

AMENDED IN SENATE APRIL 13, 2005

SENATE BILL

No. 426

Introduced by Senator Simitian

February 17, 2005

An act to ~~amend Section 26011.6 of the Public Resources~~ *add Article 2 (commencing with Section 25571) to Chapter 6.5 of Division 15 of the Public Resources Code, and to amend Sections 1002 and 1003 of the Public Utilities Code*, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 426, as amended, Simitian. ~~California Alternative Energy and Advanced Transportation Financing Authority: renewable energy program.~~ *State Energy Resources Conservation and Development Commission: liquified natural gas plants.*

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission) and requires the Energy Commission to prepare a biennial integrated energy policy report. The act requires the Energy Commission to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. The act grants the Energy Commission the exclusive authority to certify any stationary or floating electrical generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto.

Existing law authorizes the Public Utilities Commission (CPUC) to regulate public utilities, including electrical corporations and gas corporations. The existing Public Utilities Act prohibits any electrical corporation or gas corporation from beginning the construction of,

among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the CPUC a certificate that the present or future public convenience and necessity require or will require that construction (certificate of public convenience and necessity). The act requires that the CPUC consider certain factors in determining whether to issue a certificate of convenience and necessity, but requires that the issuance of a certificate by the Energy Commission for an electrical generating facility and facilities appurtenant thereto, is conclusive as to all matters determined thereby when the CPUC is determining whether to issue a certificate of public convenience and necessity.

This bill would require the Energy Commission to make a liquefied natural gas (LNG) needs assessment study that assesses demand and supply for natural gas and alternatives to natural gas to meet energy demands, and to determine the number of LNG terminals, if any, needed to meet the state's projected natural gas demand. The bill would require the LNG needs assessment study to be completed no later than November 1, 2006, and incorporated into its biennial integrated energy policy report. The bill would require the Energy Commission to hold public hearings to consider the results of the LNG needs assessment study and to provide an opportunity for public comment. All costs of the LNG needs assessment study would be funded from fees charged to persons or entities applying for permits to build and operate a LNG terminal according to mechanisms that would be added by SB 1003 of the 2005–06 Regular Session. The bill would require the Energy Commission to compare and rank every site for which an application for a permit to build and operate a LNG terminal has been filed, based upon certain criteria and in consultation with specified entities, and would require the Energy Commission to issue permits only according to the rank order or priority, and as necessary. The bill would authorize the Energy Commission to issue a permit to build and operate a LNG terminal only if it determines that the technology chosen for a particular site will have the least adverse public health, safety, and environmental impacts then feasible.

This bill would require that with respect to any LNG terminal that requires a certificate of public convenience and necessity from the CPUC, that no certificate be issued unless the LNG terminal has first obtained a permit from the Energy Commission, and that the issuance of a permit by the Energy Commission is conclusive as to all matters

determined thereby when the CPUC is determining whether to issue a certificate of public convenience and necessity. The bill would make other conforming changes.

The bill would provide that it shall only become operative if SB 1003 of the 2005–06 Regular Session is also enacted and becomes operative on or before January 1, 2006.

~~Existing law requires the California Alternative Energy and Advanced Transportation Financing Authority to establish a renewable energy program, and requires that emergency regulations adopted by the authority for the program be repealed 180 days after their effective date unless specified conditions are met.~~

~~This bill would instead require that the emergency regulations be repealed 190 days after their effective date unless those specified conditions are met.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

1 ~~SECTION 1. Section 26011.6 of the Public Resources Code~~
2 ~~is amended to read:~~

3 *SECTION 1. The Legislature finds and declares all of the*
4 *following:*

5 *(a) It is the policy of the state to meet California’s energy*
6 *growth by optimizing energy conservation and resource*
7 *efficiency and by reducing per capita demand to ensure a clean,*
8 *safe, and reliable supply of energy for California.*

9 *(b) It is the policy of the state to be sensitive to the impact of*
10 *the state’s energy policy on global climate change and*
11 *environmental impacts in host countries that export natural gas.*

