and power to control the growth and development of the State to include economic growth, either statewide, locally, or regionally. Furthermore, the Bill duplicates many of the functions and responsibilities of existing state organizations. Specifically, it would pyramid redundancy upon PUC, OES, Division of Oil and Gas, Food and Agriculture, Department of Transportation, General Services, OPR, and Solid Waste Management Board. Additionally, the Commission shall require a large staff - about 100 persons based upon deductive reason - to fulfill and discharge the responsibilities detailed in the Bill. Also, it is important to recognize the mere enactment of the Bill is not a panacea cure-all for the energy dilemma. Time delays are inherent. If approved, the Bill would become effective January 7, 1975. By the time the

staff is formed, terms of reference, and guidelines of operation and procedure sorted and developed, it is reasonable to assume that it will be at least 1976 before the Commission and Staff become effective. In view of the inherent duplication of effort, it will be necessary for the State to reassess its entire organization to eliminate duplicity.

Page 3, Chapter 1, Section 25001, lines 34-38: The content here, and elsewhere throughout the Bill, focuses upon the production of electrical energy. Off-shore oil drilling, deep water facilities, and so forth, all which impact directly upon energy source and production are seemingly ignored. The omission is a short sighted approach to a comprehensive, all inclusive energy bill.

Page 8, Chapter 3, Section 25204, lines 11-15: The Governor shall appoint the members of the Commission. However, the appointments can be rejected by a majority vote of either the Assembly or Senate. This is tantamount to saying the appointments require the approval of both houses. Past experience has indicated difficulty with appointments where only one house is involved. The advent of both houses for approval increases the probability of difficulty and delay.

Page 12, Chapter 3, Section 25216(b), lines 4-16; Page 12, Section 25216(c), lines 17-23; Page 13, Section 25216.5(d),

lines 23-26; Page 14, Sections 25218.5 and 25219, lines 20-30; Page 18, Section 25304, lines 4-17; Page 19, Section 25309, lines 36-40; Page 20, Section 25309(a)(b)(c)(d), lines 6-40: These are typical of the awesome proliferation of the control and authority exercised in areas such as growth, consumption, supply, production, land use, environment, public safety, conservation, and the like. Note in particular line 35 on page 19: . . . the commission shall transmit to the Governor and the Legislature . . .

Page 20, Section 25309(d), lines 37-40: The Commission predetermines plant site locations.

Pages 22 and 23, Section 25401, lines 31-40 and lines 1-9 respectively: It indicates the Commission is completely involved with electricity pricing, building design and insulation, promotional activities, appliance efficiency, etc. One questions the need for PUC, General Services, Transportation, etc. Also, lines 23-37 on page 23 duplicates functions carried out by existing state organizations.

Page 24, Section 25403, lines 36-40: The provisions listed here are somewhat contradictory since elsewhere in the Bill the Commission has responsibility for eliminating wasteful, inefficient practices. Thus, it serves no useful purpose to go through PUC with a recommendation to achieve greater economy.

Pages 25-53, Chapter 6, Power Facility and Site Certification: This chapter may be summed as aggravating existing difficulties to obtain site certification. Rather than streamline or expedite power plant siting or construction, this chapter likely shall lead to more delay. The cumulative time from the moment a notice is filed until final issuance of a certificate and court review if necessary, can vary from 3 to 5 years. The Commission has exclusive authority to certify all sites (page 25, lines 23 and 24). Although the "exclusive authority" in fact eliminates local, regional, or state agencies, provisions are made to obtain comment from those entities. There also is a dichotomy of inconsistency in this chapter. For example, it is unrealistic to believe a utility would go through the PUC for a certificate when the operating commission exercises exclusive issuance authority (page 40, Section 25518.5, lines 31-36). This chapter too highlights a preoccupation with electrical production to the detriment of addressing other energy sources, specifically oil and petroleum.

Pages 53-55, Chapter 7, Research and Development: The net effect of this chapter is to fragment R&D since it deals only with energy. The splintering and spreading R&D into various state agencies is inefficient and wasteful. It introduces unnecessary competition for critical resources, both human and material. Further, it promotes divisiveness rather than contribute to an integrated, decisive R&D effort. Experience and lessons of history point to a centralized, all-inclusive type

R&D program rather than a piece-meal, fragmented approach.

Pages 55-58, Chapter 8, Energy Shortage Contingency Planning: This eliminates OES and the PUC from its present activities relative to energy emergency contingency actions. It also thrusts the Commission into utility operations and distribution of energy power.

Page 58, Chapter 9, Section 25800, lines 7-9: Provides for a surcharge of one-tenth mill ($0.0001) per kilowatt-hour to the cost of electric power sold to the consumer. And after January 1, 1976, this may be increased to two-tenths of a mill ($0.0002) (lines 13-15). The purpose of the surcharge is to raise money for the State Energy Resources Conservation and Development and Special Account. The one-tenth mill criteria should yield about $14 million the first year. Filing notice fees varying from $1,000 to $25,000 also are to be placed in the fund. The moneys in the fund can be expended without regard to fiscal years, but requires Legislature appropriation authority for expenditure purposes (page 59, lines 13-16).

State of California

Memorandum

To Governor's Office
Legislative Section
State Capitol
Sacramento, CA 95814

Date May 20, 1974

Subject A.B. 1575 (Warren & Alquist) Energy Conservation and Development Act.

From : Public Utilities Commission—San Francisco

William R. Johnson
William R. Johnson
Secretary

ISSUE: Recommendation on disposition of A.B. 1575.

