

# **ENERGY FACILITY SITING**

## **A Comprehensive Program for Pennsylvania**

**General Assembly of the Commonwealth of Pennsylvania**  
**JOINT STATE GOVERNMENT COMMISSION / APRIL 1977**

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The Joint State Government Commission was created by Act of 1937, July 1, P.L. 2460, as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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**GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA  
JOINT STATE GOVERNMENT COMMISSION**

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April 25, 1977

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

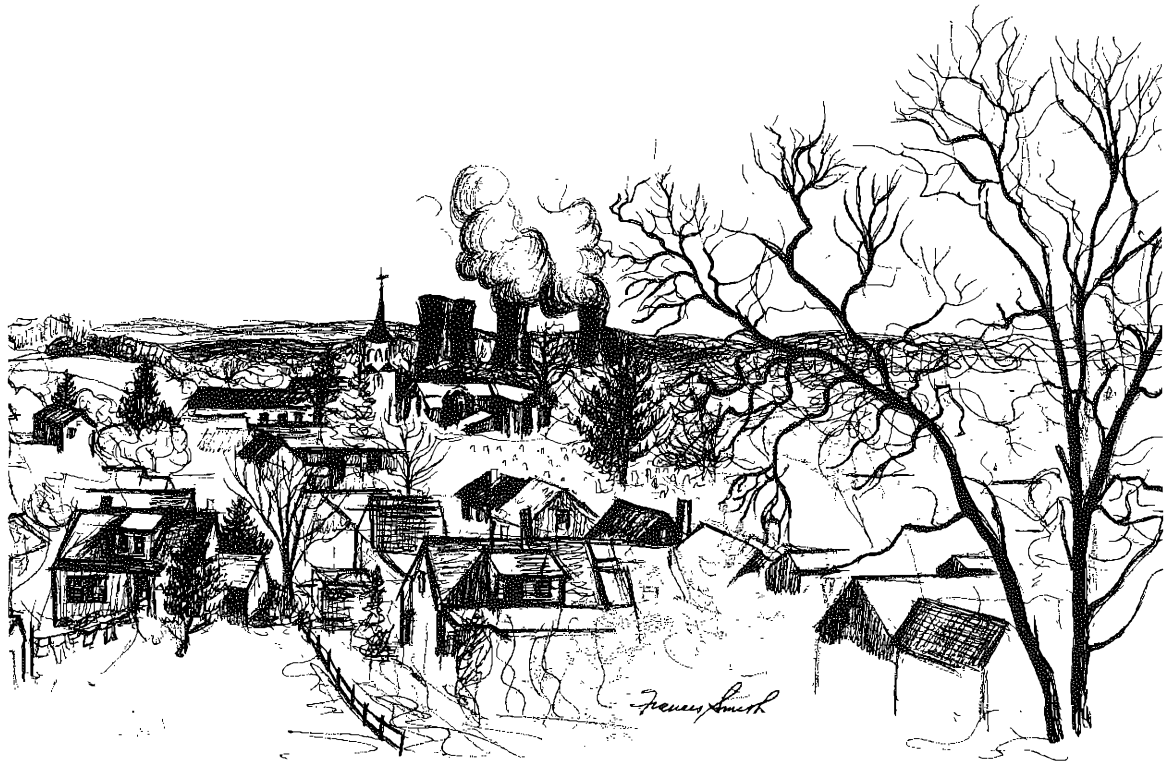
This report contains the findings of the Joint State Government Commission Task Force on Energy Facility Siting and recommended legislation developed pursuant to Senate Concurrent Resolution Serial No. 238 (Session of 1976).

On behalf of the Commission, the contribution of the members of the task force is recognized with appreciation.

Respectfully submitted,

A handwritten signature in cursive script that reads "Fred J. Shupnik".

Fred J. Shupnik  
Chairman



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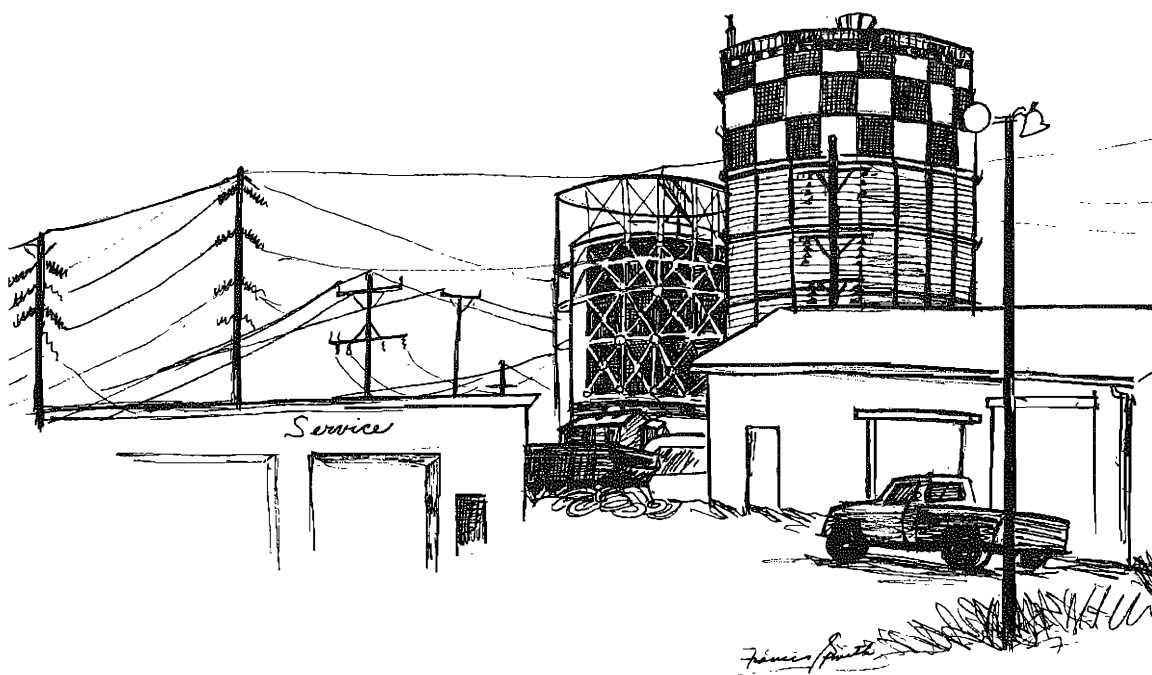
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## RECOMMENDATIONS

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### THE JOINT STATE GOVERNMENT COMMISSION RECOMMENDS:

- I. Establishment, by statute, of an Energy Facility Siting Interagency Commission which would:
  - A. Have exclusive authority over the approval and location of energy generating and conversion facilities with a capacity of 100,000 kilowatts or more of electricity or the equivalent capacity of synthetic gas or liquid hydrocarbons.
  - B. Conduct an efficient and expeditious "one-stop" site-approval process incorporating long-range energy planning and public participation and coordinating the activities of all other involved governmental agencies at all levels.
  - C. Consist of the secretaries of the Departments of Agriculture, Commerce, Community Affairs, Environmental Resources, Labor and Industry and Transportation; the chairman of the Public Utility Commission; and four citizens appointed by the Governor with the advice and consent of the Senate, two of whom would be elected municipal government officials.

In the event the General Assembly establishes by statute a Department of Energy, an Energy Council or similar agency with plenary jurisdiction over energy matters, the recommended interagency commission should be incorporated within such agency.

- II. Enactment of a comprehensive program, administered by the interagency commission, providing for payments to political subdivisions directly affected by the location of an approved energy facility. The program would have the following components:
  - A. Reimbursement and loans for planning and impact costs.
    1. Planning costs--Affected municipalities and school districts would receive reimbursement

for legal and consultant fees and other expenses in preparing testimony on the location of a proposed energy facility. These payments would be limited to 75 percent of actual expenditures and \$25,000 per municipality and \$100,000 per site.

2. Impact costs--Affected municipalities and school districts would receive reimbursement for public service costs--including administrative, fire, police, roads, waste disposal, education, health, etc.--which are directly related to the construction of an energy facility. These payments would be limited to the actual costs of necessary expenditures and \$850,000 per site and \$2 million per year.
3. Revolving fund for capital projects--Affected municipalities required to construct or expand major public capital projects--streets, highways, bridges, sewage facilities or treatment plants, etc.--may receive an advance from a revolving fund to be repayable within 10 years without interest. An annual appropriation of \$1.5 million should be made by the General Assembly until the fund reaches \$7 million.

B. Annual distributions to all local taxing authorities where electric generating plants are located.

1. The gross amount distributed on account of any plant would be the sum of:
  - (a) \$300 per million kilowatt-hours for the first 500 million kilowatt-hours of production.
  - (b) \$150 per million kilowatt-hours for the next billion kilowatt-hours.
  - (c) \$20 per million kilowatt-hours for all kilowatt-hours over 1.5 billion.<sup>1</sup>
2. The gross amount would be distributed 65 percent to the school district, 15 percent to the municipality and 20 percent to the county.

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1. For estimated distribution for each plant operating in 1975, see Table 2, p. 32.

3. Every taxing authority must use the receipts to permanently reduce real property and other local taxes.

C. Recommended appropriations:

1. Planning and impact costs (A1 and A2)--\$1.6 million.
2. Revolving fund (A3)--\$1.5 million.
3. Annual distribution in 1978 (B)--\$11.5 million.
4. Administrative costs--\$140,000.

Total appropriation for 1977-1978--\$14.74 million.

- III. Extension of the gross receipts tax on electric utilities to receipts from the sale of all electricity produced in Pennsylvania. For utilities with sales made outside the State, gross receipts would be allocated to Pennsylvania on the basis of the ratio of operating and maintenance expenses and depreciation attributable to Pennsylvania operations to the utilities' total operating and maintenance expenses and depreciation. The estimated yield from this recommendation is \$20 million annually. No Pennsylvania purchaser of electricity would be affected.

Proposed Legislation

The foregoing recommendations are implemented in the proposed legislation set forth in Chapter VI.

## I. INTRODUCTION

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Senate Concurrent Resolution Serial No. 238, introduced in the General Assembly on March 30, 1976, directs the Joint State Government Commission to establish a task force to study "the entire issue of energy facility siting." Sponsored by Senators Franklin L. Kury, Robert J. Mellow, Quentin R. Orlando, William J. Moore, Henry G. Hager and William E. Duffield, the resolution was adopted in the Senate on June 14, 1976 and concurred in by the House of Representatives on June 29. A nine-month deadline was established for completion of the task force assignment.

The study was recommended to the General Assembly by the Governor's Energy Council, under the chairmanship of Lieutenant Governor Ernest P. Kline, in January 1976. Following a year-long investigation and public hearings on the energy park concept, the council pinpointed energy facility siting as one of the most critical and controversial issues in the development of an overall energy program for Pennsylvania.

The Senate resolution specifies a comprehensive approach, directing the task force study to take into consideration--

related issues of the role of local government in power plant site selections, the impact of plant construction, lack of local tax benefits, protection of local planning efforts and environmental impact on local communities together with related legal and economic questions. . . .

Following authorization by the Commission's Executive Committee and appointment of members, the Task Force on Energy Facility Siting, under the chairmanship of Senator Robert J. Mellow, met on a number of occasions to discuss the wide-ranging problems involved and to evaluate possible solutions.

The task force considered materials prepared by the Commission staff on procedures, problems and alternative approaches to energy facility siting; model energy facility siting laws and those enacted in other states; public utility taxation in Pennsylvania and elsewhere; and the impact of energy facilities on localities.

Considerable assistance was received by the staff from William B. Harral, executive director of the Governor's Energy Council, and his associates, and Peter Capataides, director of the Bureau of Corporation Taxes, Pennsylvania Department of Revenue. The research materials and summaries of public hearings prepared for the Governor's Energy Council and transcripts of public hearings on the energy crisis provided by the Pennsylvania Senate Committee on Environmental Resources were most useful in an extensive review of the current procedures, practices and opinions existing in Pennsylvania.

During the course of the study, Governor Milton J. Shapp underscored the urgency for legislative attention in his address on the energy crisis to a joint session of the General Assembly in February of this year:

I would like the legislature to consider action on an energy-facility siting law. The Energy Council's efforts in determining the feasibility of large-scale generating facilities indicated that before such a plan could be considered for Pennsylvania, the legislature would have to address several areas.

The primary concern is to develop a logical method by which state government could play a major role in determining where, what kind, and when energy-producing facilities would be placed within this Commonwealth; not only electric generating plants but gasification plants, oil refineries and even solar energy collection fields.

On March 23, the task force completed its assignment with approval of proposed legislation and agreement to present its findings, recommendations and legislation to the members of the General Assembly in a published report.

