

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 182 Session of
1999

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TANGRETTI, E. Z. TAYLOR, WILT AND YOUNGBLOOD, MAY 11, 1999

REFERRED TO COMMITTEE ON RULES, MAY 11, 1999

A CONCURRENT RESOLUTION

1 Encouraging regional fairness and a level playing field among
2 states in the timing and adoption of electric utility
3 emission control requirements for the reduction of smog;
4 promoting fair interstate competition among electric
5 utilities subject to Environmental Protection Agency
6 regulations for the reduction of electric utility nitrogen
7 oxide emissions; and requesting the Department of
8 Environmental Protection to revise certain proposed
9 regulations to achieve these purposes.

10 WHEREAS, Natural and manmade emissions of nitrogen oxides
11 (NOx) and volatile organic compounds contribute to
12 concentrations of ozone at levels exceeding the National Ambient
13 Air Quality Standards (NAAQS) for ozone in many areas of the
14 Commonwealth of Pennsylvania; and

15 WHEREAS, Pennsylvania is affected by ozone created by
16 emissions within its own borders and by the transport of ozone
17 and its precursor emissions from other states; and

18 WHEREAS, Pennsylvania has been a leader of national and
19 regional efforts to reduce the interstate transport of ozone and
20 other air pollutants in order to achieve a level economic and

1 environmental playing field with other states in the control of
2 air pollution; and

3 WHEREAS, Unilateral emission reductions by Pennsylvania
4 sources would not meet air quality objectives and would
5 undermine Pennsylvania employment and industrial
6 competitiveness; and

7 WHEREAS, Electric utilities in Pennsylvania have reduced
8 emissions of NOx by approximately 45% from 1990 levels pursuant
9 to requirements in the Federal Clean Air Act Amendments of 1990
10 for the installation of Reasonably Available Control Technology
11 (RACT) in compliance with regulations promulgated by the former
12 Department of Environmental Resources (24 Pa.B. 459, January 15,
13 1994); and

14 WHEREAS, Pennsylvania and ten other member states of the
15 Northeast Ozone Transport Commission (OTC) established by the
16 Clean Air Act Amendments of 1990 agreed to a schedule of further
17 NOx emission reductions for electric utilities pursuant to a
18 Memorandum of Understanding dated September 27, 1994; and

19 WHEREAS, The OTC Memorandum of Understanding contemplated the
20 installation of RACT by electric utilities in the 12 states of
21 the Northeast Ozone Transport Region established by the Clean
22 Air Act Amendment of 1990 followed by additional Phase II
23 emission reductions commencing in May 1999 and by further Phase
24 III emission reductions commencing in May 2003; and

25 WHEREAS, Comparable reduction timetables for electric utility
26 emissions have not yet been established by states outside of the
27 Northeast Ozone Transport Region; and

28 WHEREAS, The Department of Environmental Protection
29 promulgated regulations for the implementation of Phase II
30 emission reductions by Pennsylvania electric utilities (27 Pa.B.

1 5683, November 1, 1997), requiring emission reductions of 55% to
2 65% from 1990 levels, depending upon plant location, commencing
3 May 1, 1999; and

4 WHEREAS, Similar Phase II regulations promulgated by
5 neighboring states of the Northeast OTC have been challenged
6 judicially and have been remanded to state environmental
7 agencies, with uncertain consequences for their timely
8 implementation; and

9 WHEREAS, Pennsylvania together with 36 other eastern states
10 and the District of Columbia participated in the Ozone Transport
11 Assessment Group (OTAG) process organized by the United States
12 Environmental Protection Agency (EPA) from 1995 to 1997 in an
13 effort to determine the causes and extent of ozone transport
14 contributing to nonattainment of the NAAQS for ozone in
15 Pennsylvania and other states; and

16 WHEREAS, Based upon the findings of the OTAG process and its
17 own analyses, the EPA has promulgated a regional ozone transport
18 rule (the SIP Call) for the control of electric utility and
19 industrial boiler NOx emissions in a 22-state region including
20 Pennsylvania, other states in the Northeast Ozone Transport
21 Region (except Maine, New Hampshire and Vermont and several
22 states located to the west and south of Pennsylvania that are
23 not subject to the OTC Memorandum of Understanding (63 FR 57356,
24 October 27, 1998); and

25 WHEREAS, The EPA has determined that emissions from electric
26 utilities and other major stationary sources in the 22 states
27 subject to the SIP Call, including Pennsylvania, contribute
28 significantly to nonattainment of the NAAQS for ozone in
29 Pennsylvania and other states and has prescribed a schedule of
30 emission reductions for industries in these states commencing

1 May 1, 2003; and

2 WHEREAS, The OTC has determined that the SIP Call would
3 restrict electric utility emissions of NOx in the 22-state
4 region to a level and on a timetable comparable to that required
5 by Phase III of the OTC Memorandum of Understanding; and

6 WHEREAS, Several upwind states and industries have petitioned
7 the United States Court of Appeals for the District of Columbia
8 Circuit for judicial review of the EPA's SIP Call, have
9 petitioned the court for a stay and extension of certain
10 regulatory deadlines under the SIP Call and have offered
11 emission reduction proposals different than those contained in
12 the SIP Call; and

13 WHEREAS, Final decisions on the merits of these petitions are
14 not anticipated prior to the year 2000, with uncertain
15 implications for the timely implementation in the SIP Call; and

16 WHEREAS, The EPA has proposed to implement Federal
17 Implementation Plans in states subject to the SIP Call that do
18 not submit approvable SIP revisions by September 30, 1999 (63 FR
19 56394, October 21, 1998); and

