
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 991

Session of
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INTRODUCED BY PRATT, MILANOVICH, COWELL, WANSACZ, DOMBROWSKI,
McGINNIS, CIMINI, DAVIES, REED AND MILLIRON, APRIL 27, 1977

REFERRED TO COMMITTEE ON MINES AND ENERGY MANAGEMENT,
APRIL 27, 1977

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, adding provisions relating to energy
3 facility siting and making appropriations.

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5 TITLE 66

6 PUBLIC UTILITIES

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5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Part II of Title 66, act of November 25, 1970
8 (P.L.707, No.230), known as the Pennsylvania Consolidated
9 Statutes, is amended by adding a chapter to read:

10 CHAPTER 51

11 ENERGY FACILITY SITING

12 Subchapter

13 A. General Provisions

14 B. Siting Procedures

15 C. Payments to Political Subdivisions

16 SUBCHAPTER A

17 GENERAL PROVISIONS

18 Sec.

19 5101. Declaration of policy.

20 5102. Definitions.

21 5103. Energy Facility Siting Interagency Commission.

22 5104. Powers and duties of commission.

23 § 5101. Declaration of policy.

24 The General Assembly hereby finds and declares that the
25 public interest in the environment, commerce within this
26 Commonwealth, economic well-being of the citizens, public health
27 and welfare, public and private investors in utility facilities,
28 consumers of energy and interstate cooperation require that:

29 (1) Bulk power facilities adequate to the need of this
30 Commonwealth for a reliable, sufficient and economical energy

1 supply be constructed and operated on a timely basis and in a
2 manner consonant with the preservation of important
3 environmental values and comprehensive use of the air, land,
4 water and energy resources of this Commonwealth.

5 (2) In order to avoid unnecessary delays in the
6 construction and operation of needed bulk power facilities
7 and to provide for full and timely analysis of the
8 environmental consequences at the earliest possible
9 opportunity, each utility operating in this Commonwealth be
10 required to engage in adequate long-range planning with
11 public availability of the plans for review and comment.

12 (3) The siting of major power plants and high-voltage
13 electric transmission lines be treated as a significant
14 aspect of land use planning in this Commonwealth, in which
15 all environmental, economic and technical issues with respect
16 to a proposed bulk power facility should be resolved in an
17 integrated fashion.

18 (4) Reviews by Commonwealth agencies and political
19 subdivisions of proposed bulk power facilities be
20 consolidated and coordinated to eliminate redundant
21 evaluation procedures so as to provide a one-stop clearance
22 mechanism coordinated in time and place and, insofar as
23 possible, with necessary reviews by the Federal Government.

24 (5) Construction and operation of needed bulk power
25 facilities and full environmental review of all such proposed
26 facilities be expedited through the establishment of
27 preconstruction review and certification procedures under the
28 authority of a Commonwealth agency with expertise to
29 accommodate both matters of power production and matters of
30 environmental protection.

(6) The mechanism established facilitates the participation and cooperation of public and private interests in neighboring states in the preconstruction review and certification procedures of facilities affecting those states.

§ 5102. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Bulk power facility."

(1) Energy generating and conversion equipment and associated real and personal property designed for, or capable of, any of the following:

(i) Generation at a capacity of 100,000 kilowatts or more.

(ii) Producing 100 million cubic feet of synthetic gas per day.

(iii) Producing 50,000 barrels of liquid hydrocarbon products per day by any extraction process.

(2) Electric transmission lines and associated property designed for, or capable of, operation at a nominal voltage of 100 kilovolts or more, between phase conductors for alternating current or between poles for direct current.

(3) Sizable additions to existing energy generating and conversion facilities as determined by the commission in accordance with the capacities specified in paragraph (1) or (2).

"Certificate." A certificate of public need and environmental compatibility issued by the commission.

"Commission." The Energy Facility Siting Interagency

1 Commission of the Commonwealth.

2 "Construction."

3 (1) Any disturbance or clearing of the land, erection
4 thereon of any structure, or other substantial action that
5 would affect the natural environment of the site or route.

