

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3047 Session of
1992

INTRODUCED BY VEON, NOVEMBER 17, 1992

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, NOVEMBER 17, 1992

AN ACT

1 Providing for additional Ohio River hydroelectric energy,
2 conservation, development and management; providing for
3 additional powers and duties of the State Energy Office in
4 relation to the development and implementation of
5 hydroelectric energy technologies; providing for the issuance
6 of grants and loans to municipalities for hydroelectric
7 development.

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16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 CHAPTER 1
19 GENERAL PROVISIONS

20 Section 101. Short title.

21 This act shall be known and may be cited as the Ohio River
22 Hydroelectric Energy Conservation, Management and Development
23 Act.

24 Section 102. Findings and declaration of policy.

25 (a) Findings.--The General Assembly finds that:

26 (1) There exist prospects for future shortages of energy
27 and that the effects of such shortages could curtail
28 industrial activity, increase unemployment and threaten the
29 health, welfare and comfort of citizens of this Commonwealth.

30 (2) The future well-being of Pennsylvania makes it

1 imperative that the Commonwealth pursue a policy that will
2 enhance the supply of hydroelectric energy from the Ohio
3 River.

4 (b) Declaration.--It is hereby declared to be the policy of
5 this Commonwealth that it is in the public interest to
6 encourage, at rates just and reasonable to electric ratepayers,
7 the development of small hydro facilities, licensed by FERC on
8 or before January 1, 1992, in order to conserve our finite and
9 expensive energy resources and to provide for their most
10 efficient utilization. In furtherance of this declared policy,
11 the office shall:

12 (1) Encourage electric public utilities participation in
13 small hydro energy production facilities either directly or
14 through subsidiaries. In addition, the office shall require
15 any public utility to enter into long-term contracts to
16 purchase wheel electricity or from any small hydro facility,
17 with an electric generating capacity of up to 80 megawatts,
18 under such rates, terms and conditions as the utility
19 ratepayers, nondiscriminatory to small hydro producers and
20 further the public policy set forth herein; provided,
21 however, the commission shall establish a minimum sales price
22 for such purchased electricity from any such facility
23 licensed by the FERC on or after January 1, 1985, at least 6¢
24 per kilowatt hour for each utility, which sales price shall
25 be subject to periodic revision by the commission to reflect
26 increases in the cost of utility-generated electricity and to
27 provide supplemental or back-up power to any small hydro
28 facility on a nondiscriminatory basis and at just and
29 reasonable rates. Nothing contained in this section shall
30 require any such electric public utility to construct any

1 additional facilities for such purposes unless such
2 facilities are paid for in full by the owner or operator of
3 the small hydro facility.

4 (2) Any electric public utility prior to entering
5 electric capacity purchase contracts or prior to making
6 substantial investments to satisfy electric capacity needs,
7 including investments in new construction, repowering or life
8 extension of electric generating facilities and demand-
9 reducing measures, should first consider small hydro
10 facilities, licensed by FERC on or before January 1, 1992,
11 and should select the source or sources which best serve the
12 public interest, taking into consideration such factors as
13 ratepayer impacts, system reliability, environmental impacts,
14 conservation of energy resources, preservation or creation of
15 economic opportunities, fuel efficiency, fuel availability
16 and diversity and public health and welfare.

17 (3) Increase the reliability and efficient use of this
18 Commonwealth's hydroelectric energy supplies so that this
19 Commonwealth will progress economically, ecologically and
20 socially.

21 (4) Make every effort to increase the production of this
22 Commonwealth's hydroelectric power from hydroelectric
23 projects within or abutting the Ohio River.

24 (5) Encourage development of hydroelectric facilities
25 within or abutting the Ohio River through arrangements
26 between agencies of the Commonwealth, municipalities,
27 municipal authorities, rural electric cooperatives, public
28 utilities and private enterprise.

29 Section 103. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Director." The Director of the Pennsylvania Energy Office.

4 "Energy form." Electricity generated by hydroelectric
5 facilities.

6 "Energy office" or "office." The Pennsylvania Energy Office.

7 "FERC." Federal Energy Regulatory Commission.

