

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2099 Session of
1984

INTRODUCED BY SWEET, RYAN, J. L. WRIGHT, MANDERINO,
R. C. WRIGHT, FREIND, MICHLOVIC, D. R. WRIGHT, ARTY,
L. E. SMITH, BURNS, BELFANTI, EVANS, DALEY, FLICK, KOSINSKI,
GANNON, DURHAM, PIEVSKY, WACHOB, SAURMAN, HOFFEL, KLINGAMAN,
OLASZ, CARN, BURD, HALUSKA, WILLIAMS, RICHARDSON AND IRVIS,
APRIL 30, 1984

SENATOR BELL, CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
IN SENATE, AS AMENDED, JUNE 13, 1984

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, providing for industrial cogeneration
3 and small power production.

4 ~~It is hereby declared to be the policy of the Commonwealth~~ <—
5 ~~that it is in the public interest to help preserve jobs in~~
6 ~~energy intensive industries located in this Commonwealth, as~~
7 ~~well as to promote the efficient use of Pennsylvania's~~
8 ~~indigenous energy resources, by encouraging investment in~~
9 ~~industrial cogeneration and small power production.~~

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Part II of Title 66 of the Pennsylvania
13 Consolidated Statutes is amended by adding a chapter to read:

14 PART II

15 OTHER PROVISIONS

1 [(Reserved)]

2 CHAPTER 51

3 POWER COGENERATION

4 Sec.

5 5101. Short title of chapter.

6 5102. Definitions.

7 5103. Interconnection contracts.

8 5104. Status of qualifying facility.

9 5105. Rate for purchase of energy.

10 5106. Rate for purchases of energy and capacity.

11 5107. Backup, maintenance and supplementary power.

12 5108. Data.

13 5109. Authority of commission.

14 § 5101. Short title of chapter.

15 This chapter shall be known and may be cited as the
16 Cogeneration, Small Power Production and Jobs Development Act.

17 § 5102. Definitions.

18 (a) In general.--The following words and phrases when used
19 in this chapter shall have the meanings given to them in this
20 section unless the context clearly indicates otherwise:

21 "Commission." The Pennsylvania Public Utility Commission.

22 "Electric utility" or "utility." A public utility, as
23 defined in section 102 (relating to definitions), which is
24 producing, generating, transmitting, distributing or furnishing
25 electricity for the production of light, heat or power to or for
26 the public for compensation, other than electricity solely from
27 a qualifying facility, NOT FOUND BY THE COMMISSION TO BE ENGAGED <—
28 IN PUBLIC UTILITY SERVICE UNDER SECTION 5104 (RELATING TO STATUS
29 OF QUALIFYING FACILITY).

30 (b) In relation to Federal law.--Unless the context clearly

1 indicates otherwise, the definitions given in the Public Utility
2 Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. §§ 796 and
3 824a-3) and the definitions given in 18 CFR Part 292 shall apply
4 to this chapter.

5 § 5103. Interconnection contracts.

6 (a) Requirement for interconnection.--At the request of the
7 owner or operator of any qualifying facility, the utility in
8 whose service territory the qualifying facility is located or to
9 which delivery of the qualifying facility's energy is made,
10 shall interconnect its facilities with the qualifying facility
11 and enter into a contract requiring the utility to purchase and
12 pay for all of the electric energy, or electric energy and
13 capacity, which is produced and offered for sale by the
14 qualifying facility at a price which is equivalent to the
15 avoided costs of the utility as defined in sections 5105
16 (relating to rate for purchase of energy) and 5106 (relating to
17 rates for purchases of energy and capacity). Such a contract
18 may, at the option of the qualifying facility, be on a year-to-
19 year basis, or for a term of years up to ten years or a mutually
20 agreed term, whichever is longer. The qualifying facility may
21 elect to purchase all or any portion of its requirements of
22 electric service from the utility in whose service territory the
23 qualifying facility is located while simultaneously selling all
24 or some portion of the electric power output of the qualifying
25 facility. Nothing in this chapter shall be construed to preclude
26 the qualifying facility AND THE UTILITY from entering into a <—
27 contract ~~with the utility~~ for the purchase of energy or energy <—
28 and capacity from the qualifying facility at a rate or under
29 terms which differ from the avoided costs of the utility.