20 WHEREAS, On August 14, 1997, Governor Ridge filed a petition
21 with the Administrator of the EPA pursuant to section 126 of the
22 Clean Air Act seeking abatement of emissions in certain upwind
23 states determined by OTAG and by independent analyses to
24 contribute to nonattainment of the NAAQS for ozone in
25 Pennsylvania; and

26 WHEREAS, On April 30, 1999, the EPA took final action on
27 several section 126 petitions that had been filed by
28 northeastern states and determined that six of the eight
29 petitions, including that filed by Pennsylvania, were partially
30 approvable based on technical considerations and that sources in

1 19 states and the District of Columbia significantly contribute
2 to nonattainment or interfere with the ability of states to
3 maintain clean air, in one or more of the petitioning states;
4 and

5 WHEREAS, The EPA has deferred fully granting the relief
6 sought in Pennsylvania's section 126 petition in order to give
7 affected states an opportunity to comply with the NOx SIP Call,
8 including the submission of State Implementation Plans in
9 September 1999; and

10 WHEREAS, Implementation of the SIP Call on a consistent
11 timetable within a 22-state region is necessary for attainment
12 of the NAAQS for ozone in Pennsylvania, to the benefit of our
13 public health and environment, and would help establish a level
14 environmental playing field for industries in all states subject
15 to the rule; and

16 WHEREAS, The Department of Environmental Protection has
17 proposed regulations to implement the SIP Call (29 Pa.B. 1319,
18 March 6, 1999), adopting with minor modifications the SIP Call
19 requirements promulgated by the EPA on October 27, 1998; and

20 WHEREAS, The electric utility NOx emission reductions called
21 for by Phase III of the OTC Memorandum of Understanding would be
22 duplicative of those required by the SIP Call but would not be
23 applicable to all 22 states in the geographic region determined
24 by the EPA to contribute to nonattainment of the NAAQS for ozone
25 in Pennsylvania; and

26 WHEREAS, The Electricity Generation Customer Choice and
27 Competition Act (Act 138 of 1996) was signed by Governor Ridge
28 on December 3, 1996, setting in motion the restructuring of this
29 Commonwealth's electric utility industry and establishing
30 standards and procedures to create direct access by retail

1 customers to the competitive market for the generation of
2 electricity, while maintaining the safety and reliability of the
3 electric system; and

4 WHEREAS, Fair competition in the deregulated electric market
5 assumes the existence of a level playing field in which electric
6 generation suppliers can compete equally; and

7 WHEREAS, Fair competition in a restructured electric supply
8 market would be impeded by programs or policies that place in-
9 State electric generation suppliers at a competitive
10 disadvantage to out-of-State generators; and

11 WHEREAS, In view of the interstate nature of the electric
12 power market, the interests of Pennsylvania electric consumers
13 and the environment are best served by an equitable level
14 playing field among adjacent states for the imposition of
15 environmental control requirements exceeding those called for by
16 Phase II of the OTC Memorandum of Understanding; and

17 WHEREAS, The emission reductions for electric utilities in
18 the Northeast contemplated by Phase III of the OTC Memorandum of
19 Understanding apply to the same pollutant from the same category
20 of sources as EPA's SIP Call, and the goal of Phase III of the
21 Memorandum of Understanding would be better served by
22 simultaneous and comparable emission reductions throughout the
23 broader 22-state region subject to the SIP Call; therefore be it

24 RESOLVED (the Senate concurring), That the General Assembly
25 of the Commonwealth of Pennsylvania urge that in order to
26 protect the public health of Pennsylvania's citizens,
27 particularly in the Philadelphia severe ozone nonattainment
28 area, the 22-state reductions in NOx emissions described in the
29 EPA's Regional Ozone Transport Rulemaking (63 FR 57356, October
30 27, 1998) must be achieved; and be it further

1 RESOLVED, That compliance with the requirements of the final
2 SIP Call, as promulgated or subsequently revised by the EPA, be
3 considered by the Department of Environmental Protection for
4 regulatory purposes as being in fulfillment of Pennsylvania's
5 remaining obligations under the OTC Memorandum of Understanding;
6 and be it further

7 RESOLVED, That the Department of Environmental Protection
8 revise its proposed regulations implementing the SIP Call (29
9 Pa.B. 1319, March 6, 1999) to give effect to the purpose and
10 intent of this resolution, namely, to ensure that major fossil-
11 fired steam electric generating units in Pennsylvania are not
12 subject to emission control requirements more stringent than, or
13 on a compliance schedule sooner than, those required by Phase II
14 of the OTC Memorandum of Understanding, until and unless similar
15 generating units in each state adjacent to Pennsylvania are
16 subject to a comparable schedule of equivalent emission control
17 requirements established in approved State Implementation Plans
18 adopted in conformance with:

19 (1) the EPA's Regional Ozone Transport Rulemaking;

20 (2) the final Federal Implementation Plans promulgated
21 in accordance with the EPA's proposed Ozone Transport Federal
22 Implementation Plan; or

23 (3) a final rulemaking granting the relief requested in
24 the petition filed by Pennsylvania on August 14, 1997,
25 pursuant to section 126 of the Clean Air Act;

26 and be it further

27 RESOLVED, That copies of this resolution be transmitted to
28 Governor Thomas J. Ridge, the Secretary of the Pennsylvania
29 Department of Environmental Protection, the Chairman, members
30 and Executive Director of the Pennsylvania Public Utility

1 Commission, the Administrator of the Environmental Protection
2 Agency, the Executive Director of the Northeast Ozone Transport
3 Commission and each member of the United States Congress from
4 Pennsylvania.