8 "Hydroelectric facilities or projects." Any dam, lock,
9 reservoir, powerhouse, generation facility or related facility
10 for the generation and transmission of hydroelectric power and
11 energy located within or abutting the Ohio River capable of
12 being licensed by FERC as a hydroelectric facility or project.

13 "Municipality." Any county, city, borough, incorporated town
14 or township of this Commonwealth and also any public
15 corporation, authority or body whatsoever created or organized
16 under any statute of this Commonwealth.

17 "Person."

18 (1) An individual, partnership or association other than
19 a corporation, including a lessee and assignee, trustee,
20 receiver, executor, administrator or other successor in
21 interest.

22 (2) Any municipality of this Commonwealth and also any
23 public corporation, authority or body whatsoever created or
24 organized under any statute of this Commonwealth supplying,
25 purchasing or selling energy or rendering any service similar
26 to that of a public utility located within or abutting the
27 Ohio River presently licensed by FERC as a hydroelectric
28 facility or project.

29 "Plan." The Hydroelectric Energy Conservation, Management
30 and Development Plan.

1 "Purchase." Includes, in addition to its ordinary meaning,
2 any acquisition of ownership or possession, including, but not
3 limited to, condemnation by eminent domain proceedings.

4 "Renewable energy resources." Any method, process or
5 substance whose use does not diminish its availability of
6 abundance, including, but not limited to, hydroelectric power.

7 "Sale." Includes, in addition to its ordinary meaning, any
8 exchange, gift or other disposition. In cases where
9 hydroelectric energy is exchanged, given, stolen or otherwise
10 disposed of, it shall be deemed to have been sold.

11 "Trade secret." The whole or any portion or phrase of any
12 scientific, technical, confidential business or financial or
13 otherwise proprietary information, design, process, procedure,
14 formula or improvement which is used in one's business and is
15 secret and of value. A trade secret shall be presumed to be
16 secret when the owner takes measures to prevent it from becoming
17 available to persons other than those selected by the owner to
18 have access thereto for limited purposes.

19 Section 104. Construction of act.

20 This act is not intended to:

21 (1) Enlarge, diminish, duplicate, conflict with or
22 supersede the exclusive authority vested in the Pennsylvania
23 Public Utility Commission by 66 Pa.C.S. Part I (relating to
24 public utilities), but merely to further develop
25 hydroelectric power from the Ohio River in this Commonwealth.

26 (2) Conflict with the function of the Pennsylvania
27 Public Utility Commission as the State regulatory authority
28 exclusively responsible for implementing the provisions of
29 the Public Utility Regulatory Policies Act of 1978 (Public
30 Law 95-617, 92 Stat. 3117), as they apply to public utilities

1 under the jurisdiction of the commission but merely to
2 further develop hydroelectric power from the Ohio River in
3 this Commonwealth.

4 Section 105. Open access.

5 (a) General rule.--Municipalities owning hydroelectric
6 projects located within or abutting the Ohio River and licensed
7 by FERC on or before January 1, 1992, as a hydroelectric
8 facility or project shall have open access to public utility
9 transmission lines throughout this Commonwealth for the purpose
10 of selling, distributing or transmitting its electricity to any
11 cooperative, public utility, municipality, commercial,
12 industrial or retail user within or outside of this
13 Commonwealth.

14 (b) Distressed municipality.--Any municipality that is
15 declared distressed by the Commonwealth or have within its
16 boundaries areas designated as enterprise zones may create a
17 Municipal Power Authority that shall have the right to open
18 access to public utility transmission lines and appurtenances
19 thereto, located within its boundaries for the purpose of
20 purchasing, selling, distributing or transmitting the purchased
21 electricity to any commercial, industrial or retail user within
22 the municipality.

23 (c) Wheeling fees.--Public Utility wheeling fees for this
24 access shall not exceed prevailing wheeling fees currently being
25 charged, with the exception of distressed municipalities or
26 municipalities having areas designated as enterprise zones in
27 which case, such municipality shall not be obligated to pay
28 fees, costs or expenses or other compensation to the public
29 utility for the open access use of the transmission lines and
30 appurtenances thereto.

