

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 42

Session of  
1979

INTRODUCED BY GOODMAN AND B. F. O'BRIEN, FEBRUARY 5, 1979

REFERRED TO COMMITTEE ON MINES AND ENERGY MANAGEMENT,  
FEBRUARY 5, 1979

AN ACT

1 Providing for the determination of the need for and approval of  
2 the siting of defined electric generating facilities  
3 including additional powers of eminent domain for electric  
4 public utilities, granting the Public Utility Commission,  
5 Environmental Quality Board and the Department of  
6 Environmental Resources additional powers, providing  
7 penalties and making an appropriation.

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

18 Section 1. Short title.

19 This act shall be known and may be cited as the "Electric  
20 Generating Facilities Certification and Siting Act."

21 Section 2. Findings and declaration of policy.

22 (a) The General Assembly finds and declares:

23 (1) That it is essential to the health, safety and  
24 welfare of the people of this Commonwealth and to its economy  
25 that a reliable economic and adequate supply of electric  
26 energy is provided and maintained by means of electric  
27 generating facilities located at sites chosen to minimize  
28 adverse effects upon the environment.

29 (2) That the present and future growth of electric power  
30 demands and supply in the Commonwealth of Pennsylvania has

1 and will have such an impact upon the environment of  
2 Pennsylvania as to affect the public interest.

3 (3) That the siting of new electric generating  
4 facilities may significantly affect the environment, the  
5 location and growth of business and industry, the use of  
6 natural resources, and the general health, safety and welfare  
7 of the people of Pennsylvania.

8 (4) That it is in the public interest to minimize the  
9 adverse effect upon the environment and upon the quality of  
10 life of the people of the Commonwealth which the siting of  
11 such facilities might cause.

12 (5) That even though there presently exist Federal  
13 permit requirements which involve extensive review of the  
14 environmental effects of the siting, construction and  
15 operation of most electric generating facilities pursuant to  
16 the National Environmental Policy Act and such environmental  
17 review should not be duplicated by the Commonwealth, it is  
18 essential that the need for such facilities and the  
19 acceptability of proposed sites under stated criteria be  
20 determined by the Commonwealth in advance of more detailed  
21 reviews conducted pursuant to the National Environmental  
22 Policy Act during Federal licensing and permitting processes.

23 (6) That the existing provisions of law do not provide  
24 adequate opportunity for individuals, groups interested in  
25 conservation and the protection of the environment, local  
26 governments and other such bodies to participate in a timely  
27 fashion in proceedings relating to the need for and the  
28 siting of electric generating facilities.

29 (7) That it is necessary and desirable to establish  
30 procedures for the review and approval of the need for and

1 location of new electric generating facilities prior to  
2 construction.

3 (8) That the need for such facilities and the  
4 acceptability of proposed sites therefor should be determined  
5 without undue delay so as to insure the availability of  
6 adequate supplies of electric power when needed.

7 (b) Therefore, the General Assembly hereby declares that the  
8 purposes of this act are:

9 (1) To provide for open advance planning and for early  
10 site review that will insure needed electric generating  
11 facilities on a timely basis.

12 (2) To establish a procedure for the finding of need for  
13 new electric generating facilities by the Pennsylvania Public  
14 Utility Commission and to provide that such determinations  
15 shall not be in issue in any subsequent State or local  
16 proceedings.

17 (3) To establish a procedure for early review of sites  
18 for new electric generating facilities and a determination of  
19 their acceptability by the Department of Environmental  
20 Resources and to provide that such determinations shall not  
21 be in issue in any subsequent State or local proceedings.

## 22 Section 3. Definitions.

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

26 "Applicant." Any person or corporation who submits an  
27 application for a certificate or a permit pursuant to the  
28 provisions of this act.

29 "Board." The Environmental Quality Board of the department.

30 "Certificate." The certificate of public necessity and

1 convenience issued by the Pennsylvania Public Utility Commission  
2 under this act.

3 "Commence to construct." Significant physical alteration of  
4 a site but not including preliminary activities incident to  
5 engineering or environmental studies.