In view of the nine-month deadline imposed by the authorizing resolution, the task force determined not to extend its work by holding hearings on its recommendations which would only duplicate the public review by the standing committees to which the bills will be referred following introduction in the General Assembly.

## II. SCOPE OF SITING PROBLEM

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Complex and overlapping energy-related issues now confront every level and nearly every major area of governmental activity.

Problems associated with energy facility siting are interrelated with dwindling energy supplies, lack of consistent governmental policies and administrative procedures, utility regulation and taxation, environmental and aesthetic pollution, public health, accelerated and innovative development of energy technology, lack of timely public involvement and advocacy and general resistance to the inconveniences, expenses and changes necessary for energy conservation.

That the solution to any one problem frequently depends upon resolving many others was clearly recognized by the Governor's Energy Council during its study of energy parks. After a year of extensive review, the conclusion was reached that before proceeding further attention first must be given to the following diverse issues:

- \* the impact of proposed House and Senate amendments to the Federal Clean Air Act amendment which could affect the further development of coal-fired energy parks;
- \* land-use planning as it affects the issue of siting energy facilities;
- \* complete analysis of federal proposals in facility siting, particularly the Nuclear Energy Center Site Survey conducted by the Nuclear Regulatory Commission;
- \* the issue of local incentives primarily in the utility taxation field, and
- \* the broad issues of concentrated siting of nuclear power plants;

\* the increasing problem with the conservation of water reserves.<sup>1</sup>

### Local Costs and Controversy

The far-reaching local side effects of energy facility siting were summarized for a workshop sponsored by the Federal Energy Administration:

Significant energy industry investments of whatever type - power plants, processing plants, distribution or transmission lines, mines, etc. - are recognized to incur three broad areas of side effects in addition to their direct purpose (production whether or not for profit) that have become of interest to officers acting within the siting system: they are 1) the environmental impact of the proposed investment, 2) its impact on public safety and health, and 3) its socioeconomic impact. A large energy facility investment often results in some shifting of the available factors of production (e.g., labor, water, etc.) and reorientation of the infrastructure (e.g., roads, schools, etc.) toward the energy industry and away from the pre-investment economic and social activities (the "baseline socioeconomic system"). In addition, large energy project investments often bring substantial growth in local populations, incomes, and markets that also perturb the local socioeconomic environment.<sup>2</sup>

Pennsylvanians generally see little advantage to the location of bulk power facilities in their communities. To local officials, energy facility siting basically involves substantial perceived costs and few benefits, if any. The following conclusion is reached in a summary of public hearings on local reactions to proposed nuclear facility sites:

The most common statement from public officials at the local level was "And how are we going to pay for all this?"<sup>3</sup>

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1. Resolution adopted January 1976.
  2. Edward H. Allen, "Socioeconomic Issues in Energy Facility Siting," prepared for workshop held in Williamsburg, Virginia, December 13-15, 1976.
  3. Terry A. Ferrar, Frank Clemente and Alan B. Brownstein, "Nuclear Energy Centers: Equity Considerations Relating to Taxation and Revenue Distribution" (University Park: The Pennsylvania State University, Center for the Study of Environmental Policy, 1976), p. 13.

A Pennsylvania Senator has remarked:

I have at least three or four . . . power plants in my four counties and . . . this is the case, that a large percentage of this power is going into New Jersey and New York State because as a former County Commissioner, I tried to impose some type of accounting on where the county would lose a great deal of taxes because of these power plants, . . . and I tried to get some of this revenue back into the counties to help pay the counties' expenses, but I was not successful . . .<sup>4</sup>

Citizens affected by energy facilities often are concerned with costs--both monetary and nonmonetary. One rural resident succinctly stated the basis for his opposition to a nearby site:

I am opposed to the energy park because:

- \* We [will] suffer from pollution, while the power goes somewhere else.
- \* It will spoil our rural area and consume much farm land.
- \* It will decrease our tax base.
- \* It will increase precipitation and severe storm activity in our area.<sup>5</sup>

Another perceives the nearby location of a power plant as a threat to health and environment:

I am a member of the generation that is going to inherit our planet. . . .

I love my country, the air, water, land, animals, and, most of all, the people. . . . We have the intelligence to find a power source compatible with our people and our environment. . . .

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4. Senator Patrick J. Stapleton, hearing of the Senate Committee on Environmental Resources on the energy crisis, Scranton, Pennsylvania, June 21, 1973.

5. Citizen's letter presented in Clemente and Ferrar, "The Nature of Public Reaction to Energy Parks: Some Examples" (University Park: The Pennsylvania State University, Center for the Study of Environmental Policy, September 1976).



It's foolish to employ a method of energy production that risks our greatest resource when there are so many other alternatives. Therefore, it is my feeling that no nuclear or coal plants be built, and that non-polluting, more economical, and safe means of energy production be explored and put into use.

Now someone has decided to build an energy park in our area to solve the problem of energy dependence. My question is, "Is it worth it?"<sup>6</sup>

However, not all affected residents share these same opinions:

Please tabulate this as a strong vote in favor of the energy park being proposed. . . . I feel strongly that the environmentalists should be overruled if they attempt to block it.

Despite the obvious good that has been done, we certainly must admit that the pendulum has swung too far in the other direction when we allowed them to aggravate the energy shortage. . . .

The only realistic long-term view is that petroleum products should be reserved for transportation, should be faded [sic] out of heating and should be eliminated from generation of electricity as rapidly as possible. Atomic generation of electricity is clearly the best, but it is better to use coal rather than oil even if air pollution standards have to be relaxed.<sup>7</sup>

### Public Utility Problems and Energy Needs

A Pennsylvania public utility official recently testified concerning the siting issue:

The real problem today is the variety of approvals required by the various agencies and bodies and the delays resulting from their overlapping authorities and jurisdictions. [What is

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6. Ibid.

7. Ibid.

needed] is a system that reduces delays caused by those who would use all possible legal tactics while at the same time assuming no responsibility for the ultimate consequences of the delays imposed.<sup>8</sup>

Perhaps more than anyone the electric utilities recognize the urgency for solution of problems surrounding facility siting. It is estimated that between 1975 and 2000 from 30,000 to 120,000 megawatts of new electrical generating capacity will be needed in Pennsylvania. Based on current average plant size, as few as 30 or as many as 120 new plants will be required throughout the State.<sup>9</sup> Many years are consumed in planning and constructing an energy facility:

. . . the construction of generating plants . . . currently, from planning to completion, involve 8 to 10 years for a fossil plant and 12 to 14 years for a nuclear fuel plant. . . . Throughout these stretched-out construction periods we are exposed to equipment delivery delays, strikes or design modifications required by regulatory agencies which can delay the completion date of a plant by several years. . . .<sup>10</sup>

### Legislative Issues

Legislation relating to energy facility siting introduced by members of the General Assembly generally reflects the attitudes of local constituents. Most legislation introduced on this subject in the 1975-1976 Session was intended to place restrictions on siting by utilities. Six bills were introduced to require local approval of the construction of energy parks--five of these involving referenda<sup>11</sup> and one imposing a three-year moratorium on the construction of nuclear energy generating plants.<sup>12</sup> In addition, a State power facilities planning and site approval bill was introduced as well as legislation establishing a Pennsylvania energy council.<sup>13</sup>

In the minds of many legislators the problem might boil down to--

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8. Brooke Hartman, vice president, Pennsylvania Power and Light Company, hearing of the Senate Committee on Environmental Resources on the energy crisis, Scranton, Pennsylvania, June 21, 1973.

9. Carnegie-Mellon University, Power Plant Siting Policy Alternatives for Pennsylvania (Pittsburgh: School of Urban and Public Affairs, May 1976), p. i.

10. Jack K. Busby, president, Pennsylvania Power and Light Company, letter to PUC Secretary C. J. McElwee dated March 1, 1976, pp. 5-6.

11. Senate Bills 715, 960 and 1010; House Bills 1760 and 1867.

12. House Bill 1850.

13. Senate Bill 293 and House Bill 96, respectively. House Bill 191 of 1977 would establish a State energy council.

There is no state law at all as to where the plant shall be located. Power companies can put it anywhere they want to. . . . the first thing you've got to do is give somebody the power to say, yes, you can put it here and no, you can't put it there. . . . The issue is, are you going to take the site selection away from the corporate executive of the utility company and put it in state or local government.<sup>14</sup>

The Task Force on Energy Facility Siting of the Joint State Government Commission has centered its efforts on the major obstacles which it found to hamper the solution of a wide range of problems associated with bulk power facility siting. These obstacles are:

- The fragmented site-approval procedure, characterized by delays as well as lack of governmental coordination, comprehensive planning and timely public participation.
- The lack of reimbursement to localities affected by energy facilities to compensate for related public and private costs and the loss of property tax revenues when utility property replaces former tax-yielding uses of the land.

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14. Senator Franklin L. Kury, meeting of the Joint State Government Commission Task Force on Energy Facility Siting, January 12, 1977.

### III. FACILITY SITE APPROVAL AND CERTIFICATION

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#### PENNSYLVANIA'S FRAGMENTED PROCESS

Power plant site selection in Pennsylvania is currently the responsibility of the various electric utilities. Recently the site-selection procedure has been undertaken by collections of utilities (power pools) in order to produce electricity at the least possible cost.

The siting procedure begins with a determination as to whether demand warrants construction of a power plant, and if it does, the type of load facilities required. Next, a fuel type is selected and several possible sites chosen.

The two most important considerations in site selection are adequate water supply and land availability. Other considerations are topography, geological conditions, availability of transportation systems, environmental impact and safety standards.

Once a particular site is chosen and acquired by the utility, the formal regulatory process begins.

#### Governmental Levels and Agencies Involved

The regulatory mechanisms affecting power plant siting operate at the federal, regional, state and local levels.

Federal--Separate federal regulatory procedures apply to coal-fired plants and to nuclear plants. Most regulations are applicable to both generating types, particularly regulation of water usage. There are certain additional procedures used to license nuclear plants.

The following federal agencies are involved in the regulatory process:

1. Environmental Protection Agency--establishes national air and water quality standards and issues various construction and operational permits.

2. U.S. Army Corps of Engineers--authority regarding discharge of power plant effluents into navigable waters and issuance of various permits for intake and discharge structures and associated dredging.
3. Nuclear Regulatory Commission--authority over design, construction and operation of nuclear plants and issuance of construction and operation licenses, as well as by-product and nuclear material licenses.
4. Other--the U.S. Fish and Wildlife Service, Occupational Safety and Health Administration, Federal Aviation Administration and the Council of Environmental Quality participate in varying degrees.

Interstate--The regulatory process at the interstate level involves the Delaware River Basin Commission and the Susquehanna River Basin Commission. These agencies have authority over withdrawals, discharges and dredging in their respective rivers and issue permits for water use.

State--The Public Utility Commission is the first State regulatory agency that a utility contacts when considering construction of a new power plant. The PUC decides whether the need for electricity justifies the construction before issuing the appropriate certification.

The most important State agency with respect to power plant siting, however, is the Department of Environmental Resources. Four bureaus regulate and oversee the environmental aspects of a power plant:

1. Bureau of Water Quality Management--authority over water-related aspects of power plant construction and operation and issuance of permits for erosion and sedimentation control, industrial waste and stream encroachment.
2. Bureau of Air Quality and Noise Control--authority over any emission of pollution into the air and issuance of permits for gaseous waste treatment and air contamination.
3. Bureau of Land Protection--authority over coal and fly-ash disposal and issuance of permits for the operation of solid waste processing and disposal facilities.
4. Bureau of Radiological Health--concerned with radiation from nuclear plants and limited involvement in the Federal Nuclear Regulatory Commission hearings.

Other State agencies concerned with power plant siting are the Governor's Energy Council, Governor's Science Advisory Committee, Department of Agriculture, Department of Labor and Industry (Bureau of Occupational Safety), Department of Transportation (Bureau of Aviation), State Police-Fire Marshal, Fish Commission and Game Commission.

Local--Various approvals and permits may be required by municipal governments. Local ordinances often specify zoning approval prior to the issuance of a building permit, an occupancy permit prior to the beginning of power plant operation and other miscellaneous permits depending upon the particular locality.

### Major Problems

The utilities' most common complaint is the undefined and haphazard means for obtaining final authorization of a generating unit. The duplication and conflict among the various agencies involved cause lengthy delays in the construction and operation of scheduled generating facilities:

Lack of adequate intergovernmental coordination was said to result in a situation where it was unclear which agencies' permits were required first. A Pennsylvania utility project was discussed where 25 State permits were required, and most State agencies would not act until other major State approvals were received.<sup>1</sup>

Many regulatory matters are the concern of all four governmental levels. This complicates the process by doubling or tripling the number of permits needed in a particular area. For example, a utility siting a power plant on the Delaware River must obtain water permits from the Army Corps of Engineers and the Environmental Protection Agency at the federal level, the Department of Environmental Resources at the State level and the Delaware River Basin Commission at the regional level.

