CALIFORNIA
ENERGY
COMMISSION

SITING FEE STUDY
A Report to the Legislative Analyst's Office

COMMISSION REPORT

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CALIFORNIA ENERGY COMMISSION

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Introduction

Legislative Directives

The Energy Commission has been requested by the Legislature to submit a report on whether it should charge fees to cover the costs of the power plant siting program. The Legislative Analyst's Office (LAO) previously raised the issue in the analysis of the Energy Commission's Fiscal Year (FY) 1985-86, FY 1987-88 and FY 1993-94 budgets.

In previous studies, conducted in response to the LAO's inquiries, the Energy Commission concluded that fees were not appropriate because fees create inequities between utility and non-utility power plant developers, fees would be difficult to administer, and fees could adversely impact staff resources and the timely review of applications. During the 2002-03 budget hearings, the legislative subcommittees considered adopting fees to finance the Energy Commission's Energy Facility Siting and Compliance Monitoring Program (Siting and Compliance Program). The subcommittees determined the LAO needed additional information regarding the imposition of fees prior to adopting any fee proposal. Specifically, the Legislature directed the Energy Commission to:

> 2. Fee Structures.
> (a) No later than January 1, 2003, the [C]ommission shall report to the chairs of the fiscal committees in both houses on alternative fee structures for imposing fees on (i) developers seeking approval for siting power plants and (ii) generators for the ongoing costs associated with compliance. The report shall detail the following for each alternative:
> - Fee structures, including information on proposed fees, fee base, and annual revenues.
> - Ease of administration and compliance.
> - Cost of administration and compliance.
> - Predictability of revenues.
> - Recommendation for which fee alternative is preferable.
> - The analysis provided in the report shall sustain a thorough review.
>
> (b) The Legislative Analyst shall review the report in (a). It shall report its findings and recommendations in the Analysis of the 2003-04 Budget Bill.

The objective of this current study is to address the informational requirements of the Legislature and determine the appropriate funding mechanism and source to meet the needs of the Siting and Compliance Program. To meet these objectives, this report describes the current method for funding the Siting and Compliance Program, examines policy issues, identifies stakeholder concerns, establishes evaluation criteria, identifies alternative methods of funding, and identifies the implications of these alternatives to the Siting and Compliance Program. Permit funding practices of eight other states and three local agencies are presented.

Conclusions and Recommendations

The Energy Commission believes that the current funding mechanism should remain intact, that is, funding for the siting program should come from electricity ratepayers. The ratepayers are the

key beneficiaries and should provide the funding for this program. The public's perception of the Energy Commission's independence and objectivity still remains a paramount concern. This issue was addressed in the earliest years of the Energy Commission. While the developers of energy facilities have changed during the past 25 years, the public's desire for a fair, open, objective, and independent evaluation of new proposals has not.

The Energy Commission understands that energy facility developers also receive a benefit from a thorough review of their applications and receipt of a well-crafted decision. When multiple parties receive benefits from the same public program, then public policy suggests that the beneficiaries pay for that program in approximate proportions to the benefit received. This policy suggests that the state should change its procedures in this area and charge the developers a fee for processing their applications for new energy facilities. The Energy Commission has weighed these two public policies and believes that maintaining the historical independence of the Energy Commission is more important than the equity issue. Therefore, the Energy Commission still recommends that developers not be charged fees.

However, if the ultimate decision on public policy priority is reversed, that is, the equity policy issue is deemed more important than the independence of the Commission's permit, then the Energy Commission would offer a carefully designed developer fee proposal. While the details of any fee proposal need to be worked out after input from the appropriate legislative committees and from public and private parties, the Energy Commission believes that a fee proposal needs to include the following characteristics:

1. The fee charged to applicants of energy facilities should be approximately 50 percent of the total average cost to the Energy Commission to process that application.
2. The fee should be based on the size of the project.
3. The fee should have a floor, to reflect minimum state operating costs regardless of size, and a ceiling to limit total exposure.
4. The actual fee paid should be known in advance so that developers can plan for it and not be surprised during the process.
5. Developers of renewable projects, possibly using the Energy Commission's Renewable Portfolio Standard as a guide, should be exempt from the fee to encourage additional projects of this nature that meet current state public policy objectives.
6. The fee should be paid to the state's General Fund, not the Energy Commission's Energy Resources Program Account, so that a developer's payment can not influence the review or outcome of its application.
7. The licensee of an Energy Commission certified power plant should pay an annual fee to offset the Energy Commission's cost for its compliance monitoring activities.
8. The Energy Commission should continue to budget its Siting and Compliance Program through the existing administrative and legislative budgetary process.

Background

Current Practices

The costs for administering the Siting and Compliance Program are presently funded primarily from the Energy Resources Programs Account (ERPA). The ERPA receives its revenues from a surcharge imposed on electricity consumed in California. Retail electricity sold by the utilities

has the surcharge applied whether it is generated by the utility or by merchant power plant developers.

The ERPA funds three primary energy facilities licensing processes. They are the Notice of Intent (NOI) followed by an Application for Certification (AFC), a single phase AFC, and a Small Power Plant Exemption (SPPE). The AFC process is the most common licensing process used. During the NOI, the Energy Commission evaluates alternative power plant locations and technologies. The applicant submits environmental and conceptual design information on at least three potential sites. The Energy Commission independently evaluates this information and can recommend one or more sites for conditional approval. The NOI process applies to large coal, municipal solid waste, and nuclear power plants. No NOI has been filed with the Energy Commission in over ten years, and the staff is not aware of any plans to do so in the future.

The most common site licensing process consists of the single-phase AFC 12-month certification process. In the application, the power plant developer presents its environmental analysis and preliminary engineering design of a specific proposed facility. During the AFC process, the Energy Commission examines the proposal and, if the project is approved, establishes specific conditions for its construction and operation.

If a project is between 50 - 100 MW in size and does not cause significant environmental impacts, the applicant has the option to request that the Energy Commission prepare a Small Power Plant Exemption. The SPPE actually exempts the proposed project from the Energy Commission's licensing jurisdiction. The process provides the applicant with all the environmental documentation needed for local permitting, and refers the project to the appropriate local agency for their permit processing.