30 (b) Costs of interconnection.--Any costs incurred by the

1 utility to interconnect with the qualifying facility shall be
2 payable by the qualifying facility in a one-time payment or, IF <—
3 MUTUALLY AGREED UPON BY THE UTILITY AND THE QUALIFYING FACILITY,
4 over a period of years, as determined by the commission by
5 regulation, to the extent that such costs are in addition to the
6 costs of interconnection facilities required to serve the
7 qualifying facility as a customer.

8 § 5104. Status of qualifying facility.

9 A qualifying facility is a cogeneration facility or a small
10 power producer which meets the criteria contained in 18 CFR Part
11 202. Such qualifying facility, INSOFAR AS IT MAKES SALES TO AN <—
12 ELECTRIC UTILITY OR USES ENERGY ITSELF, shall not be subject to
13 control or regulation by the commission, except as provided in
14 this chapter, as provided in commission regulations at 52 Pa.
15 Code § 57.31 et seq., or as required by Federal law. ~~insofar as~~ <—
16 ~~it makes sales to an electric utility or uses energy itself.~~ If
17 such qualifying facility makes sales of energy, energy and
18 capacity or thermal energy to any nonutility customer, OTHER <—
19 THAN A RURAL ELECTRIC COOPERATIVE AS DESIGNATED IN SECTION 102
20 "PUBLIC UTILITY" (2)(II) (RELATING TO DEFINITIONS), the
21 commission shall determine, by rule for class of cases or on a
22 case-by-case basis, whether such sales constitute public utility
23 service subjecting the qualifying facility to commission
24 jurisdiction under this title.

25 § 5105. Rate for purchase of energy.

26 The rate paid by an electric utility for energy purchased
27 from a qualifying facility shall equal the avoided costs for
28 energy and may consider the highest cost sources of energy
29 purchased or produced by the utility for each hour of the year.
30 Calculation of the highest cost sources of energy produced by

1 the utility ~~shall~~ MAY include the cost of fuel, variable
2 operating and maintenance costs and any other variable costs
3 associated with that generation. The avoided energy costs may
4 also take into account the avoidance of line losses as well as
5 differences in utility energy costs between peak and nonpeak
6 periods.

7 § 5106. Rate for purchases of energy and capacity.

8 (a) General rule.--The rate paid by an electric utility for
9 energy and capacity purchased from a qualifying facility shall
10 equal the avoided costs of the utility for energy and capacity.
11 The calculation of avoided energy and capacity costs shall
12 consider all of the following factors:

13 (1) The anticipated reliability of the qualifying
14 facility in comparison to the reliability of other generating
15 units supplying electricity to the utility.

16 (2) The anticipated availability of the electricity
17 provided by the qualifying facility during on-peak as well as
18 off-peak periods.

19 (3) The term of the contract.

20 (4) The amount of advance notice that the utility
21 receives that the qualifying facility will be coming on line.

22 (5) The estimated future costs to the utility of
23 constructing or purchasing capacity.

24 (6) The ability of the qualifying facility to schedule
25 maintenance during seasonal off-peak periods of the utility
26 system.

27 (7) The ability of the utility to include the energy and
28 capacity from the qualifying facility in its system dispatch.

29 (8) The degree to which the capacity made available by
30 the qualifying facility enables the utility to meet power

1 pool capacity requirements.

2 (9) The degree to which the availability of energy and
3 capacity from the qualifying facility enables the utility to
4 sell or make available for sale all or portions of its
5 planned capacity additions.

6 (10) The operating, maintenance, and other expenses, as
7 well as capital additions, associated with the construction
8 or purchase of planned capacity additions.

9 (11) The factors included in section 5105 (relating to
10 rate for purchase of energy).

11 (12) The cost of energy and expected capacity factor
12 associated with any planned capacity addition.

13 (b) Capacity value.--In addition to the factors cited in
14 subsection (a), the calculation of the avoided cost value of
15 energy and capacity for any qualifying facility which can be
16 reasonably expected to meet all reasonable standards of
17 availability and reliability established by the commission and <—
18 shall be as prescribed by the commission by regulation or on a
19 case-by-case basis: Provided, That the qualifying facility
20 enters into a contract in which it can be assessed penalties
21 established by the commission if it falls below standards as set
22 forth in regulations promulgated by the commission.