6 (2) The term "construction" does not include:

7 (i) Preconstruction surveying, monitoring or testing
8 (including borings) to determine foundation conditions or
9 to establish background information related to the
10 suitability of the site or to the protection of
11 environmental values.

12 (ii) Changes desirable for the temporary use of the
13 land for public recreational uses.

14 "Utility." Any person, corporation, political subdivision or
15 other entity which owns or operates a bulk power facility within
16 this Commonwealth, or which intends to construct such a
17 facility, however organized, whether investor owned, publicly
18 owned or cooperatively owned and whether or not subject to the
19 jurisdiction of the Pennsylvania Public Utility Commission.

20 § 5103. Energy Facility Siting Interagency Commission.

21 (a) Establishment and composition.--There is hereby
22 established as an independent Commonwealth agency an interagency
23 commission known as the Energy Facility Siting Interagency
24 Commission which shall consist of the following:

25 Secretary of Agriculture

26 Secretary of Commerce

27 Secretary of Community Affairs

28 Secretary of Environmental Resources

29 Secretary of Labor and Industry

30 Secretary of Transportation

1 Chairman of the Public Utility Commission

2 Four citizens appointed by the Governor with the advice
3 and consent of the Senate, two of whom shall be elected
4 municipal government officials.

5 (b) Special provisions for citizen members.--No citizen
6 member of the commission shall have any financial interest in
7 any utility. Citizen members shall serve a term of four years
8 and may be reappointed. Every citizen member shall be entitled
9 to reimbursement for his actual expenses incurred in the
10 performance of his duties and compensation of \$100 for each day
11 or part thereof in which he participates in the business of the
12 commission.

13 (c) Chairman.--The Governor shall appoint, with the advice
14 and consent of the Senate, a person who shall serve as the
15 chairman of the commission without a vote. The compensation of
16 the chairman shall be determined by the commission after
17 consultation with the Executive Board.

18 (d) Staff.--The commission shall employ such employees and
19 advisors as shall be required to administer the provisions of
20 this chapter.

21 § 5104. Powers and duties of commission.

22 The commission shall have the power and its duty shall be to:

23 (1) Review and compile the long-range bulk power
24 facilities reports filed under this chapter and make the
25 information contained in the reports readily available to the
26 public and interested government agencies.

27 (2) Compile and publish each year a description of the
28 type and general location of each proposed bulk power
29 facility as contained in the long-range plans of the
30 utilities pursuant to this chapter, identifying for each

1 location the year when construction is expected to commence
2 and make such information readily available to the general
3 public, to each newspaper of daily or weekly circulation
4 within the area affected by the proposed facility and to
5 interested government agencies.

6 (3) Conduct mandatory public hearings with respect to
7 any proposed bulk power facility identified five years in
8 advance of construction and decide whether or not the
9 facility should be approved for inclusion in the utility's
10 five-year inventory of sites and lines. The hearings shall be
11 held promptly after the locations are first identified and
12 the decisions shall be based upon the principles set forth in
13 this chapter.

14 (4) Conduct public hearings prior to the issuance of any
15 certificate for an energy generating or conversion plant as
16 near as feasible to the proposed site within one year from
17 the submission of an application for a certificate and
18 conduct at least one public hearing for transmission lines as
19 near as possible to the proposed transmission line. The
20 commission shall hold as many additional hearings along the
21 proposed route of the transmission line as may be necessary
22 to give the public an adequate opportunity to be heard.

23 (5) Require such information from utilities as the
24 commission deems necessary to accompany applications for
25 certificates and require the utilities to assist in the
26 conduct of hearings and any investigations or studies which
27 the commission may undertake.

28 (6) Conduct such inspections, surveys, monitoring or
29 testing, with or without notice to the utility, as it deems
30 necessary or appropriate to carry out the purposes of this

chapter.

(7) Approve, with or without conditions, or disapprove applications for certification filed under section 5112 (relating to certification of bulk power facilities) within two years of receipt of the application.

(8) Adopt such rules and regulations as are necessary to implement this chapter.

SUBCHAPTER B

SITING PROCEDURES

Sec.

