

ELECTRIC POWER GENERATION AND TRANSMISSION

476A.1 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Agency"* means an agency as defined in section 17A.2, subsection 1.
2. *"Board"* means the utilities board within the utilities division of the department of commerce.
3. *"Certificate"* means a certificate of public convenience, use and necessity issued pursuant to section 476A.6.
4. *"Commence to construct"* means significant alteration of a site to install permanent equipment or structures but does not include activities incident to preliminary engineering, environmental studies or acquisition of a site for a facility.
5. *"Facility"* means any electric power generating plant or a combination of plants at a single site, owned by any person, with a total capacity of twenty-five megawatts of electricity or more and those associated transmission lines connecting the generating plant to either a power transmission system or an interconnected primary transmission system or both. Transmission lines subject to the provisions of this subchapter shall not require a franchise under chapter 478.
6. *"Regulatory agency"* means an agency which issues licenses or permits required for the construction, operation or maintenance of a facility pursuant to statutes or rules in effect on the date on which an application for a certificate is accepted by the utilities board.

[C77, 79, 81, § 476A.1]

90 Acts, ch 1252, § 41; 2001 Acts, 1st Ex, ch 4, §35, 36

476A.2 Certificate required.

1. Commencing January 1, 1977, a person shall not commence to construct a facility except as provided in section 476A.9 unless a certificate for the facility has been issued by the board. This subchapter shall not apply to persons who prior to July 1, 1976:
 - a. Have acquired a site for a facility; and,
 - b. Have publicly announced the intention to construct a facility; and,
 - c. Have let contracts for major components of a facility.
2. Any significant alteration, as determined by the board, in the location, construction, maintenance, or operation of a facility whether constructed before or after July 1, 1976, shall require an application for an amendment to a certificate or a certificate, whichever is appropriate. "Significant alteration" shall include but shall not be limited to a change in the type of fuel used by the major electric generating facility.
3. Any person required to obtain a certificate or an amendment to a certificate shall construct, operate and maintain the facility according to the terms of the certificate and any amendments to the certificate. A certificate shall only be issued pursuant to this subchapter.
4. This subchapter shall not apply to an electric power generating plant, or combination of plants at a single

site, with a total capacity of more than twenty-five but less than one hundred megawatts of electricity if the owner or operator prior to January 1, 1990, has met all of the following conditions:

- a. Acquired a site for the facility.
- b. Publicly announced the intention to construct a facility at that site.
- c. Let contracts for major components of the facility.

[C77, 79, 81, § 476A.2]

90 Acts, ch 1252, §42; 2001 Acts, 1st Ex, ch 4, §35, 36

476A.3 Application submitted review.

An application for a certificate or an amendment to a certificate shall be submitted to the board on such forms as the board may prescribe. Copies of the application shall be forwarded to regulatory agencies. Regulatory agencies receiving a copy of the application shall conduct a preliminary review of the contents and shall evaluate the application for completeness and compliance with the regulatory agency's permit and licensing requirements within a reasonable amount of time.

[C77, 79, 81, § 476A.3]

476A.4 Hearing scheduled notice.

1. The proceeding for the issuance of a certificate or an amendment to a certificate shall be treated in the same manner as a contested case pursuant to the provisions of chapter 17A. Upon acceptance of an application by the board, a public hearing shall be scheduled.
2. The board shall serve notice of the proceeding on the following:
 - a. Interested agencies, as determined by the board, and regulatory agencies.
 - b. County and city zoning authorities from the area in which the proposed site is located.
 - c. Owners of record of real property located within one thousand linear feet of the proposed site.
3. Notice of the proceeding in the form provided in section 17A.12, subsection 2, shall be published in a newspaper of general circulation in each county in which the proposed site is located once a week for two consecutive weeks with the second publication being at least twenty days prior to the date of the hearing. The board shall be responsible for publication and delivery of notices required by this section.
4. The board shall conduct the hearing, as described in subsection 1, in the county in which the construction of the greater portion of the facility is being proposed.
5. A proceeding for the issuance of a certificate under section 476A.5 may be consolidated with a contested case proceeding for determination of applicable ratemaking principles under section 476.53.

