

No. 1984-241

AN ACT

SB 1330

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further defining the term "public utility"; and providing for the conversion of generating units from oil or gas to coal and for the recovery of conversion costs, for the approval of the construction of generating units fueled by nuclear energy, oil or natural gas and for the financing of energy supply alternatives.

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

Section 1. The definition of "public utility" in section 102 of Title 66 of the Pennsylvania Consolidated Statutes is amended to read:

§ 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this part which are applicable to specific provisions of this part, the following words and phrases when used in this part shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Public utility."

(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

(ii) Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.

(iii) Transporting passengers or property as a common carrier.

(iv) Use as a canal, turnpike, tunnel, bridge, wharf, and the like for the public for compensation.

(v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

(vi) Conveying or transmitting messages or communications, *except as set forth in paragraph (2)(iv)*, by telephone or telegraph or domestic public land mobile radio service including, but not limited to, point-to-point microwave radio service for the public for compensation.

(vii) Sewage collection, treatment, or disposal for the public for compensation.

(2) The term "public utility" does not include:

(i) Any person or corporation, not otherwise a public utility, who or which furnishes service only to himself or itself.

(ii) Any bona fide cooperative association which furnishes service only to its stockholders or members on a nonprofit basis.

(iii) Any producer of natural gas not engaged in distributing such gas directly to the public for compensation.

(iv) *Any person or corporation, not otherwise a public utility, who or which furnishes mobile domestic cellular radio telecommunications service.*

* * *

Section 2. Title 66 is amended by adding sections to read:

§ 517. *Conversion of electric generating units fueled by oil or natural gas.*

(a) *Order by commission.—Whenever the commission determines that conversion of an oil or a natural gas-fueled electric generating unit to coal, a synthetic derived in whole or in part from coal or a mixture which includes coal or is derived in whole or in part from coal is economically and technologically feasible, the commission shall issue an order to the affected public utility to show cause why the commission should not order the conversion of that unit. The commission shall subsequently issue an order requiring the conversion of that unit unless the affected public utility proves, and the commission finds, any of the following:*

(1) *Conversion of the unit is not technologically feasible.*

(2) *The unit, if converted, could not be operated in compliance with present and reasonably anticipated environmental laws and regulations.*

(3) *There is a strong probability that the conversion and subsequent operation of the converted unit would be more costly to ratepayers over the remaining useful life of the converted unit than would continued operation as an oil or a natural gas-fueled unit.*

(b) *Environmental questions.—The commission may certify, to the Department of Environmental Resources, any question regarding the applicability of environmental laws and regulations, when the question arises in a proceeding under this section, and may incorporate the department's findings in its decision.*

(c) *Mixture with oil or natural gas.—For purposes of this section, the phrase "mixture which includes coal or is derived in whole or in part from coal" includes, but is not limited to, both the intermittent and the simultaneous burning of oil or natural gas with coal or a coal derivative if the intermittent or simultaneous burning of oil or natural gas would:*

(1) *lower the cost, to the ratepayers, of using coal or a coal derivative;*

or

(2) *enable coal or a coal derivative to be burned in compliance with present and reasonably anticipated environmental laws and regulations.*

(d) *Recovery of conversion costs.—Notwithstanding any other provision of this title, if the commission, acting pursuant to this section, issues an order requiring the conversion of an oil or a natural gas-fueled unit, the affected utility shall be permitted to recover all reasonable and prudent costs associated with the conversion even if the conversion or continued operation of the converted unit is ultimately prevented by factors beyond the utility's control. The affected utility shall be permitted to include in its rate base, or*

otherwise in its rates during construction, such reasonable and prudent costs of construction associated with the conversion.

(e) Availability of funds.—Nothing in this section shall be construed as requiring the commission to issue an order to show cause pursuant to this section if the commission determines that it does not have sufficient funds available for the proceeding to show cause.

§ 518. Construction of electric generating units fueled by nuclear energy.

(a) General rule.—Only upon the application of a public utility and the approval of the application by the commission shall it be lawful for the utility to begin the construction of an electric generating unit fueled by nuclear energy.

(b) Review by commission.—Every application shall be made to the commission, in writing, and shall be in the form and contain the information the commission requires by its regulations. The commission shall approve an application if, after reasonable notice and hearing, the affected public utility proves, and the commission finds, any of the following:

(1) There are no reasonably available sites on which a unit or units of comparable capacity fueled by coal, a synthetic derived in whole or in part from coal or a mixture which includes coal or is derived in whole or in part from coal could be operated in compliance with present and reasonably anticipated environmental laws and regulations.

(2) There is a strong probability that construction and subsequent operation of a unit or units of comparable capacity fueled by coal, a synthetic derived in whole or in part from coal or a mixture which includes coal or is derived in whole or in part from coal would be more costly to ratepayers over the useful life of the nonnuclear unit or units than would construction and subsequent operation of the unit proposed by the utility.

