
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1273 Session of
2014

INTRODUCED BY SOLOBAY, ARGALL, BREWSTER, FONTANA, COSTA,
YUDICHAK, WHITE, KASUNIC, WOZNIAK AND BRUBAKER,
MARCH 21, 2014

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
MARCH 21, 2014

AN ACT

1 Providing for the deactivation of coal-fired electric generation
2 facilities; establishing the Coal-Fired Electric Generation
3 Facilities Deactivation Commission and providing for the
4 commission's powers and duties; establishing the Displaced
5 Coal-Fired Electric Generation Facilities Employee Assistance
6 and Environmental Remediation Fund; making an appropriation;
7 and making a related repeal.

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

13 CHAPTER 1

14 PRELIMINARY PROVISIONS

15 Section 101. Short title.

16 This act shall be known and may be cited as the Coal-Fired
17 Electric Generation Facilities Deactivation Act.

18 Section 102. Declaration of policy.

19 The General Assembly finds and declares as follows:

20 (1) Reasonably priced reliable sources of electric power
21 generated in this Commonwealth are vital to the health,
22 safety and welfare of the residents and to the prosperity of
23 this Commonwealth's economy.

24 (2) It is the responsibility of State government to
25 ensure that a reliable supply of electric power is generated
26 at a level consistent with the need for such electric power
27 for the protection of public health, safety and the
28 environment.

29 (3) Coal-fired electric generation power plants are
30 developed primarily through the free enterprise system and

1 require a major commitment of funds and resources from
2 shareholders and taxpayers, and the decision to deactivate
3 coal-fired electric generation power plants will have a long-
4 term impact on the Commonwealth's economy.

5 (4) Commonwealth coal-fired electric generation power
6 plants that sell into the wholesale power market strengthen
7 competition and enhance the reliability of the electric
8 transmission system and are vital to public interest.

9 (5) The deactivation of coal-fired electric generation
10 facilities significantly affects this Commonwealth's economy,
11 environment, electric reliability and the general health,
12 safety and welfare of this Commonwealth's residents.

13 (6) Federal, State and local rules, regulations,
14 practices and procedures relating to the deactivation of
15 coal-fired electric generation facilities are inadequate to
16 protect the economy and environment and fail to provide
17 societal benefits, family-sustaining jobs and electric power
18 reliability, which increase costs to the consumers of this
19 Commonwealth in the form of higher electric rates.

20 (7) Existing Federal, State and local rules,
21 regulations, practices and procedures relating to the
22 deactivation of coal-fired electric generation facilities do
23 not provide adequate opportunity for State officials,
24 municipalities, affected employees and individuals and groups
25 interested in protecting the economy and environment to
26 participate in the decision to deactivate coal-fired electric
27 generation facilities.

28 (8) Coordinating a thorough review and investigation
29 into the adverse impacts on the economy, electric power
30 reliability and the environment associated with the

1 deactivation of coal-fired electric generation power plants
2 should be consolidated in a single body that will render
3 final decisions concerning the deactivation, cleanup and
4 remediation of coal-fired electric generation power plants.

5 (9) It is the responsibility of the General Assembly to
6 provide a forum for the expeditious resolution of all matters
7 concerning the deactivation of coal-fired electric generation
8 facilities, which access shall be open to all employees,
9 individuals, groups, State officials, municipalities and
10 other interested groups to enable them to participate in the
11 decision-making process.

12 Section 103. Definitions.

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

16 "Agency." A State or local agency.

17 "Applicant." An operator who submits an application for a
18 certificate under section 501.

19 "Certificate." The certificate of approval to commence the
20 deactivation of a facility issued by the commission.

21 "Coal-fired electric generation facility." An electric
22 generating facility, and associated facilities located within
23 this Commonwealth, which use coal and coal byproducts to operate
24 at a capacity of five megawatts or more and sell the electricity
25 produced into the wholesale market at rates and charges
26 established by a Federal agency. The term does not include a
27 coal-fired cogeneration facility.

28 "Commission." The Coal-Fired Electric Generation Facilities
29 Deactivation Commission established in section 301.

30 "Department." The Department of Environmental Protection of

1 the Commonwealth.