FACTS: This bill is the energy proposal developed through the hearings before the Assembly's Energy Subcommittee in February and March 1973 and then amended during 1974 in the Senate after S.B. 283 (Alquist) was vetoed. The bill amends Sec. 21100 of the Pub. Resources Code to require that EIR's contain discussion of measures proposed in any project which would reduce wasteful and unnecessary consumption of energy. It adds Div. 15 to the Resources Code, which creates the Energy Conservation and Development Commission (ECDAC) in the Resources Agency, consisting of five members. The Sec. of Resources Agency and President of PUC are ex-officio, nonvoting members whose presence is not counted for a quorum. The ECDAC is given exclusive power to approve power plant siting, to forecast and plan to some extent future energy demand, and to develop a proposed rationing and curtailment plan for shortages in energy supply. Hearings and periodic reports to the Legislature and Governor are required. It is to make recommendations to the PUC on conservation of energy, including the pricing of electricity. The new agency is to carry on R & D programs for greater energy conservation and production efficiency. Judicial review of its decisions is in the superior court, except that on siting decisions the bill attempts to place review directly in the Supreme Court similar to PUC review procedure.

The five members of ECDAC are to hold office for 5-year terms, salary is set at the level of Commissioners of the PUC. One member is to be qualified in physical science, one an attorney qualified in governmental or administrative law, one with experience in environmental protection or an ecologist experienced in ecosystems, one an economist with experience in natural resource management, and one public member. It is to adopt rules in accordance with the State Administrative Procedure Act. Headquarters is to be Sacramento and all meetings and hearings are to be open to the public. The ECDAC is authorized to appear before any federal or state agency in matters relating to any proposed facility and to hire an executive director and counsel. It is to be represented by the Attorney General's Office.

The ECDAC is to continuously assess energy consumption trends and their overall consequences; collect energy forecasts directly from all utilities, hold hearings on these reports, and specify statewide

and service area energy demands to be utilized for planning the design and siting of generating facilities; approve or disapprove applications for new power plants; prepare and update a proposed emergency plan for use during periods of shortage in energy supply; evaluate rate policies in relation to conservation and environmental protection and make recommendations to the Governor, Legislature and the PUC.

DISCUSSION: This bill will duplicate the PUC's role in energy demand and supply forecasting and in power plant siting. It will also duplicate some of the functions now carried on by the Energy Planning Counsel. (See Attachment hereto.) If interpreted liberally the legislation goes beyond mere electrical energy forecasting and power plant siting to encompass the entire energy field. In this respect this bill is premature because the Assembly's comprehensive Rand Corp. study on all energy needs for California is not due for completion until later this year. Although the bill improves the power plant siting process, judicial review of siting decisions will almost certainly rest in the superior court under a trial de novo scope of review in light of the recent California Supreme Court decision in Strumsky v. San Diego County Employees Retirement Assn., 11 C.3d 28 (1974). For direct review by the Supreme Court of a governmental agency decision, the agency must be established in the Constitution as is the case with the PUC. The establishment of an additional state agency in the broad subject area of energy, instead of a specialized agency to deal with power plant siting, is not in the public interest as the result could be the fragmentation of overall governmental responsibility and leadership.

RECOMMENDATION: The P.U.C. respectfully recommends that this bill be vetoed.

Attachment

cc: Members of the Assembly
on Commerce and Public Utilities
Senator Alfred E. Alquist
Assemblyman Charles Warren

ATTACHMENT

RESPONSIBILITIES ESTABLISHED IN A.B. 1575
WHICH COULD BE EXECUTED BY EXISTING AGENCIES.

I. Planning and Forecasting (Chap. 4).

This chapter authorizes the new commission to receive biennially from all the electric utilities their forecasts of electrical energy demand and assessment of their resources and power plant needs for future 5-, 10-, and 20-year periods. The commission, after a hearing on its preliminary report, then establishes the level of demand which is to serve as the basis for power plant certification.

This responsibility is, to a large degree, being performed at the present time by the Public Utilities Commission (P.U.C.) by means of its General Order No. 131, except that it does not now have authority to require such forecast information from the publicly-owned utilities or to set the allowable level of electrical energy demand on a statewide basis. The P.U.C. has staff personnel experienced in this subject matter, and with some augmentation would be the appropriate agency to perform this function in the manner contemplated in A.B. 1575. Although the publicly-owned utilities are voluntarily providing such forecast information to the P.U.C., amendment of the Public Utilities Code would be desirable if a new agency is not created.

This chapter also requires that a biennial report which includes an assessment of energy resources available to the state, a list of areas appropriate for additional power plants, an energy curtailment plan, and evaluation of energy conservation measures with recommendations thereon, be submitted to the Governor and Legislature. (Sec. 25309)

This report could be compiled by several existing agencies which now have some of these subject matters within their jurisdictions, including the Resources Agency, the P.U.C., and the Energy Planning Council in the Governor's Office. To a great extent much of this work is already being done by such agencies.

II. Energy Resources Conservation (Chap. 5).

This chapter requires the new agency to study many energy-related subject matters, such as electric rates, utility advertising policies and practices, building design and insulation standards, appliance efficiency standards, advances in electric power generation, etc. In particular, it is to prescribe lighting, insulation, and building design standards (Sec. 25402(a)) and minimun appliance efficiency standards (Sec. 25402(c)) by regulation.

Studies on these subjects can be conducted through contracts administered by the Resources Agency, which has already done so in the past.

Studies of electricity rate structures can be conducted by the P.U.C., and a concurrent resolution requiring such a study is pending in the Assembly (A.C.R. 192).

Revision of insulation standards and building design standards to conserve energy are, to some extent, currently underway, pursuant to Chap. 1136, Statutes 1972. The agency assigned to work in this subject area is presently the Commission of Housing and Community Development, within the Department of Housing and Community Development. Additional legislation on this subject matter is contained in Chap. 13, Statutes 1974 (S.B. 144).

Appliance efficiency standards could be established by either the Department of Consumer Affairs or the P.U.C.

III. Power Plant and Site Certification (Chap. 6).

This chapter establishes an elaborate procedure for the approval of electric power plant sites and facilities proposed for construction by privately- and publicly-owned utilities. The authority of local agencies would be preempted, but not that of the California Coastal Commission.