The complaint is frequently voiced that citizen participation in power plant siting is limited because hearings are not well publicized, the utility has more time to gather information than the public prior to a hearing and there is no coordinating agency responsible for calling hearings.

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1. Federal Energy Administration, "Summary of Proceedings, Energy Facility Siting Workshops," Williamsburg, Va., December 13-15, 1976, p. 11.

The discrepancy in preparation time, it is contended, forces the public into the adversary role. Confrontation between utilities and the public is one of the major reasons for siting delays.

### ONE-STOP SITING PROCEDURE

A one-stop energy facility siting procedure--an alternative to the existing fragmented regulatory process now employed in Pennsylvania--has been established in 21 states.<sup>2</sup>

The one-stop procedures have been instituted to increase the probability of locating appropriate sites in an efficient manner, at minimum time and expense, while assuring procedural due process and opportunity for full policy input from all parties in interest, including affected citizens.

Essential to one-stop procedure is the designation or creation of a single agency with exclusive responsibility for site approval and subsequent certification. Utilities deal directly with this agency, which is empowered to resolve all the State and local issues pertaining to the siting of a power plant.

The creation of a one-stop procedure requires decisions concerning the type of agency to be established, its membership, its powers and duties, the requirements and scheduling of the site-approval process, planning and research capability and public notice and involvement.

#### Placement of Site-Certifying Authority

The agency responsible for site approval and certification is the most important structural component in the siting process. It is the implementing and coordinating mechanism of the policy. The alternatives in agency structure are to create a new agency, to designate an existing agency or to organize an interagency panel.

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2. Arizona, California, Connecticut, Florida, Iowa, Kentucky, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Oregon, South Carolina, Vermont, Washington and Wyoming. For a comparison of statutory provisions, see Southern Interstate Nuclear Board, Power Plant Siting in the United States (Atlanta, Georgia: June 1976).

An entirely new agency requires substantial additional funding and by necessity it assumes many of the duties already handled by other State agencies. Furthermore, a new agency does not have the benefit of the existing expertise and working relationships.

Designation of an existing agency as the site-certifying authority may present several problems. This additional responsibility could overburden the agency in terms of funding and personnel, and an existing agency may not provide the appropriate forum for open and full participation of all parties in interest in the site-selection process.

The organization of an interagency panel with plenary jurisdiction permits participation of existing professional personnel with a variety of concerns and expertise with relatively little additional personnel or funding.

Of the states which have adopted a one-stop procedure, seven have adopted some form of interagency panel.<sup>3</sup> Of the remaining one-stop states, eight have placed site-certifying authority in the public utility commission,<sup>4</sup> two in the environmental resources department,<sup>5</sup> three with the governor,<sup>6</sup> and one with the commerce department.<sup>7</sup>

#### Organization of Site-Certifying Authority

Of the various site-selection panels, the following officials are typical of the members designated by statute: speaker of the house of representatives; president of the senate; chairman of the public utility commission; secretaries of the departments of commerce, environmental resources and health; directors of the bureaus of water quality, air quality, land protection, radiological health, consumer protection and parks; and directors of the fish and game commissions. To insure citizen input, the statutes often provide for public members and residents of the localities of the sites under review.

The participation of local representatives as ad hoc members of the site-selection panel is sometimes authorized.

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3. Arizona, California, Connecticut, Maine, Massachusetts, New York and Wyoming.

4. Kentucky, Maryland, Nevada, New Hampshire, New Mexico, North Dakota, South Carolina and Vermont.

5. Minnesota and Montana.

6. Florida, Oregon and Washington.

7. Iowa.



Local participation in the decision-making process is a counterbalancing factor to the authority of the panel to override current local authority regarding siting.

The site-selection panels of the one-stop states range in size from 5 to 18 members and are generally organized under a chairman, either voting or nonvoting.

All states require an application fee for each site. The fees range from \$10,000 to \$150,000. Some states specify that this fund is to be used to defray the expenses incurred by municipal parties to the application proceeding for expert witnesses and consultant fees. Another method of funding used in certain states is placement of a surcharge on the amount of electricity sold or produced in the state.

#### Powers and Duties of Site-Certifying Authority

The authority vested in siting agencies or interagency groups is usually clearly defined by statute. Siting agencies normally are authorized to adopt rules, regulations and guidelines to carry out the provisions of the one-stop act. This authority ranges from prescribing the content for all applications to substantive standards or criteria governing site selection.

The statutes usually require that applications for site certification contain the following information and documentation:

- Complete description of the site and facility to be built.
- Documentation setting forth the expected environmental impact and safety of the project.
- Estimated cost information.
- Explanation of the need for the facility.
- Description of any reasonable alternative location.

The one-stop act may specify that no application shall be approved unless it is determined that:

- There is public necessity for the facility.
- The probable environmental, economic, social and other impacts are compatible with the best interests of the state.

- The facility is designed to operate in a safe and healthful manner.
- The facility is consistent with the long-range planning objectives of the state.
- The facility will serve the public interest, convenience and necessity.

Additional authority given to the site-certifying agency may include the following powers:

- To develop environmental and ecological guidelines in relation to the type, design and location of energy facilities.
- To establish rules of practice for the conduct of required public hearings.
- To contract for independent studies of proposed sites.
- To prescribe means for monitoring the effects arising from the construction and operation of energy facilities.
- To integrate site-evaluation activity with the various federal agencies having jurisdiction.

### Site-Approval Process

The procedure for specific site approval begins with the filing of an application for certification by a public utility. Most one-stop statutes provide that the site-certifying authority must either approve or disapprove the application within a certain time--ranging from 5 to 24 months--with the decision supported by an opinion setting forth findings of fact and reasons for the action taken.

Some statutes require a party in interest aggrieved by the decision to apply for a rehearing; all provide for judicial review. The scope of review is usually limited to whether the decision is:

- Constitutional
- Supported by evidence on the record
- Within the statutory jurisdiction of the one-stop agency

- In compliance with the procedures of the one-stop statute
- Arbitrary, capricious or an abuse of discretion.

### Planning and Research

Almost unanimous among the one-stop statutes is a provision for long-range planning and forecasting. The utilities are required to furnish the site-certifying authority forecasts covering time periods ranging from 2 to 20 years. The reports--usually annual--may include the following:

- Forecast of demand.
- Identification of generating capacity.
- Inventory of existing facilities, facilities under construction, retiring facilities and land owned and held for future use.
- Anticipated expenditures for research in generation, transmission and pollution control.
- Environmental, economic and social impact.

### Public Notice and Participation

The requirement of public notice and participation is a vital ingredient of power-plant siting policy. In addition to the notice in an official publication, other means of notice utilized are local media and site-specific mailings within some radius of a proposed power plant.

In order for the public to become involved, one-stop statutes generally explicitly require the site-certifying agency to disclose to affected communities information relating to siting plans and decisions within the communities.

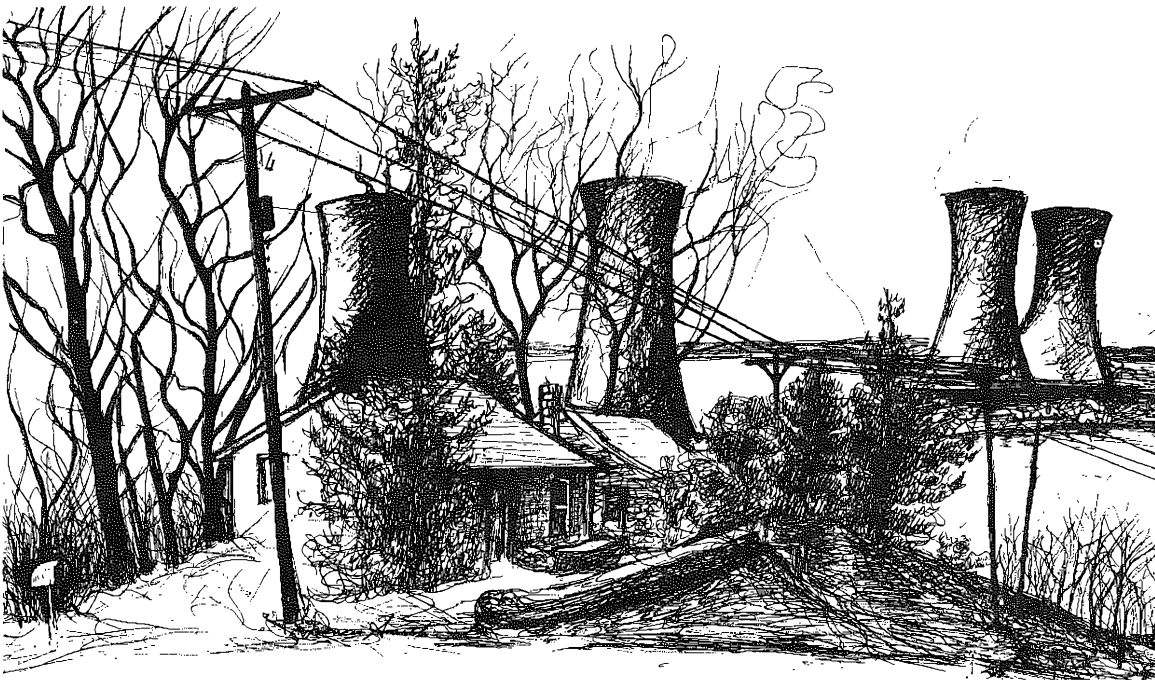
Public participation may be mandated at each of the following major steps in the site-approval procedure-- planning, site designation and approval and post-approval.

## PROPOSED LEGISLATION

The proposed legislation implementing the task force recommendations concerning energy facility site approval and certification is set forth beginning on page 40.

In recommending a one-stop procedure for Pennsylvania, the task force deliberately avoided overly restrictive statutory provisions. In addition to eliminating unnecessary delay, the primary purpose of a consolidation of the siting-decision process is to reconcile often-competing public policy goals. Under existing practices, the fragmented decision process offers little opportunity for policy trade-offs between equally desirable objectives. Disputes are likely to end in the courts, which usually must adopt the position of one adversary rather than provide a forum for negotiated solutions.

If properly administered, the recommended procedure is efficient, equitable and flexible and can accommodate changing technology as well as evolving community standards.



## IV. EVALUATION OF LOCAL IMPACTS OF ENERGY FACILITIES

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### PUBLIC UTILITY PROPERTY TAXATION

#### Current Constitutional and Statutory Provisions

Prior to the adoption of a constitutional amendment in 1968, public utility operating property was generally exempt from local real property taxation in Pennsylvania.<sup>1</sup> Article VIII, Section 4, of the Constitution, as amended, specifies:

The real property of public utilities is subject to real estate taxes imposed by local taxing authorities. Payment to the Commonwealth of gross receipts taxes or other special taxes in replacement of gross receipts taxes by a public utility and the distribution by the Commonwealth to the local taxing authorities of the amount as herein provided shall, however, be in lieu of local taxes upon its real property which is used or useful in furnishing its public utility service. The amount raised annually by such gross receipts or other special taxes shall not be less than the gross amount of real estate taxes which the local taxing authorities could have imposed upon such real property but for the exemption herein provided. This gross amount shall be determined in the manner provided by law. An amount equivalent to such real estate taxes shall be distributed annually among all local taxing authorities in the proportion which the local tax receipts of each local taxing authority bear to the total tax receipts of all local taxing authorities, or in such other equitable proportions as may be provided by law.

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1. For a history of the taxation of public utility property and of the constitutional provision, see Joint State Government Commission, Taxation of Public Utility Realty (Harrisburg, 1970).

Notwithstanding the provisions of this section, any law which presently subjects real property of public utilities to local real estate taxation by local taxing authorities shall remain in full force and effect.

In Act No. 66 of 1970,<sup>2</sup> the Public Utility Realty Tax Act, which implements this constitutional provision, the General Assembly elected to forego the option of subjecting the real property of utilities to local taxation and to provide for a State public utility tax and distribution mechanism as suggested by the Constitution. Specifically, Act No. 66 provides for:

1. A 30-mill tax upon the book value (original cost less depreciation) of public utility realty to be levied annually with the proceeds paid into the General Fund of the Commonwealth.<sup>3</sup>
2. A total distribution to all local taxing authorities of an amount equivalent to ". . . the gross amount of real estate taxes which the local taxing authorities could have imposed upon such real property . . ." had it been taxed locally. This amount for each local taxing authority is termed the "realty tax equivalent" and is equal to the product of the local real property tax rate and the locally assessed valuation of public utility realty. The amount distributed annually, therefore, is the sum of all realty tax equivalents.
3. A distribution to each local taxing authority of a portion of the amount in (2) above equal to the proportion which the total local tax receipts of the taxing authority bears to the total local tax receipts of all local taxing authorities.

