

No. 1982-333

AN ACT

SB 955

Amending the act of February 1, 1966 (1965 P.L.1656, No.581), entitled "An act concerning boroughs, and revising, amending and consolidating the law relating to boroughs," providing for joint acquisition or construction of an electric light plant or project by a borough with another borough or another entity empowered to supply electricity, and further providing for the creation of municipal power agencies.

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

Section 1. The act of February 1, 1966 (1965 P.L.1656, No.581), known as "The Borough Code," is amended by adding sections to read:

Section 2471.1. Operation of Electric Plants.—(a) *The following words and phrases when used in this section shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:*

(1) *"Project" means any electric plants, hydroelectric plant works, system, facilities, or real or personal property, together with all parts thereof and appurtenances thereto, used or useful in connection with the generation, production, transmission, purchase, sale, exchange or interchange of electric power or energy, or any interest therein or right to capacity thereof.*

(2) *"Revenue bond" means an instrument imposing an obligation for the repayment of money borrowed, payable as to both principal and interest exclusively from the income and revenues derived from an interest in an electric light plant or project.*

(b) *A borough may own, construct, acquire by lease, purchase or otherwise gain an interest as co-owner or tenant in common and operate and manage or cause to be operated and managed an electric light plant or project located within or without this Commonwealth jointly with any other borough, political subdivision, subdivision of the Federal Government, State, political subdivision of another state, private corporation empowered to supply electricity, electric cooperative corporation formed under the act of June 21, 1937 (P.L.1969, No.389), known as the "Electric Cooperative Corporation Act," or electric cooperative corporation in another state.*

(c) *A borough which jointly owns, constructs, leases, purchases or otherwise gains an interest in an electric light plant or project shall have the power to do and accomplish all actions reasonably necessary and incident to the administration, operation and management of the plant or project. This power shall be vested in the corporate authorities: Provided, however, That a borough shall not become a stockholder in, obtain or appropriate money for or loan its credit to any corporation,*

association, institution or individual or otherwise act contrary to the provisions of section 9 of Article IX of the Constitution of Pennsylvania. In addition to the powers enjoyed by all boroughs, a borough which gains an interest in an electric light plant or project under subsection (b) shall have the following powers:

(1) to cooperate with private power companies, other boroughs, electric cooperative corporations and other public or private electric power entities, inside and outside of this Commonwealth, in the development of electric power and energy;

(2) to make such studies as may be necessary to determine the feasibility and cost of any additional sources and supplies of electric power and energy;

(3) to contract for the purchase, sale, exchange, interchange, wheeling, pooling or transmission of electric power and energy or for the right to the capacity thereof, inside and outside of this Commonwealth, to and from any public or private power entities, private power companies, other boroughs and electric cooperative corporations;

(4) to procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as the corporate authorities deem desirable;

(5) to contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from any other source;

(6) to grant the use, by lease or otherwise, and to make charges for the use, of any property or facility owned or controlled by it;

(7) to procure from the United States of America or any agency or instrumentality thereof, or from any state or agency or instrumentality thereof, any consents, authorizations or approvals which may be requisite to enable ownership, operation, construction or repair;

(8) to borrow money and from time to time to issue revenue bonds, and to enter into agreements with the purchasers of such revenue bonds; and

(9) to mortgage any property acquired or owned under subsection (b) to secure the payment of its revenue bonds, or other obligations issued to finance such acquisition, ownership or repair.

(d) In the erection and extension of an electric light plant or project under subsection (b) and for all other purposes authorized by this act, a borough may enter upon, appropriate, injure, or destroy private lands, property or material according to the proceedings set forth in the law governing eminent domain: Provided, however, That a borough shall not have the power of condemnation with regard to any property of a private or public retail electric supplier which geographically lies beyond the boundaries of the corporate limits of the borough.

(e) A borough which gains an interest in an electric light plant or project under subsection (b) may fix, establish, maintain and collect or authorize by contract or otherwise the establishment, levying and collec-

tion of such rates, fees, rental or other charges, including connection charges, for the services afforded by or in connection with any properties which it constructs, erects, owns, acquires, operates or manages, and for the sale or transmission of electric energy and power as it may deem necessary, proper, desirable and reasonable.

(f) A borough which gains an interest in an electric light plant or project under subsection (b) may pay all or part of the cost therefor from the revenues derived from the sale of revenue bonds issued in the manner provided by the act of July 12, 1972 (P.L.781, No.185), known as the "Local Government Unit Debt Act."

(g) Interest and principal paid on revenue bonds issued by a borough under subsection (f) shall be exempt from all State taxes of whatsoever kind or nature.

Section 2471.2. Municipal Power Agencies.—(a) The following words and phrases when used in this section shall have, unless the context clearly indicates otherwise, the meanings given to them in this subsection:

(1) "Municipal power agency" means a separate body politic and corporate under the laws of the Commonwealth of Pennsylvania created by agreement between or among two or more boroughs pursuant to this section.

