

ENERGY AND ENVIRONMENT: Gronstal, Chair; Colton and Rife

Energy Environment 4/24/85

SENATE FILE 462

BY COMMITTEE ON ENERGY AND ENVIRONMENT
Approval (p. 807)

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Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to public utilities making civil penalties
2 applicable.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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3474 1 Section 1. Section 17A.19, subsection 1, Code 1985, is
2 amended to read as follows:

3 1. A person or party who has exhausted all adequate
4 administrative remedies and who is aggrieved or adversely
5 affected by any final agency action is entitled to judicial
6 review thereof under this chapter. When agency action is
7 pursuant to ~~rate-regulatory~~ rate-regulatory powers over ~~public~~
8 ~~utilities-or~~ common carriers and the aggrievement or adverse
9 effect is to the rates or charges of a ~~public-utility-or~~
10 common carrier, the agency action shall not be final until all
11 agency remedies have been exhausted and a decision prescribing
12 rates which satisfy the requirements of those provisions of
13 the Code has been rendered. A preliminary, procedural or
14 intermediate agency action is immediately reviewable if all
15 adequate administrative remedies have been exhausted and
16 review of the final agency action would not provide an
17 adequate remedy. If a declaratory ruling has not been
18 rendered within thirty days after the filing of a petition
19 therefor under section 17A.9, or if the agency declines to
20 issue such a declaratory ruling after receipt of a petition
21 therefor, any administrative remedy available under section
22 17A.9 shall be deemed inadequate or exhausted.

23 Sec. 2. NEW SECTION. 476.5A SPECIAL INDUSTRIAL INCENTIVE
24 ELECTRIC DEMAND CHARGE TARIFF.

25 Notwithstanding section 476.5, the commission may approve a
26 special industrial incentive electric demand charge tariff
27 establishing a maximum demand charge to a new or expanding
3475 28 industrial or commercial customer if the commission finds all
29 of the following:

- 30 1. The utility has the necessary delivery capability.
- 31 2. The special industrial incentive electric demand charge
32 tariff is reasonably calculated to attract new business or
33 expand existing production and employment.
- 34 3. Other customers of the utility will not experience an
35 increase in rates as a result of the special industrial

1 incentive electric demand charge tariff for the duration of
2 the tariff.

3 4. The special industrial incentive electric demand charge
4 tariff may take the form of a fixed demand charge for a period
5 of years to protect the customers from volatile rates.

6 The special industrial incentive electric demand charge
7 tariff shall phase out over a reasonable period as specified
8 by the commission.

9 Sec. 3. Section 476.13, Code 1985, is amended to read as
10 follows:

11 476.13 JUDICIAL REVIEW.

12 ~~1.--Notwithstanding the Iowa administrative procedure Act,
13 the district court for Polk county or for the county in which
14 a public utility maintains its principal place of business has
15 exclusive venue for the judicial review under chapter 17A of
16 actions of the commission pursuant to rate-regulatory powers
17 over that public utility.~~

18 ~~2.--Upon the filing of a petition for judicial review in an
19 action referred to in subsection 1, the clerk of the district
20 court shall notify the chief justice of the supreme court for
21 purposes of assignment of a district judge under section
22 602.1212.--The judicial review proceeding shall be heard by
23 the district judge appointed by the supreme court under
24 section 602.1212, but in the county of venue under subsection
25 1.~~

26 1. Judicial review of agency action of the commission may
27 be sought in accordance with the terms of the Iowa ad-
28 ministrative procedure Act except as provided in this section.

29 2. Agency action by the commission pursuant to its rate-
30 regulatory powers over public utilities is not subject to
31 judicial review until all agency remedies have been exhausted
32 and a decision prescribing rates which satisfy the
33 requirements of this chapter has been rendered.

34 3. Proceedings for judicial review of commission action
35 pursuant to its rate-regulatory powers over public utilities

1 shall be initiated by filing a petition for judicial review
2 with the Iowa supreme court.

3 4. No court in this state has jurisdiction to review an
4 action of the commission pursuant to its rate-regulatory
5 powers over public utilities or to impose a stay of the
6 action, or restrain or interfere with the commission in the
7 performance of its official duties, except for the supreme
8 court or the court of appeals to the extent specified by this
9 chapter and by the judicial review provisions of the Iowa
10 administrative procedure Act that do not conflict with this
11 section.

12 3 5. ~~Notwithstanding the Iowa administrative procedure~~
13 ~~Act, if~~ If a public utility seeks judicial review of an order
14 approving rates for the public utility, the level of rates
15 that may be collected, under bond and subject to refund, while
16 the appeal is pending shall be limited to the level of the
17 temporary rates set by the commission, or the level of the
18 final rates set by the commission, whichever is greater.
19 During the period the judicial review proceeding is pending,
20 the commission shall retain jurisdiction to determine the rate
21 of interest to be paid on any refunds eventually required on
22 rates collected during judicial review.