The Warren-Alquist Act, Public Resources Code (PRC) Section 25532, also requires that the Energy Commission establish a compliance monitoring system to assure that certified facilities are constructed and operated in compliance with applicable laws, regulations, and conditions of certification. Compliance activities exist for the life of the project, including decommissioning, and are designed to:

- review scheduled compliance submittals,
- perform on-site construction and operation audits,
- process amendments to certificates,
- investigate and resolve complaints,
- coordinate with federal agencies on monitoring, and
- assist state and local agencies with delegated authority; maintain legal records and files.

Notice of Intent

Energy Commission Costs

The Energy Commission's cost for processing an NOI, according to its workload standards, is equivalent to 15.87 person years or $ 1.2 million (based on $75K/person year). Costs are not associated with compliance as projects are approved at the preliminary design level and must still proceed through the AFC process.

Energy Commission Fees

The NOI process has a required filing fee, but AFCs do not. Each applicant that submits an NOI to the Energy Commission must accompany the notice with a fee. The fee is assessed at one cent ($0.01) per kilowatt of net electric capacity of the proposed generation facility. The minimum fee is one thousand dollars ($1,000) and the maximum fee is twenty-five thousand dollars ($25,000). A fee of five thousand dollars ($5,000) is imposed on transmission line NOIs. (For further information on the filing fees, see PRC Section 25802.)

In addition, PRC Section 25538 provides for reimbursing local agencies for their actual reasonable costs for participation in the Energy Commission's permitting process. The Energy Commission must approve the local agency reimbursement request, which is also subject to review and comment by the applicant. The applicant pays approved costs.

Application for Certification

Energy Commission Costs

The Energy Commission cost for processing an AFC, according to its workload standards, varies with the type of project submitted. The following presents the person year requirements for different projects:

Project Type	Workload		
	Average	Low	High
Geothermal	7.86	4.88	13.86
Cogeneration	7.04	4.53	8.75
Merchant*	7.84	4.77	15.51

* Most new power plants fall into the merchant category, which are natural gas-fired simple or combined cycles.

Because most new projects will be merchant power plants, the estimate of Energy Commission cost is based on the average workload for recent merchant AFCs. Attachment A shows the costs for processing recent merchant AFCs. These costs include direct staff costs, consultant costs, consultant overhead, travel, and overtime. The average costs for the recent group of AFCs are about $666,000.

In addition to the licensing cost, the Energy Commission has costs related to compliance monitoring. Upon certification, the Energy Commission is responsible to ensure that the applicant complies with all the Energy Commission conditions of certification governing the project’s construction and operation. This function is undertaken in concert with local, state and, if necessary, federal agencies. The costs of the local agencies are reimbursed if requested. Those costs for the Energy Commission are not.

Energy Commission Fees

An AFC has no filing fee. Before becoming a "certified regulatory program", the Energy Commission collected fees to prepare California Environmental Quality Act (CEQA) documents. For each AFC, the Energy Commission prepared an Environmental Impact Report (EIR) and collected from the applicant the actual cost of preparing the EIR, including overhead. However, the Energy Commission no longer prepares an EIR because the Secretary of the Resources

Agency has certified the Energy Commission's regulatory process (i.e., the Energy Commission's siting process has been deemed equivalent to the review required by CEQA).

In addition, PRC Section 25538 provides that local agencies be reimbursed for their actual reasonable costs for participating in the Energy Commission's permitting process. In some circumstances, an applicant will also have to pay other state agencies for their review and involvement in the Energy Commission's process. The California Department of Fish and Game is one of the primary agencies involved in the Energy Commission's review process. Under its CEQA review responsibilities, the Department is allowed by law to charge for its work in reviewing and commenting upon documents that it receives.

Small Power Plant Exemption

Energy Commission Costs

The Energy Commission's cost for processing an SPPE, according to its workload standards, is equivalent to 2.54 person years, or about $191,000 assuming approximately $75,000 per person year. The variance historically has been as low as 0.32 person years to as high as 5.02 person years. It should be noted that the budget for each project is estimated at the time the case begins.

Energy Commission Fees

Under CEQA agencies are allowed to charge a fee covering the cost of preparing required documents (California Code of Regulations (CCR), Title 20, Section 21089). The Initial Study/Negative Declaration is principal CEQA document prepared by the Energy Commission in the SPPE. The applicant pays for the total cost of preparing the necessary documents.

At the beginning of a case, after filing an SPPE, the Energy Commission project manager sends the applicant a letter requesting a deposit for preparing the CEQA documents. CCR Title 20, Section 2308 requires that the deposit not be in excess of three percent of the capital cost of the project. The budget estimate is based upon a workload projection based on the average costs of processing recent SPPEs. Over time, the SPPE fees have been shown to be well below three percent of the project's capital cost. Each project is calculated individually and includes salaries, benefits, and overhead. If the cost of preparing the CEQA document is greater than the deposit received, the applicant is billed for the remainder. Similarly, any excess is returned to the applicant upon completion of the project.

Budget Projections

The budget for the Siting and Compliance Program is not limited to just siting of individual power plant or transmission line projects. The Program actually consists of four major functions:

1. reviewing of energy facility siting applications
2. monitoring of certified facilities
3. planning for future energy needs
4. assessing environmental trends and establishing energy siting policies and regulations

The yearly expenditure for each of these functions will vary, depending on the number of power plant applications submitted, the number of proposed changes to conditions of certification submitted, and to a lesser degree, the magnitude and extent of policy issues pertaining to energy facilities sited in California.

The Energy Commission has developed workload standards for most power plant technologies based on previous siting cases using an electronic data system to collect staff time spent on each siting case. The data are used to calculate an average workload for various types of projects (i.e., to develop workload standards). If the electronic data system were used in the future as the basis for assessing a fee for all AFCs, then additional administrative resources would be needed to administer and audit the system.

The first step in developing the Siting and Compliance Program's annual budget is preparing a filing forecast indicating the types of projects and likely filing dates of the applications. This forecast is based upon communications with potential applicants and subject to their decisions regarding project filing dates. Budget projections are developed using the workload standards and based on expected filing dates or decision dates for projects continuing from previous budget years. These budget projections include staff resources for the System Assessments and Facilities Siting Division, Hearing Office, Chief Counsel’s Office and Public Advisor's Office.