[C77, 79, 81, § 476A.4]

2001 Acts, 1st Ex, ch 4, §13, 36

476A.5 Proceeding role of regulatory agencies and local authorities.

1. The board shall conduct the contested case proceeding. Regulatory agencies which appear on record at the proceeding shall state whether the application meets their permit and licensing requirements. If the application does not meet such requirements, the regulatory agency shall recommend amendments to the application which outline actions necessary to bring the applicant in compliance with the regulatory agency's permit and licensing requirements. The board shall not issue a certificate for a facility which does not meet the permit and licensing requirements of a regulatory agency.

2. If a regulatory agency which received notice pursuant to section 476A.4 fails to appear of record in the contested case proceeding, the board shall conclusively presume that the facility meets the regulatory agency's permit and licensing requirements and the regulatory agency shall immediately issue any license or permit required for the construction, operation or maintenance of the facility.

3. City and county zoning authorities designated as parties to the proceeding may appear on record and may state whether the facility meets city, county and airport zoning requirements. The failure of a facility to meet zoning requirements established pursuant to chapters 329, 335 and 414 shall not preclude the board from issuing the certificate and to that extent the provisions of this subsection shall supersede the provisions of chapters 329, 335 and 414.

[C77, 79, 81, § 476A.5]

476A.6 Decision criteria.

The board shall render a decision on the application in an expeditious manner. A certificate shall be issued to the applicant if the board finds all of the following:

1. The services and operations resulting from the construction of the facility are consistent with legislative intent as expressed in section 476.53 and the economic development policy of the state as expressed in Title I, subtitle 5, and will not be detrimental to the provision of adequate and reliable electric service.

2. The applicant is willing to construct, maintain, and operate the facility pursuant to the provisions of the certificate and this subchapter.

3. The construction, maintenance, and operation of the facility will be consistent with reasonable land use and environmental policies and consonant with reasonable utilization of air, land, and water resources, considering available technology and the economics of available alternatives.

[C77, 79, 81, § 476A.6]

83 Acts, ch 127, § 39; 90 Acts, ch 1252, §4346; 2001 Acts, 1st Ex, ch 4, §14, 35, 36

476A.7 Issuance of certificate effect.

1. Issuance of a certificate by the board:

a. Authorizes construction of the facility on the site designated in the certificate according to the terms and conditions stated in the certificate and licenses and permits issued by regulatory agencies during the proceeding; and,

b. Gives the applicant the power of eminent domain to the extent and under such conditions as the board may approve, prescribe and find necessary for the public convenience, use and necessity, proceeding in the manner of works of internal improvement under chapter 6B. The burden of proving the necessity for the exercise of the power of eminent domain shall be on the person issued the certificate.

2. A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms of the certificate including any amendments to the certificate. Certificates shall be transferable by operation of law to any receiver, trustee or similar assignee under a mortgage, deed of trust or similar instrument.

3. Pursuant to the provisions of section 476.53, a rate-regulated public utility shall have the option of withdrawing its application for issuance of a certificate at any time prior to the issuance of the certificate, or after the certificate has been issued.

[C77, 79, 81, § 476A.7]

2001 Acts, 1st Ex, ch 4, §15, 36

476A.8 Further approvals prohibited exception.

Upon issuance of a certificate, notwithstanding any provision of law except statutory requirements relating to the protection of employees engaged in the construction of the facility, a regulatory agency, city or county shall not require any further approval, permit or license for the construction of the facility.

[C77, 79, 81, § 476A.8]

476A.9 Advance site preparation.

Subsequent to the hearing held pursuant to section 476A.5 and in the event of extensive delay in the issuance of a certificate, the board may permit an applicant having an application docketed for hearing to begin work to prepare the site for construction of the facility. Any activities conducted pursuant to this section shall have no probative value in the board's decision concerning the actual issuance of a certificate.

[C77, 79, 81, § 476A.9]

476A.10 Costs of proceeding.