(c) Environmental questions.—The commission may certify, to the Department of Environmental Resources, any question regarding the applicability of environmental laws and regulations, when the question arises in a proceeding under this section, and may incorporate the department's findings in its decision.

(d) Time limit on commission review.—If the commission fails to approve or disapprove an application within six months after the date on which the application is filed, it shall be lawful for the affected utility to construct the proposed electric generating unit as though the commission had approved the application.

(e) Capacity determinations.—This section does not authorize the commission to review the affected public utility's determination that there is a need to construct a new electric generating unit of the capacity and by the in-service date proposed by the utility and does not supersede a decision by the commission under some other provision of law that there is, or was, not a need to construct a new electric generating unit of the capacity and by the in-service date proposed by the utility.

(f) Mixture with oil or natural gas.—For the purposes of this section, the phrase "mixture which includes coal or is derived in whole or in part from coal" includes, but is not limited to, both the intermittent and the simulta-

neous burning of oil or natural gas with coal or a coal derivative if the intermittent or simultaneous burning of oil or natural gas would:

(1) lower the cost, to the ratepayers, of using coal or a coal derivative;
or

(2) enable coal or a coal derivative to be burned in compliance with present and reasonably anticipated environmental laws and regulations.

§ 519. *Construction of electric generating units fueled by oil or natural gas.*

(a) General rule.—Only upon the application of a public utility and the approval of the application by the commission shall it be lawful for the utility to begin the construction of an electric generating unit fueled by oil or natural gas.

(b) Review by commission.—Every application shall be made to the commission, in writing, and shall be in the form and contain the information the commission requires by its regulations. The commission shall approve an application if, after reasonable notice and hearing, the affected public utility proves, and the commission finds, any of the following:

(1) There are no reasonably available sites on which a unit or units of comparable capacity fueled by coal, a synthetic derived in whole or in part from coal or a mixture which includes coal or is derived in whole or in part from coal could be operated in compliance with present and reasonably anticipated environmental laws and regulations.

(2) There is a strong probability that construction and subsequent operation of a unit or units of comparable capacity fueled by coal, a synthetic derived in whole or in part from coal or a mixture which includes coal or is derived in whole or in part from coal would be more costly to ratepayers over the useful life of the nonoil or nongas unit or units than would construction and subsequent operation of the unit proposed by the utility.

(c) Environmental questions.—The commission may certify, to the Department of Environmental Resources, any question regarding the applicability of environmental laws and regulations, when the question arises in a proceeding under this section, and may incorporate the department's findings in its decision.

(d) Time limit on commission review.—If the commission fails to approve or disapprove an application within six months after the date on which the application is filed, it shall be lawful for the affected utility to construct the proposed electric generating unit as though the commission had approved the application.

(e) Capacity determinations.—This section does not authorize the commission to review the affected public utility's determination that there is a need to construct a new electric generating unit of the capacity and by the in-service date proposed by the utility and does not supersede a decision by the commission under some other provision of law that there is, or was, not a need to construct a new electric generating unit of the capacity and by the in-service date proposed by the utility.

(f) Mixture with oil or natural gas.—For the purposes of this section, the phrase "mixture which includes coal or is derived in whole or in part from

coal" includes, but is not limited to, both the intermittent and the simultaneous burning of oil or natural gas with coal or a coal derivative if the intermittent or simultaneous burning of oil or natural gas would:

(1) lower the cost, to the ratepayers, of using coal or a coal derivative;

or

(2) enable coal or a coal derivative to be burned in compliance with present and reasonably anticipated environmental laws and regulations.

§ 1319. *Financing of energy supply alternatives.*

(a) *Recovery of certain additional expenses.*—If a natural gas or electric public utility elects to establish a conservation or load management program and that program is approved by the commission after a determination by the commission that the program is prudent and cost-effective, the commission shall allow the public utility to recover all prudent and reasonable costs associated with the development, management, financing and operation of the program, provided that such prudent and reasonable costs shall be recovered only in accordance with appropriate accounting principles. Nothing in this section shall permit the recovery of costs in a manner prohibited by section 1315 (relating to limitation on consideration of certain costs for electric utilities). Nothing in this section shall permit the recovery of the cost of producing, generating, transmitting, distributing or furnishing electricity or natural gas.

(b) *Option for recovery.*—The commission may consider allowing the recovery of those costs permitted to be recovered by subsection (a) through charges to those persons who are participants in the financing program.

Section 3. The provisions of this act adding section 102 "public utility" (2)(iv) to Title 66 (Public Utilities) shall continue in existence until December 31, 1985, at which time said provisions shall terminate unless extended or reenacted by the General Assembly prior thereto.

Section 4. (a) The amendments adding sections 518 and 519 shall take effect in 60 days.

(b) The remainder of this act shall take effect immediately.

APPROVED—The 21st day of December, A. D. 1984.

DICK THORNBURGH