This activity is now under the jurisdiction of various agencies, both local and state, and in the case of nuclear plants, the federal government. The P.U.C. could carry out this task if given preemptive authority similar to that provided for A.B. 1575. This includes determination of environmental impact issues.

IV. Research and Development (Chap. 7).

The new agency is to carry out a research and development program in energy supply, consumption, conservation, and technology of siting facilities.

This program could be conducted by several agencies; the Resources Agency, the P.U.C., and the Energy Planning Council.

V. Energy Shortage Contingency Planning (Chap. 8).

The bill requires the new commission to secure from all utilities and fuel manufacturers proposed plans for curtailment of energy and fuels in periods of shortages. It must recommend a plan, after at least one public hearing, to the Governor and Legislature (Sec. 25702).

This planning activity is being conducted at the present time by the Energy Planning Council and the P.U.C.

July 31, 1974

State Board of Equalization
State of California
1020 N. Street
P. O. Box 1799
Sacramento, Ca 95808

Re: AB 1575 KWH Surcharge

Gentlemen:

The meeting on July 25 concerning the above bill was informative and I was happy to learn that as the bill is now interpreted, our Cooperative is exempt.

In the event the bill is amended to include electric distribution systems as small as ours is, I would hope that the accounting for the surcharge can be simplified.

Our coop recently purchased a Burroughs L 5000 series accounting machine. There are only so many calculations that can be made on it as the memory and printing capability is limited. There is room only to show the previous and present meter readings, the Kwhr consumption and the charge for same. The surcharge has to be programmed into the Kwhr charge and not stated separately. In addition there is no way to secure a separate total of the surcharge.

We do get a total of all Kwhr sold in a month and it would be a simple matter to subtract from the total the sales made to the U. S. Govt, determine the tax liability and pay the same.

We have no idea how we can program the machine to cover the exemptions.

As I stated at the meeting, the cost to program the accounting machine to handle the small increments of tax year by year would cost us $3,000.00 for programming each time there is a change. The bill in effect then is placing the tax directly on the cooperative and not the consumer where it is intended.

Since ours is not the only utility that would face this problem I would hope that this entire matter could be given careful consideration. As I stated, we are happy to be exempted but do want you to understand the problems involved in the event the legislation is amended.

I would be plaesed to have an opportunity to answer any specific questions that this letter brings up.

Sincerely,

PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE

A. E. Engel
Manager

AEE:bw

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Assistant General Manager
Sacramento Municipal Utility District

OFFICE OF THE ASSOCIATION — SUITE 336, 11th & L BUILDING — SACRAMENTO, CALIFORNIA 95814 — TELEPHONE 442-8981, AREA CODE 916

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August 5, 1974

FILE 1575

The Honorable Charles Warren
Assemblyman, 56th District
State Capitol Building, Room 2126
Sacramento, California 95814

Dear Mr. Warren:

On July 25, 1974, members of the California Municipal Utilities Association met prior to the Board of Equalization meeting to discuss the surcharge provisions of AB 1575. Concerns of member agencies voiced at this meeting regarding the surcharge provisions are as follows:

1. There must be some follow-up legislation to AB 1575 which more clearly sets forth the requirements and procedures associated with collection of the surcharge. Such legislation should address these points:

   a. The utilities billing cycle seriously complicates prorating accounts so as to uniformly initiate collection of the surcharge or impose increases when ordered by the Board. Utilities would prefer to delay implementation of the tax until completion of the current billing cycle. The utility will apply any increases directed by the Board uniformly across the board on the effective date of the increase in spite of the retroactive effect on some customers;

   b. The manner by which the utility itemizes the surcharge on its bill should be optional so long as the pertinent information regarding the rate is conveyed to the customer;

   c. Those exemptions covered under the Federal and State Constitutions should be listed within this Act in order that the utilities could, prior to implementation of the Act, determine from their own records many such exempt accounts.

   Beyond this, subsequent exemptions should be processed through the State Board, approved and passed on to the utility with sufficient identification, such as premises address, as well as customer, in order to identify and exempt all services supplied to such consumers.

Furthermore, it is suggested that refund of any surcharges already billed to the consumer should be refunded by the State to the consumer, unless already refunded by the utility;

d. For unmetered accounts the utility should only be obligated to provide alternative accounting and not be required to install meters;

e. Uncollectables should be deducted quarterly based on the utility's uncollectable percentage rate experience prior to forwarding surcharge to the Board;

f. Enforcement of collection procedures and nonpayment should clearly be the responsibility of the Board;

g. Acceptable accounting procedure should be defined as that which is practiced by the individual utility.

2. Electricity used by the agency for its own purposes to include street lighting, traffic signals and illumination should not be subject to the surcharge.

3. Sections 38021 and 38022 relating to proportionate application of payments between revenues and surcharges and customer service deposits should be deleted from the Board's draft bill, Exhibit B.

4. The utility should be reimbursed for costs associated with collection of the surcharge.

At its meeting, the Board of Equalization raised the issue of determination of time of sale. While the utilities appeared to be of the opinion that sale was at the time of reading the meter, the Board believed sale to occur at time of consumption.

Sincerely,

Denny Valentine
Executive Director

j

cc: Mr. William H. Dunlop
Executive Secretary
Board of Equalization

The Honorable Alfred E. Alquist
State Senator, 13th District

PCL THE PLANNING AND CONSERVATION LEAGUE

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September 8, 1973

The Honorable Charles Warren
California State Assembly
State Capitol, Room 2126
Sacramento, CA 95814

Dear Assemblyman Warren:

I have very carefully read the new provisions of SB 283 and I can't believe how good a bill it is.

My congratulations to you and your staff for your excellent work in refining AB 1575 - and my sincere thanks for reflecting most of the points we raised in our comments on your original legislation.