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

[C77, 79, 81, § 476A.10]

476A.11 Single hearing judicial review.

Notwithstanding the provisions of chapter 17A:

1. Any proceeding or oral presentation held on an application for a certificate or an amendment to a certificate shall be held in lieu of any other proceeding or oral presentation required for a license or permit necessary for the construction, maintenance or operation of a facility.

2. The decision of the board shall be considered a single agency action. The agency action shall be subject to judicial review in the manner provided in chapter 17A.

3. Only parties to the proceeding before the board may seek judicial review of the final order of the board.

[C77, 79, 81, § 476A.11]

476A.12 Rules.

The board shall adopt rules pursuant to chapter 17A necessary to implement the provisions of this subchapter including but not limited to the promulgation of facility siting criteria, the form for an application for a certificate and an amendment to a certificate, the description of information to be furnished by the applicant, the determination of what constitutes a significant alteration to a facility, and the establishment of minimum guidelines for public participation in the proceeding.

[C77, 79, 81, § 476A.12]

2001 Acts, 1st Ex, ch 4, §35, 36

476A.13 Staff assistance federal preemption.

1. The board may request staff assistance from other federal, state and local agencies, pursuant to chapter 28D, to assist in discharging the responsibilities assigned to the board pursuant to this subchapter. The board may exercise the powers and responsibilities assigned to the board under this subchapter jointly with other governmental agencies pursuant to chapter 28E.

2. This subchapter shall not apply to any facility over which an agency of the federal government has exclusive jurisdiction. When concurrent jurisdiction exists with certain powers reserved to the state, the state shall exercise those powers with respect to facilities operating within this state to the full extent permitted by the Constitution and the laws of the United States.

[C77, 79, 81, § 476A.13]

2001 Acts, 1st Ex, ch 4, §35, 36

476A.14 Penalties.

1. Any person who commences to construct a facility as provided in this subchapter without having first obtained a certificate, or who constructs, operates or maintains any facility other than in compliance with a certificate issued by the board or a certificate amended pursuant to this subchapter, or who causes any of these acts to occur, shall be liable for a civil penalty of not more than ten thousand dollars for each violation or for each day of continuing violation. Civil penalties collected pursuant to this subsection shall be forwarded by the clerk of court to the treasurer of state for deposit in the general fund of the state.

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

3. Persons convicted of violating any provision of this subchapter shall be guilty of a simple misdemeanor.

[C77, 79, 81, § 476A.14]

2001 Acts, 1st Ex, ch 4, §35, 36

476A.15 Waiver.

The board, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this subchapter.

83 Acts, ch 127, § 40; 90 Acts, ch 1252, §47; 2001 Acts, 1st Ex, ch 4, §16, 35, 36

476A.16 through 476A.19 Reserved.

476A.20 Definitions.

For purposes of this subchapter, unless the context otherwise requires:

1. *"Electric power agency"* means an entity as defined in section 28F.2.
2. *"Facility"* means an electric power generating plant, or transmission line or system, as defined in section 476A.1.
3. *"Public bond or obligation"* means an obligation as defined in section 76.14.

2001 Acts, 1st Ex, ch 4, §17, 36

476A.21 Electric power agency general authority.

In addition to other powers conferred upon an electric power agency by chapter 28F or other applicable law, an electric power agency may enter into and carry out joint agreements with other participants for the acquisition of ownership of a joint facility and for the planning, financing, operation, and maintenance of the joint facility, as provided in this subchapter.

2001 Acts, 1st Ex, ch 4, §18, 36

476A.22 Electric power agency authority conflicting provisions.

1. In addition to any powers conferred upon an electric power agency under chapter 28F or other applicable law, an electric power agency may exercise all other powers reasonably necessary or appropriate for or incidental to the effectuation of the electric power agency's authorized purposes, including without limitation the powers enumerated in chapters 6A and 6B for purposes of constructing or acquiring an electric power facility.
2. An electric power agency, in connection with its property and affairs, and in connection with property within its control, may exercise any and all powers that might be exercised by a natural person or a private corporation in connection with similar property and affairs.
3. The enumeration of specified powers and functions of an electric power agency in this subchapter is not a limitation of the powers of an electric power agency, but the procedures prescribed for exercising the powers and functions enumerated in this subchapter control and govern in the event of any conflict with any other provision of law.
4. The authority conferred pursuant to this subchapter applies to electric power agencies, notwithstanding any contrary provisions of section 28F.1.