1 Section 106. Manufacture and supply of electricity.

2 Any municipality owning a hydroelectric project and licensed
3 by FERC to own and operate a hydroelectric facility or project
4 on the Ohio River may generate, manufacture, sell or purchase
5 hydroelectric electricity for the use of any wholesaler,
6 industrial, commercial, retail or other municipal customer. Any
7 municipality owning or operating an FERC licensed hydroelectric
8 generating facility or project within or abutting the Ohio River
9 may enter into and make contracts for selling, distributing and
10 supplying electricity to any wholesale, industrial, commercial,
11 retail or other municipal customer within or outside the limits
12 of the municipality.

13 Section 107. Eminent domain.

14 (a) Acquisition.--It shall be lawful for any municipality to
15 acquire, by eminent domain, that portion of a utility system,
16 integrated or not, serving the municipality within its
17 boundaries for the purpose of selling, distributing and
18 transmitting to any wholesale, commercial, industrial or retail
19 customer power and energy purchased by the municipality from
20 another municipality licensed by FERC to own and operate a
21 hydroelectric facility or project on or abutting the Ohio River.

22 (b) Ownership and operation.--It shall be lawful for any
23 municipality licensed by FERC to own and operate a hydroelectric
24 facility or project located within and/or abutting the Ohio
25 River to acquire, by eminent domain, that portion of a utility
26 system, integrated or not, serving any wholesale, commercial,
27 industrial, retail or other municipal customer for the purpose
28 of selling, distributing and transmitting power and energy to
29 the wholesale, commercial, industrial, retail or other municipal
30 customer.

1 CHAPTER 2

2 PENNSYLVANIA ENERGY OFFICE

3 Section 201. Pennsylvania Energy Office.

4 The Pennsylvania Energy Office shall be:

5 (1) Authorized and is hereby mandated to carry out the
6 intent and purpose of this act.

7 (2) Staffed by a director and necessary support
8 personnel selected by the House of Representatives to
9 accomplish the purposes of this act.

10 Section 202. Additional powers and duties.

11 The office shall have the following additional powers and
12 duties:

13 (1) To undertake special studies on present and future
14 demand for and supplies of hydroelectric energy that the
15 General Assembly determines is required to develop and
16 represent its policy on hydroelectric energy matters. Other
17 studies that the office proposes should be undertaken with
18 the approval of the Governor, should the Governor deem it
19 advisable.

20 (2) To establish an energy information system which can
21 be used to project potential hydroelectric shortages and
22 which will provide sufficient information to mitigate the
23 adverse effects of such shortages.

24 (3) To inform and educate the public about cost-
25 effective options for using and converting hydroelectric
26 energy efficiently.

27 (4) To apply for, accept and expend grants-in-aid and
28 assistance from private and public sources for hydroelectric
29 energy programs. Notwithstanding any other law to the
30 contrary, the office is designated as the Commonwealth agency

1 to apply for, receive and expend Federal and other funding
2 made available to the Commonwealth for the purposes of this
3 act, subject to appropriation by the General Assembly.

4 (5) To adopt and promulgate rules and regulations with
5 the approval of the Governor to carry out the purposes of
6 this act.

7 (6) To assist the Department of Commerce in promoting
8 the production, use and export of the Commonwealth's
9 indigenous energy resources, especially hydroelectric power,
10 by providing information, data and analysis of the potential
11 resource and markets for these energy resources.

12 (7) To develop a Hydroelectric Energy Policy and
13 Management Plan for this Commonwealth.

14 (8) To review existing and proposed Federal or State
15 agency rules, regulations or proceedings that affect energy
16 utilization and development and to recommend decisions that
17 are consistent with the development of hydroelectric power.

18 (9) The office is authorized to prepare or to enter into
19 agreements with any person to prepare plans and feasibility
20 studies for the development and operation of hydroelectric
21 facilities and projects, including plans for the marketing
22 and distribution of power derived from these hydroelectric
23 facilities and projects.

24 (10) The office may finance and enter into agreements
25 with any person to construct, finance, maintain and operate
26 hydroelectric facilities and projects, including facilities
27 for the transmission of hydroelectric power produced by these
28 projects.

29 CHAPTER 3

30 ENERGY POLICY PLANNING

1 AND ENERGY MANAGEMENT PLAN

2 Section 301. Energy policy.

3 (a) General rule.--The office shall prepare and, after
4 public hearing, adopt as of the effective date of this act a
5 Hydroelectric Energy Policy and Management Plan. This policy and
6 plan may include policies or plans developed prior to the
7 effective date of this act.

