

No. 1984-234

## AN ACT

SB 64

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for audits of certain utilities, for the conversion of generating units from oil or gas to coal and for the recovery of conversion costs, and for the approval of the construction of generating units fueled by nuclear energy, oil or natural gas.

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

Section 1. Title 66 of the Pennsylvania Consolidated Statutes is amended by adding sections to read:

**§ 516. Audits of certain utilities.**

(a) *General rule.*—*The commission shall provide for audits of any electric, gas, telephone or water utility whose plant in service is valued at not less than \$10,000,000. The audits shall include an examination of management effectiveness and operating efficiency. The commission shall establish procedures for audits of the operations of utilities as provided in this section. Audits shall be conducted at least once every five years unless the commission finds that a specific audit is unnecessary, but in no event shall audits be conducted less than once every eight years.*

(b) *Use of independent auditing firms.*—*The commission may require an audit to be performed by an independent consulting firm. When the commission orders an audit to be performed by an independent consulting firm, the commission, after consultation with the audited utility, shall select the audit firm and require the audited utility to enter into a contract with the audit firm providing for payment of the audit firm by the utility. That contract shall require the audit firm to work under the direction of the commission.*

(c) *Other powers of commission unaffected.*—*This section is not intended to alter or repeal any existing powers of the commission.*

**§ 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 such a show cause proceeding.*

§ 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 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.*

§ 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.*

Section 2. (a) The amendment affecting 66 Pa.C.S. § 516 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