23 (c) Levelized rate.--At the option of the qualifying
24 facility, the rate set under this section for energy and
25 capacity may be set at a levelized value such that the rate paid
26 in the early years of a contract is higher than the avoided cost
27 during those years so long as the present value of all rates
28 paid over the term of the contract is no greater than the
29 present value of the total avoided costs of the utility.

30 § 5107. Backup, maintenance and supplementary power.

1 Each electric utility shall make available to each qualifying
2 facility backup power, maintenance power and supplementary power
3 on a firm (noninterruptible) basis, as well as on an
4 interruptible basis, at rates and under terms and conditions
5 which help achieve the purpose of this chapter, are just and
6 reasonable and which do not discriminate against qualifying
7 facilities and which are based upon the cost of providing
8 service to the qualifying facility. The commission shall, upon
9 the filing of a petition by a qualifying facility or utility so
10 requesting, establish reasonable rates for backup power and
11 maintenance power, and in such case the commission will take
12 into account the qualifying facility's anticipated availability
13 and reliability and shall not assume that forced outages will
14 occur simultaneously among qualifying facilities or during
15 system peaks.

16 § 5108. Data.

17 The electric utility and the qualifying facility shall make
18 available upon request by the other whatever data may be
19 reasonably necessary in order to implement this chapter. THE
20 COMMISSION MAY ALSO REQUIRE UTILITIES TO DEVELOP AND FILE POLICY
21 STATEMENTS FOR THE WHEELING OF POWER FROM A QUALIFYING FACILITY
22 TO ANY OTHER UTILITY IN THE COMMONWEALTH TO WHICH WHEELING IS
23 PHYSICALLY POSSIBLE. SUCH POLICY STATEMENTS SHALL APPLY WHEN THE
24 WHEELING UTILITIES AND QUALIFYING FACILITY AGREE TO WHEELING, OR
25 WHEN THE UTILITY IS REQUIRED TO WHEEL POWER UNDER FEDERAL LAW.

26 § 5109. Authority of commission.

27 The commission shall, after notice and opportunity for
28 hearing, take whatever steps may be necessary to implement this
29 chapter, including, but not limited to, the promulgation of
30 rules and regulations. Within nine months from the date of

1 enactment of this chapter, the commission shall promulgate
2 amended regulations which implement the provisions of this
3 chapter. Prior to issuance of such amended regulations, the
4 existing commission regulations at 52 Pa. Code §§ 57.31-57.39
5 shall be in effect. ~~The commission may also require utilities to~~ <—
6 ~~develop and file standards and rates for the wheeling of power~~ <—
7 ~~from a qualifying facility to any other utility in the~~
8 ~~Commonwealth to which wheeling is physically possible. Such~~
9 ~~standards and rates shall apply when the wheeling utilities and~~
10 ~~qualifying facility agree to wheeling, or when the utility is~~
11 ~~required to wheel power under Federal law. UNLESS HERETOFORE~~ <—
12 OTHERWISE ORDERED BY THE COMMISSION. Any qualifying facility or
13 electric utility may petition the commission to resolve
14 controversies and for other appropriate relief under this
15 chapter and the commission shall resolve any such petition
16 within 120 days. Any qualifying facility or electric utility may
17 petition the commission for approval of a contract between them.
18 Within a period of 60 days of receipt of the petition, which
19 period may be extended an additional 60 days as the commission
20 deems necessary, such approval shall be granted if the contract
21 is found to be in the public interest and the rates set forth in
22 the contract are found to be just and reasonable. IF SUCH <—
23 APPROVAL IS GRANTED, PAYMENT BY AN ELECTRIC UTILITY TO A
24 QUALIFYING FACILITY SHALL BE AFFORDED APPROPRIATE TREATMENT BY
25 THE COMMISSION TO ASSURE FULL AND EXPEDIENT RECOVERY IN RATES
26 CHARGED BY THE UTILITY WHICH ARE SUBJECT TO THE COMMISSION'S
27 JURISDICTION.

28 Section 2. The provisions of this act are severable. If any
29 provision of this act or its application to any person or
30 circumstance is held invalid, the invalidity shall not affect

1 other provisions or applications of this act which can be given
2 effect without the invalid provision or application.
3 Section 3. This act shall take effect immediately.