8 (b) Contents.--The policy and plan may include legislative,
9 executive and regulatory recommendations for increasing the
10 economic production of this Commonwealth's hydroelectric energy
11 resources, for increasing the reliability of this Commonwealth's
12 hydroelectric energy supplies and for increasing the efficient
13 use of hydroelectric energy.

14 CHAPTER 4

15 MARKETING AND DISTRIBUTION

16 OF HYDROELECTRIC POWER

17 Section 401. General rule.

18 Power and energy derived from hydroelectric facilities and
19 projects developed and operated by a municipality whose
20 facilities or project is located within and/or abutting the Ohio
21 River and who is the licensee and/or owner of an FERC license to
22 develop the facilities or project, if offered for sale by the
23 municipality to the public utility within the territory of the
24 hydroelectric facility or project, shall be purchased by the
25 public utility at rates to be established by section 402. The
26 municipality may sell and distribute power and energy to any
27 wholesale, commercial, industrial or retail customer or to a
28 State, municipality or municipal agency or municipal authority
29 in or out of this Commonwealth at rates greater than those
30 established by section 402.

1 Section 402. Rate establishment.

2 The office shall fix, alter and revise rates, rentals,
3 charges and classifications thereof for the use of municipally
4 owned and FERC licensed hydroelectric facilities and for power
5 and energy produced by such facilities and projects, which shall
6 be purchased by the utility referred to in section 701, at the
7 rates, rentals and charges fixed by the office, without
8 regulation or control by any other department, commission or
9 agency of the Commonwealth. Rates and charges fixed by the
10 office for hydroelectric power shall be reasonable,
11 nondiscriminatory and in an amount equal to the cost, of
12 generation by the municipality, including, but not limited to,
13 capital cost, financing of the project, operating charges, a
14 fair cost of transmission as determined by the office overhead
15 and profit in an amount not less than 25% of operating charges.

16 CHAPTER 5

17 MISCELLANEOUS

18 Section 501. Annual report.

19 The office shall make an annual report of its renewable
20 energy resource grant and loan activities for the preceding
21 fiscal year to the Governor and the General Assembly. Each
22 report shall contain a statement of its activities and a
23 complete operating and financial statement covering the
24 operations of the office during the year relating to
25 hydroelectric energy resource development.

26 Section 502. Grant and loan authority of office.

27 The office shall have authority to:

28 (1) Make grants to fund research to increase the
29 efficient use of this Commonwealth's indigenous energy
30 resources, especially hydroelectric powers.

1 (2) Make grants, loans and loan guarantees available to
2 private industry, municipalities and public agencies for
3 hydroelectric energy production facilities.

4 Section 503. Powers and duties.

5 The office as a governmental instrumentality exercising
6 public powers of the Commonwealth is hereby granted and shall
7 have and may exercise all powers necessary or appropriate to
8 carry out and effectuate the purposes of this act, including the
9 following powers, in addition to others previously granted or
10 granted in this act:

11 (1) To conduct, when necessary, examinations and
12 investigations and to take testimony, under oath or
13 affirmation, at public or private hearings, on any matter
14 relevant to its information and necessary to the
15 determination and approval of hydroelectric energy
16 development project grant or loan applications.

17 (2) To seek, when necessary, technical determinations on
18 hydroelectric project applications.

19 (3) To enter into contracts of every name and nature and
20 to execute all instruments necessary or convenient for the
21 carrying on of its business.

22 (4) To accept grants from and to enter into contracts or
23 other transactions with any Federal agency for the purpose of
24 promoting hydroelectric energy development.

25 (5) To collect fees and charges, as the office
26 determines to be reasonable, in connection with its loans,
27 application for loans, guarantees of loans, application for
28 loan guarantees, commitments, services, expenses and other
29 matters relating to activities undertaken in furtherance of
30 the purposes of this chapter.

1 Section 504. Grants and/or loans.

2 (a) Conditions of approving grants and/or loans.--When it
3 has been determined by the office upon application for a
4 hydroelectric grant and/or loan that the awarding of such grant
5 and/or loan will accomplish the public purposes of this chapter,
6 the office may contract to award the grant and/or loan in an
7 amount not in excess of 90% of the cost of the hydroelectric
8 project.