In its present form, I believe SB 283 is the best piece of energy legislation in the nation. It is eminently fair, both to conservationists and the energy industry. It addresses every aspect of the complex electrical energy problem.

Bill Press and I dedicate our efforts over the next few weeks toward getting this bill on Governor Reagan's desk - and convincing him to sign it.

Again, many thanks.

Sincerely yours,

David L. Hirsch

David L. Hirsch
President

V.J.

vnj

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STATE CAPITOL
SACRAMENTO CA

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RECEIVED
SEP 10 1973
CAPITOL OFFICE

IN REPLY TO YOUR LETTER OF SEPTEMBER 6 REGARDING SB 283 AS AMENDED SEPTEMBER 4, YOU CAN BE SURE THAT CAREFUL REVIEW IS BEING GIVEN TO YOUR LETTER AND ENCLOSURE. HOWEVER, OUR POSITION WITH RESPECT TO PLANT SITING AND LEGISLATION TO EXPEDITE IT HAS BEEN CLEARLY AND EXTENSIVELY SET FORTH IN OUR 200-PAGE RESPONSE TO THE DEC 20, 1972 QUESTIONNAIRE FROM THE ASSEMBLY COMMITTEE ON PLANNING AND LAND USE, IN MR SHACKELFORD'S TESTIMONY ON SEVERAL OCCASIONS BEFORE THAT COMMITTEE, AND , WITH SPECIFIC RELATION TO AB 1575, IN OUR STATEMENT FILED ON AUG 2 1973, IN LOS ANGELES. THE LATTER STATEMENT SET FORTH IN DETAIL OUR OBJECTIONS TO THE

SF-1201 (R5-69)

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MANY PROVISIONS OF AB 1575 WHICH NOW HAVE BEEN ADDED TO SB 283. SINCE THOSE WERE THE VERY PROVISIONS TO WHICH WE TOOK EXCEPTION AT THE HEARING LAST WEEK, I AM SURPRISED THAT YOU CATEGORIZE OUR OPPOSITION AS RAISING MATTERS NOT SUBJITTED TO YOU EARLIER. ALTHOUGH SOME OF THE AMENDMENTS MADE TO SENATOR ALQUIST'S BILL ON SEPT 4 ARE SALUTARY, WE BELIEVE THAT THE OTHER ADDITIONS TO THE PROPOSED LEGISLATION CONTAIN MAJOR PROVISIONS WHICH WILL DEFEAT THE OBJECTIVE OF EXPEDITIOUS ELECTRIC POWER PLANT SITING IN CALIFORNIA

JOHN F BONNER, PRESIDENT
PACIFIC GAS AND ELECTRIC CO

SF-1201 (R5-69)

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Send the following message, subject to the terms on back hereof, which are hereby agreed to

MR. STEPHEN STILL
MANAGING EDITOR
THE OAKLAND TRIBUNE
401 - 13th STREET
OAKLAND, CALIFORNIA 94604

DEAR MR. STILL:

YOUR EDITORIAL SUPPORT OF SB 283 BY ALQUIST AND WARREN IS URGENTLY REQUESTED. IT IS A MAJOR EFFORT TO DEAL WITH THE LOOMING ELECTRICAL ENERGY SHORTAGE IN CALIFORNIA. IT PROVIDES FOR THOROUGH AND LONG-RANGE FORECASTING OF DEMAND GROWTH AND MEANS OF SUPPLY, CONSERVATION BY REDUCING WASTEFUL USES, ONE-STOP SITING OF POWER PLANTS, AND EMERGENCY PLANNING.

DR. LESTER LEES OF THE CALIFORNIA INSTITUTE OF TECHNOLOGY HAS DESCRIBED THIS PROPOSAL AS "THE MOST FAR REACHING, INTEGRATED, CONCEPTUALLY SOUND AND COMPLETE POWER FACILITY SITING AND ENERGY CONSERVATION MEASURE PRODUCED BY ANY LEGISLATIVE BODY IN THIS COUNTRY."

IT IS SUPPORTED BY THE CALIFORNIA MANUFACTURERS ASSOCIATION, ALL MAJOR CONSERVATION GROUPS AND ORGANIZED LABOR.

IT WILL SOON BE ON THE SENATE FLOOR.

WE BELIEVE IT IMPERATIVE TO ALL CALIFORNIANS THIS MEASURE BE APPROVED.

YOUR SUPPORT WOULD BE MOST HELPFUL.

ASSEMBLYMAN CHARLES WARREN

SAME TELEGRAM TO:

Mr. Stephen Still, Managing Editor, The Oakland Tribune
401 - 13th Street, Oakland 94604

Mr. George Gruner, Managing Editor, The Fresno Bee
1559 Van Ness, Fresno 93786

Mr. Gene Gregston, Editor, San Diego Union
940 ~~X~~ Third Avenue, San Diego 92101

Mr. Abe Melinkoff, Editor, San Francisco Chronicle
905 Mission, San Francisco 94103

Mr. Rene Cazanave, Managing Editor, San Francisco Examiner
110 - 5th Street, San Francisco 94119

Mr. Art Nauman, City Editor, The Sacramento Bee
21st and Q, Sacramento 95813

Mr. Peter Hayes, Editor, The Sacramento Union
301 Capitol Mall, Sacramento 95814

Mr. Don Goodenow, Managing Editor, Los Angeles Herald-Examiner
1111 South Broadway, Los Angeles 90051

Mr. Bill Thomas, Editor, Los Angeles Times
Times Mirror Square, Los Angeles 90053

Also sent copies of bill 9/6/73

Comments on Specific Sections of AB 1575
By Pacific Gas and Electric Company

Chapter 1. Title and General Provisions

Section 25001. This section speaks of the need for a "reliable" supply of electric energy for public health and safety and environmental quality protection. A reliable and adequate supply at reasonable cost is necessary not only for those purposes but for sound economic development. Those concepts should be included in the legislative findings in order to give them a balanced tone. In addition, Sections 25001 through 25007 should be broadened to encompass all forms of energy, not just electricity which is the only form of energy emphasized.