6 "Commission." The Pennsylvania Public Utility Commission.

7 "Commonwealth agency." Includes but is not limited to the  
8 following: the Department of Community Affairs, the Department  
9 of Environmental Resources, the Department of Labor and  
10 Industry, the Department of Health, the Department of  
11 Transportation, the Department of Agriculture, the Department of  
12 Commerce, the Fish Commission, the Game Commission and the  
13 Historical and Museum Commission.

14 "Department." The Department of Environmental Resources of  
15 the Commonwealth of Pennsylvania.

16 "Electric generating facility." A new electric generating  
17 unit with a capacity of 100 megawatts of electricity or more, or  
18 a combination of such units with a combined capacity of 100  
19 megawatts of electricity or more, and associated facilities  
20 including electric transmission lines necessary to carry  
21 electric power from the power plant to the bulk power system.

22 "Federal agency." Includes but is not limited to the  
23 following: the Environmental Protection Agency, the Army Corps  
24 of Engineers, the Nuclear Regulatory Commission and the Federal  
25 Energy Regulatory Commission.

26 "Interstate agency." Includes but is not limited to the  
27 following: the Delaware River Basin Commission and the  
28 Susquehanna River Basin Commission.

29 "Local government." Any county, municipality, district,  
30 agency or other unit of local government.

1 "Permit." The site approval permit issued by the department  
2 approving a proposed location for an electric generating  
3 facility.

4 "Utility." Any individual domestic or foreign corporation,  
5 political subdivision or other entity which proposes to  
6 construct, own or operate an electric generating facility to be  
7 located within this Commonwealth, however organized, which is  
8 subject to the jurisdiction of the Pennsylvania Public Utility  
9 Commission.

10 Section 4. Requirement for a certificate and permit.

11 (a) No utility after the effective date of this act shall  
12 commence to construct an electric generating facility without  
13 having first obtained a certificate from the commission and also  
14 a permit from the department. If prior to the date of final  
15 enactment of this act contracts have been let for the  
16 construction of major portions of an electric generating  
17 facility at the site or a National Environmental Policy Act  
18 review involving the site has been commenced by a Federal  
19 agency, construction shall be deemed to have commenced prior to  
20 the effective date and neither a certificate nor permit shall be  
21 required.

22 (b) A certificate may be transferred subject to the approval  
23 of the commission and a permit may be transferred subject to the  
24 approval of the department to any person or utility which agrees  
25 to comply with the terms thereof, including any amendments  
26 thereto. Certificates and permits shall be transferrable by  
27 operation of law to any successor by merger or consolidation, or  
28 to any receiver, trustee or similar assignee under a Mortgage  
29 Deed of Trust or similar instrument.

30 Section 5. Enumeration of powers of the Public Utility

Commission.

The commission shall have the following powers:

(1) To adopt, promulgate or amend reasonable rules to implement the provisions of this act, including, but not limited to, establishing standards relating to the need for power and the service, accommodation, convenience and safety of the public.

(2) To prescribe the form, content and necessary supporting documentation and studies for applications for certificates.

(3) To review and evaluate all applications for certificates filed pursuant to this act.

(4) To make or contract for studies of applications for certificates.

(5) To participate as a party in permit proceedings before the department.

#### Section 6. Enumeration of powers of the Environmental Quality Board.

The Environmental Quality Board shall have the power to adopt, promulgate or amend reasonable rules and regulations for the department to implement the provisions of this act.

#### Section 7. Enumeration of powers of the Department of Environmental Resources.

The department shall have the following powers:

(1) To review and evaluate all applications for permits filed pursuant to this act.

(2) To prescribe the form, content and necessary supporting documentation and studies for applications for permits.

(3) To employ one or more independent consultants to

1 study and report on the matters involved in a determination  
2 by the department pursuant to paragraph (1) hereof. The  
3 department shall direct such consultant or consultants to  
4 study any matter that the department deems necessary for an  
5 adequate appraisal of the application. Any such study and any  
6 report issued as a result thereof shall be part of the record  
7 of the proceeding before the department.

