
THE GENERAL ASSEMBLY OF PENNSYLVANIA

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BELFANTI AND STEELMAN, APRIL 19, 1993

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, APRIL 19, 1993

AN ACT

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

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

19 CHAPTER 1
20 GENERAL PROVISIONS

21 Section 101. Short title.

22 This act shall be known and may be cited as the Hydroelectric
23 Energy Conservation, Management and Development 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 Pennsylvania
3 waterways.

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 hydroelectric facilities, licensed by
8 the Federal Energy Regulatory Commission in order to conserve
9 our finite and expensive energy resources and to provide for
10 their most efficient utilization. In furtherance of this
11 declared policy, the Pennsylvania Energy Office shall:

12 (1) Encourage electric public utilities participation in
13 small hydroelectric energy production facilities, either
14 directly or through subsidiaries. In addition, the
15 Pennsylvania Energy Office may require any electric public
16 utility to enter into long-term contracts to purchase or
17 wheel electricity from any small municipally-owned
18 hydroelectric facility, with an electric generating capacity
19 of up to 80 megawatts, under rates, terms and conditions as
20 the Pennsylvania Energy Office shall determine, which shall
21 be nondiscriminatory to small municipal hydroelectric
22 producers and further the public policy set forth in this
23 act. However, the Pennsylvania Energy Office shall establish
24 a minimum sales price for such purchased electricity from any
25 such facility licensed by the Federal Energy Regulatory
26 Commission, at not less than six cents per kilowatt hour,
27 which sales price shall be subject to periodic revision by
28 the Pennsylvania Energy Office to reflect increases in the
29 cost of producing public utility-generated electricity. The
30 Pennsylvania Energy Office may also require any electric

1 utility to provide supplemental or backup power to any small
2 municipal hydroelectric facility on a nondiscriminatory basis
3 and at a just and reasonable wholesale rate. Nothing
4 contained in this section shall require any electric public
5 utility to construct any additional facilities for these
6 purposes unless the facilities are paid for in full by the
7 municipal owner of the small hydroelectric facility.

8 (2) Any electric public utility prior to entering into
9 electric capacity purchase contracts or prior to making
10 substantial investments to satisfy electric capacity needs,
11 including investments in new construction, repowering or life
12 extension of electric generating facilities and demand-
13 reducing measures, shall first consider small municipal
14 hydroelectric facilities, licensed by the Federal Energy
15 Regulatory Commission and select the source or sources which
16 best serve the public interest, taking into consideration
17 such factors as ratepayer impacts, system reliability,
18 environmental impacts, conservation of energy resources,
19 preservation or creation of economic opportunities, fuel
20 efficiency, fuel availability and diversity and public health
21 and welfare.

22 (3) Increase the reliability and efficient use of this
23 Commonwealth's hydroelectric energy supplies so that this
24 Commonwealth will progress economically, ecologically and
25 socially.

26 (4) Make every effort to increase the production of this
27 Commonwealth's hydroelectric power.

28 (5) Encourage development of hydroelectric facilities
29 through arrangements among agencies of the Commonwealth,
30 municipalities, municipal authorities, rural electric

1 cooperatives, public utilities and private enterprise.

2 Section 103. Definitions.

3 The following words and phrases when used in this act shall
4 have the meanings given to them in this section unless the
5 context clearly indicates otherwise:

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

7 "Energy." Electricity generated by hydroelectric facilities.

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

9 "FERC." Federal Energy Regulatory Commission.

10 "Hydroelectric facilities or projects." Any dam, lock,
11 reservoir, powerhouse, generation facility or related facility
12 used for the generation and transmission of hydroelectric power
13 and energy capable of being licensed by the Federal Energy
14 Regulatory Commission as a small hydroelectric facility or
15 project.

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

20 "Person."

21 (1) An ultimate user or purchaser of hydroelectric power
22 whether it be an individual, partnership, corporation or
23 association, including a lessee and assignee, trustee,
24 receiver, executor, administrator or other successor in
25 interest.

26 (2) Any municipality of this Commonwealth and also any
27 public corporation, authority or body whatsoever created or
28 organized under any ordinance, resolution, regulation or
29 statute of this Commonwealth, whether or not an ultimate user
30 of hydroelectric power.

1 "Plan." The Hydroelectric Energy Policy and Management Plan
2 established under section 701.

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

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

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

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

22 Section 104. Construction of act.

23 This act is intended to:

24 (1) Supersede and transfer the exclusive authority
25 vested in the Pennsylvania Public Utility Commission by 66
26 Pa.C.S. (relating to public utilities) over hydroelectric
27 facilities and utilities to the office and to further develop
28 hydroelectric power in this Commonwealth.