12 *(c) It is the policy of the state to accelerate the use of*
13 *renewable energy resources wherever feasible and to ensure a*
14 *diverse and affordable portfolio of fuel sources to minimize the*
15 *opportunity for supply interruptions.*

16 *(d) The state has a lead role in decisions regarding the siting*
17 *and design of new onshore and offshore infrastructure for the*
18 *importation of liquefied natural gas that results in impacts to*
19 *public health, safety, and the environment.*

20 *(e) Laws and regulations enacted by the state to address*
21 *consumer, public health, safety, and environmental impacts of*

1 *new onshore and offshore imported liquefied natural gas*
2 *infrastructure, where more protective, should not be preempted*
3 *by weaker, less protective federal laws and regulations.*

4 *(f) Decisions regarding the importation of liquefied natural*
5 *gas should be based on a comprehensive review of current and*
6 *projected natural gas supply and demand in California, and*
7 *alternative sources of supply.*

8 *(g) Construction and operation of liquefied natural gas*
9 *onshore and offshore infrastructure may commence after*
10 *completion of a rigorous evaluation that analyzes the need for*
11 *liquefied natural gas and the relative merits of pending and*
12 *future proposals with respect to business, consumer, public*
13 *health, safety, and environmental impacts.*

14 *SEC. 2. Article 2 (commencing with Section 25571) is added*
15 *to Chapter 6.5 of Division 15 of the Public Resources Code, to*
16 *read:*

17

18 *Article 2. Evaluation of Potential Liquefied Natural Gas*
19 *Terminals and Alternatives*

20

21 *25571. (a) The commission shall not issue a permit to*
22 *construct and operate a liquefied natural gas terminal, except in*
23 *accordance with this article.*

24 *(b) The commission shall issue a permit, or more than one*
25 *permit, to construct and operate a liquefied natural gas terminal,*
26 *only according to the rank order priority established in this*
27 *article and as necessary to further the purposes of this chapter.*

28 *25571.2. (a) The commission shall make a study of the need*
29 *for liquefied natural gas terminals to meet the state's energy*
30 *demands, to be known as the LNG Needs Assessment Study. The*
31 *study shall assess all of the following:*

32 *(1) The future demand for natural gas in California.*

33 *(2) The future supply of natural gas in California available*
34 *from domestic production and imported into California through*
35 *interstate pipelines, supply available from domestic production*
36 *within California, and supply available from foreign production*
37 *and imported into California through international pipelines*
38 *from Mexico and Canada, including any liquefied natural gas*
39 *terminal proposed to be built outside the state that would be the*
40 *source for natural gas imported into the state.*

1 (3) All supplemental sources of natural gas and natural gas
2 alternatives that can reasonably be expected to be available to
3 meet the projected demand for natural gas, including, but not
4 limited to, conservation and energy efficiency programs, steps to
5 increase production and importation of natural gas from other
6 states, Mexico, and Canada, steps to increase available supply
7 from federally owned or federally regulated supplies, and steps
8 to increase energy supplies available from renewable energy
9 resources, including solar, wind, geothermal, and biomass.

10 (b) The LNG Needs Assessment Study shall determine the
11 number of liquefied natural gas terminals, if any, needed to meet
12 the state's projected natural gas demand and whether it is
13 economically feasible to meet the state's future natural gas needs
14 without building a liquefied natural gas terminal.

15 (c) The LNG Needs Assessment Study shall be commenced by
16 January 1, 2006, shall be completed no later than November 1,
17 2006, and shall be incorporated into the integrated energy policy
18 report prepared pursuant to Section 25302.

19 (d) The commission shall hold at least two public hearings to
20 consider the results of the LNG Needs Assessment Study and to
21 provide an opportunity for public comment. At least one public
22 hearing shall be held in any county that is the proposed site for
23 which an application for a permit has been filed with the
24 commission, to build and operate a liquefied natural gas
25 terminal.