The next step is to determine the compliance monitoring budget based on the number of projects in construction, operation, and those proposed to be shutdown. In addition, adjustments can be based upon communications with power plant operators on likely major project amendments for the coming fiscal year.

Practices by Local Agencies and by other States

Attachment B summarizes the practices of local counties and cities regarding permit applications and zoning plan amendments. These local agencies generally require an application fee and charge for time and materials to prepare CEQA documents, such as an EIR. Typical application fees range from $17,000 to $55,000, plus time and materials.

Attachment C summarizes the practices of eight other states’ power plant and transmission permitting processes. The states examined typically require a nominal filing fee and require additional payment based on the capital costs of the project, megawatt rating of the power plant, or charge for actual costs. If the fee is based on capital costs or megawatt rating of the project, the states typically cap the maximum fees that can be charged.

Policy Issues

Should Energy Facility Developers Pay An Application Fee And An Ongoing Compliance Monitoring Fee?

Currently, the Energy Commission’s costs to review power plant applications is paid for by the fees charged to retail consumers of electricity in the state, an amount currently set at 0.2 mils ($0.0002) for each kilowatt hour (kWh) of electricity consumed. For an average residential household in the state this fee amounts to roughly 10 cents per month.

When the Warren-Alquist Act in 1975 first established the current payment structure, the state’s electricity regulatory system was far different than it is today. In 1975, investor owned utilities, municipal utilities, the state of California, and the federal government generated and sold virtually all the power consumed in the state. Consequently, the Legislature reasonably expected

that the Energy Commission would review power plants and transmission lines proposed either by public agencies or by investor owned utilities that were subject to regulation by the California Public Utilities Commission. To the extent that the Energy Commission did not collect fees from these project proponents, their overall costs were reduced which meant they passed on lower costs to their ratepayers/taxpayers.

Today, unregulated merchant generators propose most applications. Investor owned utilities have not proposed power plants subject to the Energy Commission review since the early 1990s. Recently municipal utilities are filing applications for projects and have accounted for 6 of the 76 applications filed since 1996. In the future, under the California Public Utilities Commission procurement proceedings, the investor owned utilities may finance or build projects as might the California Power Authority.

Merchant generators who build power plants in California predominantly sell their power in state, but are not required to do so. Therefore, the Energy Commission could review projects at the ratepayers' costs that do not provide electricity to the ratepayers. As noted above, the state's average cost of processing 12-month AFCs since 1997 has been $666,000. The Energy Commission's free review of these projects differs from other governmental agencies in California who charge project applicants for the expenses the agencies incur in reviewing applications and preparing environmental documents. In most instances, local agencies fully cover their costs through fees.

The cost to build a large power plant varies depending on the location, the cost of emission offsets, the cost of the various linear features, and the technology (e.g. coal, nuclear, natural gas, geothermal, etc.). With two exceptions, every project filed with the Energy Commission in the last ten years has been for a natural gas-fired power plant. The cost to build a natural gas-fired facility averages about $700,000 per megawatt. Therefore, to build a 500 MW facility costs about $350 million dollars. The cost to an applicant to prepare an application and participate in the licensing review accounts for about one percent of the total project costs. Requiring applicants to pay for the Energy Commission's costs to process an application would increase their licensing costs by roughly 20 percent and increase total project costs by about one quarter of one percent (0.025).

Requiring applicants to pay for the Energy Commission's costs to review an application would increase the cost to plan, permit, and build a project. As such, the up front costs to prepare and review a project application could increase by perhaps 20 percent, it is questionable in the long-term if such an increase in costs ($666,000) would pose a significant barrier to developing projects that cost hundreds of millions of dollars. However, given the current financial conditions of the electricity industry, any added up-front costs may discourage new development. The added up-front cost could also influence a merchant power plant developer's decision on whether to build in or out of state or whether to build over or under 50 MW. It is questionable that a seemingly small additional up front cost could tip the balance of a developer's decision and reduce the number of new generation projects potentially needed for California.

In the past, equity was one of the reasons that we recommended earlier against implementing a fee, because utilities were able to rate-base their up-front permitting costs while merchant developers were not. Because merchant developers are now proposing most of the new generation, this competitive advantage for utilities is not as significant. However, it may be an

issue in the future if investor owned utilities develop rate-based generation under the California Public Utilities Commission procurement proceedings.

More important is the issue of how much benefit the state's ratepayers receive as they provide the budgetary support through the surcharge on their electricity bills to ERPA. Ratepayers do benefit from added infrastructure to the extent that new infrastructure increases system reliability and is economical. Under the current system, a merchant developer also accrues significant benefit from the Siting and Compliance Program because they do not have to pay fees that could approach or even exceed one million dollars. As noted above, these developers are under no obligation to sell the electricity their projects generate to California consumers. Requiring developers to pay for permitting is also consistent with a broader state policy of having the "polluter pay".

Whether developers should pay the Energy Commission for all or some of its review, including compliance monitoring work during construction and operation of the facility is an issue driven more by policy considerations than economics. As stated above, in the long-run, the small increase in project costs is unlikely to change the economics of project development although it may discourage developers from proposing needed energy infrastructure in California under difficult financial conditions, such as exist now.

The public's perception of policy must also be considered when discussing developer fees. If a developer pays a regulatory agency for the agency's review and approval of a project, the public may raise the issue of whether the agency is performing an unbiased analysis as the agency is paid by the entity it is regulating. This is an important issue and a valid concern. It is the norm in California for agencies to be paid by developers for their CEQA review/permitting. To address this issue, the regulated developer could pay the fees to the General Fund, not the special fund which supports the Energy Commission.

What Proportion Of Total Processing Costs And Compliance Costs Should The Fee Cover?

Planning, permitting, and licensing power plant and transmission line projects in a competitive, deregulated electricity system entails risks that prospective applicants must weigh against potential rewards. While the Energy Commission's permitting process normally takes a little over one year, a project may take over five years from the beginning of a company's earliest planning activities through permitting and construction to being on-line. However, as we have seen in just the past two years, the finances of the electric power industry can change dramatically in a short period of time. This uncertainty, coupled with the extremely capital intensive nature of building large power plants and transmission lines, creates problems for the orderly planning and construction of needed upgrades to the existing electric power system.

