

F I N A L R E P O R T

ENERGY FACILITIES AND HAZARDOUS SUBSTANCES SUBCOMMITTEE  
OF THE  
JOINT STANDING COMMITTEE ON ENERGY

November, 1975

At its July 16 meeting, the Legislative Council created the joint Subcommittee on Energy Facilities and Hazardous Substances to examine the need for state certification of the construction of major energy facilities and to determine what role, if any, the state may assume in the regulation of hazardous materials.

The following legislators were appointed to the joint Subcommittee:

Senator Louis P. Culver  
Senator Calvin O. Hultman  
Senator Cloyd E. Robinson  
Representative Donald V. Doyle  
Representative Cooper Evans  
Representative William B. Griffee

Representative Doyle and Senator Hultman were designated Co-chairpersons. Staff personnel assigned to the Subcommittee were Debbie Dahab, Research Analyst and Mary Richards, Legal Counsel, both from the Legislative Service Bureau.

At its first meeting, the Subcommittee met with Mr. Maurice Van Nostrand, Chairperson, and Mr. Don Uthus, Legal Counsel, from the Iowa State Commerce Commission. Mr. Van Nostrand explained that the Commission investigates proposals for construction of energy facilities for which capital outlays are projected in excess of \$250,000,000 to insure the economic viability of the project and to prevent the possible refusal of the Commission, subsequent to construction, to allow recovery of capital costs through the rate structure. Mr. Van Nostrand emphasized that the Commission does not have the authority to prevent the construction of a plant at a designated location.

The joint Subcommittee discussed the derailment which occurred near Interstate 80 north of Des Moines on September 1, with Mr. Victor Preisser, Director of the state Department of Transportation, and other Department representatives. Mr. Preisser pointed out that states are substantially preempted from regulating the transportation of hazardous materials. Public Law 94-633 provides that states may regulate the transportation of hazardous materials to the extent that state regulations are not inconsistent with federal regulations. Further, any state regulations must be approved by the United States Secretary of Transportation.

At that time, the joint Subcommittee decided to exclude the regulation of radioactive materials from its investigation since an ad hoc study, coordinated by the Energy Policy Council is being conducted in this area pursuant to House Resolution 46.

At its second meeting, the Subcommittee discussed the options available to states in the siting of major energy facilities. Mr. Andrew Robart and Mr. Joseph Scinto from the United States Nuclear Regulatory Commission (NRC) appeared to answer questions concerning the role of NRC in the siting process. Subcommittee members were told that the NRC regulates only the health and safety aspects of nuclear plants and issues construction and operating permits and licenses for such facilities only after evidence indicating that the utility has met all state requirements is presented.

The Subcommittee also learned that the state cannot prohibit the construction of nuclear parks within its boundaries but can institute a ban or enact laws affecting all power parks, including both nuclear and fossil fueled plants. Legislation requiring certification for the construction of electrical generating facilities with the Iowa State Commerce Commission as the consolidated licensing authority was requested by the joint Subcommittee and is discussed elsewhere in this report.

At its third and final meeting, the joint Subcommittee met with a panel of experts representing the various modes of transportation who discussed the roles of their respective agencies with regard to hazardous materials. Panel members were:

Robert C. Bowman, Federal Aviation Administration  
Jack H. Witthauer, Federal Railroad Administration  
Dennis Ehlert, Iowa Department of Transportation, representing the Bureau of Motor Carrier Safety  
Commander Billie A. Campbell, United States Coast Guard

The panel explained that the Materials Regulation Board of the United States Department of Transportation promulgates all regulations governing the transportation of hazardous materials although inspections are conducted by the specific bureau of the outside agency representing each mode. In the case of motor vehicle carriers, Iowa has adopted the federal regulations and will be assuming enforcement responsibilities. Again it was noted that state options with regard to the transportation of hazardous materials are extremely limited because of federal preemption.

The joint Subcommittee also heard testimony from Mr. Howard Covert, Assistant Chief of the Keokuk Fire Department, concerning the desirability of regular notification of local fire departments of the routing of hazardous materials shipments and the establishment of uniform labeling of hazardous materials shipments through state adoption of the 704M marking system. The Department of Environmental Quality presented information and recommendations concerning the disposal of hazardous materials and the development of an adequate state response capability in spill situations.

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--FEES.

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

34 2. The application shall include:

35 a. A description of the proposed major electric generating

1 facility and the site selected.

2 b. A description of at least one alternative site.

3 c. Such other information as the applicant may consider  
4 relevant or the commission may by rule require.

5 3. The application for a certificate shall be accompanied  
6 by proof of service of a copy of the application on the chief  
7 executive officer or governing body of each municipality in  
8 the counties in which any portion of the facility may be  
9 located and on the head of each local or state agency or local  
10 governing body having regulatory authority over some aspect  
11 of the construction or operation of the facility or on a state  
12 or local agency which is designated by the commission as  
13 having an interest in the certification proceeding.

14 4. The application shall be accompanied by proof that  
15 public notice was given to persons residing in the areas where  
16 the proposed facility may be located. "Public notice" means  
17 publication of a summary of the application and the approximate  
18 date of filing for three days in a newspaper of general  
19 circulation in the affected areas.