26 (e) All costs incurred by the commission to conduct the LNG
27 Needs Assessment Study, including costs for any temporary
28 personnel or consultants, shall be funded by fees charged to
29 persons or entities applying for permits to build and operate a
30 liquefied natural gas terminal.

31 25571.4. (a) The commission shall compare and rank every
32 site for which an application for a permit has been filed with the
33 commission to build and operate a liquefied natural gas
34 terminal. The comparison and ranking shall be based on the
35 following criteria:

36 (1) The extent to which the facility is necessary to meet the
37 future energy needs of California.

38 (2) The extent to which environmentally less damaging
39 alternatives are feasible to meet California's future energy
40 needs.

1 (3) *The extent to which a no-build alternative is or is not*
2 *economically feasible for California's economy.*

3 (4) *All effects on the environment, public health, safety, and*
4 *welfare, including any disproportionate negative effects upon*
5 *low income or disadvantaged communities.*

6 (5) *The economic merits of the respective proposals,*
7 *including, but not limited to, the reliability and sustainability of*
8 *the proposed supply.*

9 (b) *In conducting the comparison and ranking, the commission*
10 *shall consult with all entities of local government that would be*
11 *affected by a proposed liquefied natural gas terminal, the*
12 *California Coastal Commission, the State Lands Commission, the*
13 *Public Utilities Commission, the Office of Emergency Services,*
14 *the Department of Fish and Game, the State Water Resources*
15 *Control Board, the affected California regional water quality*
16 *control board, the State Air Resources Board, the Federal*
17 *Energy Regulatory Commission, and the United States Coast*
18 *Guard.*

19 25571.6. *The commission may issue a permit to build and*
20 *operate a liquefied natural gas terminal only if it determines,*
21 *based on the record, that among the available technologies for*
22 *producing natural gas through a liquefied natural gas process,*
23 *that the technology chosen for a particular site will have the least*
24 *adverse public health, safety, and environmental impacts then*
25 *feasible.*

26 25571.8. (a) *The commission shall be the lead agency for*
27 *issuing any approval necessary for the construction or operation*
28 *of a liquefied natural gas terminal in California.*

29 (b) *This article does not limit any existing authority of state*
30 *government pursuant to Division 13 (commencing with Section*
31 *21000).*

32 SEC. 3. *Section 1002 of the Public Utilities Code is amended*
33 *to read:*

34 1002. (a) *The commission, as a basis for granting any*
35 *certificate pursuant to Section 1001 shall give consideration to*
36 *the following factors:*

37 (1) *Community values.*

38 (2) *Recreational and park areas.*

39 (3) *Historical and aesthetic values.*

1 (4) Influence on environment, except that in the case of any
2 line, plant, or system or extension thereof located in another state
3 which will be subject to environmental impact review pursuant to
4 the National Environmental Policy Act of 1969 (Chapter 55
5 (commencing with Section 4321) of Title 42 of the United States
6 Code) or similar state laws in the other state, the commission
7 shall not consider influence on the environment unless any
8 emissions or discharges therefrom would have a significant
9 influence on the environment of this state.

10 (b) With respect to any thermal powerplant or electrical
11 transmission line for which a certificate is required pursuant to
12 the provisions of Division 15 (commencing with Section 25000)
13 of the Public Resources Code, no certificate of public
14 convenience and necessity shall be granted pursuant to Section
15 1001 without such other certificate having been obtained first,
16 and the decision granting such other certificate shall be
17 conclusive as to all matters determined thereby and shall take the
18 place of the requirement for consideration by the commission of
19 the four factors specified in subdivision (a) of this section.