9 (b) Commitment for sufficient funds.--Prior to the making of
10 any grant and/or loan under this section, the office shall have
11 determined that the project owner has obtained from other
12 responsible and independent sources such as the Federal
13 Government, banks, savings and loan associations or otherwise a
14 firm commitment for all other funds over and above the grant or
15 loan of the office, which the aggregate shall be sufficient to
16 cover the entire cost of the hydroelectric project.

17 (c) Loan security.--Any loan of the office shall be for a
18 period of time and shall bear interest at a rate as shall be
19 determined by the office and shall be secured by the project
20 revenue for which the loan was made, the loan to be second and
21 subordinate only to the loan securing the first lien obligation
22 issued to secure the commitment of funds from the responsible
23 and independent sources, described in subsection (b), used in
24 the financing of the hydroelectric energy development project.

25 (d) Payment.--Moneys so granted or loaned by the office
26 shall be withdrawn from the appropriate funds and paid over to
27 the project owners in such manner as shall be provided and
28 prescribed by the rules and regulations of the office.

29 (e) Deposits.--All payments of interest on the loans and the
30 principal thereof shall be deposited by the office in the

1 appropriate accounts.

2 (f) Grant or loan application.--Prior to the awarding of a
3 grant or the loaning of any funds for a project, the office
4 shall receive from the project owner, a grant or loan
5 application in the form and having the content as the office in
6 its rules and regulations may prescribe.

7 Section 505. Plan to award grants or loans.

8 (a) Plan.--In order to devise the most effective strategy
9 for awarding hydroelectric grants or loans and for funding
10 limited hydroelectric research, the office shall publish, within
11 20 days of the effective date of this chapter, a plan for the
12 allocation and distribution of grants, loans and loan guarantees
13 and research funds. The plan shall:

14 (1) Place maximum reliance upon allocation and
15 distribution strategies which exploit the use of other
16 available Federal, State, local and private financial
17 support.

18 (2) Allocate grants and loans to hydroelectric projects
19 whose likelihood or implementation would be diminished unless
20 grants or loans are made available.

21 (3) Provide grants and loans to projects which will make
22 the greatest possible contributions to energy conservation
23 and development.

24 (4) Continue to provide grant and loan guarantees to
25 classes of projects only so long as Commonwealth financial
26 assistance is vital to support these classes of projects and
27 provide for the reallocation of funds as economic conditions
28 change and develop.

29 (5) Provide grants and loans only to persons with a
30 demonstrated financial need and ability to undertake these

1 projects.

2 (6) Identify the various classes of projects to be
3 provided grants and loans and allocate available funds among
4 these classes.

5 (7) Establish application procedures and criteria for
6 awarding grants and loans.

7 (8) Specify the appropriate regional distribution for
8 grants and loans within this Commonwealth.

9 (9) Set procedures for the periodic updating and
10 revision of the plan.

11 (b) Hearings.--The office may hold periodic public hearings
12 at locations throughout this Commonwealth to receive comments
13 upon and suggestions for the improvement of the plan.

14 CHAPTER 6

15 VIOLATIONS AND PENALTIES

16 Section 601. Actions for injunctive relief.

17 For a violation of any provisions of Chapters 2 through 4 or
18 of any rules, regulations or orders issued under this act by the
19 office, the office may institute a civil action in the
20 Commonwealth Court or in the court of common pleas of the
21 judicial district in which the violation occurs for injunctive
22 relief to restrain the violation and for such other relief as
23 the court shall deem proper. Neither the institution of this
24 action nor any of the proceedings therein shall relieve any
25 party to the proceedings from other fines or penalties, civil or
26 criminal, prescribed for the violation by this act or by any
27 rule, regulation or order issued under this act.

28 Section 602. Civil penalties.

29 Any person who fails to provide energy information as
30 required by this act shall be liable for a civil penalty of

1 \$10,000 for each offense. If the violation is of a continued
2 nature, each day during which it continues shall constitute an
3 additional and separate offense.

4 CHAPTER 7

5 EFFECTIVE DATE

6 Section 701. Effective date.

7 This act shall take effect in 60 days.