8 (4) To participate as a party in certification  
9 proceedings before the commission.

10 Section 8. Enumeration of powers of the Environmental Hearing  
11 Board.

12 The Environmental Hearing Board shall have the power and its  
13 duties shall be to hear and determine all appeals from actions  
14 of the department taken in accordance with the provisions of  
15 this act. Any and all actions taken by the Environmental Hearing  
16 Board with reference to any such appeal shall be in the form of  
17 an adjudication, and all such actions shall be subject to the  
18 provisions of the Administrative Agency Law.

19 Section 9. Contents of the application for certificate.

20 (a) An applicant for a certificate shall file an application  
21 with the commission in such form and number and with such filing  
22 fee as the commission may prescribe.

23 (b) The application shall include:

24 (1) The utility's long-range plans regarding generating  
25 needs and the proposed means of satisfying those needs.

26 (2) A description of the project as currently planned.

27 (3) A statement setting forth the need for the project.

28 (4) An identification, description and location of all  
29 existing electric generating facilities to be removed from  
30 the service upon completion of the project described in the



1 application.

2 (5) Such other information as the applicant may consider  
3 relevant or the commission may by regulation require.

4 (c) The application for a certificate shall be served upon  
5 those parties including Federal, interstate, Commonwealth or  
6 local agencies designated by the commission as having an  
7 interest in the proceeding.

8 Section 10. Decision by commission.

9 The commission after public hearings shall issue an order  
10 granting, denying or modifying the application no later than 18  
11 months after the application is filed. Any order issued shall  
12 set forth the reasons for its decision. A certificate shall be  
13 issued if the commission finds and determines that the need for  
14 power to be provided by the project set forth in the application  
15 has been demonstrated from the standpoint of providing adequate,  
16 economic and reliable service to satisfy local, State and  
17 regional energy requirements. The commission shall make findings  
18 in support of its decision and any conditions accompanying a  
19 grant of a certificate; and such findings by the commission  
20 shall be conclusive and binding and not in issue in any  
21 subsequent State or local proceeding: Provided, however, That  
22 the certificate can be reviewed by the commission on its own  
23 motion at any time up until construction of the project  
24 commences.

25 Section 11. Amendments to certificates.

26 An application for an amendment to a certificate shall be in  
27 such form and contain such other information as the commission  
28 may prescribe. The commission shall establish a schedule of fees  
29 for amendments to certificates according to criteria as the  
30 commission may prescribe.

1 Section 12. Contents of the application for permit.

2 (a) An applicant for a permit shall file an application with  
3 the department only after having filed with the commission an  
4 application for a certificate. It shall be in such form and  
5 number as the department may prescribe. A fee of \$50,000 for  
6 each proposed site shall accompany the application to cover the  
7 department's costs for site evaluation and hearings.

8 (b) The application shall include:

9 (1) A description of the general location, size and type  
10 of the electric generating facility to be constructed.

11 (2) A copy of the certificate, if any, issued by the  
12 commission.

13 (3) A study setting forth the applicability of the  
14 criteria set forth in section 14 to the proposed site for an  
15 electric generating facility.

16 (4) Such additional information as the department may  
17 require.

18 (c) The application for a permit shall be served upon those  
19 parties including Federal, interstate, Commonwealth or local  
20 agencies designated by the department as having an interest in  
21 the proceeding.

22 Section 13. Decision by department.

23 The department after public hearings shall issue an order  
24 granting, denying or modifying a permit no later than 18 months  
25 after the application is filed. Any order issued shall set forth  
26 the reason for its decision. A permit shall be issued with such  
27 conditions as the department deems appropriate if it finds and  
28 determines on the record that the proposed site is acceptable  
29 under the criteria set forth in section 14 hereof. The findings  
30 of the department in the permit proceeding as specified in this

1 act shall be binding with respect to the criteria contained in  
2 section 14 hereof and not in issue in any subsequent State or  
3 local proceeding. However, permits issued by the department  
4 under this act are intended to be supplementary to, and not a  
5 substitute for, permits, licenses and other approvals issued by  
6 the department pursuant to other statutes. This act should not  
7 be construed to amend or repeal any other statute giving the  
8 department regulatory authority over electric generating  
9 facilities.