Section 25006. This section would declare a state policy to consolidate within state government responsibility for "managing" the states "energy" resources, encouraging research and development into "energy" supply and demand, and regulating "electrical" generating and transmitting facilities. This underlying policy is one of the major defects of the bill.

First, the State should not "manage" the states energy resources. It should, instead, establish policies to provide guidance to those in industry who have the responsibility for actual management.

Second, at the federal level we have seen, in connection with the Atomic Energy Commission, that the combination of regulatory, promotional and research functions in one agency has led to attacks on the ground that there are certain inherent conflicts in such combination. Thus, this bill appears to be taking an approach which is falling out of favor.

Third, policy for all energy is placed in the State Energy Resources Conservation and Development Commission (Energy Commission), but the emphasis of concern is placed solely on regulating electrical generating and transmitting facilities. Further, it is not clear if the term "regulating" means just siting or something more. Siting should be viewed primarily as a land use matter and could be given a statewide land use agency. More, the authority of such a land use agency should include other necessary associated energy supply, storage and transportation facilities.

Section 25007. The Energy Commission should not concern itself only with the rate of growth of electricity. Electric growth rates cannot be considered in a vacuum separate and apart from the availability and growth rates of other forms of energy.

Also, the establishment of "statewide environmental, public safety, and land use goals" is hardly the job for an energy commission. It is for the Legislature first, and then various air, water, land use and other agencies

after receiving legislative direction. If such goals and other social policies such as those dealing with economic development and employment, for example, are established first, energy policy will in part have been determined. Social policies should not be backed into by trying to control energy use.

Chapter 2. Definitions

Section 25102. This section speaks of a request for certification of a "facility". Section 25222 speaks of "site certification" and Section 25500 speaks of both. It should be made clear whether the siting provisions apply to sites, facilities or both. (The company's recommendation in that regard will be found with subsequent comments under Power Plant Certification.)

Section 25107. The first sentence of the definition of electric transmission line should be amended to refer to a line "capable of operating at voltages in excess of 200 kilovolts which transmits electrical power from a thermal powerplant to the first point of junction with an interconnected transmission system". The use of the term "facilities" in this section does not fit with the definition of "Facility" in Section 25110.

Section 25113. This definition of "notice" seems unnecessary, and does not in fact fit with the use of that term in the second sentence of Section 25222, for example.

Section 25114. Standing as a "party of interest" should not depend upon whether the Energy Commission "acknowledges" a person as such if that person is in fact qualified in the usual legal sense.

Section 25118. There should not be the requirement of "contiguous" in the definition of "service area". A utility's service area may not necessarily be contiguous.

Section 25119. Delete "proposed" before the word "location".

Section 25120. "Thermal power plant" should exclude geothermal plants and plants of under 100 megawatts. If siting regulations are to apply to geothermal energy, they should attach at the exploration level, not to plant construction. The plant can only go where the geothermal source is discovered. Small units of any kind under 100 megawatts should not be burdened with the involved procedures which this bill would establish.

Chapter 3. State Energy Resources Conservation

Section 25200. This section speaks of "confirmation" of Energy Commission members by the Legislature. Section 25204 does not really call for "confirmation" but, rather, allows for "rejection". "Subject to the provisions of Section 25204" would be more accurate.

Section 25201. The qualifications of the Energy Commission members are much too limited for a body with the responsibility of establishing total energy policy. Certainly industry,

labor, and the engineering profession should be represented.

Section 25205. This section indicates the apparent bias against the electric industry which is found throughout the bill. The Energy Commission has authority with respect to all forms of energy but only those who within the last two years have been related to the electric industry are forbidden membership on the Energy Commission.

Section 25209. This section requires an affirmative vote of at least three of the five Energy Commission members for the transaction of any business. Section 25211 provides for the appointment of committees of not less than three Energy Commission members to carry on investigations or hearings. This latter section further provides that every order made by a committee must be approved or confirmed by the Energy Commission as a whole. Given the number of hearings required elsewhere in the bill (at least two on each biennial utility forecast, one in connection with energy conservation regulation, and three on each electric facility certification), these provisions appear unworkable.

Sections 25216, 25216.3, and 25216.5. The Energy Commission's duties specified in these sections are much too broad and varied and, in some cases, duplicative of functions provided by existing agencies. The Energy Commission

should, at least initially and in consultation with other state agencies, study and determine what the state total energy policy should be. That would coincide with some of the duties specified in Section 25216.

Before such a total energy policy has been thought out and approved by the Legislature it is premature to, for example, "formally specify statewide and service area energy demands to be utilized as a basis for planning", particularly when only electric facilities are referred to.

It is unclear why -- and it is certainly undesirable that -- design criteria for facilities adopted by the Energy Commission must be "more stringent" than those adopted by any other agency as required by Section 25216.3. It is undesirable, in any event, that this energy policy body involve itself in design activities. The qualifications of the Energy Commission members are totally inadequate to enable them to pass on what are basically engineering and architectural matters. The Division of Industrial Safety and the Atomic Energy Commission, for two, are involved in this area already.

With respect to other specified duties assigned to the Energy Commission, the Public Utilities Commission (PUC) already has authority and expertise in the fields of emergency allocations of gas and electricity and rates.

The Office of Planning and Research could supervise efforts in the area of research and development.

Sections 25219 and 25220. To a great extent the power to intervene in Federal proceedings given to the Energy Commission in these sections overlaps authority of the PUC with respect to proceedings before the Federal Power Commission and the Atomic Energy Commission. Authority of the PUC should be left as it is and not be subject to possibly conflicting activity by the new and inexperienced Energy Commission.

