



REGULATORY AGENCY ACTION

AB 4387 (Bronzan) would have increased the fine to not less than \$200 nor more than \$1,200 for any physician, podiatrist, dentist, surgeon, chiropractor, or optometrist who engages in excessive prescribing or administering of drugs or treatment. This bill failed passage in the Assembly Health Committee.

SB 2565 (Keene) would have clarified existing law regarding immunity of hospitals, persons, or organizations for peer review actions which are required to be reported to various state agencies. This bill was vetoed by the Governor on September 30.

SB 2751 (Rosenthal) increases the amount of fines and authorizes tougher jail sentences for violations of the Chiropractic Act by chiropractors. This bill was signed by the Governor on September 20 (Chapter 1094, Statutes of 1988), and will become effective upon the approval of the electorate.

AB 4682 (Isenberg) would have provided that holders of DC degrees shall be accorded the professional status of health practitioners. *AB 4682* failed passage in the Assembly Health Committee on June 21.

LITIGATION:

Discovery is ongoing in *California Chapter of the American Physical Therapy Ass'n, et al. v. California State Board of Chiropractic Examiners* (consolidated case Nos. 35-44-85 and 35-24-14). Plaintiffs challenge the Board's adoption of regulatory section 302, which defines the scope of chiropractic practice to include colonic irrigations. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 119 and Vol. 8, No. 2 (Spring 1988) p. 30 for background information.)

RECENT MEETINGS:

At its September 15 meeting in Long Beach, the Board discussed the possibility of charging a fee for examination appeals. The Board decided to postpone the discussion until it receives a financial report from the Executive Director's office detailing the actual cost of the appeal process.

FUTURE MEETINGS:

January 5 in Sacramento.
February 16 in southern California.
March 30 in northern California.

CALIFORNIA ENERGY COMMISSION

Executive Director: Stephen Rhoads
Chairperson: Charles R. Imbrecht
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In 1974, the legislature created the State Energy Resources Conservation and Development Commission, better known as the California Energy Commission (CEC). The Commission's major regulatory function is the siting of power plants. It is also generally charged with assessing trends in energy consumption and energy resources available to the state; reducing wasteful, unnecessary uses of energy; conducting research and development of alternative energy sources; and developing contingency plans to deal with possible fuel or electrical energy shortages.

The Governor appoints the five members of the Commission to five-year terms, and every two years selects a chairperson from among the members. Commissioners represent the fields of engineering or physical science, administrative law, environmental protection, economics, and the public at large. The Governor also appoints a Public Adviser, whose job is to ensure that the general public and other interested groups are adequately represented at all Commission proceedings.

The five divisions within the Energy Commission are: (1) Conservation; (2) Development, which studies alternative energy sources including geothermal, wind and solar energy; (3) Assessment, responsible for forecasting the state's energy needs; (4) Siting and Environmental, which does evaluative work in connection with the siting of power plants; and (5) Administrative Services.

The CEC publishes *Energy Watch*, a summary of energy production and use trends in California. The publication provides the latest available information about the state's energy picture. *Energy Watch*, published every two months, is available from the CEC, MS-22, 1516 Ninth Street, Sacramento, CA 95814.

MAJOR PROJECTS:

Revision of Regulations on Plant Siting Jurisdiction. In July, the CEC published proposed amendments to its powerplant site certification regulations and to its Rules of Practice and Procedure (California Code of Regulations, Title 20, Chapter 2, Subchapters 5 and 2, respectively).

The proposed amendments would specifically interpret the terms "thermal powerplant", "generating capacity", and related terms; modify the existing Rules of Practice and Procedure to clarify that CEC's complaint and investigation procedure may also be used for obtaining Commission determinations of powerplant siting jurisdiction; and establish

a new clearance process for project developers to obtain expedited determinations of CEC siting jurisdiction.

The Warren-Alquist Act of 1974, section 25500 of the Public Resources Code, grants the CEC "the exclusive power to certify all sites and related facilities" in California. The Commission's site certification jurisdiction extends over all thermal powerplants with a generating capacity of 50 megawatts (MW) or more. The Act also grants the Commission discretion to exempt projects with a generating capacity of 50 MW but less than 100 MW from the Commission's siting requirements. These small powerplant exemptions (SPPE) are granted only if the Commission finds that there will be no significant adverse environmental impact and that there is no state interest affected by the proposed project.