Currently California depends heavily on private companies (merchant developers) to construct new power plants to meet the demand for electricity. Consequently, in a deregulated system, the state has an interest to encourage the development of new power plants.

The Energy Commission does not have a clear formula for determining the proportion of costs that applicants should pay. If one believes that developers are receiving a benefit from the state's ratepayers that should at least be partially reimbursed, a balance needs to be struck between the costs and benefits allotted to these two interests. The staff believes that splitting the costs equally

between applicants and ratepayers is appropriate. Splitting the costs creates a system where ratepayers and developers will each benefit from and pay for regulatory review of energy facilities. As an overall component of project costs, adding $666,000 (see Attachment A) for the most expensive projects should not impede development because it represents anywhere from 10 to 20 percent of the planning/licensing costs and approximately one quarter of one percent (0.025) of total project costs.

Workshop Comments

The Commission staff held a public workshop on November 26, 2002 to solicit public comments on a variety of issues related to siting application fees. The workshop was attended by two developers, an electric utility, an electric industry representative for independent energy producers, and another state department. The objective of the workshop was to discuss a variety of application fee questions including: should developers be charged an application and compliance fee, and if instituted, what level and type of fee should be charged, payment schedule, etc. The following summarizes the key points raised and discussed at the workshop.

- When considering instituting a siting application fee, the Commission should consider its potential impact on Senate Bill 1269 (SB 1269, Peace, Chapter 567, Statutes of 2002). Depending on how structured, an application fee could conflict with or negatively impact the intent or 'spirit' of SB 1269.
- Developers expressed concern about the near-term impact of an application fee on today's unstable electricity market, which could send the wrong signal to the development community, create barriers to market entry, and possibly deter smaller projects from entering the market. Additionally, developer project financing could be more difficult to obtain if an 'up front' application fee were required. Developers also expressed concern that a state application fee could push smaller projects below the 50MW threshold to avoid state oversight, thereby shifting responsibility to local agencies and ultimately reducing the amount of new generation. They were also concerned that developers may consider building out of state to avoid the state process and filing fee.
- In the event a fee is imposed, developers suggested that the fee:
  - be simple to apply and assess,
  - be identified up-front so that appropriate financing can be obtained and there are no surprises later in the review process,
  - be equitable/proportional,
  - be paid upon certification and consider providing a refund once the project is developed and comes on-line, and
  - provide some certainty to developers on the length of review time.
- The workshop participants were also concerned on using both actual and average rates as the basis for a fee structure. Actual costs could be prohibitively expensive if public intervention is high; these types of costs are often beyond the control of the developer. Average costs can drive up costs for those projects that move through the siting process quickly with minimal costs to the Energy Commission. Conversely, projects that have a higher review cost can pass a significant portion of the cost on to other developers.

- Additionally, workshop participants had mixed opinions on whether Commission objectivity would be compromised if a fee program were implemented. The concern was in the appearance (public perception) of the Commission receiving payment from a developer to obtain a certification to build a power plant in California. Others in attendance believed that developers should pay for the siting application review cost to remain equitable with other programs/services provided by other state and local agencies.

Evalutation Process

Fee Revenue and Cost Imbalances

Although historically successful in forecasting the filing of new applications for budgeting purposes, the Energy Commission now has more uncertainty regarding when or whether a developer will file its application. In addition, the range of costs for review of an application is large ($0.42 million to $1.25 million, see Attachment A). A fee structure that does not address these uncertainties may lead to potential budgetary imbalances and, thus, potentially jeopardize the Energy Commission's ability to license power plants in a timely manner.

Because of the potential budgetary imbalances in power plant siting fees and costs, fees should not be relied on to fund core Siting and Compliance Program costs. Such a procedure would produce budget surpluses and deficits that would be difficult to manage within the purview of the Energy Commission's annual budget and civil service hiring/layoff procedures. Therefore, fees should be budgeted as revenue to the General Fund. In this manner, the Energy Commission can ensure it will meet the energy facility siting requirements of the PRC. In addition, separating fee revenues from administration of the Siting and Compliance Program eliminates a perception that the Energy Commission’s decision on an application is linked to the fees paid by the developer.

The Need for a Core Program

The Siting and Compliance Program has some unique features that distinguishes it from other state programs that are financed through a fee structure. For example, the Siting and Compliance Program requires a diverse group of environmental professionals - biologists, land use planners, and water resource specialists - and engineering professionals - civil, mechanical, electrical and air quality engineers - to process an application. The Energy Commission can and does use consultants to obtain this professional expertise during times of peak workload.

