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Chapter 12: Expedited Power Plant Siting as Response to Power Crisis

John A. Wetenkamp

Code Sections Affected

Health and Safety Code §§ 39910, 39915, 39920, 42301.15, 42314.3 (new); Public Resources Code §§ 25519.5, 25550.5 (new), 25514, 25521, 25523, 25531, 25552 (amended); Public Utilities Code §§ 353.1, 353.3, 353.5, 353.7, 353.9, 353.11, 353.13, 353.15 (new).
SBx1 28 (Sher); 2001 STAT. Ch. 12.

I. INTRODUCTION

During only one episode of *The Tonight Show*, Jay Leno saved enough electricity to light a four-bedroom house for a month.¹ One of Leno's guests that night, Governor Gray Davis, jokingly suggested a different way to keep California lit: "I get a really long extension cord and I plug it into a socket in Texas."² Elsewhere in California, disgruntled consumers were not laughing.³ During the summer of 2000, consumers spent \$10.9 billion more for electricity than they did the previous summer.⁴ Today, the State's three largest utilities, Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric find themselves in no less serious a situation.⁵

California's electric power dilemma can be traced back to deregulation: the transition from public to private control of electricity.⁶ In 1996, there was a consensus among lawmakers that deregulation of the electricity industry was

1. See Patricia Porter, *Gray and Jay Meet on the Dark Side*, SACRAMENTO BEE, June 22, 2001, at A2 (describing the special "unplugged" edition of the program which included a discussion about Davis' conservation program and poke fun at the energy crisis in general).

2. *Id.*

3. See David Lazarus, *Energy: Summer Ushered in a Power Crisis that Promises Only to Get Worse*, S.F. CHRON., Dec. 29, 2000, at D1 (describing consumer discontent in the San Diego area). *But see* Toni Vranjes, *Power Play*, CAL. L. BUS., July 30, 2001, at 10 (suggesting that energy lawyers are probably laughing all the way to the bank).

4. Nancy Vogel, *How State's Consumers Lost with Electricity Deregulation*, L.A. TIMES, Dec. 9, 2000, at A1.

5. See Tim Reiterman et al., *PG&E Declares Bankruptcy; State's Crisis Plans Collapse*, L.A. TIMES, Apr. 7, 2001, at A1 (describing PG&E's chapter 11 bankruptcy filing of \$18 billion—\$8.9 billion of which is due to the energy crisis—as the third-largest in U.S. history).

6. See Christian Berthelsen, *Genesis Of State's Energy Fiasco: String of Bad Decisions on Deregulation Could End Up Costing Consumers \$40 Billion*, S.F. CHRON., Dec. 31, 2000, at A1 (describing the events that led up to deregulation and the crushing effect it has had on California energy).

necessary.⁷ Today, most lawmakers agree that deregulation was a colossal failure.⁸ However, the State's energy problems have less to do with increased usage than they do with high wholesale electricity costs.⁹ Governor Gray Davis solicited help from the federal government,¹⁰ but the Bush administration indicated a general unwillingness to get involved with California's energy nightmare.¹¹ In an effort to ease California out of its power crisis, Davis stressed the need for a dramatic increase in energy conservation and generation.¹² Chapter 12 is representative of lawmakers' efforts to make more energy available in California.¹³ One way to increase generation is by shortening the amount of time spent approving electricity generation facilities.¹⁴ Authored by Senator Byron Sher, Chapter 12 is expected to hasten the power plant certification process without jeopardizing the environment.¹⁵

7. See Richard Nemec, *Electricity in California: A Political and Economic Crossroads*, CAL. J., Jan. 2001, at 12 (describing the unanimous passage of the "anointed" Assembly Bill 1890); Berthelsen, *supra* note 6, at A1 (suggesting that successful deregulation of the airlines and long-distance telephone service providers caused, in the words of former utility securities analyst Eugene Coyle, "blind adherence to free-market ideology").

