

NATURAL GAS

# Energy Commission Sued over Location of New Natural Gas Plants

by Chris Clarke  
on May 31, 2013 3:52 PM



Seal Beach gas-fired power plant | Photo: Mollivan Jon/Flickr/Creative Commons License

The California Energy Commission (CEC) is facing a lawsuit over its siting of natural gas-fired power plants in the state of California. Plaintiffs are saying that compared to other state agencies, the CEC's siting decisions are almost immune from citizen legal challenges -- even if those decisions are badly flawed.

Unlike other state agencies, whose decisions can be challenged by citizens bringing suit in the local Superior Court, CEC power plant siting decisions can only be challenged in the State Supreme Court. That's as a result of a state law passed in 2001, California Public Resources Code Section 25531, that also limits the kinds of evidence citizens and their attorneys can introduce in challenges to CEC decisions.

Citizens' and environmentalist groups claim that law sets up the CEC as a quasi-judicial agency answerable only to itself, a violation of the state's Separation of Powers law. The lawsuit, brought by the groups Center for Biological Diversity (CBD) and **Communities for a Better Environment (CBE)** in the California Superior Court in Alameda County, asks that Section 25531 be declared unconstitutional and set aside, allowing people to challenge CEC siting decisions in their local Superior Court.

The groups are represented in court by attorneys from CBE and the public interest law firm Earthjustice.

"Families in surrounding neighborhoods of proposed power plants and cities alike have been frustrated for years by the lack of judicial review of Energy Commission siting and permitting decisions," said Earthjustice attorney Will Rostov. "When communities are denied their day in court, democracy unravels and pollution ensues."

(Clean energy mavens may remember Rostov from his role leading the legal team that blocked the expansion of Chevron's refinery in the East Bay Area city of Richmond.)

"The energy industry will continue building plants we don't need in places they don't belong until people have the right to oppose bad decisions by the government agency approving these polluting facilities," said Kassie Siegel, director of the CBD's Climate Law Institute. "We filed this case because the need for meaningful public involvement in decisions affecting California's energy future is more urgent than ever."

The lawsuit focuses on gas-fired power plants, which are some of the largest single-point sources of pollution likely to be built in the state in the future as a result of the state's shift away from coal. But as the CEC's authority extends to all heat-related power plants with a nameplate capacity of 50 megawatts or greater, a win by the plaintiffs could apply to decisions involving just about any kind of technology other than photovoltaic solar or wind turbines -- for instance, solar thermal, biomass, and geothermal.