It may be readily observed that the amount distributed and the method of distribution in Act No. 66 follow precisely the constitutionally sanctioned guidelines.

As discussed in a previous report of this Commission,<sup>4</sup> the delegates to the Constitutional Convention were almost

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2. Act of March 10, 1970, P.L. 168.

3. Public utility realty is narrowly defined in the act to include lands, buildings and other structures but to exclude machinery and other equipment. This is consistent with the property tax treatment of all industrial property in the Commonwealth.

4. Taxation of Public Utility Realty, pp. 5-6.

unanimously determined to subject public utilities to some form of property taxation, but there was considerable disagreement as to the form of taxation and the beneficiaries of the tax receipts. The major objective of the delegates was to preclude taxing jurisdictions from receiving "large tax 'windfalls' because the bulk of utility properties might be located in one or a few jurisdictions while the service areas and those ultimately paying the taxes through the rates of the public utilities involves a much wider territory."<sup>5</sup>

Approximately one-third of the delegates voting, while still apparently opposed to "windfall" gains, attempted to persuade the convention to adopt a distribution formula which would give some fiscal recognition to the situs of public utility realty. Delegate Baldus, the spokesman for this group, explained:

The reason that the taxation subcommittee did not make . . . a recommendation [that "utilities simply be subject to local taxation and let it go at that"] and that the proponents of this amendment have not adopted that position is the concern expressed by many delegates and by many other individuals, that this would permit communities which have a very high proportion of their real estate used for public utility purposes, this direct taxation would permit a windfall to those communities. That is the basis of the theory against the direct taxation by local communities, that this would be disruptive of utility procedures and it would create difficulties at a local level.

It is for that reason that the committee rejected the theory of direct taxation by local government, and rather it provided in the alternative, for a taxation at the state level with redistribution to the local communities.

The point of our proposal is that this redistribution should be based on both population and the amount of exempt property.<sup>6</sup>

It was further argued that it would be a "fundamental inequity" for "communities which have a high percentage of

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5. Remarks of Delegate Woodring, co-chairman of the Committee on Taxation and State Finance, Debates of the Pennsylvania Constitutional Convention of 1967-1968, Vol. I, p. 429.

6. Debates, Vol. II, p. 692.

utility property" to "receive no greater proportion of the total fund than would a community that had no utility property."<sup>7</sup>

### Consequences of Existing System

Nowhere in the debates of the Constitutional Convention nor in the subsequent legislative implementation process which culminated in Act No. 66 was there any apparent recognition that the failure to consider situs in the distribution formula could ultimately impede the orderly and timely development of electric utility capacity in the Commonwealth.<sup>8</sup>

It has become commonplace for many local officials to vigorously protest the imposition of unreimbursed utility impact costs, the removal of a part of their tax base and the receipt of no more than a relatively trivial amount of funds distributed under Act No. 66. In one rural county with several large electric generating plants, the assessor has reportedly asserted that the local taxpayers would be far better off had the property remained as taxable farm land rather than be occupied by generating plants. Furthermore, this lack of local tax benefit has served as a disincentive to equitable tax assessment of utility property.

Unrealistic Utility Property Assessment and Fiscal Disparities--Some indication as to the extreme disparities between the costs and assessed values of electric generating plants and between the realty tax equivalents and the Act No. 66 distributions received by localities can be obtained by an inspection of Table 1.

The Springdale and Cheswick electric generating plants in Allegheny County are assessed at approximately \$17 million which, along with minor amounts of other utility property in the same jurisdictions, produces a realty tax equivalent for the local school district of \$870,054. The school district portion of Act No. 66 funds in 1976, however, amounted to only \$26,287, or .097 percent of the approximately \$27 million of Act No. 66 funds distributed.

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7. See comments of Delegate Baldus, Debates, p. 69.

8. Subsequent to the passage of Act No. 66 an attempt was made to change the distribution formula to give weight to the situs of utility property. The proposal, 1971 Senate Bill 141, Printer's No. 141, was amended on second consideration in the Senate on April 26, 1971 to remove the situs factor and restore the constitutionally specified distribution formula.



Table 1

ORIGINAL COST AND ASSESSED VALUE OF SELECTED ELECTRIC GENERATING PLANTS  
SCHOOL DISTRICT AND MUNICIPAL REALTY TAX EQUIVALENTS AND ACT NO. 66 DISTRIBUTION SHARES

County and generating plant	Original cost	Assessed value	Realty tax equivalent for all utility property		Act No. 66 distribution	
			Municipal taxing authority	School district	Municipal taxing authority	School district
Allegheny Springdale ) Cheswick )	\$34,234,000	\$17,059,882 <sup>a</sup>	\$197,943	\$870,054	\$2,788	\$26,287
Clearfield Shawville	16,857,000	480,000	2,464	36,562	742	21,473
Delaware Eddystone	72,818,000	1,140,200	33,107	171,030	1,999	65,866
Dauphin Three Mile Island ) Crawford )	115,771,000	343,605	0	23,240	1,156	25,151
Green Hatfield's Ferry	21,147,000	1,788,580	31,103	186,898	282	4,622
Indiana Homer City	43,394,000	1,363,520	7,503	65,727	974	6,681
Conemaugh	22,972,000	1,660,400	15,389	110,822	602	6,487
Lancaster Holtwood ) Safe Harbor )	26,467,000	2,606,380	0	239,787	750	34,958
Montour Montour	31,173,000	2,450,450	7,354	91,369	210	14,741
Northampton Martin's Creek	43,214,000	5,137,511	4,484	241,463	1,449	26,141
Philadelphia Schuylkill ) Delaware ) Richmond ) Southwark )	61,335,000	5,178,400	873,425	1,238,273	4,308,026	1,765,019
Snyder Sunbury	27,931,000	3,731,980	22,514	180,410	773	16,978
Washington El Rama ) Mitchell )	35,208,000	4,707,440	37,948	326,997	1,764	28,080
York Peach Bottom	239,819,000	165,990	495	31,056	695	10,043

a. Original county assessment was \$26,331,601. The Department of Revenue disallowed \$9,271,719 attributed to tax exempt items.

SOURCES: Pennsylvania Department of Revenue, county assessment offices and annual reports to the Federal Power Commission of individual utilities.

In contrast, the Peach Bottom plant in York County, originally costing about \$240 million, is assessed at only \$165,990.<sup>9</sup> This assessment, along with the assessed value of other utility realty, resulted in a school district realty tax equivalent of about \$31,000. The district received about \$10,000 in Act No. 66 funds, or .037 percent of the total amount distributed.

While the original cost of the Peach Bottom plant would appear to support a much higher assessed valuation, there is very little incentive for county authorities to place a realistic assessment upon the property. For example, an increase in the assessment by \$1 million would, at the school district tax rate of 97 mills, increase the realty tax equivalent by \$97,000. The net gain to the district, however, would be a mere .037 percent of this, or \$36.

While the data in Table 1 are fragmentary and are not necessarily typical of utility assessment practices throughout the State, they clearly indicate that many assessors (Philadelphia and Allegheny County excepted due to the large proportion of Act No. 66 funds received--38 percent) have little incentive to place realistic values upon utility property and may well consider it a routine administrative function with no meaningful fiscal effect.

An analysis of the relationship between tax collections and total distributions under Act No. 66 over the years since its enactment indicates increasingly ineffective assessment of utility property. Taxes on the book value of utility realty increased about 67 percent between 1970-1971 and 1975-1976.<sup>10</sup> Since book values customarily lag behind market values during inflationary periods, the 67 percent increase possibly understates the growth in market values to a significant degree. However, the amount distributed under the act--equal to total realty tax equivalents--increased only 30.5 percent between 1971-1972 and 1976-1977. Furthermore, about 28 percent of the increase in realty tax equivalents appears to be attributable to increases in millage rates, leaving the estimated increase in assessed values at about 22 percent. If assessed values had increased only in line with the 67 percent increase in book values, an additional \$10.5 million would have been distributed to local taxing authorities in 1976-1977.

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9. This assessment was subsequently reduced to a current valuation of \$52,120.

10. Collections of \$55,290,000 for 1975-1976 as shown in the budget have been reduced by \$3.9 million in accordance with Department of Revenue advice that a late payment in this amount should have been credited to prior fiscal year collections.

Resistance to Energy Facilities--The lack of fiscal incentive has been cited as a primary reason for local resistance to energy facilities in Pennsylvania:

While each of the . . . "inequities" [resulting from an energy park within a community] was recognized and discussed by public officials, none received the attention accorded perceived tax and financial inequities. . . .

Given the pattern of redistribution of tax revenues from utilities, local officials immediately recognized that their communities would not benefit from the facility unless the law was changed or special compensation plans were arranged. They realized that demands for services and impact on local government would create serious problems unless major revisions in the tax structure were made.<sup>11</sup>

In most other states, including all neighboring states, electric utility property taxes accrue directly to the local taxing districts in which the property is located even though in some instances such taxes are assessed by a state agency. Furthermore, most states include machinery and equipment as taxable real property or tax tangible personalty under a local general property tax.<sup>12</sup>

Studies show that residents of municipalities in other states which receive substantial revenues from utility taxes are supportive of plans to construct additional plant capacity and have positive attitudes toward the facilities located in their areas.<sup>13</sup> In many cases, the prospect of significantly increased utility tax revenues appears important enough to substantially change community attitudes toward new power plants.

A study by Purdy and Associates evidences that resident attitudes towards utility plant location are significantly influenced by the tax benefit of such location:

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11. Ferrar, Clemente and Brownstein, "Nuclear Energy Centers: Equity Considerations . . .," p. 13.

12. U.S. Bureau of the Census, Census of Governments, 1972, Vol. 2, Taxable Property Values and Assessment-Sales Price Ratios, Part 1: Taxable and Other Property Values (U.S. Government Printing Office: Washington, D.C., 1973).

13. See, for example, Frank Clemente, "Attitudes Toward New Industry," Rural Development (Winter 1976).

. . . most residents of both communities express favorable attitudes toward nuclear plants, primarily because of the substantial increase in the tax base of their communities. . . . The most significant input into the social system in both of these communities was the money from taxes . . . residents approve of their nuclear plant neighbor because of tax benefits. . . .<sup>14</sup>

#### OVERALL COMMUNITY IMPACTS

In evaluating the costs and benefits to a community of an energy facility, the side effects or impacts of the facility both during the construction period and while it is in operation must be considered. Such impacts are often grouped into three broad categories:

- Environmental
- Health and safety
- Social and economic.

While these areas overlap to some extent, the categories are useful in distinguishing the growing concerns of government over the community effects of siting decisions. Initially, government at all levels--federal, state and local--was primarily concerned only with health and safety issues. First the Federal Government and gradually the states applied environmental impact standards. More recently, predominately at the state level, social and economic impacts are becoming essential considerations in siting decisions.

One state, Wyoming, has adopted legislation requiring the applicant for site approval to submit a comprehensive plan for "alleviating social, economic or environmental impacts upon local government" and requiring that the plan specifically cover:

scenic resources, archeological and historical resources, land-use patterns, economic base, housing, transportation, anticipated growth of satellite industries, sewer and water facilities,

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14. Bruce Purdy et al., "Case Study of Community Effects of Two Operating Nuclear Power Plants," Oakland Ridge National Laboratory, Tennessee, 1976.

solid waste facilities, police and fire facilities, educational facilities, health and hospital facilities, water supply, and other relevant areas.<sup>15</sup>

A permit is required to be issued only if the impact on the "social and economic well-being of the municipality and people in the area where the facility is proposed to be located" is acceptable. No other state has yet followed Wyoming's example of statutorily focusing upon social and economic impacts. In a number of states, however, siting regulations require that information on such impacts be included in the siting-decision process.

### Construction Impacts

The construction-period impacts are usually designated as social costs even though there may be private benefits. Ordinarily, the costs imposed on communities precede the public benefits of an improved tax base from the plant or new home construction. Moreover, the costs incurred during the construction period may be experienced by communities outside the area receiving the primary tax benefits. If, as is currently the case in Pennsylvania, the power plant tax revenues directly available to local taxing authorities are negligible and the permanent employment associated with the plant is quite small, the perceived costs greatly outweigh the potential benefits.