(2) "Project" means any electric plant or plants, hydroelectric plant works, system, facilities or real or personal property, together with all parts thereof and appurtenances thereto, used or useful in connection with the generation, production, transmission, purchase, sale, exchange or interchange of electric power or energy, or any interest therein or right to capacity thereof.

(3) "Revenue bond" means an instrument imposing an obligation for the repayment of money borrowed, payable as to both principal and interest exclusively from the income and revenues derived from an interest in an electric light plant or project.

(b) Any two or more boroughs may form a municipal power agency by the execution of any agency agreement authorized by a resolution of the corporate authorities of each borough. Such agency agreement shall state:

(1) The name of the agency, which shall include the words "municipal power agency."

(2) The names of the boroughs which have approved the agency agreement and are initial members of the municipal power agency.

(3) That the municipal power agency is created pursuant to the authority granted by this act.

(4) The names and addresses of the persons initially appointed by the corporate authorities to act as representatives to the municipal power agency from the member boroughs.

(5) The limitations, if any, placed on the powers or terms of representatives appointed by the corporate authorities of the member boroughs.

(6) The names and addresses of the initial board of directors of the municipal power agency, if known by the time of filing, which shall be constituted by not less than five persons who are representatives of the member boroughs, selected by the vote of a majority of such representatives.

(c) The agency agreement referred to in subsection (b) and a certified copy of the resolution of the corporate authorities of each borough shall be filed for record with the Secretary of the Commonwealth. If the agency agreement meets the requirements of this subsection, the Secretary of the Commonwealth shall record it and issue and record a certificate of incorporation which shall be conclusive proof of a substantial compliance with the requirements of this subsection. The certificate shall state the name of the municipal power agency and the fact and date of incorporation. Upon the issuance of the certificate of incorporation the existence of the municipal power agency as a political instrumentality of the Commonwealth shall begin.

(d) The bylaws of the municipal power agency and any amendments thereto, shall be proposed by the board of directors and shall be adopted by a majority vote of the representatives of the member boroughs, unless the agency agreement requires a greater vote, at a meeting held after notice. Subject to the provisions of the agency agreement, the bylaws shall state:

(1) the qualifications of member boroughs, and limitations, if any, upon their number;

(2) conditions of membership, if any;

(3) manner and time of calling regular meeting of representatives of member boroughs;

(4) manner and conditions of termination of membership; and

(5) such other provisions for regulating the affairs of the municipal power agency as the representatives of the member boroughs shall determine to be necessary.

(e) Every municipal power agency shall maintain an office in this Commonwealth to be known as its registered office. When a municipal power agency desires to change the location of its registered office, it shall file with the Secretary of the Commonwealth a certificate of change of location of registered office, stating the new location by city, town or other community and effective date of change. When the certificate of change of location has been duly filed, the board of directors may make the change without any further action.

(f) Each of the directors shall hold office for the term for which he has been selected and until a successor has been selected and has qualified. Directors shall discharge their duties in good faith, and with that diligence and care which an ordinary prudent person in a like position would exercise under similar circumstances. The agency agreement, or the bylaws may prescribe the number, term of office, powers, authority and duties of directors, the time and place of their meetings and other regulations concerning directors. Except where the agency agreement or

bylaws prescribe otherwise, the term of office of a director shall be for one year. Except where the agency agreement or bylaws prescribe otherwise, a meeting of the board of directors may be held at any place, within the Commonwealth, designated by the board, after notice, and an act of the majority of the directors present at a meeting at which a quorum is present is the act of the board. Except where the agency agreement or bylaws prescribe otherwise, any vacancy occurring on the board shall be filled by a person nominated by the remaining members of the board and elected by a majority of representatives of the member boroughs.

(g) Except where the agency agreement or bylaws prescribe otherwise, the board of directors shall appoint a president from its membership, and a secretary and treasurer, and any other officers or agents deemed to be necessary, who may but need not be borough representatives or directors. An officer may be removed with or without cause by the board of directors. Officers of the municipal power agency shall have the authority and duties in the management of the business of the municipal power agency that the agency agreement or bylaws prescribe, or, in the absence of such prescription, as the board of directors determines.

(h) Except as otherwise provided in the agency agreement or the bylaws, the duly authorized representatives of each member borough shall act as, and vote on behalf of, such borough. Except where the agency agreement or bylaws provide otherwise, representatives of the member boroughs shall hold at least one meeting each year for the election of directors and for the transaction of any other business. Except where the agency agreement or bylaws prescribe otherwise, special meetings of the representatives may be called for any purpose upon written request to the president or secretary to call the meeting. Such officer shall give notice of the meeting to be held between ten and sixty days after receipt of such request. Unless the agency agreement or bylaws provide for a different percentage, a quorum for a meeting of the representatives of the member boroughs is a majority of the total members and a quorum for meetings of the board of directors is a majority of the membership of such board.