8. See Berthelsen, *supra* note 6, at A1 (arguing that the Assembly and the Senate approved AB 1890 hastily and without fully understanding its details); Michael A. Yuffee, *California's Electricity Crisis: How Best to Respond to the "Perfect Storm,"* 22 ENERGY L.J. 65, 67 (2001) (explaining that the deregulation bill was unsound because it was enacted on a foundation of inadequate and old generation facilities).

9. See Christian Berthelsen & Scott Winokur, *Soaring Electric Use More Fiction Than Fact: Chronicle Investigation Finds Power Companies Manipulate Data to Excuse Their Towering Rates*, S.F. CHRON., Mar. 11, 2001, at A1 (explaining that one cannot legitimately blame consumers because the 4.75 percent increase in electricity consumption from 1999 to 2000 was not too much for power companies to handle); SOUTHERN CALIFORNIA EDISON, CALIFORNIA ENERGY CRISIS OVERVIEW, http://www.sce.com/005_regul_info/005c6a_overview.shtml (last visited June 28, 2001) (copy on file with the *McGeorge Law Review*) (indicating that "the total wholesale cost for electricity in California was twenty-eight billion dollars in 2000, compared to seven billion dollars in 1999").

10. See *Davis Requests Meeting with Bush*, MEGAWATT DAILY, May 24, 2001, at 1 (describing Davis' efforts to get President Bush to agree to price caps).

11. See Zachary Coile, *Cheney Blames Davis for Crisis: They Knew Over a Year Ago They Had a Problem*, S.F. CHRON., May 21, 2001, at A1 (describing a political "blame game" between California and the federal government wherein Vice President Dick Cheney called Davis' efforts to remedy the situation by using the State to purchase power a "harebrained scheme"). But see Ricardo Alonso-Zaldivar & Nancy Vogel, *Regulators OK Price Limits on Power in West Energy: Federal Panel Closes Loophole in Imposing Curbs Full Time*, L.A. TIMES, June 19, 2001, at A1 (describing FERC order which placed price caps on wholesale electricity).

12. See generally Exec. Order Nos. D-15-00, D-18-01, D-19-01, D-39-01 (on file with the *McGeorge Law Review*) (conservation); Exec. Order Nos. D-24-01, D-25-01, D-26-01, D-27-01, D-28-01 (on file with the *McGeorge Law Review*) (generation).

13. See Ric Teague, *Davis Signs Bill to Speed Power Plant Approval*, ENERGY ONLINE DAILY NEWS, May 23, 2001, at <http://www.energyonline.com/news/articles/e23-1ca.asp> (copy on file with the *McGeorge Law Review*) (quoting Governor Davis as saying "the best long-term weapon is to build more power plants," and this bill will "set a landspeed record for siting plants").

14. SENATE FLOOR, COMMITTEE ANALYSIS OF SBx1 28, at 5 (May 10, 2001).

15. See *id.* at 4; CAL. PUB. RES. CODE § 25001 (West 1996) (stating that it is California's policy to maintain electricity supply); see also *id.* § 800 (West 1996) (stating that it is California's policy to account for environmental impact of power plant siting); R.H. BALL, ET AL., CALIFORNIA'S ELECTRICITY QUANDRY: II. PLANNING FOR POWER PLANT SITING, at v (1972) (explaining that, while power companies want to avoid a

II. BACKGROUND

The electricity industry breaks down into three components: generation, transmission, and distribution.¹⁶ In the United States, electricity is generated primarily by burning fossil fuels.¹⁷ Other sources include nuclear power and renewable fuels, which harness the powers of wind, water, and sun.¹⁸ Since electricity cannot be stored, generation must constantly keep up with demand.¹⁹ The California Independent System Operator (ISO) is charged with the management of transmission of electricity across the network of interconnected power lines called the power "grid."²⁰ While glitches that result in blackouts are at times due to insufficient generation, transmission congestion also causes problems.²¹