Chapter 4. Planning and Forecasting

Section 25300 et seq. These sections create a cumbersome and confusing procedure. The Energy Commission is a total energy commission and, for example, under Section 25309(g) must assess the state's "energy resources". However, the only reporting and hearing requirements are based on reports from electric utilities.

Electric demand and resource projections are already provided to the PUC. Those same projections can be provided to the Energy Commission, but it should obtain similar reports from other energy suppliers if it is to evaluate energy supply.

Much of the information with respect to fuels, costs and sites 20 years out would be difficult if not impossible to provide.

There is no justification for the establishment of a "common methodology" for estimating loads and resources (Section 25301). There is no quarrel with the present estimates of future demands by electric utilities. The quarrel, if any, is with respect to how and to what extent loads should and can be reduced in the future.

The procedure outlined gets into siting (Sections 25304(a), 25305(a), 25308(c)(d), 25309(c)) in an apparently detailed way, although no siting proceedings may have yet been conducted. Again, only electric facilities and sites seem to be involved.

In short, the Energy Commission is required to do too much from too little information and in a very disorganized way. Three concepts should be separated. One is the concept of establishing a statewide energy policy which includes the creation of a committee or commission to study the total energy demands and resources of the state. In performing that function, the agency should get information from all sources, including that already available from the PUC and the utilities.

The second concept is the siting of energy facilities -- zoning, if you will -- which is a land use function and might well -- in fact perhaps should -- include essential associated transportation and storage facilities as well.

This could be the function of a land use agency which would fit into any statewide land use planning agency which might later be created either to fit with Federal legislation or independently. It would be the job of that agency to assure the availability of sufficient sites to take care of state and regional needs.

The third concept, the certification of need for construction purposes, should be left with the PUC for investor-owned facilities, and could be performed by the Energy Commission, if necessary, for public agencies.

The procedure outlined in this bill intermixes the three concepts and leads to the confused and unnecessarily lengthy procedures involved. As an example of the latter, the forecasting procedure called for would take approximately 15 months and the data being considered could well be outdated by the time the proceedings were concluded. The next two year study would already be under preparation before or at least soon after the conclusion of hearings on the first. In any event, forecasting as such is a largely statistical and interpretive process which does not require the extent of public involvement envisioned by this procedure.

Another difficulty with this Chapter is its apparent bias toward reduction of electric demand (Section 25305(e), 25308(b)(1), 25309(h)). To the extent that the avoidance of waste is intended, it is all right, but to indicate a policy of actively reducing electric demand before the

facts are in is certainly premature. For example, a review of the total energy supply picture may indicate that a more rapid increase in electrical energy in proportion to total energy demands is desirable.

Section 25308(a) presents another problem. The wording indicates that the Energy Commission will decide what a desirable electrical energy demand should be and base its planning and certification on that demand. No state agency should have that authority. It is for the Legislature to determine if it wishes to establish a ceiling on demand at other than what normally forecast load projections would indicate. Once more, why just electric energy?

Section 25309(a) involves the Energy Commission again in areas beyond its expertise and requires it to make judgments with respects to land use that should be the function of agencies already in the field of land use planning or a new agency created for that purpose.

Chapter 5. Energy Resources Conservation

Sections 25400 et seq. This chapter starts out indicating a broad, total energy concern. It then slips back into the preoccupation with electric energy and the bias toward electric demand and pricing (Section 25401) previously noted.

This chapter also requires too much of the Energy

Commission too soon. Within one year it must prescribe minimum standards for lighting, insulation, climate control systems and "other" building design (Section 25402(a)). It will take a year to assemble the staff and hold preliminary hearings on all of these subjects, let alone do a sufficient job to allow establishment of standards. In any event, other agencies already have experts who could expand their activities in these fields and do the job. This Legislature, for example, just last year directed the Energy Commission of Housing and Community Development to establish insulation standards by January 1, 1974.

Under Section 25402(b) the Energy Commission must prescribe energy allotments based on a square footage basis to reduce growth of "electrical energy consumption". The allotments must be "technically feasible". What does that mean? Why just electricity? And what expertise has the Energy Commission to decide the important issue of social policy of how much energy a person may use in his home, particularly when none of the studies on the <u>total</u> energy problem would have been completed?

Under Section 25402(c) the Energy Commission becomes the arbiter of appliance standards. With what expertise? Why waste the expertise and efforts in this regard of the Department of Consumer Affairs? After six months, "no appliance" could be sold in California unless certified to comply with the minimum standards. This would wipe

out the whole used appliance business.

Under Section 25402(d) the Energy Commission becomes the arbiter of construction and operation of electric transmission and generating facilities. There is no expertise on the Energy Commission to enable it to involve itself in this undertaking. It suggests authority in the field of nuclear plants which has been preempted by the Federal government. The Energy Commission could not possibly do the job, in any event, within the time allowed.

The requirements of Section 25402 are, in short, wasteful and duplicative of the efforts of other agencies. The Energy Commission has no expertise with respect to any of them and could not assemble an adequate staff to do them all within the time allowed.

Section 25403 establishes the Energy Commission as utility rate experts. That job is now being done adequately by the PUC. The section requires the establishment, without hearing, of fundamental utility practices and policies which should only be carefully considered by this Legislature in the context of total social policy or be left to the PUC which is the agency created by the Constitution to do the job.

This chapter should be deleted.

Chapter 6. Power Facility Certification

Sections 25500 et seq. This chapter creates a siting procedure which is far too complex and time consuming. The company's general position on that subject was stated at pages 8 and 9 under Planning and Forecasting. The following section by section comments and observations are not meant to indicate a departure from that previously stated position.

Section 25500 speaks of certifying sites and also certifying facilities. This was noted before, and should be resolved. Also, the grandfather provision is much too limited. Any major generation or transmission facility for which substantial planning has been done and which should be under construction within three years after the effective date of the act should be exempted.