10 Section 14. Site criteria.

11 In determining the acceptability of a site for the issuance  
12 of a permit, the department shall consider the following  
13 factors:

14 (1) The amount of land acquired or which may be acquired  
15 for the site to accommodate the proposed facility, including,  
16 but not limited to, the storage of fuel and waste.

17 (2) Proposed plans to mitigate any significant adverse  
18 effects of the proposed use of the site upon historic sites,  
19 scenic areas, conservation areas, wild and scenic rivers,  
20 natural areas, State-owned land, Federally-owned land, and  
21 similar areas afforded protection by Federal and State law.

22 (3) Proposed plans to mitigate any significant adverse  
23 effects of the proposed use of the site upon historic sites,  
24 scenic areas, conservation areas, wild and scenic rivers,  
25 natural areas, State-owned land, Federally-owned land and  
26 similar areas afforded protection by State and Federal law  
27 which would result from:

28 (i) the transportation of fuel to the site;

29 (ii) the transmission of power from the site to the  
30 bulk power system;

(iii) the transportation of construction material  
and equipment to the site; and

(iv) the construction of any new reservoirs needed  
to provide or augment water supply.

(4) Adequacy of the site selection process used to  
choose the site contained in the application, including  
studies conducted, environmental factors evaluated,  
alternative sites considered and public participation methods  
employed.

(5) The availability of water necessary to meet the  
water requirements of the proposed facility, and the  
consistency with the State water plan and the comprehensive  
plans for the applicable river basins of the facility's water  
use and such projects as are necessary for the conservation  
and management of water resources used or affected by the  
facility.

(6) The potential impact of the location and design  
concept of the proposed facility on storm water runoff and  
floods, and the consistency of the proposed facility with  
floodplain management requirements.

Section 15. Validity of permits; renewals; revocation.

(a) Any permit issued pursuant to this act shall authorize  
the location of a facility on the site, provided construction is  
commenced within ten years from the date of issuance of a permit  
or within such additional periods obtained pursuant to (b)  
hereof.

(b) No less than 12 months prior to the expiration of the  
ten-year period the holder of the permit may apply for a renewal  
of the permit. Upon review by the department, the department may  
renew without hearings a permit for additional five-year

1 periods, pursuant to such rules and regulations as the  
2 department may deem appropriate.

3 (c) The department may at any time until construction of the  
4 project commences revoke, suspend, or modify a permit only when  
5 it finds and determines on the record and after notice and  
6 public hearings that the action is necessary because of major  
7 new considerations having a significant effect upon the  
8 suitability of the proposed site under the criteria set forth in  
9 section 14.

10 Section 16. Joint hearings and orders.

11 The commission and the department or the Environmental  
12 Hearing Board, in the discharge of their duties under this act  
13 or any other act, are authorized to make joint investigations,  
14 hold joint hearings within or without the State, and issue joint  
15 or concurrent orders in conjunction or concurrence with each  
16 other and any official or agency of any state or of the United  
17 States, whether in the holding of such investigations or  
18 hearings, or in the making of such orders, the commission and  
19 department or the Environmental Hearing Board shall function  
20 under agreements or compacts between states or under the  
21 concurrent power of states to regulate interstate commerce, or  
22 as an agency of the United States, or otherwise.

23 Section 17. Eminent domain.

24 (a) The rights or powers of eminent domain granted to  
25 electric public utilities by the applicable provisions of the  
26 act of May 5, 1933 (P.L.364, No.106), known as the "Business  
27 Corporation Law," the act of June 22, 1964 (Sp.Sess., P.L.84,  
28 No.6), known as the "Eminent Domain Code," and any other law  
29 applicable, shall not be exercised by any such utility with  
30 respect to any right-of-way or other property to construct,

1 operate and maintain a facility subject to the requirements of  
2 the act unless a certificate and permit have been issued in  
3 accordance with this act.