Regulation of the electricity industry began as part of President Roosevelt's New Deal legislation.²² At that time, it was logical to regulate electricity because competition would have required power suppliers to erect their own transmission lines.²³ From the 1930s to the late 1970s, the United States electric power industry was successful.²⁴ Then, as a result of the Organization of Petroleum Exporting Countries (OPEC) oil embargo, the United States got its first exposure to deregulation.²⁵ In 1973, OPEC withheld oil from the West as a punishment for its involvement in the Arab-Israeli War.²⁶ The OPEC crisis piqued America's

power crisis, conservationists are concerned with preventing an environmental crisis). Power plant siting decisions have notoriously been subject to these conflicting points of view. *Id.*

16. Michael Evan Stern & Margaret M. Mlynchak Stern, *A Critical Overview of the Economic and Environmental Consequences of the Deregulation of the U.S. Electric Power Industry*, 4 ENVTL. LAW. 79, 84 (1997).

17. See DEPARTMENT OF ENERGY, ELECTRICITY GENERATION, <http://www.eia.doe.gov/cneaf/electricity/page/prim2/chapter3.html> (last visited Oct. 6, 2001) (copy on file with the *McGeorge Law Review*) (stating that seventy percent of the electricity generated in the United States is the product of fossil fuels like coal, petroleum, and gas).

18. *Id.*

19. See CALIFORNIA INDEPENDENT SYSTEM OPERATOR, CALIFORNIA ELECTRICITY: HOW IT WORKS, <http://www.caiso.com/PowerCentral> (last visited Feb. 20, 2001) (copy on file with the *McGeorge Law Review*) (referring to this demand as the "load").

20. *Id.*

21. *Id.*

22. Public Utilities Holding Company Act of 1935, 15 U.S.C.A. § 79 (West 1997).

23. See Vogel, *supra* note 4, at A1 (suggesting that competition was unheard of because "delivering electricity is a natural monopoly" once the distribution lines are in place).

24. See Stern & Stern, *supra* note 16, at 85 (explaining that plants generally kept up with growing demand, making the system "reliable and efficient").

25. See *id.* at 86-87 (characterizing the Public Utilities Regulatory Policies Act of 1978, which encouraged both competition and the development of alternative energy sources, as "the first step toward deregulation").

26. See Richard Mably, *The Arab Embargo—From Oil Crisis to OPEC Crisis*, MIDDLE E. TIMES, Oct. 18, 1998, available at <http://www.metimes.com/issue98-42/methaus.htm> (last visited July 24, 2001) (copy on file with the *McGeorge Law Review*) (comparing the relatively high bargaining power OPEC countries had in the 1970s with the relatively low bargaining power they have now and suggesting that this is due to the fact that the United States has increased its own self-sufficiency significantly).

interest in alternative forms of energy.²⁷ The United States attempted to lessen reliance on oil-producing nations by generating its electricity with non-fossil fuel resources.²⁸ California led the nation in this respect; its utilities making long-term commitments with “green energy” generators.²⁹ Rates began to climb as California became dedicated to more expensive, environmentally-friendly power.³⁰ Then, the Federal Energy Regulatory Commission (FERC), the agency in the Department of Energy that handles natural gas, oil, and electricity issues, set the stage for deregulation by opening access to transmission lines nationwide, eliminating the “natural monopoly” phenomenon.³¹ In the early 1990s, deregulation looked like the answer to out-of-control prices.³² The belief was, if power companies could compete in a market environment, prices would drop.³³

The passage of Assembly Bill 1890 in 1996 introduced deregulation to California, but it did not produce the kind of competition which the Legislature hoped it would.³⁴ When wholesale electricity prices increased, there was nothing to stop the utilities from passing on costs to consumers.³⁵ No major power plants were built during the 1990s because power generators were unwilling to invest in such a heavily regulated and unstable market.³⁶ Furthermore, the Energy Commission underestimated the economic growth in store for the State.³⁷ Advocates of deregulation think it was undertaken too cautiously; opponents

27. Stern & Stern, *supra* note 16, at 86; see Vogel, *supra* note 4, at A1 (explaining that in 1978, “Congress forced utilities to buy electricity from companies willing to produce it with solar panels, windmills, farm waste[, or factory steam.]”).