5111. Long-range planning.

5112. Certification of bulk power facilities.

5113. Authority of other government agencies.

5114. Interagency cooperation.

5115. Judicial review.

5116. Actions to enjoin violations.

§ 5111. Long-range planning.

The commission shall prepare and maintain a comprehensive, integrated bulk power facilities plan for this Commonwealth.

Every utility shall prepare and submit annually to the commission a long-range bulk power facilities report. The report shall contain a ten-year forecast of loads, resources and prospective sites and shall describe the bulk power facilities which will be required to supply system demands during the forecast period. The report shall cover the ten-year period next succeeding the date of the report and shall be in such form as may be prescribed by the commission. Each utility shall provide in its report the following information:

(1) A description of the general location, size and type of all bulk power facilities to be constructed within this

1 Commonwealth during the ensuing ten years by the utility.

2 (2) An identification, description and location of all
3 existing bulk power facilities within this Commonwealth to be
4 removed from service upon the completion of the projects
5 described or within the time period provided in this chapter.

6 (3) Identification of the location of tentative sites
7 within this Commonwealth upon which construction of a bulk
8 power facility is scheduled to commence within the ensuing
9 five-year period. For each tentative site identified, the
10 utility shall describe the type and size of bulk power
11 facility to be constructed, analyze anticipated impact of the
12 facility on the environment and public safety and health and
13 set forth the plan of the utility for avoiding or minimizing
14 any adverse effects on the environment and public safety and
15 health including, but not limited to, those caused by waste
16 products of any kind as well as heated water.

17 (4) A description of plan of the utility to coordinate
18 its bulk power facility plans with those of other utilities
19 so as to provide an integrated regional and Commonwealth plan
20 for meeting the energy needs of the region and this
21 Commonwealth.

22 (5) A description of its plan to involve Federal,
23 regional, Commonwealth and local government conservation and
24 land-use agencies, as well as public conservation and
25 environmental protection organizations, in their planning so
26 as to identify and minimize environmental problems at the
27 earliest possible stage in the planning process.

28 (6) A statement of the estimate of demand by the utility
29 for power in each year of the time period set under this
30 chapter. This estimate shall also state particularly:

1 (i) That portion of the demand for power which is to
2 be met by each bulk power facility.

3 (ii) That portion of the demand which originates
4 outside this Commonwealth and that portion which
5 originates within this Commonwealth.

6 (iii) That portion of the power to be produced or
7 transmitted by any bulk power facility which is to be
8 allocated to users within this Commonwealth.

9 (iv) That portion of the power to be produced or
10 transmitted by each bulk power facility which will be
11 allocated to users outside this Commonwealth.

12 (7) Such additional information as the commission may
13 require to implement this chapter.

14 § 5112. Certification of bulk power facilities.

15 (a) General rule.--A utility shall not commence construction
16 or begin operation of a bulk power facility without obtaining a
17 certificate of public need and environmental compatibility from
18 the commission. The facility shall be constructed, operated and
19 maintained in accordance with the terms and conditions required
20 by the commission and set forth in the certificate.

21 (b) Application.--Application for a certificate shall be on
22 such forms and contain such information as required by the
23 commission, including statements that either the necessary
24 requirements have been met and approvals or consents have been
25 obtained or that the facility complies with the standards and
26 criteria applicable to it, or the reasons why such standards and
27 criteria should be varied for the site, and shall be filed with
28 the commission not less than two years prior to commencement of
29 construction. An application may be amended during the period of
30 review with the approval of the commission. All bulk power

1 facilities, the certification of which is applied for, shall be
2 planned for construction on sites in the five-year inventory of
3 sites of the applicant approved by the commission pursuant to
4 this chapter unless for good cause shown the commission waives
5 this requirement.

6 (c) Fee.--Each application for a certificate filed shall be
7 accompanied by a fee of \$25,000 which shall be paid into the
8 General Fund for use in defraying the administrative costs of
9 the commission.

10 (d) Issuance.--No certificate shall be issued until the
11 commission has determined that:

12 (1) The use of the site or routes for which a
13 certificate is sought is consonant with the protection of the
14 environment, public safety and health as provided in this
15 chapter.