2001 Acts, 1st Ex, ch 4, §19, 36

Footnotes

Eminent domain and eminent domain procedures; chapters 6A and 6B

476A.23 Issuance of public bonds or obligations purposes limitations.

1. An electric power agency may from time to time issue its public bonds or obligations in such principal amounts as the electric power agency deems necessary to provide sufficient funds to carry out any of its purposes and powers, including but not limited to any of the following:

a. The acquisition or construction of any project to be owned or leased by the electric power agency, or the acquisition of any interest in such project or any right to the capacity of such project, including the acquisition, construction, or acquisition of any interest in an electric power generating plant to be constructed in this state, or the acquisition, construction, or acquisition of any interest in a transmission line or system.

b. The funding or refunding of the principal of, or interest or redemption premiums on, any public bonds or obligations issued by the electric power agency whether or not the public bonds or obligations or interest to be funded or refunded have become due.

c. The establishment or increase of reserves to secure or to pay the public bonds or obligations or interest on the public bonds or obligations.

d. The payment of all other costs or expenses of the electric power agency incident to and necessary to carry out its purposes and powers.

2. Notwithstanding anything in this subchapter or chapter 28F to the contrary, a facility shall not be financed with the proceeds of public bonds or obligations, the interest on which is exempt from federal income tax, unless the public issuer of such public bonds or obligations covenants that the issuer shall comply with the requirements or limitations imposed by the Internal Revenue Code or other applicable federal law to preserve the tax exemption of interest payable on the bonds or obligations.

3. Notwithstanding anything in this subchapter or chapter 28F to the contrary, an electric power generating facility shall not be financed under this subchapter unless all of the following conditions are satisfied:

a. The portion of the electric power generating facility financed by the electric power agency is not designed to serve the electric power requirements of retail customers of members that are municipal electric utilities established in the state after January 1, 2001.

b. The electric power agency annually files with the utilities board, in a manner to be determined by the utilities board, information regarding sales from the electric power generating facility in sufficient detail to determine compliance with these provisions.

The utilities board shall report to the general assembly if any of the provisions are being violated.

2001 Acts, 1st Ex, ch 4, §20, 36; 2003 Acts, ch 44, §78, 79

476A.24 Public bonds or obligations authorized by resolution of board of directors terms.

1. The board of directors of an electric power agency, by resolution, may authorize the issuance of public bonds or obligations of the electric power agency.

2. The public bonds or obligations may be issued in one or more series under the resolution or under a trust indenture or other security agreement.

3. The resolution, trust indenture, or other security agreement, with respect to such public bonds or obligations, shall provide for all of the following:

a. The date on the public bonds or obligations.

- b.* The time of maturity.
 - c.* The rate of interest.
 - d.* The denomination.
 - e.* The form, either coupon or registered.
 - f.* The conversion, registration, and exchange privileges.
 - g.* The rank or priority.
 - h.* The manner of execution.
 - i.* The medium of payment, including the place of payment, either within or outside of the state.
 - j.* The terms of redemption, either with or without premium.
 - k.* Such other terms and conditions as set forth by the board in the resolution, trust indenture, or other security agreement.
4. Public bonds or obligations authorized by the board of directors shall not be subject to any restriction under other law with respect to the amount, maturity, interest rate, or other terms of obligation of a public agency or private person.
5. Chapter 75 shall not apply to public bonds or obligations authorized by the board of directors as provided in this section.

2001 Acts, 1st Ex, ch 4, §21, 36

476A.25 Public bonds or obligations payable solely from agency revenues or funds.

