

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3023 Session of
1990

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COLAFELLA, TRELLO, F. TAYLOR, PISTELLA, JOSEPHS, CORRIGAN AND
TANGRETTI, NOVEMBER 19, 1990

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, NOVEMBER 19, 1990

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

16 [(Reserved)]

17 CHAPTER 51

18 POWER COGENERATION

1 Sec.
2 5101. Short title of chapter.
3 5102. Definitions.
4 5103. Interconnection sales by qualifying facilities.
5 5104. Status of qualifying facility.
6 5105. Rate for purchase of energy.
7 5106. Rate for purchases of energy and capacity.
8 5107. Backup, maintenance and supplementary power.
9 5108. Data.
10 5109. Authority of commission.
11 5110. Resolution of controversies.
12 5111. Recovery of utility payments.
13 § 5101. Short title of chapter.

14 This chapter shall be known and may be cited as the
15 Cogeneration, Small Power Production and Jobs Development Act.
16 § 5102. Definitions.

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

20 "Commission." The Pennsylvania Public Utility Commission.

21 "Electric utility" or "utility." A public utility, as
22 defined in section 102 (relating to definitions), which is
23 producing, generating, transmitting, distributing or furnishing
24 electricity for the production of light, heat or power to or for
25 the public for compensation, other than electricity solely from
26 a qualifying facility.

27 (b) In relation to Federal law.--Unless the context clearly
28 indicates otherwise, the definitions given in the Public Utility
29 Regulatory Policies Act of 1978 (PURPA) (Public Law 95-617, 16
30 U.S.C. §§ 796 and 824a-3) and the definitions given in 18 CFR

1 Part 292 shall apply to this chapter.

2 § 5103. Interconnection sales by qualifying facilities.

3 (a) Requirement for interconnection.--At the request of the
4 owner or operator of any qualifying facility, the utility in
5 whose service territory the qualifying facility is located or to
6 which delivery of the qualifying facility's energy is made,
7 shall interconnect its facilities with the qualifying facility
8 and shall enter into a contract requiring the utility to
9 purchase and pay for all of the electric energy, or electric
10 energy and capacity, which is produced and offered for sale by
11 the qualifying facility at a price which is based on the avoided
12 costs of the utility as defined in sections 5105 (relating to
13 rate for purchase of energy) and 5106 (relating to rate for
14 purchases of energy and capacity). At the option of the
15 qualifying facility, the sale of energy only may be made without
16 a contract, with a year-to-year contract or under conditions set
17 out in commission regulations. Sales of energy and capacity
18 shall be pursuant to a contract for a minimum term of ten years,
19 subject to such exceptions as the commission may provide by
20 regulation. The qualifying facility may elect to purchase all or
21 any portion of its requirements of electric service from the
22 utility in whose service territory the qualifying facility is
23 located while simultaneously selling all or some portion of the
24 electric power output of the qualifying facility. Nothing in
25 this chapter shall be construed to preclude the qualifying
26 facility from entering into a contract with the utility for the
27 purchase of energy or energy and capacity from the qualifying
28 facility at a rate or under terms which differ from the avoided
29 costs of the utility.

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

1 by the utility to interconnect with the qualifying facility
2 shall be payable by the qualifying facility in a one-time
3 payment or over a period of years, as determined by the
4 commission by regulation, to the extent that such costs are in
5 addition to the costs of interconnection facilities required to
6 serve the qualifying facility as a customer.

7 § 5104. Status of qualifying facility.

8 A qualifying facility is a cogeneration facility or a small
9 power producer which meets the criteria contained in 18 CFR Part
10 292. Such qualifying facility shall not be subject to control or
11 regulation by the commission, except as provided in this
12 chapter, as provided in commission regulations in 52 Pa. Code §
13 57.31 et seq., or as required by Federal law insofar as it makes
14 sales to an electric utility or uses energy itself. If such
15 qualifying facility makes sales of energy, energy and capacity
16 or thermal energy to any nonutility customer, the commission
17 shall determine, by rule for class of cases or on a case-by-case
18 basis, whether such sales constitute public utility service
19 subjecting the qualifying facility to commission jurisdiction
20 under this title.

21 § 5105. Rate for purchase of energy.

22 The rate paid by an electric utility for energy purchased
23 from a qualifying facility shall be based on the avoided costs
24 for energy and may consider the highest cost sources of energy
25 purchased or produced by the utility for each hour of the year.
26 Calculation of the highest cost sources of energy produced by
27 the utility shall include the cost of fuel, variable operating
28 and maintenance costs and any other variable costs associated
29 with that generation. The avoided energy costs may also take
30 into account the avoidance of line losses, differences in

1 utility energy costs between peak and nonpeak periods and
2 exclusion of nonrepresentative sources of costs.

