

No. 1988-83

AN ACT

SB 1022

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for the price a public utility shall pay and the charges which may be imposed on ratepayers for electricity generated by a qualifying facility that burns coal mined in a foreign country; prohibiting public utilities that furnish water from imposing a certain charge; and providing for decision deadlines for rates.

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 a section to read:

§ 528. Use of foreign coal by qualifying facilities.

(a) Legislative findings.—The General Assembly hereby finds as follows:

(1) Potential qualifying facilities which would generate electricity from United States energy sources are, and will for the foreseeable future continue to be, able to supplement adequately the capacity needs of public utilities in this Commonwealth.

(2) Some of those qualifying facilities offer the multiple benefits of supplying electricity to Pennsylvania ratepayers at a reasonable price, creating jobs in areas of high unemployment in this Commonwealth and helping to clean up this Commonwealth's environment.

(3) Although Federal law places a duty on public utilities to buy electricity generated by qualifying facilities, Federal law does not dictate how the price paid by public utilities and the charges to ratepayers for that electricity are to be calculated.

(4) The energy source used by a qualifying facility is a significant factor in determining if a qualifying facility would be able to meet its commitment to supply electricity to a public utility at a reasonable price.

(5) Coal mined in a foreign country is subject to major supply interruptions, price increases and quality reductions which are unpredictable and which may result not only from market factors, but also from foreign policy decisions of the United States Government or one or more foreign governments or from domestic policy changes in the foreign country in which the coal is mined.

(6) It is much easier for a public utility and the commission to predict the reliability of a qualifying facility and the reasonableness of the price of the electricity to be supplied by that qualifying facility if United States energy sources are to be used than if coal mined in a foreign country is to be used.

(7) A qualifying facility which would burn coal mined in a foreign country is too potentially unreliable to justify a public utility in foregoing alternative capacity commitments and in paying the qualifying facility a price which includes any capacity credit.

(b) *General rule.*—*The price paid by a public utility to a qualifying facility and the charge imposed on the utility's ratepayers for electricity generated by that qualifying facility shall not include any capacity credit if that qualifying facility burns coal mined in a foreign country.*

(c) *Restriction on contract approval.*—*The commission shall not approve any contract between a public utility and a qualifying facility which burns coal mined in a foreign country for the purchase by the utility of electricity generated by the qualifying facility unless:*

(1) *the price to be paid by the utility reflects no more than the actual avoided cost of the utility when the payment is made; and*

(2) *the contract does not exceed five years in duration.*

(d) *Review of contracts.*—*Notwithstanding any other provision of law, a contract in effect on the effective date of this section or thereafter between a public utility and a qualifying facility for the purchase by the utility of electricity generated by the qualifying facility shall, after notice and hearing, be subject to review and modification in accordance with subsections (b) and (c) at any time upon complaint or upon the commission's own motion if the qualifying facility burns coal mined in a foreign country.*

(e) *Recovery from ratepayers.*—*For the express purpose of implementing the intent of this section, a public utility shall not be permitted to recover from ratepayers pursuant to section 1307 (relating to sliding scale of rates; adjustments) any of the costs associated with a contract between the utility and a qualifying facility which burns coal mined in a foreign country for the purchase by the utility of electricity generated by the qualifying facility. Any such costs which the commission determines to be reasonable and prudent shall be recoverable only through a base rate proceeding pursuant to Chapter 13 (relating to rates and rate making).*

(f) *Definition.*—*For the purposes of this section, "qualifying facility" means any cogeneration facility or small power producer which is a qualifying facility pursuant to the Federal Energy Regulatory Commission's guidelines set forth at 18 CFR §§ 292.101(b)(1) (relating to definitions) and 292.203(a) and (b) (relating to general requirements for qualification).*

(g) *Severability.*—*The provisions of this section shall be severable. If any provision of this section or the application thereof to any public utility, qualifying facility or circumstance is held invalid, the remainder of this section and the application of any provision thereof to any other public utilities, qualifying facilities or circumstances shall not be affected thereby.*

Section 2. Section 1309 of Title 66 is amended to read:

§ 1309. Rates fixed on complaint; investigation of costs of production.

(a) *General rule.*—*Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the existing rates of any public utility for any service are unjust, unreasonable, or in anywise in violation of any provision of law, the commission shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served upon the public utility, and such rates shall constitute the legal rates of the public utility until changed as provided in this part. Whenever a public utility*

does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the commission shall have the power and authority to investigate the cost of such production or generation in any investigation of the reasonableness of the rates of such public utility.

(b) Deadline for decision.—Before the expiration of a nine-month period beginning on the date of the commission's motion or the filing of a complaint pursuant to subsection (a), a majority of the members of the commission serving in accordance with law, acting unanimously, shall make a final decision and order, setting forth its reasons therefor. If such an order has not been made at the expiration of such nine-month period and the motion or complaint pursuant to subsection (a) requested a reduction in rates, a final decision and order of the commission which determines or fixes a rate reduction shall be retroactive to the expiration of such nine-month period, provided that nothing herein shall be construed to prohibit the commission from setting temporary rates pursuant to section 1310 (relating to temporary rates) prior to the expiration of such nine-month period and giving such effect to the setting of temporary rates as is otherwise permitted by this title. This subsection shall apply only when the requested reduction in rates affects more than 5% of the customers and amounts to in excess of 3% of the total gross annual intrastate operating revenues of the public utility, provided that, if the public utility furnishes two or more types of service, the foregoing percentages shall be determined only on the basis of the customers receiving, and the revenues derived from, the type of service to which the requested reduction pertains. This subsection shall not apply to any proceeding involving a change in rates proposed by a public utility pursuant to section 1307 (relating to sliding scale of rates; adjustments) or 1308 (relating to voluntary changes in rates).

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

§ 1326. *Standby charge prohibited.*

(a) Prohibition.—A public utility that furnishes water to or for the public shall not impose a standby charge on owners of residential structures equipped with automatic fire protection systems.

(b) Definition.—As used in this section, the term "standby charge" means an amount, in addition to the regular rate, assessed against the owner of a residential structure for the reason that the residential structure is equipped with an automatic fire protection system.

Section 4. This act shall take effect immediately.

APPROVED—The 6th day of July, A. D. 1988.

ROBERT P. CASEY