1. The principal of and interest on any public bonds or obligations issued by an electric power agency shall be payable solely from the revenues or funds pledged or available for their payment as authorized in this subchapter.
2. Each public bond or obligation shall contain all of the following terms:
 - a.* That the principal of or interest on such public bonds or obligations is payable solely from revenues or funds of the electric power agency.
 - b.* That neither the state or a political subdivision of the state other than the electric power agency, nor a public agency that is a member of the electric power agency is obligated to pay the principal or interest on such public bonds or obligations.
 - c.* That neither the full faith and credit nor the taxing power of the state, of any political subdivision of the state, or of any such public agency is pledged to the payment of the principal of or the interest on the public bonds or obligations.

2001 Acts, 1st Ex, ch 4, §22, 36

476A.26 Public bonds or obligations types sources for payment security.

1. Except as otherwise expressly provided by this subchapter or by the electric power agency, every issue of public bonds or obligations of the electric power agency shall be payable out of any revenues or funds of the electric power agency, subject only to any agreements with the holders of particular public bonds or obligations pledging any particular revenues or funds.

2. An electric power agency may issue types of public bonds or obligations as it may determine, including public bonds or obligations as to which the principal and interest are payable exclusively from the revenues from one or more projects, or from an interest in such project or projects, or a right to capacity of such project or projects, or from any revenue-producing contract made by the electric power agency with any person, or from its revenues generally.

3. Any public bonds or obligations may be additionally secured by a pledge of any grant, subsidy, or contribution from any public agency or other person, or a pledge of any income or revenues, funds, or moneys of the electric power agency from any other source.

2001 Acts, 1st Ex, ch 4, §23, 36

476A.27 Public bonds or obligations and rates for debt service not subject to state approval.

Public bonds or obligations of an electric power agency may be issued under this subchapter, and rents, rates, and charges may be established in the same manner as provided in section 28F.5 and pledged for the security of public bonds or obligations and interest and redemption premiums on such public bonds or obligations, without obtaining the consent of any department, division, commission, board, bureau, or agency of the state and without any other proceeding or the happening of any other condition or occurrence, except as specifically required by this subchapter.

2001 Acts, 1st Ex, ch 4, §24, 36

476A.28 Public bonds or obligations to be negotiable.

All public bonds or obligations of an electric power agency shall be negotiable within the meaning and for all of the purposes of the uniform commercial code, chapter 554, subject only to the registration requirement of section 76.10.

2001 Acts, 1st Ex, ch 4, §25, 36

476A.29 Validity of public bonds or obligations at delivery temporary bonds.

1. Any public bonds or obligations may be issued and delivered, notwithstanding that one or more of the officers executing them shall have ceased to hold office at the time when the public bonds or obligations are actually delivered.

2. Pending preparation of definitive bonds or obligations, an electric power agency may issue temporary bonds or obligations that shall be exchanged for the definitive bonds or obligations upon their issuance.

2001 Acts, 1st Ex, ch 4, §26, 36

476A.30 Public or private sale of bonds and obligations.

Public bonds or obligations of an electric power agency may be sold at public or private sale for a price and in a manner determined by the electric power agency.

2001 Acts, 1st Ex, ch 4, §27, 36

476A.31 Public bonds or obligations as suitable investments for governmental units, financial institutions, and fiduciaries.

The following persons may legally invest any debt service funds, money, or other funds belonging to such person or within such person's control in any public bonds or obligations issued pursuant to this subchapter:

1. A bank, trust company, savings association, building and loan association, savings and loan association, or investment company.
2. An insurance company, insurance association, or any other person carrying on an insurance business.
3. An executor, administrator, conservator, trustee, or other fiduciary.
4. Any other person authorized to invest in bonds or obligations of the state.

2001 Acts, 1st Ex, ch 4, §28, 36

Footnotes

Investment of public funds; §12B.10

Insurance companies; §511.8, 515.35

Banks; §524.901

Savings and loan associations; §534.213

Investments by fiduciaries; §636.23

476A.32 Resolution, trust indenture, or security agreement constitutes contract provisions.