(i) The agency agreement may be amended as proposed at any meeting of the representatives of the members for which notice, stating the purpose, shall be given to each representative and, unless the agency agreement or bylaws require otherwise, shall become effective when ratified by resolutions of a majority of the corporate authorities of the member boroughs. Each amendment and the resolutions approving it shall be filed for record with the Secretary of the Commonwealth.

(j) Each member borough shall have full power and authority, within budgetary limits applicable to it, to appropriate money for the payment of expenses of the formation of the municipal power agency and of its representative in exercising its functions as a member of the agency.

(k) A municipal power agency may own, construct, acquire by lease, purchase or otherwise gain an interest by itself or as co-owner or tenant in common and operate and manage or cause to be operated and

managed an electric light plant or project located within or without this Commonwealth jointly with any political subdivision, subdivision of the Federal Government, State, political subdivision of another state, private corporation empowered to supply electricity, electric cooperative corporation formed under the act of June 21, 1937 (P.L. 1969, No. 389), known as the "Electric Cooperative Corporation Act," or electric cooperative corporation in another state.

(l) All powers of a municipal power agency shall be exercised by its board of directors, unless otherwise provided by the agency agreement or bylaws. A municipal power agency shall have the power to do and accomplish all actions reasonably necessary and incident to the ownership, construction, acquisition, administration, operation and management of an electric light plant or project. Among the specific powers of a municipal power agency shall be the following:

- (1) to sue and be sued;*
- (2) to enter into contracts;*
- (3) to cooperate with private power companies, boroughs, electric cooperative corporations and other public or private electric power entities, inside and outside of this Commonwealth, in the development of electric power and energy;*
- (4) to make such studies as may be necessary to determine the feasibility and cost of any additional sources and supplies of electric power and energy;*
- (5) to contract for the purchase, sale, exchange, interchange, wheeling, pooling or transmission of electric power and energy or for the right to the capacity thereof, inside and outside of this Commonwealth, to and from any public or private power entities, private power companies, other boroughs and electric cooperative corporations;*
- (6) to procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as the board of directors deems desirable;*
- (7) to contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from any other source;*
- (8) to acquire, hold, use, operate and dispose of personal property;*
- (9) to acquire, hold, use and dispose of its income, revenues, funds and moneys;*
- (10) to acquire, own, use, lease, operate and dispose of real property and interests in real property and to make improvements thereon;*
- (11) to grant the use, by lease or otherwise, and to make charges for the use, of any property or facility owned or controlled by it;*
- (12) to procure from the United States of America or any agency or instrumentality thereof, or from any state or agency or instrumentality thereof, any consents, authorizations or approvals which may be requisite to enable ownership, operation, construction or repair;*

(13) to borrow money and from time to time to issue revenue bonds and to enter into agreements with the purchasers of such revenue bonds;

(14) to invest funds not required for immediate use, including but not limited to proceeds from the sale of revenue bonds: Provided, however, That the power of a municipal power agency to invest shall be the same as that of a borough, as exercised by the borough council pursuant to clause (6) of section 1005 and section 1316; and

(15) to mortgage any property acquired or owned to secure the payment of its revenue bonds or other obligations issued to finance such acquisition, ownership or repair.

(m) In the erection and extension of an electric light plant or project, and for all other purposes authorized by this act, a municipal power agency may enter upon, appropriate, injure or destroy private lands, property or material according to the proceedings set forth in the law governing eminent domain: Provided, however, That a municipal power agency shall not have the power of condemnation with regard to any property of a private or public retail electric supplier which geographically lies beyond the boundaries of the corporate limits of its member boroughs.

(n) A municipal power agency which gains an interest in an electric light plant or project may pay all or part of the cost therefor from the revenues derived from the sale of revenue bonds issued in the manner provided by the act of July 12, 1972 (P.L.781, No.185), known as the "Local Government Unit Debt Act."

(o) A municipal power agency may make and enforce bylaws or rules which it deems necessary or desirable and may establish, fix, levy and collect or may authorize, by contract, franchise, lease or otherwise, the establishment, levying and collection of, rents, rates and other charges for the services afforded by the municipal power agency, including connection for the services afforded by the municipal power agency, including connection charges or by or in connection with any project or properties which it may construct, erect, acquire, own, operate or control, or with respect to which it may have any interest or any right to capacity thereof and for the sale of electric energy or of generation or transmission capacity or services as it may deem necessary, proper, desirable and reasonable. Rents, rates and other charges shall be at least sufficient to meet expenses thereof, including reasonable reserves, interest and principal payments.

(p) Interest and principal paid on revenue bonds, issued by a municipal power agency shall be exempt from all State taxes of whatsoever kind or nature.

Section 2. This act shall take effect in 90 days.

APPROVED—The 30th day of December, A. D. 1982.

DICK THORNBURGH