

No. 1986-80

## AN ACT

HB 258

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, adding provisions to allow limited construction work in progress for coal plants; and providing for retirement of electric generating units.

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

Section 1. Section 514 of Title 66 of the Pennsylvania Consolidated Statutes is amended to read:

§ 514. Use of coal.

(a) Upgrading capability to use coal.—The commission shall promulgate regulations which require utilities to uprate their electric power production by **[upgrading]** *increasing* the capability to use coal in existing coal-fueled plants where economically feasible and where the uprate is beneficial to ratepayers.

(b) Incentive for uprating.—The commission shall promulgate regulations which establish a special cost recovery and shared benefits procedure for electric utilities and their ratepayers as an incentive to implement upratings as provided in subsection (a). Nothing in this section shall permit or require the commission to establish rates or procedures which are inconsistent with any other section in this title.

(c) *Cost of upgrading.—Notwithstanding section 1315 (relating to limitation on consideration of certain costs for electric utilities) and subject to regulations promulgated by the commission, the commission may allow a portion of the prudently incurred costs, determined on a per megawatt basis and not to exceed 50% of the unit's undepreciated original cost per megawatt, of uprating the capability of an existing coal-fueled plant to use coal mined in Pennsylvania to be made a part of the rate base or otherwise included in the rates charged by the utility before such uprating is completed. This subsection shall not apply unless, upon application of the affected public utility, the commission determines that the uprating would be more cost effective for the utility's ratepayers than other alternatives for meeting the utility's load and capacity requirements. Notwithstanding section 1309 (relating to rates fixed on complaint; investigation of costs of production), the commission, by regulation, shall provide for a utility to remove the costs of an uprating from its rate base and to refund any revenues collected as the result of this subsection, plus interest, which shall be the average rate of interest specified for residential mortgage lending by the Secretary of Banking in accordance with the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law, during the period or periods for which the commission orders refunds, if the commission, after notice and hearings, determines that the uprating has not been completed within a reasonable time.*

Section 2. Section 517(e) of Title 66 is repealed.

Section 3. Title 66 is amended by adding a section to read:

**§ 521. Retirement of electric generating units.**

(a) *Removal from normal operation.*—No public utility shall discontinue an electric generating unit from normal operation unless it has petitioned for and obtained the approval of the commission. The commission may, upon its own motion or upon complaint, prohibit a public utility from discontinuing an electric generating unit from normal operation if the commission determines that it would be more cost effective for the utility's ratepayers if the unit were to remain in normal operation, either with or without capital additions or operating improvements, than if the utility were to implement its plan for replacing the power which the unit is, or could be made, capable of producing.

(b) *Return to normal operation.*—The commission may, upon its own motion or upon complaint, order a public utility to return an electric generating unit to normal operation if the commission determines that it would be more cost effective for the utility's ratepayers if the unit were to be returned to normal operation, with or without capital additions or operating improvements, than if the utility were to implement its plan for providing the power which the unit is, or could be made, capable of producing.

(c) *Procedure.*—The commission may hold such hearings as it deems necessary in making the determinations required by subsection (a) or (b). The affected public utility shall have the burden of proof in any proceeding pursuant to this section.

(d) *Regulations.*—The commission may adopt such regulations as it deems necessary to carry out its powers and duties under this section.

(e) *Exclusion.*—This section shall not apply to a nuclear generating unit or to variations in operation of electric generating units to satisfy economic dispatch requirements or to maintain intrasystem or intersystem stability.

(f) *Construction costs.*—Notwithstanding section 1315 (relating to limitation on consideration of certain costs for electric utilities) and subject to regulations promulgated by the commission, the commission may allow a portion of the prudently incurred costs of capital additions, determined on a per megawatt basis and not to exceed 50% of the unit's undepreciated original cost per megawatt, to an electric generating unit to be made a part of the rate base or otherwise included in the rates charged by the utility before such capital additions are completed if the commission, acting pursuant to subsection (a) or (b), prohibits the utility from retiring the unit or orders the utility to return the unit to normal operation, provided that:

(1) the capital additions would allow the continued or increased use of coal mined in Pennsylvania; and

(2) the capital additions would be more cost effective for the utility's ratepayers than other alternatives for meeting the utility's load and capacity requirements.

Notwithstanding section 1309 (relating to rates fixed on complaint; investigation of costs of production), the commission, by regulation, shall provide for a utility to remove the costs of capital additions from its rate base and to

*refund any revenues collected as the result of this subsection, plus interest, which shall be the average rate of interest specified for residential mortgage lending by the Secretary of Banking in accordance with the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law, during the period or periods for which the commission orders refunds, if the commission, after notice and hearing, determines that the capital addition has not been completed within a reasonable time.*

*(g) Definition.—As used in this section the term “normal operation” means the continuing availability of an electric generating unit to meet consumer demand except during:*

*(1) Scheduled outages for repairs, tests or other procedures essential to the unit’s further use.*

*(2) Unscheduled outages caused by the unit’s physical malfunctioning or breakdown.*

*(3) Reduced levels of generation pending execution of repairs.*

*(4) Reduced levels or complete cessation of generation, on a temporary basis, because of disruptions in fuel supplies, waste disposal or cooling water; or because of compliance with environmental protection limitations or conservation of fuel during periods of, or in anticipation of, scarcity.*

Section 4. This act shall take effect in 60 days.

APPROVED—The 3rd day of July, A. D. 1986.

DICK THORNBURGH