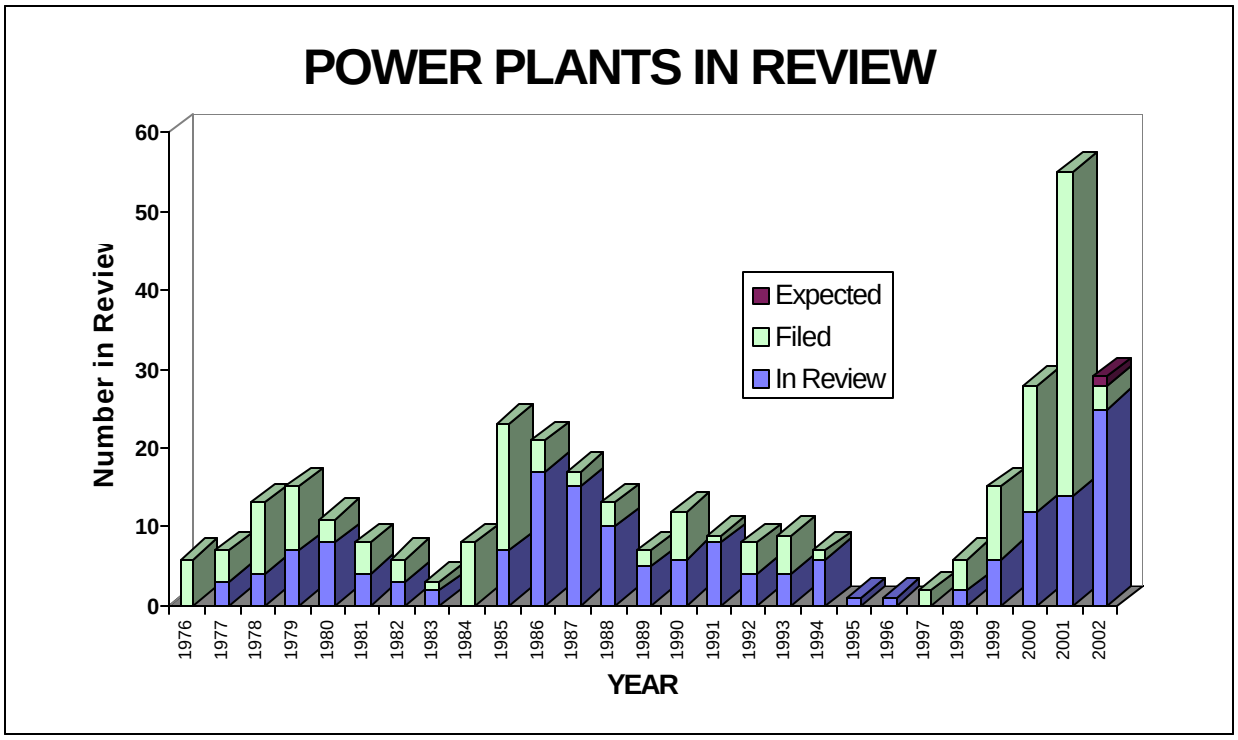
However, because of the intricate and evolving nature of California’s energy systems, the Energy Commission needs a core staff familiar with California’s environmental, engineering, and energy policies. The core staff also directs the work of consultants, plans for future energy needs, and develops energy siting policies and regulations. Although consultants can review applications, state contracting requirements, the time required for contract approval, the Energy Commission’s strict conflict of interest requirements dictate that contracts securing the consultants be in place before an application is submitted. Consequently, the Energy Commission needs a fee structure that will fund core staff and/or consultants to meet the varying yearly siting workload.

A core staff is essential to ensure that the Energy Commission will be prepared at all times to carry out its duties and responsibilities for administering the law, including maintaining the siting regulations and procedures and performing studies of statewide or regional siting issues that might otherwise delay the review of siting applications in a timely manner. To budget for a core

staff requires a funding level that bridges the peak and valley syndrome of the siting program's history.

Figure 1 illustrates the peaks and valleys the Energy Commission has experienced permitting power plants. To address this problem, funding should be provided from the ERPA account and the fee revenue should be deposited in the General Fund. Alternatively, if the program were funded from developer fees, the fee revenues would be needed in advance of developers filing applications to ensure that needed personnel and/or peak workload contracts are in place to review the applications when received. This alternative does not appear to be practical.

Figure 1
Peaks and Valleys of Power Plant Permitting



Evaluation Objectives

Based on the Legislature's study objectives and the unique nature of the Siting and Compliance Program, the fee structure should be as follows:

- Easy to administer and to verify compliance
- Have minimal administration and compliance costs
- Generate predictable revenues
- Ensure that the developer and public costs and benefits are balanced
- Recover the full costs of licensing a project (e.g., costs and fees are balanced)
- Fund core staff and peak workload contracts
- Ensure that sufficient revenues are available to conduct ongoing compliance monitoring work and process project amendments

- Ensure that sufficient revenues are available to conduct ongoing compliance monitoring work and process project amendments

Alternative fee structures

Siting Application and Compliance Monitoring Fees

The Energy Commission has examined five alternative fee structures. All fees paid by developers could be paid to the state's General Fund, and ERPA funds would continue to support the Siting and Compliance Program. If fees were paid to ERPA, they could be used to fund peak workload siting contractors when needed and/or they could be used to fund local agency and/or intervenor participation in the review process. The alternatives are:

1. No Fee/Status Quo: Continue funding the Siting and Compliance Program from the ERPA.
2. Developer Pays 100% of Actual Costs: The developer would pay for the actual hours the staff reviewed an application, monitor compliance and/or consultant costs. The developer would pay an initial deposit, then make quarterly payments. At the end of the review process, a final payment would be made. Annual compliance payments would begin at the end of the first year of construction and could be paid annually or in a single payment.
3. Developer Pays 100% of Average Review Costs: The developer would pay 100% of average costs to review an application (i.e., $666,000) and monitor compliance (approximately $15,000/year). The developer would pay an initial deposit and then make quarterly payments. Annual compliance payments would begin at the start of construction and could be paid annually or in a single payment.
4. Developer Pays 50 percent of Actual Review Costs: The developer would pay 50 percent of actual costs for application review and compliance monitoring. The developer would pay an initial deposit and then make quarterly payments. At the end of the review process, a final payment would be made. Annual compliance payments would begin at the end of the first year of construction and could be paid annually or in a single payment.
5. Developer Pays Fixed, Scaled Fee[1]: The developer would pay $100,000 plus $250 per megawatt at the time of filing an application for certification up to a maximum of $350,000. Annual compliance payments of $15,000 per year for the life of the project would begin at the start of construction and could be paid annually or in a single advance payment.

Evaluation of Alternative Fee Structures

Table 1 ranks the Siting and Compliance Program Fee Alternatives. Each alternative was ranked for its ability to meet the evaluation objectives discussed above. The rankings were 0 through 3; 3 was given for the best alternative to meet the objective, 2 was above average, 1 was average, and 0 was given when the alternative failed to meet an objective. The “No Fee/Status Quo” ranked the highest and “Developer Pays Fixed Fee” ranked second highest.

[1] This proposal considers an application to the Energy Commission for a thermal power plant and transmission line in combination. If this concept is accepted, the Energy Commission would need to develop an equivalent fee for a transmission line only application.