The nature and extent of the impacts during the construction period have been the subject of a substantial body of literature. Many if not most of these impacts involve the increased social costs or overcrowding associated with such publicly funded assets or services as roads, sewage and water treatment facilities, solid waste disposal systems, hospitals and other medical facilities, police and fire protection, ambulance service, schools and general public administration and planning systems. Additionally, privately funded and supplied assets--e.g., doctors' offices, medical facilities, housing including trailer courts--may be impacted in adverse ways.

### Production-Period Impacts

The community impacts associated with a power plant in the production stages are a mix of positive and negative

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15. Wyo. Stat. §35-502.75 et seq.

elements. The positive elements are usually the increased tax receipts from the plant and from new houses built by the permanent population. In most states, as case studies indicate,<sup>16</sup> the taxes from the plant are the most evident and substantial local benefits associated with the facility. In fact, in some cases the utility tax revenues are enormous in relation to the population receiving them.<sup>17</sup>

Other economic benefits related to an ongoing production process are the secondary employment and income-generating effects related to the primary employment. As noted above, however, the primary employment at utility plants is not very large. Employment opportunities for local residents are not great because the skills needed are often not available in the local community, and the secondary employment and income effects are usually disappointingly small.

The costs of energy production to a local community can be increased air pollution, water pollution, aesthetic pollution and, in Pennsylvania, the loss of property tax revenues incurred whenever the utility property replaces former tax-yielding uses of the land.

The costs to Pennsylvania communities under current arrangements appear to greatly outweigh the meager benefits provided.

#### PROPOSED LEGISLATION

The proposed legislation implementing task force recommendations on payments to political subdivisions is set forth starting at page 53.

The system of reimbursements and subventions to political subdivisions affected by the construction and operation of energy facilities recognizes the basic difference between front-end or construction period impacts and ongoing effects--principally the tax-base loss. The type and magnitude of

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16. See, NACo Case Studies on Energy Impacts, No. 4; Nuclear Power Plant Development Boom or Boon? County Experiences (Washington, D.C.: National Association of Counties, 1976).

17. For example, Lower Alloways Creek Township, New Jersey, received \$4,460,574 in 1975 from a state-collected gross receipts tax on utilities. This was equivalent to a grant of \$3,186 per capita in the township. As a result of this substantial continuing windfall, the township stopped taxing its residents and now enjoys an accumulated budget surplus of nearly \$8 million.

front-end impacts are normally unique to a given site and are not amenable to formula-type distributions. Also, impacts during construction may well affect surrounding localities as much or more than the site community.

The choice of physical plant output as the base for calculating annual subventions to taxing authorities was dictated by several factors. No other reliable measure of the market value of generating plants exists. As previously noted, locally assessed values exhibit extreme variation from county to county and book values uncorrected for inflation are equally unsatisfactory. Since the only purpose of a generating plant is to produce electricity, the production itself serves as an index of true value.

No measure of plant value could be transformed proportionately into the amount of the annual subvention else the large "windfall gains" which the delegates to the Constitutional Convention worked so diligently to prevent would be unavoidable. Under the recommended formula, therefore, increases in plant output result in less than proportionate increases in subventions once an output of 500 million kilowatt-hours is reached.

The estimated gross distribution under the recommended formula on account of each generating plant with an annual output exceeding 100 million kilowatt-hours in 1975 is shown in Table 2. The amounts shown would be divided among the local taxing authorities of the plant location in the following manner: municipality, 15 percent; school district, 65 percent; and county, 20 percent. These percentages approximate the distribution of total real property taxes among the three types of local taxing authorities. The legislation requires that the annual subvention be used for permanent property tax relief.

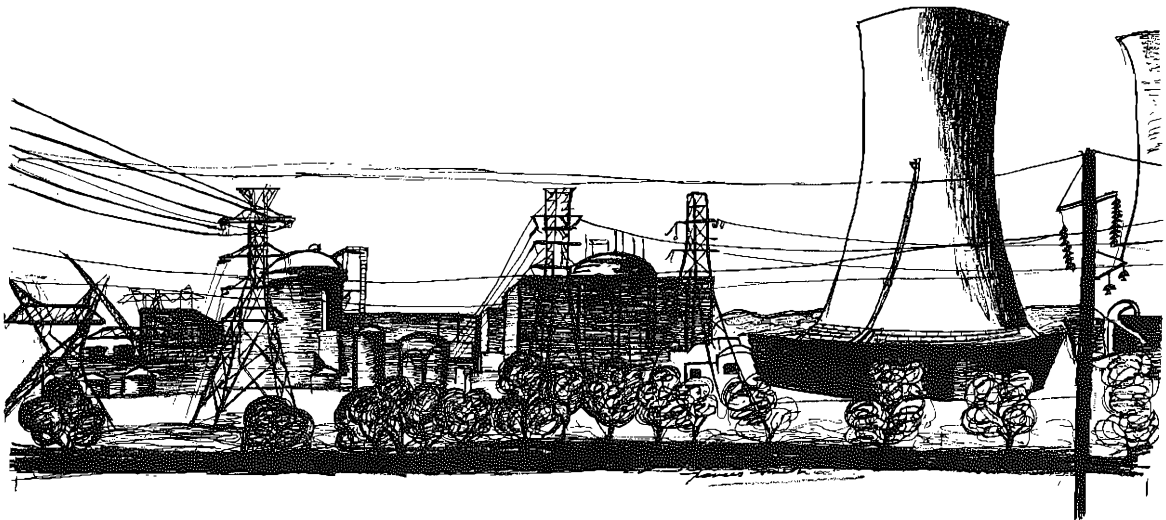


Table 2

ESTIMATED GROSS DISTRIBUTIONS ON ACCOUNT OF  
ELECTRIC GENERATING PLANTS PRODUCING  
100 MILLION KWH OR MORE IN 1975

Plant name	County	Net generation (millions of kwh)	Gross distribution <sup>1</sup>
Peach Bottom	York	10,237	\$474,740
Keystone	Armstrong	10,087	471,740
Hatfield's Ferry	Greene	9,416	458,320
Montour	Montour	9,394	457,880
Brunner Island	York	8,845	446,900
Conemaugh	Indiana	8,693	443,860
Three Mile Island	Dauphin	5,542	380,840
Homer City	Indiana	4,446	358,920
Shawville	Clearfield	4,111	352,220
Eddystone	Delaware	4,035	350,700
Cheswick	Allegheny	3,394	337,880
Sunbury	Snyder	2,667	323,340
El Rama	Washington	2,508	320,160
Portland	Northampton	2,221	314,420
Martin's Creek	Northampton	2,197	313,940
Mitchell	Washington	1,875	307,500
Armstrong	Armstrong	1,855	307,100
New Castle	Lawrence	1,769	305,380
Philips	Allegheny	1,712	304,240
Cromby	Chester	1,594	301,880
Seward	Westmoreland	1,411	286,650
Holtwood	Lancaster	1,284	267,600
Muddy Run	Lancaster	1,275	266,250
Safe Harbor	Lancaster	1,262	264,300
Titus	Berks	1,199	254,850
Schuylkill	Philadelphia	1,100	240,000
Delaware	Philadelphia	1,079	236,850
Croydon	Bucks	686	177,900
Seneca	Warren	671	175,650
Front Street	Erie	585	162,750
Warren	Warren	518	152,700
Southwark	Philadelphia	494	148,200
Brunot Island	Allegheny	372	111,600
Hunlock	Luzerne	312	93,600
Chester	Chester	204	61,200
Crawford	Dauphin	202	60,600
Williamsburg	Blair	187	56,100
Richmond	Philadelphia	185	55,500
Lake Lynn	Greene	158	47,400
Springdale	Allegheny	157	47,100
York-Haven	York	151	45,300
Barbadoes	Montgomery	137	41,100
Richmond	Philadelphia	137	41,100
Wallenpaupack	Pike	103	30,900

1. Calculated by reference to the following formula: \$300 per million kilowatt-hours for first 500 million kilowatt-hours; \$150 per million kilowatt-hours for next billion kilowatt-hours and \$20 per million kilowatt-hours for output above 1.5 billion kilowatt hours.

SOURCES: Annual reports of individual utilities to Federal Power Commission, 1975.



## V. TAXATION AND INTERSTATE TRANSMISSION OF ELECTRICITY

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### EXISTING PENNSYLVANIA LAW

Since the development of long-distance electric transmission, power is often generated in one state and consumed in another. In recent years several producing states other than Pennsylvania have changed their utility tax structures to obtain revenues from interstate utility operations.<sup>1</sup> Such taxes have consistently been upheld by the courts.

As shown in Table 3 on the following page, although out-of-state electric utilities produce a substantial quantity of power in Pennsylvania, they pay a relatively insignificant amount of taxes. In 1975 such foreign utilities generated approximately 29.2 percent as much electric power in the Commonwealth as did domestic utilities but paid only 2.6 percent of the taxes paid by domestic utilities.

Section 1101 of the Tax Reform Code of 1971 imposes a 45-mill tax on gross receipts.<sup>2</sup> Section 1101, in relevant extract, provides:

Every . . . electric light and power, water power, hydro-electric . . . business in this Commonwealth shall pay . . . a tax of 45 mills upon each dollar of the gross receipts . . . from the sales of electric energy, . . . [excluding sales for taxed resales] . . . done wholly within this State.

This tax statute, containing archaic terminology enacted in 1889, has been administered and interpreted to apply only to intrastate operations. No attempt appears to have been made to amend the gross receipts tax to provide

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1. Taxes of other states presently affect Pennsylvania utilities. Both Duquesne Light and West Penn Power have generating facilities in West Virginia and are liable for the "manufacturers'" tax on the generation of electricity levied by that state; these taxes are presumably paid ultimately by Pennsylvania consumers.

2. Act of March 4, 1971, P.L. 6, No. 2.

Table 3

TAX PAYMENTS AND PRODUCTION IN PENNSYLVANIA  
DOMESTIC AND FOREIGN ELECTRIC UTILITIES, 1975

Item	Eight Domestic Utilities <sup>1</sup>	Twelve Foreign Utilities <sup>2</sup>
Capital stock or franchise tax	\$26,294,000	\$1,037,000
Corporate net income tax	26,742,000	470,000
Public utility realty tax	31,045,000	4,193,000
Utility gross receipts tax	<u>130,719,000</u>	<u>--</u>
Total	214,800,000	5,700,000
KWH production (in millions)	87,898	25,671

1. Includes utilities with more than \$20 million annual revenue: Duquesne Light, Philadelphia Electric, Pennsylvania Power and Light, Pennsylvania Electric, Pennsylvania Power, West Penn Power, Metropolitan Edison and Potomac Edison of Pennsylvania.

2. Delmarva Power and Light, Jersey Central Power and Light, Atlantic City Electric, Cleveland Electric, Potomac Electric, Toledo Edison, Baltimore Gas and Electric, Public Service Electric and Gas, Ohio Edison, Monongahela Power, New York State Electric and Gas and Potomac Edison.

SOURCES: Pennsylvania Department of Revenue by letter of December 28, 1976; Pennsylvania Department of Commerce, 1975 Statistics for Electric Utilities, Tables 7 and 8.

for the "equitable" allocation of gross receipts arising from interstate operations, although at least since 1959, U.S. Supreme Court decisions involving other types of utilities have upheld such allocations in the face of repeated constitutional challenges.

#### FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS

A traditional view of the interstate commerce clause of the U.S. Constitution (Article I, Section 8, Clause 3) holds that the provision reflects an "underlying philosophy that interstate commerce should enjoy a sort of 'free trade' immunity from state taxation."<sup>3</sup> This interpretation has been criticized in numerous Supreme Court opinions which, in upholding various state taxes, have concluded that:

"[i]t was not the purpose of the commerce clause to relieve those engaged in interstate commerce from their just share of state tax burden even though it increases the cost of doing the business."<sup>4</sup>

Complete Auto Transit v. Brady, decided March 7, 1977, reinforces the latter viewpoint and specifically overrules Spector Motor Service v. O'Connor, the leading "free trade" immunity case.<sup>5</sup> Having repudiated the "free trade" immunity approach, the court holds that standards developed by it to test whether a specific state statute violates the interstate commerce clause must be applied to determine the statute's validity. In General Motors Corp. v. Washington, the court stated:

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3. See Spector Motor Service v. O'Connor, 340 U.S. 602, 71 S.Ct. 508 (1951); Freeman v. Hewit, 329 U.S. 249, 64 S.Ct. 849 (1946), discussed in Complete Auto Transit v. Brady, 97 S.Ct. 1076 (1977).