2 "Facility." A coal-fired electric generation facility.

3 "Federal agency." The term includes:

4 (1) The Federal Energy Resource Commission.

5 (2) The United States Environmental Protection Agency.

6 (3) The Nuclear Regulatory Commission.

7 "Fund." The Displaced Coal-Fired Electric Generation
8 Facilities Employee Assistance and Environmental Remediation
9 Fund established in section 701.

10 "Municipality." A city of the first, second, second class A
11 or third class, borough, incorporated town, township of the
12 first or second class, county of the second class through eighth
13 class or home rule municipality or similar general purpose unit
14 of government which is created by the General Assembly that has
15 adopted land use or zoning regulations.

16 "Mothballed." The classification of a facility as
17 unavailable for an extended period of time because of the
18 facility's removal from service for economic or non-equipment-
19 related reasons.

20 "Operator." An individual, domestic or foreign corporation,
21 political subdivision or other entity which owns or operates a
22 facility, however organized, whether investor-owned, publicly
23 owned or cooperatively owned and regardless of whether the
24 facility is subject to the jurisdiction of the PUC. The term
25 does not include the owner or operator of a coal-fired
26 cogeneration facility.

27 "PJM." The regional transmission organization registered to
28 do business in this Commonwealth as PJM Interconnection, LLC, or
29 a successor to PJM as the regional transmission organization,
30 approved by the Federal Energy Regulatory Commission to manage

1 the wholesale procurement of electricity and electric generation
2 capacity and serving all or parts of the states of Delaware,
3 Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey,
4 North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West
5 Virginia and the District of Columbia.

6 "PUC." The Pennsylvania Public Utility Commission.

7 "RMR contract." A contract whereby an operator receives a
8 regulated rate rather than a competitive rate for electricity
9 supplied to PJM.

10 CHAPTER 3

11 COMMISSION

12 Section 301. Coal-Fired Electric Generation Deactivation
13 Commission.

14 (a) Establishment and composition.--There is established the
15 Coal-Fired Electric Generation Facility Deactivation Commission,
16 which shall consist of the following members:

17 (1) The chairperson of the PUC, who shall serve as
18 chairperson of the commission.

19 (2) A representative of PJM.

20 (3) The Secretary of Environmental Protection.

21 (4) The Secretary of Labor and Industry.

22 (5) The Secretary of Community and Economic Development.

23 (6) One appointee of the President pro tempore of the
24 Senate.

25 (7) One appointee of the Speaker of the House of
26 Representatives.

27 (8) Two members of the public, to be appointed by the
28 Governor.

29 (b) Oath.--Each member of the commission shall take an oath
30 to administer the duties of office faithfully and impartially.

1 The oath shall be filed in the office of the Secretary of the
2 Commonwealth.

3 (c) Expenses.--A member of the commission shall serve
4 without compensation, but shall be reimbursed for actual
5 expenses necessarily incurred in the performance of the member's
6 duties. The following apply:

7 (1) The commission may engage a consultant or expert
8 witness that it deems necessary to implement its
9 responsibilities under this act.

10 (2) To the maximum extent possible, commission staff
11 shall be drawn from existing State agencies.

12 (d) Quorum.--A quorum shall consist of a majority of the
13 members of the commission. A majority vote of the commission
14 shall be required for all action, including a certification
15 decision.

16 (e) Records.--

17 (1) The commission is subject to the act of February 14,
18 2008 (P.L.6, No.3), known as the Right-to-Know Law.

19 (2) Notwithstanding paragraph (1), the commission may
20 not disclose trade secrets or privileged, confidential or
21 proprietary information, except to another government agency
22 for the sole purpose of rendering an advisory opinion,
23 obtained by or submitted to the commission under this act.
24 The information must be proven to qualify under this
25 paragraph to the satisfaction of the commission.

26 Section 302. Powers and duties.

27 The commission shall:

28 (1) Approve, delay or deny applications for
29 certification to deactivate a facility. The deactivation of a
30 facility is subject to final approval by the commission.

1 (2) Identify government approvals which are required for
2 the deactivation of a facility by State statute, municipal
3 ordinance or PJM regulation.

