

**M e m o r a n d u m****275.0500**

To: Gary J. Jugum

Date: December 29, 1983

From: Donald J. Hennessy

Subject: Section 6353, Cogeneration Technology

As the result of a telephone conversation with Attorney D--- R---, (XXX) XXX-XXXX, I have discovered that section 6353's "cogeneration technology" provision now presents an "incorporation by reference" problem such as we earlier experienced with section 6355, "monetized bullion".

Effective January 1, 1979, section 6353 was amended to adopt by reference section 25134 of the Public Resources Code. In 1981, the Legislature rewrote section 25134, repealing the definition of "cogeneration technology", and replacing it with simply a definition of "cogeneration". Mr. R---'s question was, of course, what effect the Board staff believed this amendment had on section 6353.

I told him that it was our position that a statute which adopts by reference another statute is unaffected by modification or repeal of the latter in the absence of express or implied legislative intent to the contrary. Since the Legislature stated no contradictory intent here, I told him we would interpret section 6353 as referring to section 25134 as originally enacted and would give no effect to the 1981 amendment.

DJH:jw