The resolution, trust indenture, or other security agreement under which any public bonds or obligations are issued shall constitute a contract with the holders of the public bonds or obligations, and may contain provisions, among others, prescribing any of the following terms:

1. The terms and provisions of the public bonds or obligations.
2. The mortgage or pledge of and the grant of a security interest in any real or personal property and all or any part of the revenue from any project or any revenue producing contract made by the electric power agency with any person to secure the payment of public bonds or obligations, subject to any agreements with the holders of public bonds or obligations which might then exist.
3. The custody, collection, securing, investment, and payment of any revenues, assets, money, funds, or property with respect to which the electric power agency may have any rights or interest.
4. The rates or charges for electric energy sold by, or services rendered by, the electric power agency, the amount to be raised by the rates or charges, and the use and disposition of any or all revenue.
5. The creation of reserves or debt service funds and the regulation and disposition of such reserves or funds.
6. The purposes to which the proceeds from the sale of any public bonds or obligations to be issued may be applied, and the pledge of the proceeds to secure the payment of the public bonds or obligations.

7. Limitations on the issuance of any additional public bonds or obligations, the terms upon which additional public bonds or obligations may be issued and secured, and the refunding of outstanding public bonds or obligations.
8. The rank or priority of any public bonds or obligations with respect to any lien or security.
9. The creation of special funds or moneys to be held for operating expenses, payment, or redemption of public bonds or obligations, reserves or other purposes, and the use and disposition of moneys held in these funds.
10. The procedure by which the terms of any contract with or for the benefit of the holders of public bonds or obligations may be amended or abrogated, the amount of public bonds or obligations the holders of which must consent to such amendment or abrogation, and the manner in which consent may be given.
11. The definition of the acts or omissions to act that constitute a default in the duties of the electric power agency to holders of its public bonds or obligations, and the rights and remedies of the holders in the event of default including, if the electric power agency so determines, the right to accelerate the date of the maturation of the public bonds or obligations or the right to appoint a receiver or receivers of the property or revenues subject to the lien of the resolution, trust indenture, or other security agreement.
12. Any other or additional agreements with or for the benefit of the holders of public bonds or obligations or any covenants or restrictions necessary or desirable to safeguard the interests of the holders.
13. The custody of any of the electric power agency's property or investments, the safekeeping of such property or investments, the insurance to be carried on such property or investments, and the use and disposition of insurance proceeds.
14. The vesting in a trustee or trustees, within or outside the state, of such property, rights, powers, and duties as the electric power agency may determine; or the limiting or abrogating of the rights of the holders of any public bonds or obligations to appoint a trustee, or the limiting of the rights, powers, and duties of such trustee.
15. The appointment of and the establishment of the duties and obligations of any paying agent or other fiduciary within or outside the state.

2001 Acts, 1st Ex, ch 4, §29, 36

476A.33 Mortgage or trust deed to secure bonds.

For the security of public bonds or obligations issued or to be issued by an electric power agency, the electric power agency may mortgage or execute deeds of trust of the whole or any part of its property.

2001 Acts, 1st Ex, ch 4, §30, 36

476A.34 No personal liability on public bonds or obligations.

An official, director, member of an electric power agency, or any person executing public bonds or obligations shall not be liable personally on the public bonds or obligations or be subject to any personal liability or accountability by reason of the issuance of such public bonds or obligations.

2001 Acts, 1st Ex, ch 4, §31, 36

476A.35 Repurchase of securities.

An electric power agency may purchase public bonds or obligations out of any funds available for such purchase, and hold, pledge, cancel, or resell the public bonds or obligations, subject to and in accordance with any agreements with the holders.

2001 Acts, 1st Ex, ch 4, §32, 36

476A.36 Pledge of revenue as security.

An electric power agency may pledge its rates, rents, and other revenues, or any part of such rates, rents, and revenues, as security for the repayment, with interest and redemption premiums, if any, of the moneys borrowed by the electric power agency or advanced to the electric power agency for any of its authorized purposes and as security for the payment of moneys due and owed by the electric power agency under any contract.

2001 Acts, 1st Ex, ch 4, §33, 36