Table 1 Ranking of Alternative Siting and Compliance Program Fee Structures

Alternative/Evaluation Criteria	No Fee/Status Quo – 100 % ERPA	Developer Pays 100% Actual Siting and Compliance Costs	Developer Pays 50% Actual Siting and Compliance Costs	Developer Pays 100% Average Siting and Compliance Costs	Developer Pays Fixed Fee of $100,000+$250/MW up to $350,000 and $15,000/year for Compliance
Ease of Administration	3	1	1	2	2
Administrative (Compliance) Costs	3	1	1	1	2
Predictable Revenues	0	1	1	1	1
Balance Developer and Public Interests and Benefits	0	0	1	1	1
Recover the full costs of licensing a project	0	3	1	1	1
Funds core staff and peak workload contracts	3	0	0	0	0
Total Score	9	6	5	6	7
Comments	The status quo is the easiest to administer, has the least compliance costs, and will ensure that funds are available in advance of filing to fund core staff and peak workload contracts. However, because the electricity ratepayer is the only party funding the Siting and Compliance Program, there is no balance between the developer and public costs and benefits.	Tracking actual costs will add significantly to the burden of administering the fee and the compliance costs. Having the developer pay for the full cost of review does not account for public benefits. Full cost recovery is dependent on project filings and the developer's ability to pay.	Tracking actual costs will add significantly to the burden of administering the fee and the compliance costs. Having the developer and the ratepayer pay for 50 percent of the cost of review balances benefits to the developer and public.	Charging average costs reduces effort needed to administer the fee and reduces the compliance costs. Establishing a set fee provides the developer some certainty regarding the cost of review. Having the developer pay for the average cost of review does not account for public benefits.	Charging fixed fee costs reduces effort needed to administer the fee and reduces the compliance costs. Establishing a set fee provides the developer some certainty regarding the cost of review. Having the developer pay a fixed cost that will not typically recover full costs of review does not account for public benefits.

The rankings were 0 through 3; 3 was given for the best alternative to meet the objective, 2 was above average, 1 was average, and 0 was given when the alternative failed to meet an objective.

Implications of Alternative Fee Structures

A fee structure based on actual costs appears to represent the state's best option because complex or controversial projects that require more resources to process will pay the higher costs of their review. However, the cost of administering an accounting process to charge for actual costs reduces the benefits of this fee structure while having the developer pay for the cost of review does not account for public benefits. Full cost recovery and funding for core staff and peak workload contracts depends on project filings and the developer's ability to pay.

A fee structure based on average costs, over the long term, address the higher costs of reviewing a more complex or controversial project. Charging average costs reduces the effort needed to administer the fee and reduces the compliance costs. In establishing an average cost as a set fee, the developer has some certainty on the potential costs of processing its proposal. However, developers may also try to pressure the Energy Commission to reach a decision expeditiously on complex and controversial issues that may require additional time to address. Any set fee structure will encourage developers to pressure the Energy Commission to complete its review quickly to reduce costs. This situation does not currently exist with funding from the ERPA account, but having the developer pay for the average cost of review does not account for public benefits. Full cost recovery and funding for core staff and peak workload contracts depends on project filings and the developer's ability to pay.

Because both the ratepayer and the developer benefit from the licensing of new power plants, to be equitable, they both could pay for the cost of licensing. Therefore, if the equity issue is the primary public policy issue to be satisfied, then the alternative that best meets all of the objectives is the developer paying a fixed fee to the General Fund and the electricity surcharge continuing to cover the costs of the Siting and Compliance Program.

Potential Conflicts with Senate Bill 1269

In the fall of 2002 the Legislature passed and the Governor signed Senate Bill (SB) 1269. Section 25534 (f) reads:

(f) The commission shall extend the start of the construction deadline required by paragraph (4) of subdivision (a) by an additional 24 months, if the owner reimburses the commission's actual cost of licensing the project. For the purposes of this section, the commission's actual cost of licensing the project shall be based on a certified audit report filed by the commission staff within 180 days of the commission's certification of the project. The certified audit shall be filed and served on all parties to the proceeding, is subject to public review and comment, and is subject to at least one public hearing if requested by the project owner. Any reimbursement received by the commission pursuant to this subdivision shall be deposited in the General Fund.

SB 1269 does not apply to several types of projects, including those involving the modernization, repowering, replacement, or refurbishment of existing facilities or qualifying small power production facilities, qualifying cogeneration facilities, or projects proposed by municipal utilities to serve native load. Nevertheless, this legislation may be important in the discussion of potential siting fees for several reasons. First, adopting a siting fee could be a disincentive to developing new power plants and in conflict with the intent of SB 1269 to encourage timely construction of power plants. In addition, power plant developers may view any siting fee with a

broader scope than SB 1269 as retracting the understanding reached with the developers when SB 1269 was passed.

The Legislature could adopt a siting fee without amending Section 25534 (f); however, this may cause ambiguity regarding what, if any, payments a developer would need to make pursuant to Section 25534 (f). Therefore, if the Legislature determines that siting fees are appropriate, the Energy Commission recommends that the Legislature amend Section 25534 (f) to address any conflicts and remove any ambiguities. Such an amendment as highlighted in **bold** is:

(f) The commission shall extend the start of the construction deadline required by paragraph (4) of subdivision (a) by an additional 24 months, if the owner reimburses the commission's actual cost of licensing the project **less any permitting fee paid.** For the purposes of this section, the commission's actual cost of licensing the project shall be based on a certified audit report filed by the commission staff within 180 days of the commission's certification of the project. The certified audit shall be filed and served on all parties to the proceeding, is subject to public review and comment, and is subject to at least one public hearing if requested by the project owner. Any reimbursement received by the commission pursuant to this subdivision shall be deposited in the General Fund.

Recommendations

Funding of the Siting and Compliance Program from the ERPA has many policy and practical advantages over a fee charged to developers. However, relying solely on ERPA funds does not provide a balance of public and private benefits. Imposing a fee to reimburse the General Fund, rather than funding of the Siting and Compliance Program, addresses the potential disadvantage of a fee and balances the costs and benefits of the Siting and Compliance Program between power plant developers and the ratepayer.

If the fee is charged, the Energy Commission recommends that the developer pays $100,000 plus $250 per megawatt at the time of filing an AFC up to a maximum of $350,000 with annual compliance payments of $15,000 per year for the life of the project. The compliance fee would begin at the start of construction and could be paid annually or in a single advance payment.