20 5. The application shall be accompanied by a fee not to  
21 exceed one hundred dollars for each megawatt of capacity of  
22 the proposed electrical generating facility. The commission  
23 shall establish by rule a schedule of application fees based  
24 upon the size of the proposed facility and the anticipated  
25 complexity of reaching a certification decision. A certificate  
26 shall not become effective until the applicant pays, or files  
27 an agreement to pay, all costs and expenses of the proceeding,  
28 including costs of examinations of the site, the hearing,  
29 publishing of notice, and other expenses reasonably  
30 attributable to the proceeding. The application fee shall  
31 be credited against the amount owed by the applicant for costs  
32 and expenses of the proceeding.

33 6. An application for an amendment to a certificate shall  
34 be accompanied by proof of service of notice on the parties  
35 to the proceeding resulting from the original application

1 and proof that public notice of the amendment application  
2 was given pursuant to subsection four (4) of this section.  
3 An application for an amendment to a certificate shall be  
4 in such form and contain such other information as the  
5 commission may prescribe. The commission shall establish  
6 a schedule of fees for amendments to certificates according  
7 to criteria as the commission may prescribe.

8 Sec. 4. NEW SECTION. PROCEEDING--PARTICIPATION OF STATE  
9 AGENCIES AND DECISION.

10 1. Upon receipt of an application for a certificate or  
11 an amendment to a certificate the proceeding shall be conducted  
12 in the same manner as a contested case according to the  
13 provisions of chapter seventeen A (17A) of the Code. State  
14 and local agencies and local governing bodies authorized to  
15 issue permits or licenses required for the construction,  
16 operation or maintenance of major electric generating  
17 facilities shall be parties to the proceeding and shall present  
18 the position of the agency or governing body at any such  
19 proceeding. The agency or governing body's position shall  
20 clearly state whether the facility being considered for  
21 certification or the requested amendment to a certificate  
22 will be in compliance with the agency or governing body's  
23 standards, rules and policies. Other parties to the proceeding  
24 shall include persons entitled to receive service of a copy  
25 of the application under subsection three (3) of section three  
26 (3) of this Act who are not otherwise designated parties to  
27 the proceeding pursuant to this subsection and persons residing  
28 in a county or municipality entitled to receive notice of  
29 the application under subsection four (4) of section three  
30 (3) of this Act.

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

1 presentation required for a license or permit necessary for  
2 the construction, maintenance or operation of a major electric  
3 generating facility.

4 3. The commission shall render a decision within eighteen  
5 months of the date the application is filed either granting  
6 or denying the application as filed, or granting the  
7 application on such terms, conditions or modifications as  
8 the commission, in consultation with the state and local  
9 agencies and local governing bodies who were parties to the  
10 proceeding, deems appropriate. The commission shall not  
11 certify a facility unless the commission determines that the  
12 facility will serve the public interest, convenience and  
13 necessity. A facility shall not be certified which violates  
14 state and local agency and local governing body requirements  
15 for licenses or permits necessary for the construction,  
16 operation or maintenance of a major electric generating  
17 facility.

18 4. Notwithstanding the provisions of chapter seventeen  
19 A (17A) of the Code, the decision of the commission based  
20 on the recommendations of the state and local agencies and  
21 local governing bodies who were parties to the contested case  
22 shall be considered a single agency action. The agency action  
23 shall be subject to judicial review in the manner provided  
24 in chapter seventeen A (17A) of the Code.

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

35 Sec. 6. NEW SECTION. STAFF ASSISTANCE--JOINT EXERCISE

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

9 Sec. 7. NEW SECTION. PENALTIES.

10 1. Any utility who commences to construct a major electric  
11 generating facility as provided in this Act without having  
12 first obtained a certificate, or who constructs, operates  
13 or maintains any major electric generating facility other  
14 than in compliance with the certificate issued by the  
15 commission, or who causes any of these acts to occur, shall  
16 be liable for a civil penalty of not more than ten thousand  
17 dollars for each violation or for each day of continuing  
18 violation. Civil penalties collected pursuant to this  
19 subsection shall be forwarded by the clerk of court to the  
20 treasurer of state for deposit in the general fund of the  
21 state.

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

26 3. Persons convicted of violating any provision of this  
27 Act shall be guilty of a misdemeanor and shall be fined not  
28 more than one hundred dollars or be imprisoned for no more  
29 than thirty days, or be punished by both such fine and  
30 imprisonment.

31 Sec. 8. Section four hundred ninety A point twenty-seven  
32 (490A.27), Code 1975, is repealed.

33 EXPLANATION

34 This bill establishes a consolidated hearing procedure  
35 for the siting, construction, operation and maintenance of

1 major electric generating facilities. The Iowa state commerce  
2 commission is designated as the siting authority and issues  
3 the final certificate. Other state and local agencies and  
4 local governing bodies having licensing and permit  
5 responsibilities over the construction, operation and  
6 maintenance of major electric generating facilities must  
7 participate in the proceeding arising from each application  
8 and must clearly state the agency or governing body's position  
9 as to whether the application meets the agency or governing  
10 body's permit and licensing requirements at any oral  
11 presentation. A facility cannot be issued a certificate  
12 unless state and local agency and local governing body  
13 licensing and permit requirements are met.

14 This bill provides for the filing of one application by  
15 a utility for each facility resulting in a single proceeding  
16 utilizing the procedures available in a contested case pursuant  
17 to chapter 17A and for the issuance of one certificate in  
18 lieu of the several state and local licenses and permits which  
19 must be obtained at present.

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

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