4. Complete Auto Transit v. Brady, *supra*, quoting from Western Live Stock v. Bureau of Revenue, 303 U.S. 250, 254, 58 S.Ct. 546 (1938).

5. On March 22, the U.S. Supreme Court dismissed "for want of a substantial Federal question" an appeal from the New Jersey Department of Treasury (Division of Tax Appeals, Docket No. M.C. 339) which upheld a New Jersey allocation formula applied to natural gas transfers within New Jersey which were "an integral, inseparable part of the interstate process." The gas was transferred through New Jersey for transmission to New York and New England "without pause or interruption." Texas Eastern Transmission Corp. v. Director, Division of Taxation, 45 Law Week 3626.

[T]he validity of the tax rests upon whether the State . . . has exerted its power in proper proportion to appellant's activities within the State and to appellant's consequent enjoyment of the opportunities and protections which the State has afforded. . . . As was said in Wisconsin v. J. C. Penney Co. 311 U.S. 435, 444, 6 S.Ct. 246, 250, 85 L.Ed. 267 (1940), "[t]he simple but controlling question is whether the state has given anything for which it can ask return. . . .<sup>6</sup>

Complete Auto Transit holds that a state may constitutionally tax the out-of-state sales of electricity as long as it complies with the General Motors Corp. v. Washington standard.

In analyzing the "burdens" standard, it is apparent that foreign utilities own and operate property in Pennsylvania, utilize Pennsylvania services, impose costs upon the Pennsylvania environment, deplete Pennsylvania's natural resources and pay relatively insignificant amounts of other corporate taxes compared with volume of electricity produced. There would appear to be considerable economic and legal justification for a substantial increase in the tax contributions of foreign electric utilities.

Though a tax on foreign utility electric generation in Pennsylvania is clearly constitutionally permissible, inquiry as to the validity of any given tax must admit that a finding of "burdensome" impact upon interstate activity would invalidate the specific tax. For example, a tax on total gross receipts generated by partial cost-incurring activities within the boundaries of Pennsylvania would be constitutionally suspect. On the other hand, taxation of a fairly apportioned share of those receipts would not. The U.S. Supreme Court has upheld apportioned state taxes affecting interstate transactions in numerous cases. For example, in Complete Auto Transit, the Supreme Court quoted from a 1959 case:

In Northwestern Cement Co. v. Minnesota, 358 U.S. 450 (1959), the Court held that net income from the interstate operations of a foreign corporation may be subjected to state taxation, provided the levy is not discriminatory and is

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6. 337 U.S. 436, 440-441, 84 S.Ct. 1564, 1568 (1964).

properly apportioned to local activities within the taxing State forming sufficient nexus to support the tax. Limited in that way, the tax could be levied even though the income was generated exclusively by interstate sales. [Emphasis supplied.]

A companion decision upheld a franchise tax on intangible property in the form of going-concern value as measured by gross receipts. In Railway Express Agency v. Virginia,<sup>7</sup> the Commonwealth of Virginia apportioned the gross receipts of the express company to Virginia, using a formula that reflected the proportion of mileage in Virginia to the company's total national mileage. In addition to holding that the tax did not violate the interstate commerce clause, the U.S. Supreme Court declined to consider the "exactitudes" of the formula "where appellant has not shown it to be so baseless as to violate due process. . . ."8

The proposed apportionment formula for electricity that is generated in Pennsylvania and transmitted to other states is premised on the fact that the costs attributable to activities occurring in the Commonwealth as compared with the total costs provides an accurate "fair" proportion upon which the tax rate may be imposed. In any event, under the above quoted standard, it may not be said that such an apportionment is "baseless."

The cost-ratio formula ensures that the tax will only be imposed on those gross receipts attributable to Pennsylvania operations.

In 1976 Congress interjected an additional factor into the taxation of interstate electricity transactions. Any extension of the gross receipts tax to all electricity produced in the Commonwealth must also comply with Section 2121 of the Federal Tax Reform Act of 1976, entitled "Prohibition of Discriminatory State Taxes on Production and Consumption of Electricity."<sup>9</sup> This provision was added as a result of a dispute between New Mexico and its surrounding states.

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7. 358 U.S. 434, 79 S.Ct. 411 (1959).

8. Railway Express v. Virginia, *supra*, at 79 S.Ct. 413.

9. P.L. 94-445, codified as 15 U.S.C. 391.

New Mexico serves as the site of several generating plants which provide electricity to neighboring states, particularly Arizona. To obtain revenue from this activity, New Mexico levied a "generation tax" on all electricity produced within the state, but permitted the generation tax to be applied as a credit against the gross receipts tax levied upon domestic utilities. Senator Fannin of Arizona sponsored the provision which, as enacted, reads:

No State, or political subdivision thereof, may impose or assess a tax on or with respect to the generation or transmission of electricity which discriminates against out-of-State manufacturers, producers, wholesalers, retailers, or consumers of that electricity. For purposes of this section a tax is discriminatory if it results, either directly or indirectly, in a greater tax burden on electricity which is generated and transmitted in interstate commerce than on electricity which is generated and transmitted in intrastate commerce. [15 U.S.C. 391]

The Senate committee report on the tax reform act contains the following rationale:

The committee has learned that one State places a discriminatory tax upon the production of electricity within its boundaries for consumption outside its boundaries. While the rate of the tax itself is identical for electricity that is ultimately consumed outside the State and electricity which is consumed inside the State, discrimination results because the State allows the amount of the tax to be credited against its gross receipts tax if the electricity is consumed within its boundaries. This credit normally benefits only domiciliaries of the taxing State since no credit is allowed for electricity produced within the State and consumed outside the State. As a result, the cost of the electricity to nondomiciliaries is normally increased by the cost the producer of the electricity must bear in paying the tax. However, the cost to domiciliaries of the taxing State does not include the amount of the tax.

The committee believes that this is an example of discriminatory State taxation which is properly within the ability of Congress to prohibit through its power to regulate interstate commerce.

### Explanation of Provision

The committee amendment prohibits any State, or political subdivision of a State, from imposing a tax on or with respect to the generation of electricity for transmission in interstate commerce if the tax is discriminatory against out-of-state manufacturers, producers, wholesalers, retailers, or consumers of that electricity. A tax is considered discriminatory if it directly or indirectly results in the payment of a higher gross or net tax on electricity generated and transmitted in interstate commerce than on electricity which is generated and transmitted in intrastate commerce.

This provision is not intended to prohibit, restrain, or burden any other State which currently imposes a nondiscriminatory tax on the generation of electricity.<sup>10</sup>

The provisions of the Federal Tax Reform Act of 1976 addressed a peculiar tax in one state and was not meant to disturb any "nondiscriminatory" state taxes on generation of electricity.<sup>11</sup>

### PROPOSED LEGISLATION

The proposed legislation implementing the recommendations of the task force to extend the electric utility gross receipts tax to out-of-state sales is set forth beginning on page 59.

In view of the obvious disproportion between power produced and taxes paid by domestic and out-of-state utilities, the proposed tax cannot be termed discriminatory. Coupled with the proposed allocation formula based on site-specific costs, the extension of the gross receipts tax to out-of-state sales brings into closer balance the tax impact on all electric utilities.

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10. Senate Report 94-938, June 10, 1976.

11. Staff has been informally advised that Section 2121, as finally enacted, was not intended to affect existing state taxes on interstate electricity transmissions in states such as West Virginia. Also see memorandum from the Congressional Research Service of the Library of Congress to Honorable Paul J. Fannin, October 21, 1975, on file with the Commission.

## VI. PROPOSED LEGISLATION

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### ENERGY FACILITY SITING

#### AN ACT

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, adding provisions relating to energy facility siting and making appropriations.

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#### TITLE 66

#### PUBLIC UTILITIES

#### Chapter 51. Energy Facility Siting

##### Subchapter A. General Provisions

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##### Subchapter B. Siting Procedures

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- § 5115. Judicial review.



§ 5116. Actions to enjoin violations.

Subchapter C. Payments to Political Subdivisions

§ 5121. Reimbursement of costs.

§ 5122. Annual distributions to reduce tax burden.

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

Section 1. Part II of Title 66, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended by adding a chapter to read:

CHAPTER 51

ENERGY FACILITY SITING

Subchapter

A. General Provisions

B. Siting Procedures

C. Payments to Political Subdivisions

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

5101. Declaration of policy.

5102. Definitions.

5103. Energy Facility Siting Interagency Commission.

5104. Powers and duties of commission.

§ 5101. Declaration of policy.

The General Assembly hereby finds and declares that the public interest in the environment, commerce within this Commonwealth, economic well-being of the citizens, public health and welfare, public and private investors in utility facilities, consumers of energy and interstate cooperation require that:

(1) Bulk power facilities adequate to the need of this Commonwealth for a reliable, sufficient and economical energy

supply be constructed and operated on a timely basis and in a manner consonant with the preservation of important environmental values and comprehensive use of the air, land, water and energy resources of this Commonwealth.

(2) In order to avoid unnecessary delays in the construction and operation of needed bulk power facilities and to provide for full and timely analysis of the environmental consequences at the earliest possible opportunity, each utility operating in this Commonwealth be required to engage in adequate long-range planning with public availability of the plans for review and comment.

(3) The siting of major power plants and high-voltage electric transmission lines be treated as a significant aspect of land use planning in this Commonwealth, in which all environmental, economic and technical issues with respect to a proposed bulk power facility should be resolved in an integrated fashion.

(4) Reviews by Commonwealth agencies and political subdivisions of proposed bulk power facilities be consolidated and coordinated to eliminate redundant evaluation procedures so as to provide a one-stop clearance mechanism coordinated in time and place and, insofar as possible, with necessary reviews by the Federal Government.

(5) Construction and operation of needed bulk power facilities and full environmental review of all such proposed facilities be expedited through the establishment of preconstruction review and certification procedures under the authority of a Commonwealth agency with expertise to accommodate both matters of power production and matters of environmental protection.

(6) The mechanism established facilitates the participation and cooperation of public and private interests in neighboring states in the preconstruction review and certification procedures of facilities affecting those states.

§ 5102. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Bulk power facility."

(1) Energy generating and conversion equipment and associated real and personal property designed for, or capable of, any of the following:

(i) Generation at a capacity of 100,000 kilowatts or more.

(ii) Producing 100 million cubic feet of synthetic gas per day.

(iii) Producing 50,000 barrels of liquid hydrocarbon products per day by any extraction process.

(2) Electric transmission lines and associated property designed for, or capable of, operation at a nominal voltage of 100 kilovolts or more, between phase conductors for alternating current or between poles for direct current.

(3) Sizable additions to existing energy generating and conversion facilities as determined by the commission in accordance with the capacities specified in paragraph (1) or (2).

"Certificate." A certificate of public need and environmental compatibility issued by the commission.

"Commission." The Energy Facility Siting Interagency

Commission of the Commonwealth.

"Construction."

(1) Any disturbance or clearing of the land, erection thereon of any structure, or other substantial action that would affect the natural environment of the site or route.

(2) The term "construction" does not include:

(i) Preconstruction surveying, monitoring or testing (including borings) to determine foundation conditions or to establish background information related to the suitability of the site or to the protection of environmental values.

(ii) Changes desirable for the temporary use of the land for public recreational uses.

"Utility." Any person, corporation, political subdivision or other entity which owns or operates a bulk power facility within this Commonwealth, or which intends to construct such a facility, however organized, whether investor owned, publicly owned or cooperatively owned and whether or not subject to the jurisdiction of the Pennsylvania Public Utility Commission.

§ 5103. Energy Facility Siting Interagency Commission.

(a) Establishment and composition.--There is hereby established as an independent Commonwealth agency an interagency commission known as the Energy Facility Siting Interagency Commission which shall consist of the following:

- Secretary of Agriculture
- Secretary of Commerce
- Secretary of Community Affairs
- Secretary of Environmental Resources
- Secretary of Labor and Industry
- Secretary of Transportation

Chairman of the Public Utility Commission

Four citizens appointed by the Governor with the advice and consent of the Senate, two of whom shall be elected municipal government officials.

(b) Special provisions for citizen members.--No citizen member of the commission shall have any financial interest in any utility. Citizen members shall serve a term of four years and may be reappointed. Every citizen member shall be entitled to reimbursement for his actual expenses incurred in the performance of his duties and compensation of \$100 for each day or part thereof in which he participates in the business of the commission.

(c) Chairman.--The Governor shall appoint, with the advice and consent of the Senate, a person who shall serve as the chairman of the commission without a vote. The compensation of the chairman shall be determined by the commission after consultation with the Executive Board.

(d) Staff.--The commission shall employ such employees and advisors as shall be required to administer the provisions of this chapter.

§ 5104. Powers and duties of commission.