4 (3) Coordinate government approvals required by an
5 agency of the Federal or State government or a municipality,
6 including PJM, to permit the deactivation of a facility.
7 Affected State and municipal agencies, including PJM, shall
8 forward their findings from review related to deactivation of
9 a facility, the record supporting the findings and a
10 recommendation for final action to the commission.

11 (4) Summon and examine witnesses and compel the
12 production and examination of documents and other evidence
13 that may be necessary for the discharging of duties imposed
14 under this act.

15 (5) Conduct public hearings upon receipt of an
16 application for a certificate to deactivate a facility.

17 (6) Require information from the operator as the
18 commission deems necessary to accompany applications for
19 certificates and require the operator to assist in the
20 coordination of a public hearing, investigation or study
21 which the commission may undertake.

22 (7) Conduct inspections, surveys, monitoring or testing,
23 with or without notice to an operator, as deemed necessary
24 under this act.

25 (8) Approve, with or without conditions, or deny
26 applications for certification filed under section 501.

27 (9) Adopt rules and regulations as deemed necessary to
28 implement this act.

29 CHAPTER 5

30 DEACTIVATION

1 Section 501. Certificate of deactivation.

2 (a) Certificate required.--An operator may not deactivate a
3 facility unless:

4 (1) Except as set forth in subsection (b), the operator
5 has provided notice to the commission one year prior to the
6 proposed date of deactivation, which includes:

7 (i) Whether the facility is being retired or
8 mothballed.

9 (ii) The desired deactivation date.

10 (2) The operator has obtained a certificate from the
11 commission.

12 (b) Deactivation commenced.--If the operator has commenced
13 the deactivation of a facility within the 12 months immediately
14 preceding the effective date of this act, the operator must
15 submit an application for a certificate in accordance with this
16 section. This subsection shall also apply to mothballed
17 facilities regardless of the date the facility was mothballed.

18 (c) Facility acquired or leased.--If an operator's facility
19 has been acquired or contracts have been entered into for the
20 lease or deconstruction of the site prior to, on or following
21 the effective date of this act, the operator must submit an
22 application for a certificate in accordance with this section.

23 (d) Contents.--An application must include the following:

24 (1) The name, address and telephone number of the owner
25 and operator proposing to deactivate the facility.

26 (2) A full description and map of the facility detailing
27 the location, function, operating characteristics and
28 complete plans for all structures, including transmission
29 facilities, associated with the facility.

30 (3) Copies of each contract with a cogeneration facility

1 for the transportation and utilization of waste coal as a
2 fuel source prior to the proposed date of deactivation.

3 (4) A complete report of the applicant's public
4 involvement activities undertaken prior to the filing of the
5 application, including any of the following:

6 (i) Media coverage.

7 (ii) Direct mailing.

8 (iii) Fliers.

9 (iv) Newsletters.

10 (v) Public meeting.

11 (vi) Establishment of a community advisory group.

12 (vii) Other efforts to obtain local involvement in
13 the deactivation process.

14 (5) A summary of the effort made by the applicant to do
15 any of the following:

16 (i) Make appropriate upgrades to comply with Federal
17 agency regulations.

18 (ii) Sell or lease the facility.

19 (iii) Contract with cogeneration facilities
20 operating in this Commonwealth for the removal of coal
21 waste and production of at least one half of the lost
22 megawatts resulting from the proposed deactivation.

23 (iv) Assist the municipality in which the facility
24 is located.

25 (v) Provide employees of the facility with job
26 training and financial assistance.

27 (6) A summary of the effort made by the applicant to
28 pursue Federal, State and local economic development,
29 environmental grant or loan opportunities in order to remain
30 in active status.

1 (7) An analysis of the deactivation's projected effect
2 on electric reliability in this Commonwealth.

3 (8) An analysis of the facility's economic impact on the
4 affected region and this Commonwealth through the use of the
5 Federal Energy Resource Commission's approved economic
6 planning process.

7 (e) Notice.--Public notice shall:

8 (1) Be given at least 30 days immediately preceding the
9 filing of an application of the proposed deactivation and
10 shall include:

11 (i) The location of the facility.

12 (ii) A general description of the facility.