According to the Commission's 44-page Initial Statement of Reasons for the proposed regulation changes, the grant of exclusive siting power to the CEC was a response to the "energy crisis" of the early 1970s. Before the CEC was created, the siting process required developers to obtain a series of permits from a variety of single-purpose federal, state, and local agencies. Occasionally, over twenty agencies performed independent reviews of a single project. The energy crisis revealed California's need for independent energy planning and energy demand forecasting. The Commission was created to meet these needs, but also to meet the need for a consistent, efficient, and consolidated powerplant siting process. The legislature designed the CEC's siting process to provide certainty for applicants, open proceedings for the public, and full consideration of the efficiency, reliability, public health and safety impacts, and environmental impacts of proposed projects.

Questions concerning the CEC's siting jurisdiction did not arise during the Commission's first four years of existence. Of the first ten powerplant applications reviewed by the Commission through 1978, all were submitted by utilities, and the proposed projects averaged 977 MW of capacity. Since that time, three significant events have occurred. First, the demand for power has risen much more slowly, because of conservation efforts. Second, the utilities have added to their resource energy mix with nuclear, geyser, and imported hydroelectric energy. Finally, the Public Utilities Commission (PUC) has implemented a rule requiring the three largest



investor-owned utilities to offer standard contracts for the purchase of power to independent power producers.

These events have changed the nature of energy project proposals in California. Most projects now reviewed by the CEC are proposed by independent developers (third parties), and not utilities. Many of these proposals are filed as under the 50 MW jurisdiction of the Commission. Also, many proposals divide the project into several units which separately are under the 50 MW level, but which (when combined) are near or over the 50 MW or 100 MW level. Over the last several years, the Commission has investigated over 100 such projects. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 102 for an example of this type of project.)

There are several ways to determine the generating capacity of a powerplant. Unfortunately, the governing statutory and regulatory definitions of the terms "thermal powerplant" and "generating capacity" do not establish exactly how the CEC should measure the 50 MW jurisdictional threshold or the 100 MW SPPE threshold. To date, the CEC has decided jurisdiction cases on a case-by-case basis. This approach has created great uncertainty in jurisdiction matters and has resulted in time and litigation costs for CEC and developers. Similarly, the CEC has decided "thermal powerplant" aggregation issues on a case-by-case basis. This approach enables CEC to monitor for close compliance with the intent of the Warren-Alquist Act, but does so at the expense of time, money, and certainty.

Many developers seek to avoid the Commission's siting process because of its rigorous environmental and need reviews. Under a strict reading of present statutes and regulations, a developer might avoid the Commission's jurisdiction by dividing a large project into several smaller units if each generates less than 50 MW. Present law does not specify the criteria the Commission should use to aggregate (consider as a single thermal powerplant) these units. To avoid large-scale circumvention of the CEC's jurisdiction, and to protect the review process intended by the Warren-Alquist Act, the Commission has proposed three alternative rules on the question of unit aggregation, and two alternative rules on the question of generating capacity.

Of the aggregation rules, Alternative A—the "same site" rule—would focus on common ownership or control of the units and would not allow CEC aggrega-

tion if units are more than two miles apart. Alternative B—the "functional integration" rule—focuses on shared facilities and common energy fuel sources, and would not allow aggregation absent common ownership or control, or if the units are more than one mile apart. Alternative C—the "Kern Island" rule—is similar to the present case-by-case approach, but requires the Commission to consider factors such as similar unit design, common ownership, physical proximity, and sharing of common facilities or equipment.

Of the generating capacity rules, the "maximum net" alternative differs from the "maximum gross" alternative in that it subtracts the auxiliary load (the power consumed by the powerplant itself for its own operation) from the gross capacity.

The proposals to amend CEC's Rules of Practice and Procedure are designed to reaffirm that the Commission's complaint and investigatory procedures may be used to obtain expedited determinations of Commission jurisdiction under the new siting rules and definitions.