28. See Vogel, *supra* note 4, at A1 (discussing how Congress forced utilities to buy energy from companies who produced it by alternative means).

29. See *id.* (noting that, by 1994, California produced eighty percent of the total wind and solar energy in the United States).

30. See *id.* (illustrating the climbing rates with Southern California Edison estimates: “since 1985 [Edison] has paid twenty-five billion dollars more for electricity under alternative energy contracts than it would have spent to produce the energy by traditional means”).

31. See FERC Order No. 888, 18 C.F.R. pts. 35, 385 (1996) (describing the “natural monopoly” phenomenon).

32. See Opensecrets.org, *Electricity Deregulation*, at <http://www.opensecrets.org/news/electricity.htm#electric4> (updated Jan. 30, 2001) (copy on file with the *McGeorge Law Review*) (stating that both the government and the electricity industry endorsed deregulation); Nemec, *supra* note 7, at 12 (explaining how the bill slid through the Senate and the Assembly in a matter of days, facing virtually no opposition).

33. See Lisa Simon & Carol Ann O’Dea, *Who Turned Out the Lights? A Look at the California Energy Crisis*, 11 ANDREWS UTIL. INDUSTRY LITIG. REP. 17 (2001) (reasoning that prices did not drop because new power companies were unable to provide their services at a competitive price, and, in many instances, customers were unwilling to switch).

34. *Id.*

35. See Simon & O’Dea, *supra* note 33 (blaming high electricity prices on deregulation).

36. Yuffee, *supra* note 8, at 68; see Simon & O’Dea, *supra* note 33, at 17 (explaining that before deregulation, the electricity business was less profitable because of California’s strict environmental laws, and, after deregulation, the business was too uncertain because nobody knew exactly how deregulation would affect the market).

37. See Berthelsen, *supra* note 6, at A1 (noting that, in terms of energy supply, California began falling behind in 1999).

worry that the State moved too aggressively.³⁸ Nevertheless, those on both sides of the issue believe that California needs more power plants.³⁹ Chapter 12 represents a push to get more power plants online in the state by streamlining the power plant siting process.⁴⁰

III. EXISTING LAW

In 1970, Congress made important amendments to the Clean Air Act.⁴¹ Air pollution was recognized as a serious health threat and Congress wanted a way to regulate it.⁴² The Clean Air Act sets uniform national air quality standards, but it lets the individual states decide how to comply.⁴³ Each state must devise its own congressionally approved “state implementation plan” (SIP).⁴⁴ The SIP’s can be as creative as necessary to comply with the federal minimum reduction targets.⁴⁵ Some polluters in California use what are called “emissions offsets,” where one “power plant developer . . . pays other air pollution sources to reduce their emissions” to meet federal requirements.⁴⁶

The Warren-Alquist Act simplified power plant siting (the application and certification process).⁴⁷ The Act gave sole certification authority to the California Energy Commission (CEC)⁴⁸ and required a decision on certification within one year of application by a utility.⁴⁹ However, the CEC certification process remains fairly elaborate.⁵⁰ Before an application may be filed, the candidate must

38. James C. Benton & Chuck McCutcheon, *Electricity Deregulation Supporters, Skeptics Draw Lessons From California Crisis*, 59 CONG. Q. WKLY. 226, 226 (2001).

39. See Press Release, Senator Byron Sher, 11th District, Governor Signs Sher’s Bipartisan Energy Legislation into Law (May 22, 2001) (copy on file with the *McGeorge Law Review*) (describing the Bill as a “balanced package”).

40. SENATE FLOOR, COMMITTEE ANALYSIS OF SBX1 28, at 5 (May 10, 2001).

41. 42 U.S.C.A. § 7401 (West 1995); ROGER W. FINDLEY & DANIEL A. FARBER, ENVIRONMENTAL LAW IN A NUTSHELL 91 (5th ed. 2000).