In Section 25503 the language with respect to three alternatives, one not in the coastal zone, does not fit transmission lines. It should not be required for generation facilities either. Some utilities have testified they could not offer three viable sites -- for example, the Los Angeles Department of Water and Power. It should be sufficient if a utility can defend the site it proposes. Part of that defense will undoubtedly be, as it has been in past proceedings before the PUC, a showing of various alternatives considered.

The requirement for putting forth specific, alternatives should be placed on those who oppose the site suggested by the utility.

In Section 25510, no time limit seems to be put on the Energy Commission to make a determination.

Section 25511 requires the Energy Commission to consider a number of matters totally outside the fields of expertise of its members and which, with respect to nuclear plants, has been preempted by the Federal government in any event.

It is impossible to determine what the time constraint of Section 25515, taken in connection with Section 25517, may be. Section 25509 has no limit on the extent of the hearings provided for. The already indefinite period of nine to twenty months of Section 25517 does not start until the 25509 hearings are concluded. Section 25515 is therefore meaningless as a time determinant.

Section 25519 which prohibits the Energy Commission from approving a site unless it finds two sites acceptable is unrealistic and unworkable. Which of the two sites should a utility then build on? Why prohibit building on an acceptable site merely because there is not another equally acceptable? If two sites are found to be acceptable,

why require hearings if subsequently a utility wishes to build on the alternate site? Suppose a utility can only find one acceptable site? The requirement that if only one site is approved a utility must bring in other alternatives and start the whole time consuming process over again would, of course, create intolerable delays.

Sections 25520 and 25521, when compared with Sections 25503 and 25504, show the repetitive and duplicative nature of the two procedures covering notice and certification. A utility wishing to expedite construction would, as soon as it had finished the notice procedure which could run several years, file an application for certification setting forth much of the same material which the Energy Commission had just considered. On the other hand, a utility should not be required to go through the whole notice process again just because it does not seem desirable to file an application within precisely three years.

Section 25527 requires a decision "within three months, but not later than nine months after completion of the hearing or hearings". Perhaps "completion" should read "commencement."

Section 25530 should be deleted. It inhibits the processing of parallel applications, thus leading to delay. The Coastal Zone Conservation Act provides adequate safeguards.

Section 25533 is another section which substantially removes any value that the proposed plant siting procedure would have. Not only must three alternative sites be proposed (Section 25903) and two alternative approved (Section 25519) but under this section a certificate could not be obtained until a utility had obtained "development rights of lands in the area of the proposed facility which, as the Energy Commission determines, are necessary to control future population growth and land use in the interests of public safety". Thus, some four years, possibly, after the first notice is filed, the applicant finds out what extra land it might have to acquire and with respect to what site. How would the utility acquire these rights? By condemnation after a few more years in court? This procedure would be another obstacle to the timely construction of facilities.

The same could be said of Section 25534. Under that section, the party wishing to construct a needed and useful facility is required to establish public use areas. There should be a binding determination at the notice stage, as there should be for the land referred to in Section 25573, as to what the requirements will be so that the proposed site can be removed from consideration if the requirements are too onerous. It

should not be necessary to wait until the certification stage to find out that additional land must be obtained which cannot be acquired without lengthy eminent domain proceedings.

Section 25537 requires the Energy Commission to monitor compliance with air, water and other regulations. This is an unnecessary duplication of activities carried on by qualified agencies with jurisdiction in those areas.

The prohibition in Section 25538 against any certification until the Energy Commission has independently prepared and adopted forecasts and assessments of demand and reviewed proposed facilities as specified in Section 25527 would mean no certifications until at least April of 1977 and could grind power facility construction to a halt. Section 25527 requires a facility to conform to the ten year plan developed under Section 25300 et seq. That forecast won't be through the procedure envisioned by those sections until at least April of 1977. This emphasizes the need for a broader grandfather clause.

Chapter 7. Research and Development

Section 25600. This section suggests a program of research and development be conducted by the Energy Commission which will have "unique benefits to the state". Almost any research and development in the energy field will have benefits in all states. The state should not shoulder this cost. Research and development should more properly

be conducted at the Federal level in those areas where utilities and manufacturers are unable to do the job adequately with, perhaps, some cooperation by the various states. In any event, this function could well be performed by the Office of Planning and Research which is already established.

Chapter 8. Emergency Powers

Section 25700. This section would require the Energy Commission, apparently without any hearings, to restrict the use of electrical energy or other forms of energy. The PUC already has this authority with respect to natural gas and electricity and can and has in the past exercised it. There is no need to duplicate this function.

Section 25705 would have the Energy Commission make rate recommendations to the PUC in times of "probable" shortages. The Energy Commission has no expertise in this field and is apparently not required to even hold hearings to find out what the possible effects of such important social decisions might be. Must the PUC follow the recommendations? If not, what is the purpose? It has not been established that there is such elasticity of demand with respect to given fuels that price changes will materially affect demand, particularly in short run emergency situations. For example, if a person has an

electric stove he will have to cook on it no matter what the price.

Under Section 25705(b) the Energy Commission, without any hearings, may require that electric utilities restrict new service connections. Regulating service connections is properly the province of the PUC. And why, again, only electric connections?

The whole of Chapter 8 should be stricken.

Chapter 9. State Energy Resource Conservation and Development Fund

Section 25800. This section provides for a surcharge on electric customers which would, initially, provide about 32 million dollars to support the activities of the Energy Commission. This is a total energy Commission with powers of control and required activities with respect to all energy plus appliances and building standards. The State General Fund or all forms of energy should support the Energy Commission. If other suggestions for limiting the Energy Commissions duties are adopted, the Energy Commission would not need anywhere near the amount of money that would be raised by this tax.

Chapter 10. Enforcement and Judicial Review

The major objection to this chapter is that the judicial review of certification proceedings provided for starts in the Superior Court and could take several years to complete. This could be disasterous. Judicial review

of siting proceedings should be directly to the Supreme Court by Writ of Review.