Attachment A

Energy Commission Costs to Process Recent Applications for Certification

Project	MIS CODE	Months to Process	Siting Staff Person Months	General Counsel Person Months*	Hearing Office Person Months*	Consultant Person Months	Total Person Months	Staff Costs (@ $75K/PY)	Consultant Direct & Overhead (14.4%)	Travel $17,000/Year	Overtime $9,600/Year	Total Costs
High Desert Project	6155	33.6	166.31	9.20	8.22	2.35	**186.09**	$ 1,148,324	$ 27,623	$ 47,600	$ 26,880	**$ 1,250,427**
Metcalf	6173	27.1	129.04	9.20	8.22	6.25	**152.72**	$ 915,387	$ 132,189	$ 38,392	$ 21,680	**$ 1,107,647**
Sutter Project	6158	15.7	121.31	9.20	8.22	0.00	**138.74**	$ 867,095	$ -	$ 22,242	$ 12,560	**$ 901,897**
Three Mtn. Pwr. Proj.	6165	22.8	80.09	9.20	8.22	3.85	**101.37**	$ 609,473	$ 45,165	$ 32,300	$ 18,240	**$ 705,178**
Otay Mesa Project	6157	18.4	78.82	9.20	8.22	1.26	**97.50**	$ 601,555	$ 14,945	$ 26,067	$ 14,720	**$ 657,286**
Sunrise Cogen	6161	23.2	76.26	9.20	8.22	0.00	**93.68**	$ 585,507	$ -	$ 32,867	$ 18,560	**$ 636,933**
Enron Pittsburg	6160	13.9	74.57	9.20	8.22	0.00	**91.99**	$ 574,956	$ -	$ 19,692	$ 11,120	**$ 605,768**
Blythe Energy	6164	12	56.96	9.20	8.22	14.75	**89.13**	$ 464,905	$ 175,484	$ 17,000	$ 9,600	**$ 666,988**
Contra Costa	6177	15.7	52.10	9.20	8.22	16.31	**85.84**	$ 434,543	$ 314,981	$ 22,242	$ 12,560	**$ 784,325**
La Paloma	6162	13.6	56.27	9.20	8.22	0.00	**73.69**	$ 460,570	$ -	$ 19,267	$ 10,880	**$ 490,717**
Elk Hills	6167	21.1	54.76	9.20	8.22	0.00	**72.19**	$ 451,182	$ -	$ 29,892	$ 16,880	**$ 497,954**
Moss Landing	6170	17.4	53.11	9.20	8.22	1.15	**71.69**	$ 440,875	$ 19,056	$ 24,650	$ 13,920	**$ 498,501**
Delta Energy Facility	6166	13.6	53.15	9.20	8.22	0.00	**70.58**	$ 441,097	$ -	$ 19,267	$ 10,880	**$ 471,244**
Mountainview	6179	10.1	30.69	9.20	8.22	15.12	**63.23**	$ 300,705	$ 213,783	$ 14,308	$ 8,080	**$ 536,876**
Pastoria Power Project	6172	12.5	41.23	9.20	8.22	1.41	**60.06**	$ 366,588	$ 22,111	$ 17,708	$ 10,000	**$ 416,407**
Midway Sunset	6174	12.4	36.11	9.20	8.22	3.75	**57.28**	$ 334,598	$ 62,696	$ 17,567	$ 9,920	**$ 424,780**
Average Costs			**72.55**	**9.20**	**8.22**	**4.14**	**94.11**	**$ 562,335**	**$ 64,252**	**$ 25,066**	**$ 14,155**	**$ 665,808**

* Person Months for General Counsel and Hearing Office are estimates based on workload standard.

ATTACHMENT B

Sample of Local Government Permitting Fees*

Application Type	Scope of Services	Sacramento County	Sacramento City	El Dorado County
General Plan Amendment	Full Service Rev ** + CEQA	$12,371	$8,500	$3,004
Rezone	Full Service Rev + CEQA	$10,176	$8,000	$2,924
Com Plan Amendment	Full Service Rev + CEQA	$8,579	$7,000	$5,000 + T&M
Development Plan Review	Planning, Parks, Roads, Water + CEQA	$4,620	$3,000	$2,258
Development Agreement	Planning, Roads, Water, Transit, + CEQA	$6,194	$7,700	$5,000 + T&M
Use Permit	Full Service Review, w/o Parks & Transit, + CEQA	$6,544	$5000	$3,090
Variance	Planning, Public Health, Roads, Water + CEQA	$3,879	$1,600	$1,021
Tentative Map	Full Service Rev + CEQA	$7,065	$3,000	$5,835
Parcel Map	Full Service Rev + CEQA	$4,930	$2,000	$3,819
Pre Application Meetings/Rev	Planning + CEQA	$100	$1,600	$160
Pub Workshop Review	Planning	--	$1,500	--
Typical Combined Application* **	GPA, CPA, Rezone, UP, V, TM, PM	$53,544 (full fees)	$28,450	$16,602
CEQA Review	Exemption, Neg. Dec., EIR	$240 + T&M	$6,100 + T&M	$8,200 + T&M
Payment		Flat Fee Up Front + T&M	Flat Fee Up Front + T&M	Flat Fee Up Front + T&M

***** Fees listed are flat fees and do not include additional fees for local air quality permits and water quality permits. Unusual projects would normally be classified as "Special Projects" and developers would be billed for actual costs.
****** Full Service Review includes comments from Planning, Parks, Air Quality, Public Health, Hazardous Materials, Roads, Water, Transit departments and CEQA review.
*** The City of Sacramento and El Dorado County charge reduced fees for combined applications, if the project review costs are covered by the flat fee. Projects reviewed on a "time and materials" (T&M) basis do not get discounted fees. Discounts do not apply to CEQA review changes.