16 (2) The facility for which a certificate is sought is
17 necessary to meet the energy needs of this Commonwealth.

18 (3) The facility is designed to operate in a safe and
19 healthful manner.

20 (4) The facility is consistent with the long-range
21 planning objectives of this Commonwealth.

22 (5) The facility will have no substantial adverse
23 environmental effect upon parkland, wildlife protection
24 reserves and historic areas.

25 (6) All practical alternative sites and routes have been
26 considered.

27 (7) The provisions of this chapter have been satisfied
28 and all requirements met or waived and approvals obtained or
29 waived by the agency involved or the commission.

30 (e) Expiration or extension.--Any certificate granted by the

1 commission shall expire if the construction of the facility has
2 not been commenced within five years of the date of issuance. A
3 certificate shall be extended, without an additional fee, for
4 one five-year period upon written request by the utility to the
5 commission.

6 (f) Emergency certification.--Notwithstanding the other
7 provisions of this chapter, a utility may petition the
8 commission for an interim or emergency certificate based upon
9 its showing that the public interest imperatively requires a
10 prompt decision with respect to the facility. The commission
11 shall adopt rules and regulations for reviewing such petitions,
12 giving due consideration to the effect upon the public of
13 adequate and reliable energy supply and the effect of the lack
14 of prompt action, or of inconclusive action. The commission
15 shall make a decision on the petition within 90 days of the date
16 of filing thereof.

17 (g) Existing facilities.--Utilities which have commenced or
18 completed construction of bulk power facilities which are not in
19 operation on the effective date of this chapter shall be issued
20 a certificate, without payment of fee, upon filing with the
21 commission an application containing the following:

22 (1) A description of the location, type of facility and
23 date operation is scheduled to begin.

24 (2) Evidence that all licenses, permits and approvals
25 required by the Federal, regional, Commonwealth and local
26 governments for the protection of the environment and public
27 welfare, safety and health have been obtained.

28 (3) A statement of the quantity of power to be produced
29 or transmitted, the geographic area to be serviced by the
30 facility and the quantity of power to be generated or

1 transmitted for use within this Commonwealth.

2 § 5113. Authority of other government agencies.

3 No Commonwealth agency or political subdivision may require
4 any approval, consent, permit, license or other condition for
5 the construction of a bulk power facility authorized by a
6 certificate issued pursuant to section 5112 (relating to
7 certification of bulk power facilities) except that a
8 Commonwealth agency or political subdivision may object to the
9 commission to the inclusion of a site in the five-year inventory
10 or the approval of a certificate if its standards and criteria
11 are not met.

12 § 5114. Interagency cooperation.

13 The Pennsylvania Public Utility Commission, Department of
14 Environmental Resources and other Commonwealth agencies are
15 authorized and required to cooperate with the commission so as
16 to fully coordinate and effectuate the purposes of this chapter.
17 All Commonwealth agencies shall make available to the commission
18 such information, staff expertise and technical assistance as
19 may be necessary.

20 § 5115. Judicial review.

21 Within 30 days of the grant, denial, revocation or suspension
22 of a certificate by the commission, any aggrieved party to the
23 proceeding may appeal the action of the commission to the
24 Commonwealth Court. The findings of fact on which such decision
25 is based shall be conclusive if supported by substantial
26 evidence on the record considered as a whole.

27 § 5116. Actions to enjoin violations.

28 When the commission determines that a utility has begun to
29 construct, operate or maintain a bulk power facility as provided
30 in this chapter without having first obtained a certificate, or

1 has begun to construct, operate or maintain a bulk power
2 facility other than in compliance with the certificate issued to
3 it, or has caused any of these acts to occur, it shall so notify
4 the Attorney General who shall bring an action for injunctive
5 and other appropriate relief on behalf of the Commonwealth.

6 SUBCHAPTER C

7 PAYMENTS TO POLITICAL SUBDIVISIONS

8 Sec.

9 5121. Reimbursement of costs.

10 5122. Annual distributions to reduce tax burden.