23 Sec. 4. Section 476.53, unnumbered paragraph 1, Code 1985,
24 is amended to read as follows:

25 It is the intent of the general assembly of the state of
26 Iowa to provide for the development of a fair resolution
27 concerning the allocation of costs associated with excess
28 electric generating capacity. It is the policy of this state
29 that it is in the public interest that public utilities
30 subject to rate regulation, at a minimum, be prohibited from
31 including either directly or indirectly in their charges or
32 rates to customers the return on common equity associated with
33 excess electric generating capacity, however this shall not
34 apply to rural electric cooperatives. The commerce commission
35 shall not allow a return on common equity on that portion of a

1 public utility's electric generating capacity which is
2 determined to be excess electric generating capacity. In
3 determining the amount of common equity investment associated
4 with excess electric generating capacity, the commission shall
5 use the cost of the most recent electric generating units
6 constructed but shall not include electric generating units
7 primarily fueled by gas or oil. Excess electric generating
8 capacity is that portion of the public utility's electric
9 generating capacity which exceeds the amount reasonably
10 necessary to provide adequate and reliable service as
11 determined by the commission one hundred fifteen percent of
12 the utility's peak electrical demand during the applicable
13 test period. However, upon petition by a public utility the
14 commission may in extenuating circumstances grant a public
15 utility a variance to have additional excess electric
16 generating capacity, not to exceed five percent, for a period
17 not to exceed one year. After the lapse of the variance, a
18 public utility may petition for another variance. The
19 commission shall by rule adopt standards for extenuating
20 circumstances that the commission shall use in determining
21 whether to grant a variance or an extension to the time period
22 of the variance.

23 Sec. 5. NEW SECTION. 476.56 COMPETITIVE PROCEDURES.

24 1. BIDDING PROCEDURES REQUIRED. A public utility shall
25 purchase equipment and supplies and make improvements through
26 use of competitive bidding procedures as provided in this
27 section. The public utility shall use competitive bidding
28 procedures for purchase of equipment, supplies and improve-
29 ments where the estimated total cost of the equipment,
30 supplies and improvements exceeds twenty-five thousand
31 dollars. The public utility shall use competitive bidding
32 procedures specified by rules adopted by the Iowa state
33 commerce commission. However, a public utility is not
34 required to use competitive bidding procedures if the
35 equipment or supplies which are the subject of the expenditure

1 are only available from a single source, when they are a
2 unique concept, or in an emergency when failure to make the
3 purchase can reasonably be expected to disrupt utility service
4 to the public or otherwise jeopardize the utility's
5 requirement to furnish service under section 476.8.

6 2. PROHIBITED CHARGES -- WAIVERS. If the public utility
7 accepts a bid which is not the lowest bid, the public utility
8 is prohibited from including either directly or indirectly in
9 their charges or rates to customers the difference between the
10 bid accepted and the lowest bid, unless the public utility is
11 granted a waiver from this requirement from the commission.
12 The commission may grant a waiver if it determines that the
13 bid accepted by the public utility was more beneficial to its
3594 14 customers. The public utility may also request a waiver from
15 the competitive bidding procedures of this section in the case
16 of an emergency. The commission shall adopt rules stating
17 what constitutes an emergency for purposes of granting waivers
18 from the competitive bidding procedures of this section.

19 3. EXEMPTIONS. This section does not apply to public
20 utilities defined under section 476.1, subsection 2 or 3,
21 municipally owned public utilities or rural electric coopera-
22 tives. This section also does not apply to improvements of a
23 public utility which are made by employees of the public
24 utility.

3474 25 Sec. 6. Section 602.1212, Code 1985, is repealed.

26 Sec. 7. Section 3 applies to proceedings for judicial
27 review commenced on or after the effective date of this Act.

28 EXPLANATION

29 Sections 1, 3, 6 and 7 of this bill relate to proceedings
30 for judicial review of the Iowa state commerce commission's
31 rate-regulatory powers. The bill eliminates review of the
32 commission's rate-regulatory powers at the district court
33 level but provides for direct appeal to the Iowa supreme
34 court.

35 Section 2 allows the Iowa state commerce commission to

1 approve a special industrial incentive electric demand charge
2 tariff establishing a maximum demand charge to a new or
3 expanding industrial or commercial customer.

4 Section 4 of the bill provides that in determining the
5 common equity investment associated with excess electric
6 generating capacity the commerce commission shall use the cost
7 of the most recent electric generating units constructed but
8 shall not include electric generating units primarily fueled
9 by gas or oil. Excess capacity is defined as that amount of
10 electric generating capacity which exceeds one hundred fifteen
11 percent of the utility's peak electrical demand during the
12 applicable test period. Procedures are established for a
13 company to seek a five percent variance due to extenuating
14 circumstances.

15 Section 5 provides for competitive bidding procedures to be
16 utilized by rate-regulated gas and electric public utilities.
17 The competitive bidding procedures are to be used for the
18 purchase of equipment, supplies and improvements where the
19 estimated total cost of the items exceeds twenty-five thousand
20 dollars. The competitive bidding procedures are not required
21 if the expenditure is from a single source, or is unique in
22 concept, or in an emergency when failure to make the purchase
23 can reasonably be expected to disrupt the utility's service.
24 A public utility which accepts a bid which is not the lowest
25 bid is prohibited from including directly or indirectly in
26 their charges or rates to customers the difference between the
27 bid accepted and the lowest bid unless a waiver is granted by
28 the commission upon its determination that the accepted bid
29 was more beneficial to the utility's customers.

30 This bill creates new sections 476.5A and 476.56.

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