

CHAPTER 476A

ELECTRIC POWER GENERATION AND TRANSMISSION

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SUBCHAPTER II

ELECTRIC POWER AGENCIES

SUBCHAPTER I

ELECTRIC POWER GENERATING
FACILITIES**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, §43 – 46; 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 department of commerce revolving fund created in section 546.12.

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; 2009 Acts, ch 181, §52

[SP] For future repeal of 2009 amendment to subsection 1, effective July 1, 2011, see 2009 Acts, ch 179, §146

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.

SUBCHAPTER II

ELECTRIC POWER AGENCIES

476A.20 Definitions. Repealed by 2010 Acts, ch 1018, § 7. See § 390.9.

476A.21 through 476A.36 Transferred to § 390.10 through 390.25; 2010 Acts, ch 1018, § 8 – 23.