29 (2) Identify the function of the Pennsylvania Public
30 Utility Commission as the State regulatory authority

1 responsible for implementing the provisions of the Public
2 Utility Regulatory Policies Act of 1978 (Public Law 95-617,
3 92 Stat. 3117) as they apply to public utilities with the
4 exception of hydroelectric facilities and utilities which
5 shall be under the jurisdiction of the office which shall
6 further develop hydroelectric power in this Commonwealth.

7 CHAPTER 3

8 MUNICIPALITY-OWNED HYDROELECTRIC PROJECTS

9 Section 301. Open access.

10 (a) General rule.--Municipalities owning hydroelectric
11 projects located within this Commonwealth and licensed by FERC
12 as a hydroelectric facility or project owner shall have open
13 access to electric public utilities' transmission lines
14 throughout this Commonwealth for the purpose of selling,
15 distributing or transmitting its electricity, wholesale or
16 retail, to any person within or outside of this Commonwealth.

17 (b) Distress municipality.--Any municipality that is
18 declared distressed by the Commonwealth or have within its
19 boundaries areas designated as enterprise zones may create a
20 municipal power authority that shall have the right to open
21 access to electric public utility transmission lines and
22 appurtenances thereto, located within its boundaries for the
23 purpose of purchasing, selling, distributing or transmitting the
24 purchased electricity to any person at retail or wholesale
25 within the municipality.

26 (c) Wheeling fees.--Public utility wheeling fees for this
27 access shall not exceed prevailing wheeling fees currently being
28 charged, with the exception of distress municipalities or
29 municipalities having areas designated as enterprise zones, in
30 which case the municipality shall be obligated to pay only

1 actual maintenance fees, costs or expenses to the electric
2 public utility for the open access use of the transmission lines
3 and appurtenances thereto.

4 (d) Office approval and hearings.--The office must approve
5 all agreements for the wheeling and delivery of power and
6 retains the right to order wheeling and delivery of electricity
7 and to set terms for a wheeling agreement, including price, that
8 it deems necessary. The office or any township, authority,
9 agency or transmitter involved in a wheeling transaction may
10 request an informal hearing with the office for the review of
11 any and all terms of a wheeling agreement.

12 Section 302. Manufacture and supply of electricity.

13 Any municipality owning a small hydroelectric project and
14 licensed by FERC to own and operate a small hydroelectric
15 facility or project may generate, manufacture, sell or purchase
16 hydroelectric electricity for its use or sale to any person at
17 wholesale or retail. Any municipality owning or operating a
18 hydroelectric generating facility or project licensed by FERC
19 may enter into and make contracts for purchasing, selling,
20 distributing and supplying electricity at wholesale or retail to
21 any person within or outside the limits of the municipality.

22 Section 303. Eminent domain.

23 (a) Acquisition.--It shall be lawful for any municipality to
24 acquire, by eminent domain, that portion of an electric utility
25 grid system, integrated or not, serving the municipality within
26 its boundaries for the purpose of purchasing, selling,
27 distributing and transmitting hydroelectric electricity to any
28 person at wholesale or retail from its hydroelectric facility to
29 the ultimate users or the use point.

30 (b) Ownership and operation.--It shall be lawful for any

1 municipality, licensed by FERC to own and operate a small
2 hydroelectric facility or project, to acquire, by eminent
3 domain, that portion of an electric utility grid system,
4 integrated or not, serving any wholesale, commercial,
5 industrial, retail or other municipal customer or person or
6 ultimate user of its electricity for the purpose of purchasing,
7 selling, distributing and transmitting hydroelectric power and
8 energy to wholesale or retail persons or end users of
9 electricity.

10 CHAPTER 5

11 PENNSYLVANIA ENERGY OFFICE

12 Section 501. Pennsylvania Energy Office.

13 The Pennsylvania Energy Office shall be:

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

16 (2) Authorized to hire the necessary support personnel
17 to accomplish the purposes of this act.

18 Section 502. Powers and duties.

19 The office shall have the following powers and duties:

20 (1) To undertake special studies on present and future
21 demand for and supplies of hydroelectric energy that the
22 General Assembly determines is required to develop and
23 represent its policy on hydroelectric energy matters. Other
24 studies that the office proposes shall be undertaken with the
25 approval of the Governor, if the Governor deems it advisable.

26 (2) To establish an energy information system which can
27 be used to project potential hydroelectric shortages and
28 which will provide sufficient information to mitigate the
29 adverse effects of shortages.

30 (3) To inform and educate the public about cost-

1 effective options for using and converting hydroelectric
2 energy efficiently.

3 (4) To apply for, accept and expend grants-in-aid and
4 assistance from private and public sources for hydroelectric
5 energy programs. Notwithstanding any other law to the
6 contrary, the office is designated as the sole Commonwealth
7 agency to apply for, receive, grant, award and expend Federal
8 and other funding made available to the Commonwealth for the
9 purposes of this act, subject to appropriation by the General
10 Assembly.