After an August 25 discussion of the proposed rule changes by the CEC's Siting and Regulatory Committee, all of the alternatives were presented to the full Commission at its October 5 meeting. At the October meeting, the Commission heard brief comments from representatives of the California Municipal Utilities Association (CMUA), GWF Power Systems, and California Edison. In response to a CMUA inquiry, Commissioner Noteware cited the Cottonwood Plant as illustrative of the serious need for the proposed regulatory amendments. Commissioner Mussetter noted that the Commission is approaching a consensus on the language and form of the proposals, and announced that his Siting and Regulatory Committee would hold an additional meeting to prepare a detailed final proposal for the full Commission's consideration. According to Steven Cohn, CEC's Deputy General Counsel, the consensus proposal will most closely resemble the "functional integration" alternative. Commissioner Mussetter indicated he may introduce a variation on the generating capacity proposal which would minimize the final rule's discrimination in favor of some sources of energy.

Siting Process Report. As required by the legislature in the 1987 budget bill, the Commission conducted a review of its powerplant siting responsibilities to evaluate, among other things, whether any of those responsibilities should be

transferred to local agencies. In a 72-page report issued in May, the Commission details the history of the California siting process, explains the present siting procedures, and forecasts the future siting situation.

In performing its analysis, the Commission mailed a questionnaire to 58 county and 40 city governments. The Commission received responses from 37 counties and 22 cities which reported their perspectives of the current process and their opinions on having CEC siting responsibility shifted to them. Twenty-five percent favored such a move; 66% favored maintaining the current system; and 9% favored shifting siting responsibilities from localities to the CEC.

In the report, the Commission acknowledged the trend toward smaller projects and the subsequent decline in importance of energy needs reviews, but also noted the lack of funds and expertise for local governments to conduct proper environmental impact reports. In conclusion, the Commission recommended retaining the current siting process for the near term, and committed itself to reevaluate the process if and when any change in state policy or the siting situation occurs.

LEGISLATION:

The following is a status update on bills discussed in detail in CRLR Vol. 8, No. 3 (Summer 1988) at pages 120-21:

SB 2297 (Rosenthal) requires the South Coast Air Quality Management District (SCAQMD) to adopt a program to promote the use of clean-burning fuels. Funding of the program would come from increased fees for SCAQMD permits. The bill also requires the CEC to make an assessment of the prices and availability of clean-burning fuels. This bill was signed on September 29 (Chapter 1546, Statutes of 1988).

AB 3202 (Tanner), as amended, requires the CEC, before certifying applications to site or construct a powerplant, to ensure that information regarding air quality standards has been obtained by the applicant. This bill was signed on August 26 (Chapter 617, Statutes of 1988).

AB 3344 (Tanner), as amended, imposes a state-mandated local program by requiring the responsible local enforcement agency, prior to issuing a permit for a solid waste-to-energy conservation project, to report such projects to the CEC for a jurisdiction determination. This bill was signed on September 28 (Chapter 1446, Statutes of 1988).

AB 4420 (Sher), as amended, re-



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quires the CEC, in consultation with the University of California, the Department of Food and Agriculture, and other state bodies, to coordinate a study on how global warming trends may affect California's energy supply and demand, economy, environment, agriculture, and water supplies. This bill was signed on September 28 (Chapter 1506, Statutes of 1988).

AB 4655 (Tanner), as amended, requires the CEC to consider the impact that new building standards relating to energy conservation have on indoor air pollution. This bill was signed on September 26 (Chapter 1286, Statutes of 1988).

SB 1821 (Rosenthal) directs the Commission to prepare and submit a report to the legislature containing a summary of CEC loans and grants exceeding \$10,000 made during the previous fiscal year. This bill was signed on August 25 (Chapter 585, Statutes of 1988).

SB 2431 (Garamendi) requires the CEC, in consultation with the PUC, to prepare a report on the projected need for additional electrical transmission rights-of-way during the next five, twelve, and twenty years. This bill was signed on September 27 (Chapter 1457, Statutes of 1988).

AB 4216 (Bronzan), as amended, would have required the CEC to expend \$100,000 for a program to educate small farmers on options available to conserve energy or shift energy use to off-peak times. The bill also would have required \$900,000 to be spent for an additional revolving loan fund program for loans to small farmers to purchase equipment necessary to mitigate increased electrical energy costs. The bill passed the Assembly on June 9 but died in the Senate Committee on Energy and Public Utilities.