11 § 5121. Reimbursement of costs.

12 (a) Planning costs.--Any political subdivision, referred to
13 in this subchapter as "local taxing authority," which would be
14 directly affected by the location of a proposed bulk power
15 facility owned by a public utility for which certification under
16 section 5112(a) (relating to certification of bulk power
17 facilities) is sought shall be eligible for reimbursement for
18 legal and expert consultant fees, planning costs and other
19 expenses incurred in determining the impact of the proposed
20 facility and costs incurred in preparing testimony incident
21 thereto. The reimbursement shall be in an amount determined by
22 the commission but shall not exceed 75% of the actual
23 expenditures of the local taxing authority or \$25,000 for any
24 local taxing authority or \$100,000 for any proposed site.

25 (b) Impact costs.--Each local taxing authority which is
26 directly affected by the location of a bulk power facility owned
27 by a public utility certified pursuant to the provisions of
28 section 5112 shall be eligible for reimbursement for the actual
29 costs or portion thereof incurred or to be incurred by the local
30 taxing authority on account of expenditures directly related to

1 the construction of a bulk power facility as determined by the
2 commission. Reimbursable items of expenditure shall include, but
3 are not limited to, public service costs for fire, police,
4 roads, solid waste, sewage, education, health, welfare,
5 recreation and related administration. The total amount
6 distributed on account of any one certified site shall not
7 exceed \$850,000 and the total amount distributed in any fiscal
8 year by the commission for impact costs shall not exceed
9 \$2,000,000.

10 (c) Revolving fund for financing capital projects.--Any
11 municipality that is required to construct or expand a major
12 public capital facility including, but not limited to, streets
13 or highways, bridges, sewage disposal and sewage treatment
14 facilities, solely by virtue of the direct or indirect effects
15 attributable to the location and construction of a bulk power
16 facility owned by a public utility shall be eligible for an
17 advance from a revolving fund hereby established to finance part
18 or all of such capital facility. Any advance from the fund shall
19 be repaid in annual installments and shall not bear interest.
20 The commission shall establish a repayment schedule for each
21 advance, not to exceed ten years, taking into account the amount
22 thereof and the fiscal capacity of the municipality.

23 (d) Administration of payments.--The distributions provided
24 for in subsections (a), (b) and (c) shall be made by the
25 commission from funds appropriated to it for such purposes. In
26 all cases the commission shall insure that:

27 (1) All costs and expenditures reimbursed are
28 attributable to the location or construction of the bulk
29 power facility.

30 (2) The costs and expenditures are necessary to the

welfare and well-being of the residents of the local taxing authority and do not finance a level of public services higher than would exist absent the bulk power facility.

(3) No payment shall exceed actual costs incurred or to be incurred by a local taxing authority.

The commission shall have the authority to allocate funds in the event requests for distributions exceed applicable limits.

§ 5122. Annual distributions to reduce tax burden.

(a) General rule.--The local taxing authorities in which is located every electric generating plant owned by a public utility subject to the jurisdiction of the Pennsylvania Public Utility Commission or the corresponding regulatory agency of any other state or of the United States, but not including a municipality or municipal authority, shall be entitled to an annual subvention calculated by reference to the net annual generation of electricity by the plant.

(b) Calculation of gross amount.--The gross subvention attributable to any generating plant shall be the sum of:

\$300 per million kilowatt-hours for each of the first 500 million kilowatt-hours generated.

\$150 per million kilowatt-hours for each of the next 1,000 million kilowatt-hours generated.

\$20 per million kilowatt-hours for all kilowatt-hours generated in excess of 1,500 million kilowatt-hours.

(c) Distributions among local taxing authorities.--

(1) Plant located in only one county.--If an electric generating plant, including such surrounding real property as is necessary for its operation, is located in only one county the gross amount calculated under subsection (b) shall be allocated to local taxing authorities under the following

1 formula:

2 65% to the school district or school districts of
3 location (notwithstanding that a portion of a school
4 district lies in another county).

5 15% to the municipal corporation or corporations of
6 location.

7 20% to the county.

