

No. 1985-62

## AN ACT

SB 543

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further defining "public utility"; further providing that the transcript of public hearings be considered part of the record in proceedings before the commission; and providing the Public Utility Commission with authority to order electric utilities to cancel or modify construction of generating units.

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.

**(3) For the purposes of sections 2702 (relating to construction, relocation, suspension and abolition of crossings), 2703 (relating to ejection in crossing cases) and 2704 (relating to compensation for damages occasioned by construction, relocation or abolition of crossings) and those portions of sections 1501 (relating to character of service and facilities), 1505 (relating to proper service and facilities established on complaint) and 1508 (relating to reports of accidents), as those sections or portions thereof relate to safety only, a municipal authority or transportation authority organized under the laws of this Commonwealth shall be considered a public utility when it owns or operates, for the carriage of passengers or goods by rail, a line of railroad composed of lines formerly owned or operated by the Pennsylvania Railroad, the Penn-Central Transportation Company, the Reading Company or the Consolidated Rail Corporation.**

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Section 2. Section 332(d) of Title 66 is amended to read:

§ 332. Procedures in general.

\* \* \*

(d) Record, briefs and argument.—**The transcript of a public input hearing, the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision, and shall be available for inspection by the public. Briefing and oral argument shall be held in accordance with rules established by the commission. For the purpose of this section, a public input hearing is a hearing held in the service area at which the ratepayers may offer testimony, written or otherwise, relating to any matter which has a bearing on the proceeding.**

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

§ 520. **Power of commission to order cancellation or modification of construction of electric generating units.**

**(a) General rule.—The commission shall order any public utility engaged in producing, generating, transmitting, distributing or furnishing electricity to cancel or modify the construction of, or its participation in the construction of, any generating unit where the commission, after notice and an opportunity for hearing, determines that the construction is not in the public interest. In addition to any other relevant matters, the commission shall consider in its determination whether:**

**(1) The generating unit is necessary for the utility to provide adequate and reliable service to the public.**

**(2) There are less costly alternatives by which the utility could maintain its ability to provide adequate and reliable service.**

**(b) Investigations and hearings.—For the purpose of enabling the commission to make its determination, it may hold hearings, make inquiries and**

*require the submission of information which it deems necessary or proper in enabling it to reach a determination. The burden of proof at these hearings to show that construction of the generating unit is in the public interest shall be on the public utility.*

*(c) Regulatory treatment of costs.—Notwithstanding any other provisions of this title, for a generating unit canceled after the effective date of this section, either voluntarily or by commission order, an electric utility may be permitted to recover a return of, but not a return on, prudently incurred costs on any partially completed facility when cancellation is found by the commission to be in the public interest. The burden of proof to show that any costs claimed were prudently incurred shall be on the public utility.*

Section 4. (a) The act of January 22, 1968 (P.L.42, No.8), known as the Pennsylvania Urban Mass Transportation Law, is repealed insofar as it is inconsistent with this act.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 5. (a) Sections 1, 2 and 4 of this act shall take effect in 60 days.

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

APPROVED—The 10th day of October, A. D. 1985.

DICK THORNBURGH