13 (iii) The number of employees impacted.

14 (iv) Potential electric reliability or market power
15 issues.

16 (v) A statement that the proposed deactivation is
17 subject to approval by the commission.

18 (2) Public notice shall be provided to:

19 (i) The commission.

20 (ii) PJM.

21 (iii) Employees of the facility.

22 (iv) The municipality in which the facility is
23 located.

24 (v) Landowners whose property borders the facility.

25 (vi) Each person that has contracted with the
26 facility to perform services on the facility's behalf,
27 including transmission providers, mining operations,
28 transportation service providers and cogeneration
29 facilities.

30 (vii) The general public in a newspaper of general

1 circulation in the county or municipality in which the
2 plant is located.

3 (f) Interim or emergency certificate.--Notwithstanding any
4 other provision of this act, an operator may petition the
5 commission for an interim or emergency certificate based upon a
6 showing that the public interest requires a prompt decision with
7 respect to the facility. The commission shall render a decision
8 on the petition within 90 days of the date the petition is
9 filed. The commission shall adopt rules and regulations for:

10 (1) Reviewing the petition and giving due consideration
11 to the effect on the availability of an adequate and reliable
12 electric supply.

13 (2) Assessing economic and environmental impacts.

14 (g) Alterations of existing facility.--Replacement of a
15 facility with a similar facility, or the repair, modification,
16 retrofitting, enhancement or reconfiguration of a facility shall
17 not constitute a deactivation of a facility.

18 (h) Regulations.--The commission shall promulgate
19 regulations prescribing fees to pay expenses associated with the
20 review of applications filed with the commission under this
21 section. All application fees collected by the commission shall
22 be deposited into the fund. If a majority of the members of the
23 commission finds that an applicant's initial fees are
24 insufficient to pay the expenses associated with the
25 application, including the expenses associated with a legal
26 review, the commission shall assess a supplemental application
27 fee to cover the additional expenses. An applicant's failure to
28 pay a fee assessed under this subsection shall be grounds for
29 denial of the application.

30 Section 502. Review of applications.

1 The commission shall use the following procedures in
2 reviewing an application for a certificate:

3 (1) Within 15 days of the filing of an application, the
4 commission shall notify the applicant whether the application
5 is in the proper form and addresses the matters that are
6 outlined in this section or the regulations promulgated under
7 this act. The following apply:

8 (i) An application meeting the requirements of this
9 act shall be docketed.

10 (ii) An application deemed to be deficient shall be
11 returned to the applicant, together with a concise
12 statement of the application's deficiencies. Within 15
13 days of the resubmission of an application following a
14 rejection for deficiency, the commission shall docket the
15 application, specifying any additional deficiencies noted
16 by the commission.

17 (2) Within 60 days following the commission's docketing
18 of an application, the commission shall:

19 (i) Determine the issues to be considered in
20 evaluating the application, including:

21 (A) Reliability.

22 (B) Market power.

23 (C) Economic and congestion impacts.

24 (ii) Identify State and local agencies for the
25 purpose of providing findings and recommendations for
26 final action on the issues.

27 (3) The commission shall limit the scope of an agency's
28 investigation if the commission finds that more than one
29 agency has jurisdiction over a matter at issue in the
30 approval process. In this instance, the commission shall

1 determine which agency shall make the necessary findings on
2 the issue after giving proper consideration to the expertise
3 and resources available to each agency involved.

4 (4) PJM and an agency shall:

5 (i) Investigate the issue assigned for review.

6 (ii) Conclude the investigation and issue the
7 findings and recommendations for final action not more
8 than 120 days following the identification of agencies
9 under paragraph (2)(ii). If the investigation is not
10 issued within the designated time frame, the commission
11 shall perform the review.

12 (5) Within 30 days after the final date of submission of
13 the findings and recommendations for final action, the
14 commission shall convene a hearing on the application in
15 accordance with the following:

16 (i) The purpose of the hearing is to provide the
17 opportunity to address, in a single forum and from a
18 consolidated, Statewide perspective, the issues reviewed
19 and the recommendations made by the identified agencies.
20 The evidence presented to an agency at a hearing held
21 prior to the commission's hearing shall not be
22 entertained.