3 § 5106. Rate for purchases of energy and capacity.

4 (a) General rule.--The rate paid by an electric utility for
5 energy and capacity purchased from a qualifying facility shall
6 be based on the avoided costs of the utility for energy and
7 capacity. The calculation of avoided energy and capacity costs
8 shall consider all of the following factors:

9 (1) The anticipated reliability of the qualifying
10 facility in comparison to the reliability of other generating
11 units supplying electricity to the utility.

12 (2) The anticipated availability of the electricity
13 provided by the qualifying facility during peak as well as
14 off-peak periods.

15 (3) The term of the contract.

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

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

20 (6) The ability of the qualifying facility to schedule
21 maintenance during seasonal off-peak periods of the utility
22 system.

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

25 (8) The degree to which the capacity made available by
26 the qualifying facility enables the utility to meet power
27 pool capacity requirements.

28 (9) The operating, maintenance and other expenses
29 associated with the construction or purchase of planned
30 capacity additions.

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

3 (b) Capacity value.--In addition to the factors cited in
4 subsection (a), the calculation of the avoided cost value of
5 energy and capacity for any qualifying facility which can be
6 reasonably expected to meet all reasonable standards of
7 availability and reliability established by the commission shall
8 be as prescribed by the commission by regulation or on a case-
9 by-case basis provided the qualifying facility enters into a
10 contract in which it can be assessed penalties established by
11 the commission if it falls below standards as set forth in
12 regulations promulgated by the commission.

13 (c) Levelized rate.--At the option of the qualifying
14 facility, the rate set under this section for energy and
15 capacity may be set at a levelized value.

16 § 5107. Backup, maintenance and supplementary power.

17 Each electric utility shall make available to each qualifying
18 facility backup power, maintenance power and supplementary power
19 on a firm (noninterruptible) basis, as well as on an
20 interruptible basis, at rates and under terms and conditions
21 which help achieve the purpose of this chapter, are just and
22 reasonable and which do not discriminate against qualifying
23 facilities and which are based upon the cost of providing
24 service to the qualifying facility. The commission shall, upon
25 the filing of a petition by a qualifying facility or utility or
26 upon its own motion establish reasonable rates for backup power
27 and maintenance power for all such entities similarly situated,
28 and, in such case, the commission will take into account the
29 qualifying facility's anticipated availability and reliability
30 and shall not assume that forced outages will occur

1 simultaneously among qualifying facilities or during system
2 peaks.

3 § 5108. Data.

4 The electric utility and the qualifying facility shall make
5 available, upon request by the other, whatever data may be
6 reasonably necessary in order to implement this chapter.

7 Qualifying facilities need not make available any data relating
8 to their costs of generation or otherwise providing electric
9 power to the utility.

10 § 5109. Authority of commission.

11 The commission shall take whatever steps may be necessary to
12 implement this chapter, including, but not limited to, the
13 promulgation of rules and regulations. However, the existing
14 commission regulations in 52 Pa. Code, Ch.57, Subchapter C
15 (relating to purchase and sale of energy and capacity-qualifying
16 facilities), are deemed to be in compliance with this chapter
17 and are not expressly or implicitly repealed hereby. The
18 provisions of this statute are to be considered as additional to
19 rights and responsibilities granted qualifying facilities under
20 such regulations. The commission need only take such further
21 action as is necessary to implement these additional provisions.
22 The commission may also require utilities to develop and file
23 standards and rates for the wheeling of power from a qualifying
24 facility to any other utility in this Commonwealth to which
25 wheeling is physically possible. Such standards and rates shall
26 apply when the wheeling utilities and qualifying facility agree
27 to wheeling, or when the utility is required to wheel power
28 under Federal law.

29 § 5110. Resolution of controversies.

30 Any qualifying facility or electric utility may petition the

1 commission to resolve controversies and for other appropriate
2 relief under this chapter and the commission shall resolve any
3 such petition within nine months. Any qualifying facility or
4 electric utility may petition the commission for approval of a
5 contract between them. Within a period of 60 days of receipt of
6 the petition, which period may be extended an additional 60 days
7 as the commission deems necessary, such approval shall be
8 granted if the contract is found to be in the public interest
9 and the rates set forth in the contract are found to be just and
10 reasonable.

11 § 5111. Recovery of utility payments.

12 Payment by an electric utility to a qualifying facility shall
13 be afforded appropriate treatment by the commission to assure
14 full and expedient recovery in rates charged by the utility
15 which are subject to the commission's jurisdiction.

16 Section 2. This act shall take effect in 60 days.