ATTACHMENT C
SUMMARY OF SITING/COMPLIANCE PROGRAMS AND FEES FOR POWER PLANTS AND RELATED FACILITIES IN SELECTED STATES

SITING/COMPLIANCE ELEMENTS	SELECTED STATES		
	ARIZONA	**NEVADA**	**OREGON**
Facilities requiring state certificate/ License/permit	100MW or > power plants & related transmission, fuel lines	All power plants + transmission line connections	Power plants over 25MW, except certain co-generation facilities
Primary siting/compliance Monitoring agency Responsibilities:	Power Plant & Transmission Siting Committee Reviews applications & issues certificate. Water, air permits by local entities	Nevada PUC (NPUC) Reviews and approves all permit applications, except in Clark & Washoe Counties, which issue their own.	Oregon Office of Energy & Siting Council Processes Notice of Intent (NOI) and Certificate Application. Monitors power plant construction and operation.
Additional siting/ compliance Monitoring agencies Responsibilities:	AZ Corporation Commission Approves certificate	1. Other state & federal agencies review & issue other permits 2. EIR, air, water and waste permits issued by local agencies	OPUC, Cons. & Dev., Forestry, Fish & Wildlife. Local zoning agencies do own review through Office of Energy
Application, permits and related fees	New plant application: $10,000 Plant + Trans. exp: $7,500 Plant expansion: $5,000 Transmission only: $2,500-5,000	Power plant: $200 Transmission line: $200 EIR: actual cost Other permits: various fees or actual costs, by other state/local agencies.	1. NOI: Actual costs with $25,000 deposit. 2. Certificate: Applicant billed for actual costs.
Payment schedules for fees/permits and certificates	All fees, permits payable at time of filing.	Applications payable when filing, some local fees billed "in arrears" for actual costs.	Deposits payable up front; then applicant billed monthly for actual costs.
1. Do fees/permits/charges cover actual administrative costs? 2. If not, how is deficit covered?	1. No. 2. Deficit paid from Commission's surcharge revenue, then applicant requested to reimburse.	1. No. 2. Deficit covered from NPUC surcharge on all regulated utilities.	1. Yes.

	Florida	Maryland	New York
Facilities requiring state License/certificate/ Permit	75MW or > steam or solar, combined cycle. Smaller plants: by locals	All power plants & associated facilities, except very small emergency plants, eligible for exemption	All major plants 80MW or >, also associated trans and fuel lines
Primary siting and compliance monitoring agency; Responsibilities	1. Public Service Commission: Determines need. 2. Dept of Environmental Protection: One-stop processing and issuing of permits. 3. Compliance: Monitoring by state/local agencies.	Public Service Commission (PSC): processes and issues siting certificate. Compliance monitoring by state and local environmental agencies	State Board on Electricity Generation and the Environment; Processes and issues Certificates of Environmental Compatibility
Additional siting and compliance agencies; Responsibilities	Public Service Comm., Dept. of Community Affairs; Fish & Wildlife; Dept. of Ag & Health; Counties. Review application, issue water, air and waste permits	State and local environmental depts. process and issue water, air, waste emission permits.	1. Dept. of Environmental Conservation issues air, water, waste permits prior to certification 2. Public Service Commission monitors compliance
Applications, permits, certificates and related fees/charges	1. Notice of Intent: $2,500 2. Certificate Application: >$200,000, determined by size and type of facility. 3. Cert. of Modification: $10K-30K 4. Supplemental Application: $75,000 if plant capacity is increased.	1. Cert. of Public Convenience & Necessity Fee: $10,000 2. Water, air, waste permits costs vary, depending on amount of discharge	1. Prelim. Scoping: no charge 2. Application for Certificate $1,000/MW, up to $300,000 deposited in Intervenor Fund. 3. Air, water, waste permits by state & local agencies. Fee determined by amount of emission.
Payment schedules for fees, permits and certificates	All fees payable when filing, deposited in special fund, treated as revenues, not as reimbursements.	All fees payable at time of application. Permits renewable in 3-5 years.	Payable at time of filing
1. Do fees/charges cover actual administrative costs? 2. If not, how is deficit covered?	1. Generally do not; Dept of Environmental Protection doing study on how much covered. 2. From budget of affected state departments.	1. No. 2. State siting & compliance monitoring costs subsidized from Public Service Commission's budget supported from assessments on utilities.	1. No. 2. Siting & compliance costs paid from Dept of Public Service that is funded by surcharge on utilities. Intervenor costs paid for from Intervenor Fund.

	Ohio	WASHINGTON
Facilities requiring state License/certificate/ Permit	All steam plants 50MW or >; smaller plants licensed by local agencies	1. Floating thermal plants of 100MW or >. 2. 350MW & > regular thermal. 3. Associated facilities > 200,000 V.
Primary siting and compliance monitoring agency; Responsibilities	Ohio Power Siting Board (OPSB): 1. Hold preliminary information hearing; 2. Process & approve applications for certification; 3. issue certificate	Energy Facility Site Evaluation Council Processes and evaluates applications for final action by Governor; monitors construction and operation.
Additional siting and compliance agencies; Responsibilities	Ohio Dept. of EPA & Nat. Resources processes and issues air, water, waste permits; OPSB also monitors compliance for 1- 2 yrs; Ohio EPA monitors afterwards	Local Zoning Boards work with Evaluation Council on processing permits through the Council.
Applications, permits, certificates and related fees/charges	Certificate Deposit fee is 50¢/KW up to max $100,000 (200MW); Ohio, local EPSs issue air, water, waste permits. Costs determined by volume of discharge.	Prelim. Site Study: actual costs with $10,000 deposit. Certificate Application: • $25,000 processing deposit • Billed for balance of actual costs quarterly
Payment schedules for fees, permits and certificates	Paid when application/ Permit filed.	Deposits payable up front; then applicant billed quarterly for balance of actual costs.
1. Do fees/charges cover actual administrative costs? 2. If not, how is deficit covered?	1. Yes, deposit covers most admin costs. 2. If not, legislative board can approve supplemental assessments. Unused portion of certificate deposit, or assessments refunded to applicant.	1. Yes. All actual permitting and compliance costs billed to licensee.

	Ohio	WASHINGTON
Facilities requiring state License/certificate/ Permit	All steam plants 50MW or >; smaller plants licensed by local agencies	1. Floating thermal plants of 100MW or >. 2. 350MW & > regular thermal. 3. Associated facilities > 200,000 V.
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1. Do fees/charges cover actual administrative costs? 2. If not, how is deficit covered?	1. Yes, deposit covers most admin costs. 2. If not, legislative board can approve supplemental assessments. Unused portion of certificate deposit, or assessments refunded to applicant.	1. Yes. All actual permitting and compliance costs billed to licensee.