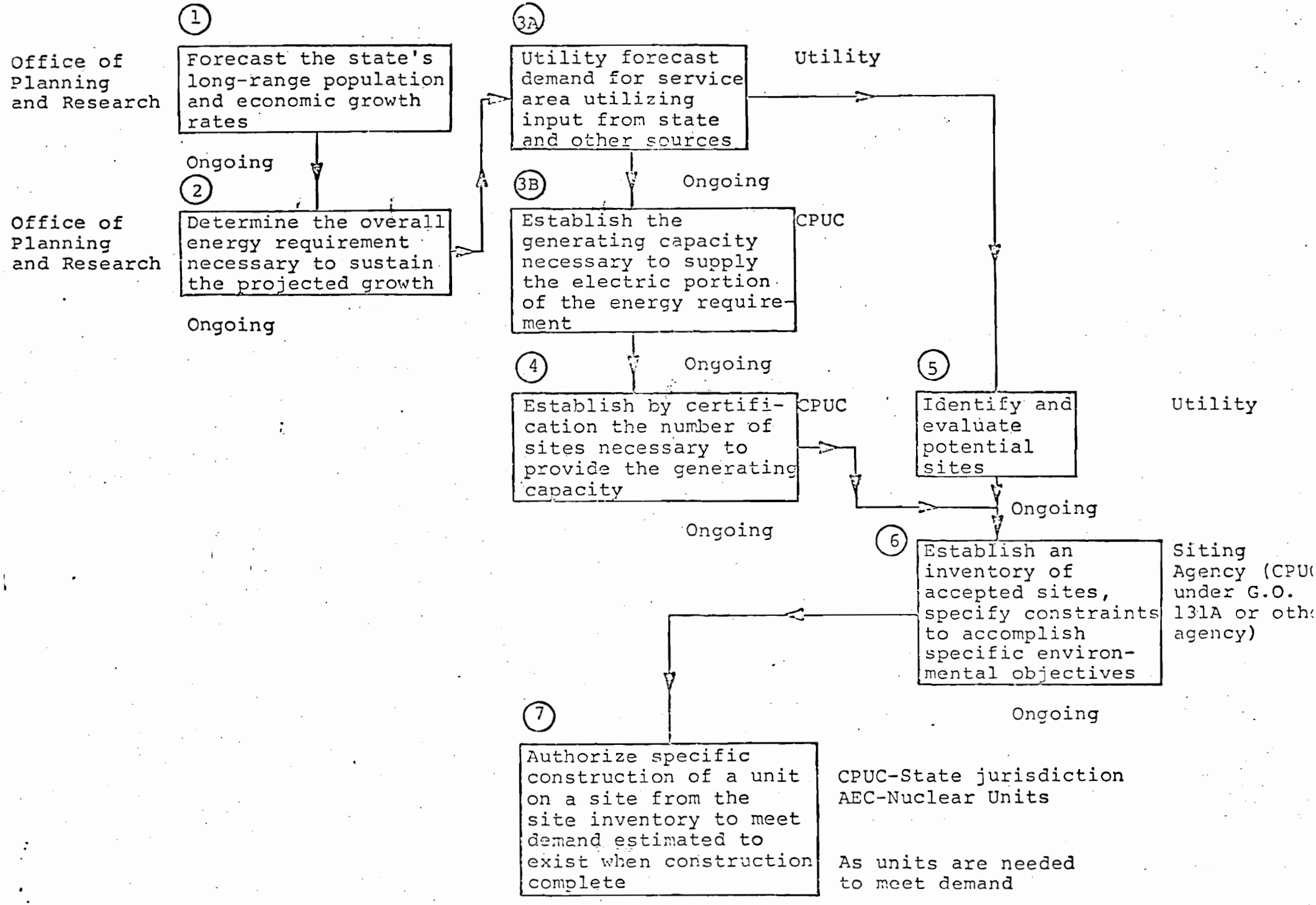
Finally, Section 25901 provides only for judicial review of certification proceedings. It should be broadened to cover all of the myriad decisions which the Energy Commission is authorized to make, most of which could have a substantial impact on those affected.

The general views of Pacific Gas and Electric Company with respect to state energy policy and power plant siting have already been made known to this committee in great detail in the company's 238 page response in December of 1972 to the committee's questions based on the Rand report and in the several presentations by Mr. Shackelford, the company's Vice President - Planning and Research, at hearings in February and March of this year. We cannot add materially to those statements, and will not burden the committee's record by repeating them. However, in his March 8 statement to this committee, Mr. Shackelford suggested an allocation of specific areas of responsibility among state agencies in connection with power plant siting. A flow chart was attached to his written statement which pictured the various jurisdictions and responsibilities. That chart is attached to this statement as well for your convenience and as a partial response to the request for specific recommendations for alternative approaches to AB 1575 contained in the July 6, 1973, invitation to appear at these hearings.

At the June hearing before the Planning and Land Use Committee to consider the specific provisions of AB 1575, the company expressed concern with certain aspects of the bill but, because of its length and complexity, had not had an opportunity to make the section by section analysis which was necessary. As promised at that time we have now made that analysis and, in response to the request for specific suggestions contained in the July 6 invitation to appear, it is attached for your study and consideration and as part of the record of these proceedings.

A section by section analysis of this sort does not lend itself readily to a concise presentation for a hearing but is better suited for discussion. Because of that, and because this committee has not had an opportunity to review our suggestions, we will limit ourselves to presenting the written documents at this time, answer any questions you may have, and hold ourselves available for further discussion at any time.

We wish to complement both this Committee for its continuing efforts to solve the critical problem of establishing energy policy and the authors of AB 1575 for attempting to come to grips with that problem.



STATE SITING PROCEDURES AND RESPONSIBILITIES