

FILED FEB 26 1976

Withdrawn 4/23

SENATE FILE 1219

By COMMITTEE ON ENERGY

See H. F. 1470

Passed Senate, Date _____ Passed House, Date _____
 Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
 Approved _____

A BILL FOR

1 An Act relating to the location and construction of major
 2 electric generating facilities and providing penalties.
 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S-5265

1 Amend Senate File 1219 as follows:
 2 1. Page 6, by striking lines 18 through 25.

S-5265 FILED
 MARCH 2, 1976

BY NORMAN RODGERS

1 Section 1. NEW SECTION. DEFINITIONS. As used in this
2 Act unless the context otherwise requires:

3 1. "Major electric generating facility" means:

4 a. An electric power generating plant or combination of
5 plants, at a single site with a combined capacity of one
6 hundred megawatts of electricity or more.

7 b. An electric switching station where the highest
8 operating voltage exceeds one hundred fifty kilovolts.

9 c. A voltage transformation substation where the highest
10 operating voltage exceeds two hundred kilovolts or the combined
11 transformation capacity exceeds eighty thousand
12 kilovoltamperes.

13 2. "Utility" means any person, partnership, joint
14 ownership, business association or corporation, foreign or
15 domestic, engaged in or authorized to engage in the business
16 of generating, transmitting or distributing electric energy.

17 3. "Certification" means the final order of the commission
18 granting permission to a utility to commence to construct
19 a major electric generating facility.

20 4. "Commence to construct" means significant physical
21 alteration of a site to install permanent equipment or
22 structures, but does not include activities incident to
23 preliminary engineering or environmental studies.

24 5. "Commission" means the Iowa state commerce commission.

25 Sec. 2. NEW SECTION. CERTIFICATE REQUIRED.

26 1. Commencing January 1, 1977, a utility shall not commence
27 to construct a major electric generating facility without
28 having first obtained a certificate with respect to the
29 establishment of such facility from the commission. If a
30 site has been acquired and contracts let for the construction
31 of major portions of a major electric generating facility
32 prior to January 1, 1977, construction shall be deemed to
33 have commenced prior to January 1, 1977 and a certificate
34 shall not be required. Any utility that commenced construction
35 of a major electric generating facility prior to January 1,

1 1977 may file an application for a certificate as provided
2 in this Act and upon filing of the application, the provisions
3 of this Act shall apply. Any utility required or electing
4 to obtain a certificate shall construct, operate and maintain
5 a major electric generating facility according to the terms
6 of the certificate and any amendments to the certificate.
7 A certificate shall only be issued pursuant to this Act.

8 2. Any significant alteration, as determined by the
9 commission, in the location, construction, or operation of
10 a major electric generating facility whether constructed
11 before or after the effective date of this Act shall require
12 an application for an amendment or a certificate, whichever
13 is appropriate. "Significant alteration" shall include but
14 shall not be limited to a change in the type of fuel used
15 by the major electric generating facility.

16 3. A certificate may be transferred, subject to the
17 approval of the commission, to a person or utility who agrees
18 to comply with the terms of the certificate including any
19 amendments to the certificate. Certificates shall be
20 transferable by operation of law to any receiver, trustee
21 or similar assignee under a mortgage, deed of trust or similar
22 instrument.

23 4. Upon application by a utility, a certificate issued
24 pursuant to this Act may be amended as provided in section
25 four (4) of this Act.

26 Sec. 3. NEW SECTION. CONTENTS OF APPLICATION--COSTS OF
27 PROCEEDING.

28 1. An applicant for a certificate shall file an application
29 with the commission in such form as the commission may
30 prescribe. The application for a certificate shall be filed
31 in lieu of all other applications for a license or permit
32 required for the construction, maintenance or operation of
33 a major electric generating facility and the certificate shall
34 be issued in lieu of the licenses or permits.

35 2. The application shall include:

1 a. A description of the proposed major electric generating
2 facility.

3 b. The basis of need for the facility as proposed.

4 c. A description of any reasonable alternate location
5 or locations considered for the proposed facility.

6 d. A description of the comparative merits and detriments
7 of each location submitted.