42. FINDLEY & FARBER, *supra* note 41, at 90.

43. *Id.* at 91.

44. *Id.* at 92.

45. See CALIFORNIA AIR RESOURCES BOARD, WELCOME TO THE 1994 CALIFORNIA STATE IMPLEMENTATION PLAN, VOLUME I: OVERVIEW OF THE CALIFORNIA OZONE SIP, <http://www.arb.ca.gov/sip/sipvo11.htm> (last visited Oct. 13, 2001) (copy on file with the *McGeorge Law Review*) (noting that each of the six nonattainment areas in the State has its own reduction schedule depending on its status as “serious,” “severe,” or “extreme”).

46. Peter Asmus, *California’s New Energy Legacy: A Desperate Innovation*, CAL. J., Jan. 2001, at 18.

47. Warren-Alquist Act of 1974, CAL. PUB. RES. CODE §§ 25000-25986 (West 1996).

48. *Id.* § 25500.

49. *Id.* § 25522.

50. See *id.* §§ 25502-25531 (describing the process, which spans twenty pages of the Public Resource Code from start to finish and includes a total of fifteen steps); see also California Energy Commission, *Power Plants Greater than 300 MW Presently Under Review*, <http://www.energy.ca.gov/sitingcases/background.html> (last modified May 30, 2001) (copy on file with the *McGeorge Law Review*) (describing the process as having four steps). But see Metcalf Energy Center, *California Energy Commission Permit Process*, <http://www.metcalfenergycenter.com/facts/permit.asp> (last visited June 1, 2001) (copy on file with the

complete a “notice of intent,” which includes a detailed description of the proposed facility and its location, including at least three alternative sites.⁵¹ Then the CEC must publish the notice⁵² and make comments and recommendations regarding the proposed site.⁵³ Next, the CEC must hold informational presentations and nonadjudicatory hearings.⁵⁴ The CEC then summarizes the hearings and distributes transcripts to interested parties.⁵⁵ Then, the agency must hold adjudicatory hearings⁵⁶ and submit a final report.⁵⁷ However, in no sense is this “final” report actually final; more comments, recommendations, and hearings follow.⁵⁸ Then, once the CEC approves the notice of intent, an applicant may finally submit to the CEC an application for consideration.⁵⁹ At this point, the CEC has one year to make its decision.⁶⁰ The CEC forwards the application to local governments who, unlike the CEC, have an unlimited amount of time to review it.⁶¹ Of course, the CEC cannot certify an applicant until the public scrutinizes the published application at a final set of hearings.⁶² Finally, the CEC submits its written decision, which is subject to a very limited appeals process.⁶³

IV. CHAPTER 12

Called a “balanced package,”⁶⁴ Chapter 12 is an endeavor to expedite electric power production while maintaining high air quality standards.⁶⁵ One of the most important changes this law makes concerns local jurisdictions’ review of

McGeorge Law Review) (describing the process as having six parts: “pre-filing, data adequacy, discovery, analysis, hearings, decision”).

51. CAL. PUB. RES. CODE §§ 25502, 25504.

52. *Id.* § 25505.

53. *Id.* §§ 25506-25506.5.

54. *See id.* § 25509 (stating that the presentations must be conducted within forty-five days after notice of intention is filed, which ensures that the public is informed about a particular proposed facility); *see also* CALIFORNIA ENERGY COMMISSION, ENERGY FACILITIES LICENSING PROCESS-GUIDE TO PUBLIC PARTICIPATION, http://www.energy.ca.gov/siting/guide_license_process.html (last modified Dec. 11, 2000) (copy on file with the *McGeorge Law Review*) (referring to power plant licensing as a “public process” and outlining the various methods of public participation); CAL. PUB. RES. CODE § 25509.5 (indicating that the purpose of these hearings is “to provide knowledge and understanding of proposed facilities and sites [and] to obtain the views and comments of the public”).

55. CAL. PUB. RES. CODE § 25510.

56. *Id.* § 25513.