4 (b) Whenever a certificate and permit have been issued to a  
5 utility under the provisions of this act and such utility is  
6 unable to agree with the owner of the land as to the  
7 compensation to be paid for the fee, easement or right-of-way on  
8 the land for the construction, operation and maintenance of an  
9 electric generating facility, the utility may acquire the same  
10 by the exercise of the power of eminent domain. This power of  
11 eminent domain is in addition to any such power heretofore  
12 granted by any other act and is not in substitution therefor.  
13 The "Eminent Domain Code," shall be applicable to proceedings  
14 for the condemnation and the taking of property conducted  
15 pursuant to this section. The certificate and permit shall be  
16 conclusive evidence of the validity and scope of the taking by  
17 the utility in such proceedings.

18 (c) Notwithstanding the provisions of section 19, neither  
19 the Commonwealth Court nor any court of common pleas shall  
20 entertain any collateral proceeding questioning the jurisdiction  
21 of the commission or department under this section. A final  
22 order of the commission or department approving or denying an  
23 application for a certificate or permit pursuant to this act,  
24 including an order involving a question of jurisdiction  
25 hereunder, may be made the subject of an appeal to Commonwealth  
26 Court in the manner provided by section 19.

27 (d) The power conferred by subsection (b) is in addition to  
28 any other power of eminent domain conferred by any other act and  
29 is not in substitution therefor and can be exercised by the  
30 utility without prior commission approval, notwithstanding the

provisions contained in the "Business Corporation Law" or any other law conferring a power of eminent domain.

Section 18. Exclusion of certain transmission lines approved under this act from further commission review.

Any transmission line or part thereof which is approved by the commission and department pursuant to the provisions of this act shall not be the subject of any additional review or approval procedure by the commission pursuant to any rules or regulations pertaining to the siting and construction of overhead transmission lines.

Section 19. Judicial review.

(a) Any aggrieved party may obtain judicial review of an order issued on an application for a certificate or permit or an amendment of a certificate or a permit after exhaustion of any applicable administrative review procedures. Such review shall be brought in the Commonwealth Court in accordance with the applicable provisions of the Pennsylvania Rules of Appellate Procedure.

(b) No injunction shall issue modifying, suspending, staying or annulling any order of the commission or department issued pursuant to this act except in a proceeding questioning the jurisdiction of the commission or department and then only after cause shown upon a hearing. The Commonwealth Court of Pennsylvania is hereby clothed with exclusive jurisdiction throughout the Commonwealth in all proceedings for such injunctions.

Section 20. Penalties.

(a) Any utility which commences to construct an electric generating facility as provided in this act without having first obtained a certificate and permit, or who constructs any

1 electric generating facility other than in compliance with the  
2 certificate and permit issued by the commission and department,  
3 or who causes any of these acts to occur, shall be liable for a  
4 civil penalty of not more than \$10,000 for each violation or for  
5 each day of continuing violation. Civil penalties collected  
6 pursuant to this subsection shall be forwarded by the clerk of  
7 court to the State Treasurer for deposit in the General Fund of  
8 the State and shall not be chargeable to customers as part of  
9 the utility's cost of service.

10 (b) The Commonwealth Court shall have exclusive jurisdiction  
11 to grant restraining orders and temporary or permanent  
12 injunctive relief as may be necessary to obtain compliance with  
13 this act.

14 (c) The penalties provided in this section are in addition  
15 to those provided in the act of May 28, 1937 (P.L.1053, No.286),  
16 known as the "Public Utility Law," and nothing herein contained  
17 shall affect the right of the commission to also proceed under  
18 any applicable penalty provision of that act for violation of  
19 any rule, regulation or order of the commission.

20 Section 21. Appropriation.

21 The sum of \$100,000 is hereby appropriated to the Department  
22 of Environmental Resources in order to carry out the provisions  
23 of this act.

24 Section 22. Effective date and expiration.

25 This act shall take effect one year from the date of  
26 enactment and shall expire within three years thereafter unless  
27 the General Assembly extends its existence prior to that time.