

No. 1996-94

AN ACT

HB 2446

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, affirming the opportunity for an electric public utility to restructure, buy down or buy out a nonutility generation contract from which such utility has an obligation to purchase electricity and affirming rate recovery of certain electric utility payments for such purposes.

The General Assembly makes the following findings:

(1) Electric public utilities in Pennsylvania have entered into contracts with various nonutility project developers for the purchase of electric capacity or energy, or both, from nonutility projects, some of which are in operation and some of which have not yet been completed. Some of these contracts have been entered into voluntarily by such utilities. Others have been entered into pursuant to orders of the Pennsylvania Public Utility Commission. Such contracts were predicated, in each case, on avoiding the estimated costs the utility would have incurred but for the nonutility project. The utilities' payments under such contracts are and should continue to be recoverable from customers, as well as the utilities' payments pursuant to other arrangements which are negotiated, as provided for herein.

(2) Some nonutility generation projects have provided benefits to utilities, consumers and the economy.

(3) Some of the existing contracts for nonutility projects not yet completed may no longer be needed or justified based on present cost estimates. This is due to unanticipated and unforeseeable changes in economic factors as a result of which either the utility no longer needs the contract's electric capacity or energy or there are less expensive alternatives by which the utility could obtain such needed electric capacity or energy.

(4) From time to time it may be in the mutual interest of a nonutility project developer, or owner of an operating nonutility project, and a public utility to voluntarily negotiate reasonable arrangements to buy down, buy out and terminate or otherwise restructure existing contracts.

(5) Negotiated arrangements to buy down, buy out and terminate or otherwise restructure contracts with operating nonutility projects and contracts for unfinished projects may be in the public interest.

(6) The costs prudently incurred by utilities under a buyout, buydown or other restructuring arrangement should be recoverable from customers.

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

Section 1. Section 527 of Title 66 of the Pennsylvania Consolidated Statutes is amended to read:

§ 527. Cogeneration rules and regulations.

(a) *Availability.*—The commission shall promulgate rules and regulations concerning the rates, terms, conditions and availability of cogeneration in this Commonwealth. The commission shall require that utility rates to the public reflect *the costs and savings to the utility from cogeneration[.], including, but not limited to, the costs incurred by utilities under contracts with nonutility generating unit project developers for the purchase of electric capacity or energy, or both; the costs recoverable under subsection (b) to buy out and cancel unfinished nonutility generating unit projects by mutual agreement of the project developer and the public utility; and the costs prudently incurred by utilities under a voluntary buyout, buydown or other restructured arrangement which are just and reasonable and which reduce the cost to customers of nonutility generating unit projects.*

(b) *Recovery of cancellation costs of nonutility generating unit projects.*—*A nonutility generating unit project is a generating unit project that is not owned by a public utility. If the construction of a nonutility generating unit project for which a public utility has a contract, whether entered into voluntarily or pursuant to commission order, to purchase project energy or project capacity and energy is canceled by mutual agreement of the project developer and the public utility prior to the unit's completion and operation, the public utility may recover all costs to be paid to the project developer and all costs directly related thereto which are prudently incurred as a result of such cancellation. The burden of proof to show that any costs claimed were prudently incurred shall be on the public utility. In reviewing a claim for such costs:*

(1) *the commission shall not disallow any portion solely on the basis that it constitutes an amount greater than actual development expenditures and all costs related thereto; and*

(2) *the commission shall consider the amount of the claim compared to the utility's total estimated costs of obligations under the contract.*

Section 2. Nothing in this act shall be construed as:

(1) requiring an electric utility or a nonutility generating unit project to enter into an arrangement to buy down, buy out and terminate or otherwise restructure a contract; or

(2) authorizing the Pennsylvania Public Utility Commission to require a regulated utility to pursue such an arrangement with a nonutility generating unit project.

Section 3. This act shall take effect immediately.

APPROVED—The 2nd day of July, A.D. 1996.

THOMAS J. RIDGE