The commission shall have the power and its duty shall be to:

(1) Review and compile the long-range bulk power facilities reports filed under this chapter and make the information contained in the reports readily available to the public and interested government agencies.

(2) Compile and publish each year a description of the type and general location of each proposed bulk power facility as contained in the long-range plans of the utilities pursuant to this chapter, identifying for each

location the year when construction is expected to commence and make such information readily available to the general public, to each newspaper of daily or weekly circulation within the area affected by the proposed facility and to interested government agencies.

(3) Conduct mandatory public hearings with respect to any proposed bulk power facility identified five years in advance of construction and decide whether or not the facility should be approved for inclusion in the utility's five-year inventory of sites and lines. The hearings shall be held promptly after the locations are first identified and the decisions shall be based upon the principles set forth in this chapter.

(4) Conduct public hearings prior to the issuance of any certificate for an energy generating or conversion plant as near as feasible to the proposed site within one year from the submission of an application for a certificate and conduct at least one public hearing for transmission lines as near as possible to the proposed transmission line. The commission shall hold as many additional hearings along the proposed route of the transmission line as may be necessary to give the public an adequate opportunity to be heard.

(5) Require such information from utilities as the commission deems necessary to accompany applications for certificates and require the utilities to assist in the conduct of hearings and any investigations or studies which the commission may undertake.

(6) Conduct such inspections, surveys, monitoring or testing, with or without notice to the utility, as it deems necessary or appropriate to carry out the purposes of this

chapter.

(7) Approve, with or without conditions, or disapprove applications for certification filed under section 5112 (relating to certification of bulk power facilities) within two years of receipt of the application.

(8) Adopt such rules and regulations as are necessary to implement this chapter.

#### SUBCHAPTER B

#### SITING PROCEDURES

Sec.

5111. Long-range planning.

5112. Certification of bulk power facilities.

5113. Authority of other government agencies.

5114. Interagency cooperation.

5115. Judicial review.

5116. Actions to enjoin violations.

§ 5111. Long-range planning.

The commission shall prepare and maintain a comprehensive, integrated bulk power facilities plan for this Commonwealth. Every utility shall prepare and submit annually to the commission a long-range bulk power facilities report. The report shall contain a ten-year forecast of loads, resources and prospective sites and shall describe the bulk power facilities which will be required to supply system demands during the forecast period. The report shall cover the ten-year period next succeeding the date of the report and shall be in such form as may be prescribed by the commission. Each utility shall provide in its report the following information:

(1) A description of the general location, size and type of all bulk power facilities to be constructed within this

Commonwealth during the ensuing ten years by the utility.

(2) An identification, description and location of all existing bulk power facilities within this Commonwealth to be removed from service upon the completion of the projects described or within the time period provided in this chapter.

(3) Identification of the location of tentative sites within this Commonwealth upon which construction of a bulk power facility is scheduled to commence within the ensuing five-year period. For each tentative site identified, the utility shall describe the type and size of bulk power facility to be constructed, analyze anticipated impact of the facility on the environment and public safety and health and set forth the plan of the utility for avoiding or minimizing any adverse effects on the environment and public safety and health including, but not limited to, those caused by waste products of any kind as well as heated water.

(4) A description of plan of the utility to coordinate its bulk power facility plans with those of other utilities so as to provide an integrated regional and Commonwealth plan for meeting the energy needs of the region and this Commonwealth.

(5) A description of its plan to involve Federal, regional, Commonwealth and local government conservation and land-use agencies, as well as public conservation and environmental protection organizations, in their planning so as to identify and minimize environmental problems at the earliest possible stage in the planning process.

(6) A statement of the estimate of demand by the utility for power in each year of the time period set under this chapter. This estimate shall also state particularly:



(i) That portion of the demand for power which is to be met by each bulk power facility.

(ii) That portion of the demand which originates outside this Commonwealth and that portion which originates within this Commonwealth.

(iii) That portion of the power to be produced or transmitted by any bulk power facility which is to be allocated to users within this Commonwealth.

(iv) That portion of the power to be produced or transmitted by each bulk power facility which will be allocated to users outside this Commonwealth.

(7) Such additional information as the commission may require to implement this chapter.

§ 5112. Certification of bulk power facilities.

(a) General rule.--A utility shall not commence construction or begin operation of a bulk power facility without obtaining a certificate of public need and environmental compatibility from the commission. The facility shall be constructed, operated and maintained in accordance with the terms and conditions required by the commission and set forth in the certificate.

(b) Application.--Application for a certificate shall be on such forms and contain such information as required by the commission, including statements that either the necessary requirements have been met and approvals or consents have been obtained or that the facility complies with the standards and criteria applicable to it, or the reasons why such standards and criteria should be varied for the site, and shall be filed with the commission not less than two years prior to commencement of construction. An application may be amended during the period of review with the approval of the commission. All bulk power

facilities, the certification of which is applied for, shall be planned for construction on sites in the five-year inventory of sites of the applicant approved by the commission pursuant to this chapter unless for good cause shown the commission waives this requirement.

(c) Fee.--Each application for a certificate filed shall be accompanied by a fee of \$25,000 which shall be paid into the General Fund for use in defraying the administrative costs of the commission.

(d) Issuance.--No certificate shall be issued until the commission has determined that:

(1) The use of the site or routes for which a certificate is sought is consonant with the protection of the environment, public safety and health as provided in this chapter.

(2) The facility for which a certificate is sought is necessary to meet the energy needs of this Commonwealth.

(3) The facility is designed to operate in a safe and healthful manner.

(4) The facility is consistent with the long-range planning objectives of this Commonwealth.

(5) The facility will have no substantial adverse environmental effect upon parkland, wildlife protection reserves and historic areas.

(6) All practical alternative sites and routes have been considered.

(7) The provisions of this chapter have been satisfied and all requirements met or waived and approvals obtained or waived by the agency involved or the commission.

(e) Expiration or extension.--Any certificate granted by the

commission shall expire if the construction of the facility has not been commenced within five years of the date of issuance. A certificate shall be extended, without an additional fee, for one five-year period upon written request by the utility to the commission.

(f) Emergency certification.--Notwithstanding the other provisions of this chapter, a utility may petition the commission for an interim or emergency certificate based upon its showing that the public interest imperatively requires a prompt decision with respect to the facility. The commission shall adopt rules and regulations for reviewing such petitions, giving due consideration to the effect upon the public of adequate and reliable energy supply and the effect of the lack of prompt action, or of inconclusive action. The commission shall make a decision on the petition within 90 days of the date of filing thereof.

(g) Existing facilities.--Utilities which have commenced or completed construction of bulk power facilities which are not in operation on the effective date of this chapter shall be issued a certificate, without payment of fee, upon filing with the commission an application containing the following:

(1) A description of the location, type of facility and date operation is scheduled to begin.

(2) Evidence that all licenses, permits and approvals required by the Federal, regional, Commonwealth and local governments for the protection of the environment and public welfare, safety and health have been obtained.

(3) A statement of the quantity of power to be produced or transmitted, the geographic area to be serviced by the facility and the quantity of power to be generated or

transmitted for use within this Commonwealth.

§ 5113. Authority of other government agencies.

No Commonwealth agency or political subdivision may require any approval, consent, permit, license or other condition for the construction of a bulk power facility authorized by a certificate issued pursuant to section 5112 (relating to certification of bulk power facilities) except that a Commonwealth agency or political subdivision may object to the commission to the inclusion of a site in the five-year inventory or the approval of a certificate if its standards and criteria are not met.

§ 5114. Interagency cooperation.

The Pennsylvania Public Utility Commission, Department of Environmental Resources and other Commonwealth agencies are authorized and required to cooperate with the commission so as to fully coordinate and effectuate the purposes of this chapter. All Commonwealth agencies shall make available to the commission such information, staff expertise and technical assistance as may be necessary.

§ 5115. Judicial review.

Within 30 days of the grant, denial, revocation or suspension of a certificate by the commission, any aggrieved party to the proceeding may appeal the action of the commission to the Commonwealth Court. The findings of fact on which such decision is based shall be conclusive if supported by substantial evidence on the record considered as a whole.

§ 5116. Actions to enjoin violations.

When the commission determines that a utility has begun to construct, operate or maintain a bulk power facility as provided in this chapter without having first obtained a certificate, or

has begun to construct, operate or maintain a bulk power facility other than in compliance with the certificate issued to it, or has caused any of these acts to occur, it shall so notify the Attorney General who shall bring an action for injunctive and other appropriate relief on behalf of the Commonwealth.

#### SUBCHAPTER C

#### PAYMENTS TO POLITICAL SUBDIVISIONS

Sec.

5121. Reimbursement of costs.

5122. Annual distributions to reduce tax burden.

§ 5121. Reimbursement of costs.

(a) Planning costs.--Any political subdivision, referred to in this subchapter as "local taxing authority," which would be directly affected by the location of a proposed bulk power facility owned by a public utility for which certification under section 5112(a) (relating to certification of bulk power facilities) is sought shall be eligible for reimbursement for legal and expert consultant fees, planning costs and other expenses incurred in determining the impact of the proposed facility and costs incurred in preparing testimony incident thereto. The reimbursement shall be in an amount determined by the commission but shall not exceed 75% of the actual expenditures of the local taxing authority or \$25,000 for any local taxing authority or \$100,000 for any proposed site.

(b) Impact costs.--Each local taxing authority which is directly affected by the location of a bulk power facility owned by a public utility certified pursuant to the provisions of section 5112 shall be eligible for reimbursement for the actual costs or portion thereof incurred or to be incurred by the local taxing authority on account of expenditures directly related to

the construction of a bulk power facility as determined by the commission. Reimbursable items of expenditure shall include, but are not limited to, public service costs for fire, police, roads, solid waste, sewage, education, health, welfare, recreation and related administration. The total amount distributed on account of any one certified site shall not exceed \$850,000 and the total amount distributed in any fiscal year by the commission for impact costs shall not exceed \$2,000,000.

(c) Revolving fund for financing capital projects.--Any municipality that is required to construct or expand a major public capital facility including, but not limited to, streets or highways, bridges, sewage disposal and sewage treatment facilities, solely by virtue of the direct or indirect effects attributable to the location and construction of a bulk power facility owned by a public utility shall be eligible for an advance from a revolving fund hereby established to finance part or all of such capital facility. Any advance from the fund shall be repaid in annual installments and shall not bear interest. The commission shall establish a repayment schedule for each advance, not to exceed ten years, taking into account the amount thereof and the fiscal capacity of the municipality.

(d) Administration of payments.--The distributions provided for in subsections (a), (b) and (c) shall be made by the commission from funds appropriated to it for such purposes. In all cases the commission shall insure that:

(1) All costs and expenditures reimbursed are attributable to the location or construction of the bulk power facility.

(2) The costs and expenditures are necessary to the

welfare and well-being of the residents of the local taxing authority and do not finance a level of public services higher than would exist absent the bulk power facility.

(3) No payment shall exceed actual costs incurred or to be incurred by a local taxing authority.

The commission shall have the authority to allocate funds in the event requests for distributions exceed applicable limits.

§ 5122. Annual distributions to reduce tax burden.

(a) General rule.--The local taxing authorities in which is located every electric generating plant owned by a public utility subject to the jurisdiction of the Pennsylvania Public Utility Commission or the corresponding regulatory agency of any other state or of the United States, but not including a municipality or municipal authority, shall be entitled to an annual subvention calculated by reference to the net annual generation of electricity by the plant.

(b) Calculation of gross amount.--The gross subvention attributable to any generating plant shall be the sum of:

\$300 per million kilowatt-hours for each of the first 500 million kilowatt-hours generated.

\$150 per million kilowatt-hours for each of the next 1,000 million kilowatt-hours generated.

\$20 per million kilowatt-hours for all kilowatt-hours generated in excess of 1,500 million kilowatt-hours.

(c) Distributions among local taxing authorities.--

(1) Plant located in only one county.--If an electric generating plant, including such surrounding real property as is necessary for its operation, is located in only one county the gross amount calculated under subsection (b) shall be allocated to local taxing authorities under the following

formula:

65% to the school district or school districts of location (notwithstanding that a portion of a school district lies in another county).

15% to the municipal corporation or corporations of location.

20% to the county.

If the plant is located in more than one school district or more than one municipal corporation within the county, the amounts so allocated shall be divided among the individual school districts or among the individual municipal corporations on the basis of the proportion of the total assessed value of the real property of the plant which lies in each school district or in each municipal corporation.