23 (ii) The commission shall limit the presentation of
24 repetitive or cumulative evidence.

25 (iii) The hearing:

26 (A) Shall proceed on at least 30 days' notice to
27 the parties and the public.

28 (B) Must be concluded within 30 days following
29 its initiation.

30 (C) Shall be conducted expeditiously.

1 (iv) In the discretion of the commission, for good
2 cause shown, the time prescribed for the hearing may be
3 extended for up to 30 additional days.

4 (6) Within 60 days of the conclusion of the hearing, the
5 commission shall issue the final decision on the application.
6 The following apply:

7 (i) A decision in favor of the application shall
8 constitute approval of the proposed deactivation of the
9 facility.

10 (ii) The commission's decision shall explicitly
11 address each of the findings and recommendations received
12 from agencies and include the commission's reasons for
13 accepting, rejecting or modifying, in whole or in part,
14 any of those findings and recommendations.

15 (7) The commission may delay the deactivation of a
16 facility if upgrades to the transmission system deemed
17 necessary to reduce the effects of the proposed deactivation
18 will not be completed by the proposed deactivation date. The
19 commission shall work with an operator of a facility to
20 identify the upgrades that are needed to accommodate the
21 deactivation, the expected completion dates and temporary
22 operating solutions. Operators are prohibited from
23 deactivating a facility to ensure reliability under an RMR
24 contract approved by the Federal Energy Resource Commission.

25 (8) The commission may deny an application for a
26 certificate to deactivate a facility if the commission
27 determines that:

28 (i) It would be more cost effective for ratepayers
29 if the facility were to remain in normal operation,
30 either with or without capital additions or operating

1 improvements, than if the operator were to implement a
2 plan for replacing the power which the operator is, or
3 could be made, capable of producing.

4 (ii) The continued operation of the facility is
5 necessary to provide adequate and reliable electric
6 service to PJM and the public.

7 (iii) There are less costly alternatives by which
8 the operator could maintain the ability to provide
9 adequate and reliable electric service to PJM and the
10 public.

11 (9) If the commission's decision is to approve the
12 deactivation of a facility, no action may be taken by an
13 agency or another person that would prevent the facility from
14 entering into a contract with another entity for:

15 (i) The sale or lease of the deactivated facility.

16 (ii) The environmental remediation of a deactivated
17 facility.

18 (iii) The cogeneration of a minimum of 50% of the
19 PJM tariffed megawatts displaced through the use of coal
20 waste as required under section 504.

21 Section 503. Appeals.

22 A party aggrieved by a decision of the commission may obtain
23 judicial review of the decision in accordance with 2 Pa.C.S. Ch.
24 7 Subch. A (relating to judicial review of Commonwealth agency
25 action).

26 Section 504. Coal waste cogeneration.

27 (a) Contracts.--Upon approval by the commission to
28 deactivate a facility, an operator shall immediately enter into
29 a contract for:

30 (1) The environmental remediation of the facility and

1 associated facilities.

2 (2) The production of 50% of displaced megawatts
3 originally filed under tariff with PJM for a period of two
4 years or until the facility has utilized all contracted coal,
5 including coal waste, located on the facility or associated
6 facilities.

7 (b) Pennsylvania waste coal cogenerators.--In complying with
8 section 501, an operator in receipt of a certificate to
9 deactivate a facility shall enter into a contract with a
10 Pennsylvania-based waste coal cogenerator facility.

11 Section 505. Employee notification and severance benefits.

12 (a) Notice.--Each operator of a facility that submits an
13 application for certification to deactivate a facility must
14 provide notice to its employees at least 30 days before the date
15 of submission of an application to deactivate if the proposed
16 deactivation will displace more than 25 employees.

17 (b) Benefits.--Facility employees whose employment is
18 terminated as a result of the deactivation of a facility shall
19 be entitled to the following:

20 (1) Counseling, placement, training and other services
21 deemed necessary which will lead to the reemployment of the
22 employees.

23 (2) Severance pay:

24 (i) Of two weeks' pay for every year of service for
25 employees who have worked at the facility for at least
26 one year.