11 (5) To adopt and promulgate rules and regulations to
12 carry out the purposes of this act.

13 (6) To assist the Department of Commerce in promoting
14 the production, use and export of the Commonwealth's
15 indigenous energy resources, especially hydroelectric power,
16 by providing information, data and analysis of the potential
17 resource and markets for these energy resources.

18 (7) To develop a Hydroelectric Energy Policy and
19 Management Plan for this Commonwealth in accordance with
20 Chapter 3.

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

25 (9) To prepare or to enter into agreements with any
26 person to prepare plans and feasibility studies for the
27 development and operation of hydroelectric facilities and
28 projects, including plans for the marketing and distribution
29 of power derived from these hydroelectric facilities and
30 projects.

1 (10) To finance and enter into agreements with any
2 person to construct, finance, maintain and operate
3 hydroelectric facilities and projects, including facilities
4 for the transmission of hydroelectric power produced by these
5 projects.

6 (11) To establish licensing procedures and fees for
7 hydroelectric facilities under this act.

8 Section 503. Grant and loan authority of office.

9 The office shall have authority to:

10 (1) Make grants to fund research to increase the
11 efficient use of this Commonwealth's hydroelectric energy
12 resources.

13 (2) Make grants, loans and loan guarantees available to
14 persons for development and construction of hydroelectric
15 energy production facilities.

16 Section 504. Additional powers and duties.

17 The office as a governmental instrumentality exercising
18 public powers of the Commonwealth is hereby granted and shall
19 have and may exercise all powers necessary or appropriate to
20 carry out and effectuate the purposes of this act, including the
21 following powers, in addition to others previously granted or
22 granted in this act:

23 (1) To conduct, when necessary, examinations and
24 investigations and to take testimony, under oath or
25 affirmation, at public or private hearings, on any matter
26 relevant to its information and necessary to the
27 determination and approval of hydroelectric energy
28 development and construction project grants or loan
29 applications.

30 (2) To seek, when necessary, technical determinations on

1 hydroelectric project applications.

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

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

8 (5) To collect fees and charges, as the office
9 determines to be reasonable, in connection with its loans,
10 application for loans, guarantees of loans, application for
11 loan guarantees, commitments, services, expenses and other
12 matters relating to activities undertaken to further the
13 purposes of this chapter.

14 Section 505. Grants and loans.

15 (a) Conditions of approving grants and loans.--When it has
16 been determined by the office upon application for a
17 hydroelectric grant or loan that the awarding of such grant or
18 loan will accomplish the public purposes of this chapter, the
19 office may contract to award the grant or loan in an amount not
20 in excess of 90% of the cost of the development and construction
21 of the hydroelectric project.

22 (b) Commitment for sufficient funds.--Prior to the making of
23 any grant or loan under this section, the office shall have
24 determined that the project owner has obtained from other
25 responsible and independent sources such as the Federal
26 Government, banks, savings and loan associations or otherwise a
27 firm commitment for all other funds over and above the grant or
28 loan of the office, which the aggregate shall be sufficient to
29 cover the entire cost of the hydroelectric project.

30 (c) Loan security.--Any loan of the office shall be for a

1 period of time and shall bear interest at a rate as shall be
2 determined by the office and shall be secured by the project
3 revenue for which the loan was made, the loan to be second and
4 subordinate only to the loan securing the first lien obligation
5 issued to secure the commitment of funds from the responsible
6 and independent sources, described in subsection (b), used in
7 the financing of the hydroelectric energy development project.

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

12 (e) Deposits.--All payments of interest on the loans and the
13 principal thereof shall be deposited by the office in the
14 appropriate accounts.

15 (f) Grant or loan application.--Prior to the awarding of a
16 grant or the loaning of any funds for a project, the office
17 shall receive from the project owner, a grant or loan
18 application in the form and having the content as the office in
19 its rules and regulations may prescribe.

20 Section 506. Plan to award grants or loans.

21 (a) Plan.--In order to devise the most effective strategy
22 for awarding hydroelectric grants or loans and for funding
23 limited hydroelectric research, the office shall publish, within
24 20 days of the effective date of this chapter, a plan for the
25 allocation and distribution of grants, loans and loan guarantees
26 and research funds. The plan shall:

27 (1) Place maximum reliance upon allocation and
28 distribution strategies which exploit the use of other
29 available Federal, State, local and private financial
30 support.

1 (2) Allocate grants and loans to hydroelectric projects
2 whose likelihood of implementation would be diminished unless
3 grants or loans are made available.

4 (3) Provide grants and loans to projects which will make
5 the greatest possible contributions to energy conservation
6 and development.