57. *Id.* § 25514 (West Supp. 2002).

58. *Id.* §§ 25514.3, 25515 (West 1996).

59. *Id.* § 25516; *see also id.* § 25520 (West Supp. 2001) (describing required contents of an application).

60. *Id.* § 25516.6 (West 1996).

61. CAL. PUB. RES. CODE § 25519(f).

62. *Id.* §§ 25519(g)-(h), 25521.

63. *See id.* §§ 25523, 25531 (limiting judicial review so that it is conducted “in the same manner as the decisions of the Public Utilities Commission”); *see also* SENATE FLOOR, COMMITTEE ANALYSIS OF SBx1 28, at 3 (May 10, 2001) (stating that PUC decisions are subject to review by appellate courts).

64. Sher, *supra* note 39.

65. SENATE FLOOR, COMMITTEE ANALYSIS OF SBx1 28, at 4 (May 10, 2001).

applications under section 25519 of the Public Resources Code.⁶⁶ Bottlenecks will be less likely to occur at this stage of certification because Chapter 12 limits a local jurisdiction's review to a maximum of one hundred days after filing.⁶⁷ Chapter 12 gives repowering projects even stricter certification deadlines; under the new law, such certifications must occur, if at all, within six months following the application.⁶⁸

Chapter 12 requires air quality management districts to develop an expedited permit process.⁶⁹ The process must include deadlines for retrofitting existing power plants (with the exception of those which will undergo replacement or repowering), so that these older facilities comply with the Federal Clean Air Act.⁷⁰ Inevitably, California will need to build new electrical generating facilities in parts of the State that lack air emission offsets.⁷¹ Chapter 12 allows districts to purchase these offsets for power plant owners.⁷² The new law also allows developers to begin construction before they obtain all the necessary offsets.⁷³ In an effort to relieve some of the stress on the grid, Chapter 12 removes those tariffs that are exclusive to owners of distributed generation (DG) units.⁷⁴ So as to remove any doubt regarding the finality of a CEC siting decision, this new law provides that judicial review be exclusively under the purview of the California Supreme Court.⁷⁵

V. ANALYSIS

Chapter 12 attracts support from a variety of interests because new electric facilities will not only increase generation but will replace outdated plants which pose a major threat to air quality.⁷⁶ Boosting electricity generation is necessary to maintain the economic health of the state.⁷⁷ This new law impacts the health of

66. CAL. PUB. RES. CODE § 25519.5 (enacted by Chapter 12).

67. *Id.*

68. *Id.* § 25550.5(a) (West 1996); *see id.* § 25550.5(i) (enacted by Chapter 12) (defining a "repowering project" as a modification of an existing power plant which "will result in significant and substantial increases in the efficiency of the production of electricity").

69. CAL. HEALTH & SAFETY CODE § 42314.3 (enacted by Chapter 12).

70. *Id.* § 39915 (enacted by Chapter 12); *see* 42 U.S.C.A. § 7401 (West 1995) (giving the responsibility of air pollution prevention to the states).

71. *See* Asmus, *supra* note 46, at 18 (noting that the offsets are in short supply and dwindling).

72. *Id.*

73. *Id.*

74. *See* CAL. PUB. UTIL. CODE § 353.3-.15 (waiving standby charges imposed on "grid-connected DG customers"); *see also id.* § 353.1 (enacted by Chapter 12) (defining distributed generation as on-site facilities five megawatts or smaller). *But see* CALIFORNIA AIR RESOURCES BOARD, FACTS ABOUT THE AIR RESOURCES BOARD'S DISTRIBUTED GENERATION CERTIFICATION AND DISTRICT GUIDANCE PROGRAM, <http://www.arb.ca.gov/energy/dg/factsheet.pdf> (last modified Jan. 31, 2001) (copy on file with the *McGeorge Law Review*) (noting that not all DG units are connected to the grid).