8 e. A statement of the reasons why the primary proposed
9 location is best suited for the facility.

10 f. Such other information as the applicant may consider
11 relevant to the decision based on the criteria established
12 in subsection three (3) of section four (4) of this Act or
13 the commission may by rule require.

14 3. The application for a certificate shall be accompanied
15 by proof of service of a copy of the application on the chief
16 executive officer or governing body of each municipality in
17 the counties in which any portion of the facility may be
18 located and on the head of each local or state agency or local
19 governing body authorized as of December 31, 1976 to issue
20 licenses or permits required for the construction, maintenance
21 or operation of a major electric generating facility or on
22 a state or local agency which is designated by the commission
23 as having an interest in the certification proceeding.

24 4. The application shall be accompanied by proof that
25 public notice was given to persons residing in the areas where
26 the proposed facility may be located. "Public notice" means
27 publication of a summary of the application and the approximate
28 date of filing for three days in a newspaper of general
29 circulation in the affected areas.

30 5. An application for an amendment to a certificate shall
31 be accompanied by proof of service of notice on the parties
32 to the proceeding resulting from the original application
33 and proof that public notice of the amendment application
34 was given pursuant to subsection four (4) of this section.
35 An application for an amendment to a certificate shall be

1 in such form and contain such other information as the
2 commission may prescribe.

3 6. The applicant for a certificate, or amendment to
4 certificate, shall pay all the costs and expenses incurred
5 by the commission in reaching a decision on the application
6 for a certificate or an amendment including the costs of
7 examinations of the site, the hearing, publishing of notice,
8 commission staff salaries and the cost of consultants employed
9 by the commission, and other expenses reasonably attributable
10 to the proceeding.

11 Sec. 4. NEW SECTION. PROCEEDING--PARTICIPATION OF STATE
12 AGENCIES AND DECISION.

13 1. Upon receipt of an application for a certificate or
14 an amendment to a certificate the proceeding shall be conducted
15 in the same manner as a contested case according to the
16 provisions of chapter seventeen A (17A) of the Code. State
17 and local agencies and local governing bodies authorized as
18 of December 31, 1976 to issue permits or licenses required
19 for the construction, operation or maintenance of major
20 electric generating facilities may become parties to the
21 proceeding by filing a notice of intervention under rules
22 promulgated by the commission. Upon intervention, the agency
23 or governing body's position shall clearly state whether the
24 facility being considered for certification or the requested
25 amendment to a certificate will be in compliance with the
26 agency or governing body's standards, rules and policies.
27 Other persons having an interest in the proceeding may seek
28 intervention pursuant to rules promulgated by the commission.

29 2. Notwithstanding the provisions of chapter seventeen
30 A (17A) of the Code, any proceeding or oral presentation held
31 on an application for a certificate or an amendment to a
32 certificate pursuant to subsection one (1) of this section
33 shall be held in lieu of any other proceeding or oral
34 presentation required for a license or permit necessary for
35 the construction, maintenance or operation of a major electric

1 generating facility.

2 3. The commission may grant a certificate in whole or
3 in part upon such terms, conditions and restrictions and with
4 such modifications as the commission deems just and proper.
5 Before granting a certificate, the commission shall make a
6 finding that the proposed major electric generating facility
7 is necessary to serve the public interest, convenience and
8 necessity. In determining whether to issue a certificate
9 the commission shall consider the positions made on the record
10 by the various parties to the proceeding. In determining
11 whether certification would be in the overall public interest
12 the commission shall in addition to factors relating to land
13 use and the environment give due regard to existing technology,
14 cost or economics, and the needs of electric power consumers
15 whether located inside or outside of a directly affected
16 governmental subdivision which appeared as a party to the
17 proceeding.

18 4. Notwithstanding the provisions of chapter seventeen
19 A (17A) of the Code, the decision of the commission shall
20 be considered a single agency action. The agency action shall
21 be subject to judicial review in the manner provided in chapter
22 seventeen A (17A) of the Code. Notwithstanding the provisions
23 of chapter seventeen A (17A) of the Code, only parties to
24 the proceeding before the commission may seek judicial review
25 of the final order of the commission.