20 (c) *With respect to any liquefied natural gas terminal for*
21 *which a permit is required pursuant to the provisions of Article*
22 *6.5 (commencing with Section 25570) of Division 15 of the*
23 *Public Resources Code, no certificate of public convenience and*
24 *necessity shall be granted pursuant to this chapter without a*
25 *permit having been obtained first, and the decision granting the*
26 *permit shall be conclusive as to all matters determined thereby*
27 *and shall take the place of the requirement for consideration by*
28 *the commission of the four factors specified in subdivision (a) of*
29 *this section.*

30 *SEC. 4. Section 1003 of the Public Utilities Code is amended*
31 *to read:*

32 1003. Every electrical and every gas corporation submitting
33 an application to the commission for a certificate authorizing the
34 new construction of any electric plant, line, or extension, or gas
35 plant, line, or extension, not subject to the provisions of Chapter
36 6 (commencing with Section 25500) *or Chapter 6.5*
37 *(commencing with Section 25570) of Division 15 of the Public*
38 *Resources Code, shall include all of the following information in*
39 *the application in addition to any other required information:*

1 (a) Preliminary engineering and design information on the
2 project. The design information provided for thermal electric
3 plants shall include preliminary data regarding the operating
4 characteristics of the proposed plant, including, but not limited
5 to, the annual capacity factor, availability factor, and the heat rate
6 for each year of the useful life of the plant, line, or extension.

7 (b) A project implementation plan showing how the project
8 would be contracted for and constructed. This plan shall show
9 how all major tasks would be integrated and shall include a
10 timetable identifying the design, construction, completion, and
11 operation dates for each major component of the plant, line, or
12 extension.

13 (c) An appropriate cost estimate, including preliminary
14 estimates of the costs of financing, construction, and operation,
15 including fuel, maintenance, and dismantling or inactivation after
16 the useful life of the plant, line, or extension.

17 (d) A cost analysis comparing the project with any feasible
18 alternative sources of power. The corporation shall demonstrate
19 the financial impact of the plant, line, or extension construction
20 on the corporation's ratepayers, stockholders, and on the cost of
21 the corporation's borrowed capital. The cost analyses shall be
22 performed for the projected useful life of the plant, line, or
23 extension, including dismantling or inactivation after the useful
24 life of the plant, line, or extension.

25 (e) A design and construction management and cost control
26 plan which indicates the contractual and working responsibilities
27 and interrelationships between the corporation's management
28 and other major parties involved in the project. This plan shall
29 also include a construction progress information system and
30 specific cost controls.

31 *SEC. 5. This act shall only become operative if Senate Bill*
32 *1003 of the 2005–06 Regular Session is also enacted and*
33 *becomes operative on or before January 1, 2006.*

34 ~~26011.6. (a) The authority shall establish a renewable energy~~
35 ~~program to provide financial assistance to public power entities,~~
36 ~~independent generators, utilities, or businesses manufacturing~~
37 ~~components or systems, or both, to generate new and renewable~~
38 ~~energy sources, develop clean and efficient distributed~~
39 ~~generation, and demonstrate the economic feasibility of new~~
40 ~~technologies, such as solar, photovoltaic, wind, and ultralow~~

1 emission equipment. The authority shall give preference to
2 utility-scale projects that can be rapidly deployed to provide a
3 significant contribution as a renewable energy supply.

4 (b) The authority shall make every effort to expedite the
5 operation of renewable energy systems, and shall adopt
6 regulations for purposes of this section and Section 26011.5 as
7 emergency regulations in accordance with Chapter 3.5
8 (commencing with Section 11340) of Part 1 of Division 3 of Title
9 2 of the Government Code. For purposes of that Chapter 3.5,
10 including Section 11349.6 of the Government Code, the adoption
11 of the regulations shall be considered by the Office of
12 Administrative Law to be necessary for the immediate
13 preservation of the public peace, health and safety, and general
14 welfare. Notwithstanding the 120-day limitation specified in
15 subdivision (c) of Section 11346.1 of the Government Code, the
16 regulations shall be repealed 190 days after their effective date,
17 unless the authority complies with Sections 11346.2 to 11347.3,
18 inclusive, as provided in subdivision (c) of Section 11346.1 of
19 the Government Code.

20 (e) The authority shall consult with the State Energy
21 Resources Conservation and Development Commission
22 regarding the financing of projects to avoid duplication of other
23 renewable energy projects.

24 (d) The authority shall ensure that any financed project shall
25 offer its power within California on a long-term contract basis.