75. CAL. PUB. RES. CODE § 25531 (amended by Chapter 12).

76. Yuffee, *supra* note 8, at 67.

77. Press Release, James L. Brulte, Senate Republican Leader, California State Senate, GOP Proposes

California's environment as well.⁷⁸ Chapter 12 streamlines power plant siting by shortening deadlines within the certification process without sacrificing public comment.⁷⁹ Furthermore, a simplified certification procedure can increase generation by attracting willing investors into the state.⁸⁰

The effects of California's power plant siting frenzy are already apparent. California ISO reported about 2,231 megawatts of additional generating capacity by the end of the 2001 summer.⁸¹ Even though a 3,414 megawatts increase was expected, the ISO is optimistic that the rest will come online before the year's end.⁸²

However, while Chapter 12 has certainly expedited the certification process, this will not necessarily result in more "clean power" in California.⁸³ First, power companies are apprehensive (even after getting certified) about constructing power plants in an environment of such financial uncertainty.⁸⁴ For example, emission offsets are hard to come by in California; they make up only ten percent of the total cost of a new plant.⁸⁵ Chapter 12 may simplify certification, but it cannot force investment in electricity.⁸⁶

Second, California's transmission system may not be modern enough to endure the massive increase in generation that this new law encourages.⁸⁷ The federal government recently made plans to upgrade the State's transmission lines, but the project could take up to four years to complete.⁸⁸ Increased generation

Long Term Solutions to Energy Shortage (Jan. 31, 2001) (on file with the *McGeorge Law Review*); Simon & O'Dea, *supra* note 33, at 17.

78. SENATE FLOOR, COMMITTEE ANALYSIS OF SBX1 28, at 4 (May 22, 2001).

79. Letter from Alexander E. Creel, Senior Vice President of Governmental Affairs, California Association of Realtors, to Gray Davis, Governor (May 14, 2001) (on file with the *McGeorge Law Review*). But see CAL. PUB. RES. CODE §§ 25502-25516.6 (West 1996) (setting out the steps involved in filing a "notice of intent to apply" which present a formidable barrier even before the application can commence). See generally Nancy Perkins Spyke, *Public Participation in Environmental Decisionmaking at the New Millennium: Structuring New Spheres of Public Influence*, 26 B.C. ENVTL. AFF. L. REV. 263 (explaining the importance of public comment in a democracy).

80. See Yuffee, *supra* note 8, at 68 (arguing that California's complex certification procedure has "discouraged investment").

81. CALIFORNIA ISO, WINTER ASSESSMENT AND SUMMER 2001 POST-SEASON SUMMARY 3, available at <http://www.caiso.com> (updated Oct. 8, 2001) (copy on file with the *McGeorge Law Review*).

82. *Id.* at 6.

83. *Id.* at 85.

84. See Dan Walters, *Record Undercuts Governor's Message on Handling Energy Crisis*, SACRAMENTO BEE, June 11, 2001, at A3 (stating that, whether the utilities will have money to buy power and whether Davis will follow through with his threats to seize plants, are among the worries of power producers).

85. Carrie Peyton & Chris Bowman, *More Power, Cleaner Skies*, SACRAMENTO BEE, Aug. 5, 2001, at A1.

86. Walters, *supra* note 84, at A3.

87. Yuffee, *supra* note 8, at 86; see Asmus, *supra* note 46, at 19 (quoting Bill Kucewicz, former Wall Street Journal editor, whose studies show that investment in transmission lines is dropping and that this trend must undergo an extreme reversal "in order to maintain system-wide reliability").