26 Sec. 5. NEW SECTION. RULE-MAKING POWERS. The commission
27 shall adopt rules pursuant to chapter seventeen A (17A) of
28 the Code necessary to implement the provisions of this Act
29 including but not limited to the promulgation of facility
30 siting criteria, the form for an application for a certificate,
31 the description of information to be furnished by the utility,
32 the determination of what constitutes a significant alteration
33 to a major electric generating facility, and the establishment
34 of minimum guidelines for public participation in the
35 proceeding.

1 Sec. 6. NEW SECTION. STAFF ASSISTANCE--JOINT EXERCISE
2 OF POWERS.

3 1. The commission may request staff assistance from other
4 federal, state and local agencies, pursuant to chapter twenty-
5 eight D (28D) of the Code, to assist in discharging the
6 responsibilities assigned to the commission pursuant to this
7 Act. The commission may exercise the powers and responsi-
8 bilities assigned to the commission under this Act jointly
9 with other governmental agencies pursuant to chapter twenty-
10 eight E (28E) of the Code.

11 2. This Act shall not apply to any major electric
12 generating facility over which an agency of the federal
13 government has exclusive jurisdiction. When concurrent
14 jurisdiction exists with certain powers reserved to the state,
15 the state shall exercise those powers with respect to utilities
16 operating within this state to the full extent permitted by
17 the Constitution and the laws of the United States.

18 Sec. 7. NEW SECTION. EMINENT DOMAIN. Notwithstanding
19 the provisions of section four hundred eighty-nine point
20 fifteen (489.15) of the Code, a utility issued a certificate
21 pursuant to this Act may exercise the right of eminent domain
22 in excess of one hundred sixty acres of land to the extent
23 approved by the commission in the certificate. In all other
24 respects the provisions of section four hundred eighty-nine
25 point fifteen (489.15) of the Code shall apply.

26 Sec. 8. NEW SECTION. PENALTIES.

27 1. Any utility who commences to construct a major electric
28 generating facility as provided in this Act without having
29 first obtained a certificate, or who constructs, operates
30 or maintains any major electric generating facility other
31 than in compliance with the certificate issued by the
32 commission, or who causes any of these acts to occur, shall
33 be liable for a civil penalty of not more than ten thousand
34 dollars for each violation or for each day of continuing
35 violation. Civil penalties collected pursuant to this

1 subsection shall be forwarded by the clerk of court to the
2 treasurer of state for deposit in the general fund of the
3 state.

4 2. The district court shall have exclusive jurisdiction
5 to grant restraining orders and temporary or permanent
6 injunctive relief as may be necessary to obtain compliance
7 with this Act.

8 3. Persons convicted of violating any provision of this
9 Act shall be guilty of a misdemeanor and shall be fined not
10 more than one hundred dollars or be imprisoned for no more
11 than thirty days, or be punished by both such fine and
12 imprisonment.

13 Sec. 9. Section four hundred ninety A point twenty-seven
14 (490A.27), Code 1975, is repealed.

15 EXPLANATION

16 This bill establishes a consolidated hearing procedure
17 for the siting, construction, operation and maintenance of
18 major electric generating facilities. The Iowa state commerce
19 commission is designated as the siting authority and issues
20 the final certificate. Other state and local agencies and
21 local governing bodies having licensing and permit
22 responsibilities over the construction, operation and
23 maintenance of major electric generating facilities are to
24 participate in the proceeding arising from each application
25 and must clearly state the agency or governing body's position
26 as to whether the application meets the agency or governing
27 body's and licensing requirements at any oral presentation.
28 The commission may issue a certificate that does not meet
29 state and local agency and local governing body licensing
30 and permit requirements if it is in the public interest to
31 do so.

32 This bill provides for the filing of one application by
33 a utility for a facility resulting in a single proceeding
34 utilizing the procedures available in a contested case pursuant
35 to chapter 17A and for the issuance of one certificate in

1 lieu of the several state and local licenses and permits which
2 must be obtained at present.

3 Violation of the provisions of this Act is a misdemeanor
4 and also carries a civil penalty of up to \$10,000 for each
5 violation or for each day of continuing violation.

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