RECENT MEETINGS:

The CEC held hearings on May 5 and June 8 regarding proposed amendments to its Appliance Efficiency Regulations, California Code of Regulations, Title 20, sections 1601-1608. The pertinent regulations specify energy efficiency requirements and test methods for major appliances. This annual review of these regulations led the Commission to propose amendments to delete obsolete material, update references to test methods and other procedures, clarify existing regulations, require approval of laboratories which test commercial water heaters, and update the method of compliance testing. There was no public comment at either of the hearings, and

the proposed amendments were approval in full by the Commission. They are currently awaiting approval by the Office of Administrative Law.

On July 27, the Commission considered the possible adoption of an order to San Diego Gas & Electric Company (SDG&E) regarding the Residential Peak-shift Program. This program reduces energy consumption during peak air conditioner use hours. SDG&E has resisted the implementation of this program in the past due to skepticism of its productivity. However, the Commission agreed to require SDG&E to test the program and report back in the next year as to its cost-effectiveness. If it is determined that the Peakshift Program is not cost-effective, SDG&E must offer an alternative plan which will achieve an equal reduction in electricity use.

FUTURE MEETINGS:

General CEC meetings are held every other Wednesday in Sacramento.

HORSE RACING BOARD

Secretary: Leonard Foote
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The California Horse Racing Board (CHRB) is an independent regulatory board consisting of seven members. Each member serves a four-year term and receives no compensation other than expenses incurred for Board activities.

The purpose of the Board is to allow parimutuel wagering on horse races while assuring protection of the public, encouraging agriculture and the breeding of horses in this state, generating public revenue, providing for maximum expansion of horse racing opportunities in the public interest, and providing for uniformity of regulation for each type of horse racing.

The Board has jurisdiction and power to supervise all things and people having to do with horse racing upon which wagering takes place. If an individual, his/her spouse, or dependent holds a financial interest or management position in a horse racing track, he/she cannot qualify for Board membership. An individual is also excluded if he/she has an interest in a business which conducts parimutuel horse racing or a management or concession contract with any business entity which conducts parimutuel horse racing. (In parimutuel betting, all the bets for a race are pooled and paid out on that race based on the horses' finishing positions, absent the

state's percentage and the track's percentage.) Horse owners and breeders are not barred from Board membership. In fact, the legislature has declared that Board representation by these groups is in the public interest.

The Board licenses horse racing tracks and allocates racing dates. It also has regulatory power over wagering and horse care.

MAJOR PROJECTS:

"Select Four" Regulation Approved.
At its July 29 meeting, the CHRB adopted the proposal to add section 1978, Article 18, Title 4 of the California Code of Regulations (CCR). (See CRLR Vol. 8, No. 3 (Summer 1988) p. 122 for background information.) Section 1978 allows an additional method of parimutuel wagering called the "Select Four", whereby a selection would be made for win only in each of four races designated by the racing association. The Office of Administrative Law (OAL) approved the regulation by accelerated review at the CHRB's request.

Emergency Regulation Regarding Payment of Intertrack Stewards. Following its regularly-scheduled July 29 meeting, the CHRB held an emergency meeting to discuss its ability to pay intertrack stewards, because of the legislature's enactment of a budget bill reducing the money available to the CHRB to pay them. At the commencement of the emergency meeting, Vice-Chair Leslie Liscom noted that the topic had been discussed for two or three months in public and private meetings, and also at the Parimutuel and Stewards Committee meetings on July 28; and that CHRB had enough money to pay the stewards until October. However, the Board found that an "emergency" existed and proceeded to discuss the unagended item. No section of the Bagley-Keene Open Meetings Act was cited as authorizing the emergency meeting.

At the meeting, the Board adopted an emergency regulation to amend section 2058(g), Title 4, Chapter 4 of the CCR. Section 2058(g) requires the presence of a licensed CHRB satellite steward at each facility; a facility is not approved to operate unless such a satellite steward is present. Thus, the CHRB would have to order the satellite facility closed if it could not afford to pay its intertrack stewards. The emergency amendment adopted on July 29 would have allowed the intertrack association to hire a Satellite Facility Supervisor in