88. See Carolyn Lochhead, *13 Plans Submitted to Alleviate Power Transmission Bottleneck*, S.F. CHRON., July 24, 2001, at A10 (discussing Energy Secretary Spencer Abraham's plan to expand Path 15, the electricity link between Southern and Northern California).

may be worthless if this growth cannot be supported by the current electricity infrastructure.⁸⁹

Third, although usage of DG units can relieve some of the demand on the grid, it is not always the cleanest form of generation.⁹⁰ Distributed generation is an appealing alternative to the power shortage because the units are already in place.⁹¹ Chapter 12 provides an economic incentive for owners of on-site generators to supply energy to the grid in emergencies.⁹² However, even if they are reserved only for periods of peak demand, encouraging DG usage undermines Chapter 12's commitment to the environment.⁹³

In recent years, the availability and affordability of natural gas needed to power so many new plants was not always stable.⁹⁴ Natural gas prices are tied to the prices of crude oil.⁹⁵ If OPEC were to cut production, natural gas prices would probably rise along with the price of oil.⁹⁶ During the summer of 2001, OPEC threatened to cut production.⁹⁷ Today, however, demand is so low that a cut in output seems unlikely.⁹⁸ Still, with the deployment of United States troops in the Middle East, oil prices have become unpredictable.⁹⁹ Even if the cost of natural gas itself does not increase, the cost of transporting it into the State makes it an expensive commodity.¹⁰⁰

89. Yuffee, *supra* note 8, at 86.

90. See Asmus, *supra* note 46, at 19-20 (stating that most DG units run on diesel gasoline, a very dirty method of generation).

91. See Mark B. Lively, *Saving California with Distributed Generation*, PUB. UTIL. FORT., June 15, 2001, at 1 (stating that there are approximately thirty thousand megawatts of distributed generation potential in California).

92. CAL. PUB. UTIL. CODE § 353.3-.15 (enacted by Chapter 12).

93. See Lively, *supra* note 91, at 20 (explaining that California permits operation of high-pollutant emergency generators only when the owner can no longer receive power from the grid).

94. Asmus, *supra* note 46, at 19.

95. See Andy McCue, *We've Become Too Dependent on Natural Gas*, PRESS ENTERPRISE (Riverside, CA), July 8, 2001, at G1 (explaining that "the fuels are interchangeable in enough cases to cause overlap").

96. See James F. Peltz, *OPEC Considers Cutting Production to Boost Prices of Oil: Slowing the Flow Could Harm Economic Recovery and May Even Backfire, Analysts Say*, L.A. TIMES, July 24, 2001, at C3 (describing the global consequences that this action could have while expressing uncertainty as to the real economic effect that a decrease in production by OPEC would have, considering the poor shape of world economies: supplies are rising as demand remains low).

97. Stanley Reed, *Why OPEC Can't Halt the Price Slide*, BUS. WK. ONLINE, Oct. 8, 2001, http://www.businessweek.com/magazine/content/01_41/b3752718.htm. (copy on file with the *McGeorge Law Review*).

98. *Id.*

99. *Id.*

100. See *Shortages Unlikely from Southern California Gas Company*, L.A. BUS. J., June 11, 2001, at 10 (stating that California imports ninety percent of its natural gas).

VI. CONCLUSION

California desperately needs new power.¹⁰¹ Chapter 12 is a step in the right direction even though, on its own, it does not provide a complete solution to the energy crisis.¹⁰² It seeks to boost electric power but, more importantly, to do so responsibly.¹⁰³ The long-term success of Chapter 12 is based on a few assumptions: an upgraded transmission system must be in place, natural gas needed to power the generation facilities must be accessible, and power companies must be willing to invest in California's shaky market.¹⁰⁴ However, if the recent success of Chapter 12 is any indication, this new law should be helpful in meeting California's electricity demands and environmental protection goals.¹⁰⁵

101. See David Lazarus, *Experts Say Crisis Likely to Stay Around: Little Government Consensus on Solution*, S.F. CHRON., Jan. 25, 2001, at A1 (characterizing the shortage as "an acute lack of generating capacity" that cannot be corrected quickly).

102. See Creel, *supra* note 79 (praising SB 28X as "the perfect compliment" to other efforts aimed at bolstering energy supplies).

103. See CAL. PUB. RES. CODE § 25001 (West 1996) (expressing the need for clean and efficient generation facilities).

104. *Supra* Part V.

105. CALIFORNIA ISO, *supra* note 81.