7 (4) Continue to provide grant and loan guarantees to
8 classes of projects only so long as Commonwealth financial
9 assistance is vital to support these classes of projects and
10 provide for the reallocation of funds as economic conditions
11 change and develop.

12 (5) Provide grants and loans only to persons with a
13 demonstrated financial need and ability to undertake these
14 projects.

15 (6) Identify the various classes of projects to be
16 provided grants and loans and allocate available funds among
17 these classes.

18 (7) Establish application procedures and criteria for
19 awarding grants and loans.

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

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

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

27 Section 507. Annual report.

28 The office shall make an annual report of its hydroelectric
29 energy development grant and loan activities for the preceding
30 fiscal year to the Governor and the General Assembly. Each

1 report shall contain a statement of its activities and a
2 complete operating and financial statement covering the
3 operations of the office during the year relating to
4 hydroelectric energy resource development.

5 CHAPTER 7

6 ENERGY POLICY PLANNING AND

7 ENERGY MANAGEMENT PLAN

8 Section 701. Energy policy.

9 (a) General rule.--The office shall prepare and adopt a
10 Hydroelectric Energy Policy and Management Plan. This policy and
11 plan may include policies or plans developed prior to the
12 effective date of this act.

13 (b) Contents.--The policy and plan may include legislative,
14 executive and regulatory recommendations for increasing the
15 economic production of this Commonwealth's hydroelectric energy
16 resources, for increasing the reliability of this Commonwealth's
17 hydroelectric energy supplies and for increasing the efficient
18 use of hydroelectric energy.

19 (c) The office shall, immediately upon the effective date of
20 this act, adopt rules and regulations to license and regulate
21 hydroelectric facilities, energy resources within this
22 Commonwealth and hydroelectric energy resources purchased
23 outside of this Commonwealth for use within this Commonwealth,
24 without regulations or control by any other department,
25 commission, agency or authority of the Commonwealth.

26 CHAPTER 9

27 MARKETING AND DISTRIBUTION OF

28 HYDROELECTRIC POWER

29 Section 901. Sale and distribution.

30 Power and energy derived from small hydroelectric facilities

1 and projects developed and operated by a person who is the
2 licensee or owner, or both, of a FERC license to develop the
3 facilities or project, if offered for sale by the person to the
4 public utility within the territory of the hydroelectric
5 facility or project, shall be purchased by the public utility
6 within the territory of the hydroelectric facility or project,
7 shall be purchased by the public utility at rates to be
8 established under section 902. The person also may sell and
9 distribute a part of the power and energy to any wholesale,
10 commercial, industrial or retail person within or outside of
11 this Commonwealth at rates greater than those established under
12 section 902.

13 Section 902. Rate establishment.

14 The office shall fix, alter and revise rates, rentals,
15 charges and classifications thereof and wheeling fees, if any,
16 for the use of FERC-licensed municipal hydroelectric facilities
17 and for power and energy produced by these facilities and
18 projects, which shall be purchased by the utility under section
19 102(b) at the rates, rentals, fees and charges fixed by the
20 office, without regulation or control by any other department,
21 commission or agency of the Commonwealth. Rates and charges
22 fixed by the office for hydroelectric power shall be reasonable,
23 nondiscriminatory and in an amount equal to the cost of
24 generation by the municipality, including, but not limited to,
25 capital cost, financing of the project, debt service, operating
26 charges, a fair cost of transmission as determined by the
27 office, overhead and profit in an amount not less than 25% of
28 operating charges.

29 CHAPTER 11

30 VIOLATIONS AND PENALTIES

1 Section 1101. Actions for injunctive relief.

2 For a violation of any provisions of this act or of any
3 rules, regulations or orders issued under this act by the
4 office, the office may institute a civil action in the
5 Commonwealth Court or in the court of common pleas of the
6 judicial district in which the violation occurs for injunctive
7 relief to restrain the violation and for such other relief as
8 the court shall deem proper. Neither the institution of this
9 action nor any of the proceedings therein shall relieve any
10 party to the proceedings from other fines or penalties, civil or
11 criminal, prescribed for the violation by this act or by any
12 rule, regulation or order issued under this act.

13 Section 1102. Civil penalties.

14 Any person who fails to obtain a hydroelectric license or to
15 provide energy information as required by this act shall be
16 liable for a civil penalty of \$10,000 for each offense. If the
17 violation is of a continued nature, each day it continues shall
18 constitute an additional and separate offense.

19 CHAPTER 13

20 MISCELLANEOUS PROVISIONS

21 Section 1301. Repeals.

22 All acts and parts of acts are repealed insofar as they are
23 inconsistent with this act.

24 Section 1302. Effective date.

25 This act shall take effect in 60 days.