(2) Plant located in more than one county.--In the event an electric generating plant is located in more than one county, the gross amount calculated under subsection (b) shall be allocated among the counties on the basis of the proportion of the total equalized assessed value of the real property of the plant which lies in each county. The assessed-market value ratios, as ascertained by the State Tax Equalization Board for each county for school subsidy purposes, shall be utilized to equalize the county-assessed values of the real property of the plant. The amounts so allocated shall be divided among the local taxing authorities in each county in accordance with the provisions of paragraph (1).

(d) Reports.--Annually, on or before April 1, every public utility shall report to the commission the following information for each electric generating plant which it operates:



(1) The location by local taxing authority.

(2) The assessed value for county tax purposes of the plant (including such surrounding real property as is necessary for its operation) and the assessed values of the portions of the plant, if any, which are not located within coincident local taxing authorities.

(3) The net kilowatt-hours of electricity generated during the preceding calendar year. In the case of pumped storage generating plants, net electricity generated shall be generation exclusive of plant use.

(4) Such additional information as may be required by the commission to administer this subchapter.

(e) Payments.--The annual subvention authorized by this section shall be calculated by the commission on the basis of the information furnished pursuant to subsection (d) and payment shall be made to each eligible local taxing authority on or before June 30 of each year. No payment shall be made on account of any plant for which the gross subvention calculated under subsection (b) is less than \$1,000.

(f) Use of payments.--Every local taxing authority shall use the annual payments received under this section to permanently reduce real property and other local taxes. The relief from taxes granted under this subchapter shall not be eroded by any local taxing authority so as to defeat the purpose of this subchapter. Any person objecting to an increase in the rate of local taxes on the ground that the increase erodes the tax relief made available under this subchapter may petition the court of common pleas for equitable relief.

Section 2. Limitation on payments to political subdivisions.--If the Commonwealth is sued by a party seeking to

prohibit the collection of the tax provided for in section 1101(b) of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," no payments to local taxing authorities shall be made under the provisions of Subchapter C of Chapter 51 of Title 66 of the Pennsylvania Consolidated Statutes (relating to payments to political subdivisions) during the pendency of the suit or if the tax is ultimately determined by a court to be invalid.

Section 3. Appropriations.--(a) The following sums are hereby specifically appropriated for the fiscal year July 1, 1977 to June 30, 1978 for the following purposes and in the following amounts:

(1) For reimbursement to local governments for planning and impact costs as provided in 66 Pa.C.S. § 5121 (a) and (b), \$1,600,000.

(2) For the revolving fund for capital projects as provided in 66 Pa.C.S. § 5121(c), \$1,500,000.

(3) For annual subventions to eligible local taxing authorities as provided in 66 Pa.C.S. § 5122, \$11,500,000.

(4) For administrative purposes for the Energy Facility Siting Interagency Commission, \$140,000.

(b) The General Assembly hereby declares its intent to annually appropriate \$1,500,000 for the revolving fund for capital projects as provided in 66 Pa.C.S. § 5121(c) until the total amount appropriated has reached \$7,000,000 and that thereafter the fund shall be self-sustaining.

Section 4. Effective date.--This act shall take effect July 1, 1977 or in 30 days, whichever is later.

GROSS RECEIPTS TAX

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," extending the gross receipts tax to all electricity produced in the Commonwealth; and providing for reporting.

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

Section 1. Section 1101, act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971," the second paragraph amended August 31, 1971 (P.L.362, No.93), is amended to read:

Section 1101. Imposition of Tax.--(a) General Rule.--Every railroad company, pipeline company, conduit company, steamboat company, canal company, slack water navigation company, transportation company, and every other company, association, joint-stock association, or limited partnership, now or hereafter incorporated or organized by or under any law of this

Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government, and doing business in this Commonwealth, and every copartnership, person or persons owning, operating or leasing to or from another corporation, company, association, joint-stock association, limited partnership, copartnership, person or persons, any railroad, pipeline, conduit, steamboat, canal, slack water navigation, or other device for the transportation of freight, passengers, baggage, or oil, except taxicabs, motor buses and motor omnibuses, and every limited partnership, association, joint-stock association, corporation or company engaged in, or hereafter engaged in, the transportation of freight or oil within this State, and every telephone company, telegraph company, express company, [electric light company, waterpower company, hydro-electric company,] gas company, palace car company and sleeping car company, now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government and doing business in this Commonwealth, and every limited partnership, association, joint-stock association, copartnership, person or persons, engaged in telephone, telegraph, express, [electric light and power, waterpower, hydro-electric,] gas, palace car or sleeping car business in this Commonwealth, shall pay to the State Treasurer, through the Department of Revenue, a tax of forty-five mills upon each dollar of the gross receipts of the corporation, company or association, limited partnership, joint-stock association, copartnership, person or persons, received from passengers, baggage, and freight transported wholly within this State, from

telegraph or telephone messages transmitted wholly within this State, from express, palace car or sleeping car business done wholly within this State, or from the sales of [electric energy or] gas, except gross receipts derived from sales [of gas] to any municipality owned or operated public utility and except gross receipts derived from the sales for resale [of electric energy or gas], to persons, partnerships, associations, corporations or political subdivisions subject to the tax imposed by this act upon gross receipts derived from such resale and from the transportation of oil done wholly within this State. The gross receipts of gas companies shall include the gross receipts from the sale of artificial and natural gas, but shall not include gross receipts from the sale of liquefied petroleum gas. [The said tax shall be paid within the time prescribed by law, and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer or other proper officer of the said company, copartnership, limited partnership, association, joint-stock association or corporation, or person or persons, to transmit to the Department of Revenue on or before April 15 of each year an annual report, and under oath or affirmation, of the amount of gross receipts of the said companies, copartnerships, corporations, associations, joint-stock associations, limited partnerships, person or persons, derived from all sources, and of gross receipts from business done wholly within this State, during the period of twelve months immediately preceding January 1 of each year. It shall be the further duty of the treasurer or other proper officer of every such corporation or association and every individual liable by law to report or pay said tax, except municipalities, to transmit to the Department of Revenue on or

before April 30 of each year, a tentative report in like form and manner for each twelve month period beginning January 1, of each year. The tentative report shall set forth (i) the amount of gross receipts received in the period of twelve months next preceding and reported in the annual report; or (ii) the gross receipts received in the first three months of the current period of twelve months; and (iii) such other information as the Department of Revenue may require.

Upon the date its tentative report is required to be made, the corporation, association or individual making the report shall compute and pay to the Department of Revenue on account of the tax due for the current period of twelve months, at its election (i) for the year 1971 not less than twenty-nine and one-third mills of the dollar amount of its gross receipts reported for the entire preceding period of twelve months; or (ii) for the year 1971 not less than one hundred and seventeen and one-third mills of the dollar amount of its gross receipts received within the first three months of the current period of twelve months. Notwithstanding any other provision in this section to the contrary, for the year 1972 and each year thereafter the corporation, association or individual making a tentative report shall transmit such report to the Department of Revenue on account of the tax due for the current period of twelve months and compute and make payment with such report pursuant to the provisions of the act of March 16, 1970 (P.L. 180, No. 69).

The time for filing reports may be extended, estimated settlements may be made by the Department of Revenue if reports are not filed, and the penalties for failing to file reports and pay the tax shall be as prescribed by the laws defining the

powers and duties of the Department of Revenue. In any case where the works of any corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons are operated by another corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons, the taxes imposed by this section shall be apportioned between the corporations, companies, copartnerships, associations, joint-stock associations, limited partnerships, person or persons in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes the Commonwealth shall first look to the corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons operating the works, and upon payment by the said company, corporation, copartnership, association, joint-stock association, limited partnership, person or persons of a tax upon the receipts, as herein provided, derived from the operation thereof, no other corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons shall be held liable under this section for any tax upon the proportion of said receipts received by said corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons for the use of said works.

This article shall be construed to apply to municipalities, and to impose a tax upon the gross receipts derived from any municipality owned or operated public utility or from any public utility service furnished by any municipality, except that gross receipts shall be exempt from the tax, to the extent that such gross receipts are derived from business done inside the limits

of the municipality, owning or operating the public utility or furnishing the public utility service.]

(b) Electric Light, Waterpower and Hydro-electric Utilities.--Every electric light company, water power company and hydro-electric company now or hereafter incorporated or organized by or under any law of this Commonwealth, or now or hereafter organized or incorporated by any other state or by the United States or any foreign government and doing business in this Commonwealth, and every limited partnership, association, joint-stock association, copartnership, person or persons, engaged in electric light and power business, water power business and hydro-electric business in this Commonwealth, shall pay to the State Treasurer, through the Department of Revenue, a tax of forty-five mills upon each dollar of the gross receipts of the corporation, company or association, limited partnership, joint-stock association copartnership, person or persons, received from:

(1) the sales of electric energy within this State, except gross receipts derived from the sales for resale of electric energy to persons, partnerships, associations, corporations or political subdivisions subject to the tax imposed by this subsection upon gross receipts derived from such resale; and

(2) the sales of electric energy produced in Pennsylvania and made outside of Pennsylvania according to the following apportionment formula: except for gross receipts derived from sales under clause (1), the gross receipts from all sales of electricity of the producer shall be apportioned to the Commonwealth of Pennsylvania by the ratio of the producer's operating and maintenance expenses in Pennsylvania and depreciation attributable to property in Pennsylvania to the



producer's total operating and maintenance expenses and depreciation.

(c) Payment of Tax; Reports.--The said taxes imposed under subsection (a) and (b) shall be paid within the time prescribed by law, and for the purpose of ascertaining the amount of the same, it shall be the duty of the treasurer or other proper officer of the said company, copartnership, limited partnership, association, joint-stock association or corporation, or person or persons, to transmit to the Department of Revenue on or before April 15 of each year an annual report, and under oath or affirmation, of the amount of gross receipts of the said companies, copartnerships, corporations, associations, joint-stock associations, limited partnerships, person or persons, derived from all sources, and of gross receipts from business done wholly within this State and in the case of electric energy producers that transmit energy to other states, a compilation of the relevant information regarding operating and maintenance expenses and depreciation, during the period of twelve months immediately preceding January 1 of each year. It shall be the further duty of the treasurer or other proper officer of every such corporation or association and every individual liable by law to report or pay said taxes imposed under subsections (a) and (b) except municipalities to transmit to the Department of Revenue on or before April 30 of each year, a tentative report in like form and manner for each twelve-month period beginning January 1, of each year. The tentative report shall set forth (i) the amount of gross receipts received in the period of twelve months next preceding and reported in the annual report; or (ii) the gross receipts received in the first three months of the current period of twelve months; and (iii)

such other information as the Department of Revenue may require.

(d) Tax Computation.--Upon the date its tentative report is required to be made, for the year 1972 and each year thereafter the corporation, association or individual making a tentative report shall transmit such report to the Department of Revenue on account of the tax due for the current period of twelve months and compute and make payment of the tentative tax with such report pursuant to the provisions of the act of March 16, 1970 (P.L.180, No.69).

(e) Time to File Reports.--The time for filing annual reports may be extended, estimated settlements may be made by the Department of Revenue if reports are not filed, and the penalties for failing to file reports and pay the taxes imposed under subsections (a) and (b) shall be as prescribed by the laws defining the powers and duties of the Department of Revenue. In any case where the works of any corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons are operated by another corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons, the taxes imposed under subsection (a) and (b) shall be apportioned between the corporations, companies, copartnerships, associations, joint-stock associations, limited partnerships, person or persons in accordance with the terms of their respective leases or agreements, but for the payment of the said taxes the Commonwealth shall first look to the corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons operating the works, and upon payment by the said company, corporation, copartnership, association, joint-stock association, limited partnership,

person or persons of a tax upon the receipts, as herein provided, derived from the operation thereof, no other corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons shall be held liable for any tax imposed under subsections (a) and (b) upon the proportion of said receipts received by said corporation, company, copartnership, association, joint-stock association, limited partnership, person or persons for the use of said works.

(f) Application to Municipalities.--This article shall be construed to apply to municipalities, and to impose a tax upon the gross receipts derived from any municipality owned or operated public utility or from any public utility service furnished by any municipality, except that gross receipts shall be exempt from the tax, to the extent that such gross receipts are derived from business done inside the limits of the municipality, owning or operating the public utility or furnishing the public utility service.

Section 2. This act shall take effect January 1, 1978 and shall be applicable to gross receipts for calendar year 1978. For the purpose of reporting and paying the tax for calendar year 1978, where no tax base for the immediate prior year is available, the tentative tax computations shall be annualized as provided by the act of March 16, 1970 (P.L.180, No.69), or shall be computed as if the tax base for such immediate prior year had been determined under the applicable provisions of the act of March 4, 1971 (P.L.6, No.2), known as the "Tax Reform Code of 1971."