8 If the plant is located in more than one school district or
9 more than one municipal corporation within the county, the
10 amounts so allocated shall be divided among the individual
11 school districts or among the individual municipal
12 corporations on the basis of the proportion of the total
13 assessed value of the real property of the plant which lies
14 in each school district or in each municipal corporation.

15 (2) Plant located in more than one county.--In the event
16 an electric generating plant is located in more than one
17 county, the gross amount calculated under subsection (b)
18 shall be allocated among the counties on the basis of the
19 proportion of the total equalized assessed value of the real
20 property of the plant which lies in each county. The
21 assessed-market value ratios, as ascertained by the State Tax
22 Equalization Board for each county for school subsidy
23 purposes, shall be utilized to equalize the county-assessed
24 values of the real property of the plant. The amounts so
25 allocated shall be divided among the local taxing authorities
26 in each county in accordance with the provisions of paragraph
27 (1).

28 (d) Reports.--Annually, on or before April 1, every public
29 utility shall report to the commission the following information
30 for each electric generating plant which it operates:

1 (1) The location by local taxing authority.

2 (2) The assessed value for county tax purposes of the
3 plant (including such surrounding real property as is
4 necessary for its operation) and the assessed values of the
5 portions of the plant, if any, which are not located within
6 coincident local taxing authorities.

7 (3) The net kilowatt-hours of electricity generated
8 during the preceding calendar year. In the case of pumped
9 storage generating plants, net electricity generated shall be
10 generation exclusive of plant use.

11 (4) Such additional information as may be required by
12 the commission to administer this subchapter.

13 (e) Payments.--The annual subvention authorized by this
14 section shall be calculated by the commission on the basis of
15 the information furnished pursuant to subsection (d) and payment
16 shall be made to each eligible local taxing authority on or
17 before June 30 of each year. No payment shall be made on account
18 of any plant for which the gross subvention calculated under
19 subsection (b) is less than \$1,000.

20 (f) Use of payments.--Every local taxing authority shall use
21 the annual payments received under this section to permanently
22 reduce real property and other local taxes. The relief from
23 taxes granted under this subchapter shall not be eroded by any
24 local taxing authority so as to defeat the purpose of this
25 subchapter. Any person objecting to an increase in the rate of
26 local taxes on the ground that the increase erodes the tax
27 relief made available under this subchapter may petition the
28 court of common pleas for equitable relief.

29 Section 2. Limitation on payments to political
30 subdivisions.--If the Commonwealth is sued by a party seeking to

1 prohibit the collection of the tax provided for in section
2 1101(b) of the act of March 4, 1971 (P.L.6, No.2), known as the
3 "Tax Reform Code of 1971," no payments to local taxing
4 authorities shall be made under the provisions of Subchapter C
5 of Chapter 51 of Title 66 of the Pennsylvania Consolidated
6 Statutes (relating to payments to political subdivisions) during
7 the pendency of the suit or if the tax is ultimately determined
8 by a court to be invalid.

9 Section 3. Appropriations.--(a) The following sums are
10 hereby specifically appropriated for the fiscal year July 1,
11 1977 to June 30, 1978 for the following purposes and in the
12 following amounts:

13 (1) For reimbursement to local governments for planning
14 and impact costs as provided in 66 Pa.C.S. § 5121 (a) and
15 (b), \$1,600,000.

16 (2) For the revolving fund for capital projects as
17 provided in 66 Pa.C.S. § 5121(c), \$1,500,000.

18 (3) For annual subventions to eligible local taxing
19 authorities as provided in 66 Pa.C.S. § 5122, \$11,500,000.

20 (4) For administrative purposes for the Energy Facility
21 Siting Interagency Commission, \$140,000.

22 (b) The General Assembly hereby declares its intent to
23 annually appropriate \$1,500,000 for the revolving fund for
24 capital projects as provided in 66 Pa.C.S. § 5121(c) until the
25 total amount appropriated has reached \$7,000,000 and that
26 thereafter the fund shall be self-sustaining.

27 Section 4. Effective date.--This act shall take effect July
28 1, 1977 or in 30 days, whichever is later.