27 (ii) Equal to payment for one regular pay period for
28 employees terminated within one year of beginning
29 employment at the facility.

30 (3) Health insurance as follows:

1 (i) The owner or operator of a coal-fired electric
2 generation facility must pay for existing group health
3 insurance coverage for employees and their families
4 displaced as a result of the deactivation of a facility.

5 (ii) The coverage shall continue until the earlier
6 of the following:

7 (A) A minimum of 120 days upon approval of the
8 commission to deactivate.

9 (B) The employee becomes eligible for other
10 health insurance coverage.

11 CHAPTER 7

12 FUNDING

13 Section 701. Fund.

14 (a) Establishment of fund.--The Pennsylvania Displaced Coal-
15 Fired Electric Generation Facilities Employee Assistance and
16 Environmental Remediation Fund is hereby established in the
17 State Treasury and shall be administered by the commission to:

18 (1) Provide unemployment, counseling, housing and job
19 training assistance for displaced facility employees.

20 (2) Provide grants to municipalities for the immediate
21 cleanup of a facility and utilization of leftover waste coal.

22 (b) Deposit of funding sources.--All fees and assessments
23 imposed and collected and moneys appropriated under this act
24 shall be deposited into the fund and are appropriated for the
25 purposes of this act. The following shall apply:

26 (1) The sum of \$25,000,000 transferred by the
27 Commonwealth Financing Authority to the department for
28 pollution control technology projects under section 304 of
29 the act of July 9, 2008 (1st Sp.Sess., P.L.1873, No.1), known
30 as the Alternative Energy Investment Act, shall be

1 transferred to the fund.

2 (2) Beginning in fiscal year 2014 and ending in fiscal
3 year 2019, an amount equal to 0.25 mills of the utilities
4 gross receipts tax collected during each fiscal year under
5 Article XI of the act of March 4, 1971 (P.L.6, No.2), known
6 as the Tax Reform Code of 1971, shall be appropriated
7 annually from the General Fund to the fund on a continuing
8 basis for the purpose of carrying out this act.

9 (3) An assessment shall be imposed on each electric
10 generation service provider of 0.25% of the electric
11 generator service provider's total gross intrastate operating
12 revenues for the preceding calendar year and shall be
13 deposited into the fund.

14 (c) Fund guidelines.--Within 60 days of the effective date
15 of this section, the department shall promulgate grant
16 eligibility, application and other guidelines for the
17 administration of the fund. No more than 2% of the assessments
18 collected under this section shall be used by the commission for
19 administrative expenses.

20 CHAPTER 9

21 VIOLATIONS

22 Section 901. Penalties.

23 (a) Criminal.--An operator commits an offense if the
24 operator:

25 (1) Deactivates a facility without first having obtained
26 a certificate from the commission.

27 (2) Violates a provision of this act.

28 (b) Grading.--A person who violates subsection (a) commits a
29 misdemeanor of the third degree and shall, upon conviction, be
30 sentenced to pay a fine of not more than \$500,000 or to

1 imprisonment for not more than one year, or both.

2 (c) Civil.--In addition to any other penalty that may be
3 imposed by the commission, the commission may assess a civil
4 penalty of up to \$25,000 per day on an operator that:

5 (1) Violates a provision of this act or the commission's
6 regulations.

7 (2) Deactivates a facility without first having obtained
8 a certificate from the commission.

9 (3) Fails to remit an assessment under section 702 prior
10 to June 30 of each fiscal year.

11 (d) Collection.--Money received from a civil penalty or fine
12 imposed by the commission on an operator shall be paid into the
13 State Treasury and shall be credited to the department for the
14 administration of the fund.

15 CHAPTER 21

16 MISCELLANEOUS PROVISIONS

17 Section 2101. Repeal.

18 Repeals are as follows:

19 (1) The General Assembly declares that the repeal under
20 paragraph (2) is necessary to effectuate section 701(b)(1).

21 (2) Section 304 of the act of July 9, 2008 (1st
22 Sp.Sess., P.L.1873, No.1), known as the Alternative Energy
23 Investment Act, is repealed.

24 Section 2102. Effective date.

25 This act shall take effect immediately.