

MAR 1 1976

Reprinted

HOUSE FILE

1470

Place On Calendar

By COMMITTEE ON ENERGY

Passed House, Date 4-9-76(1853) Passed Senate, Date _____
 Vote: Ayes 50 Nays 34 Vote: Ayes _____ Nays _____
 Approved 5-20-76

A BILL FOR

1 An Act relating to the location and construction of electric
 2 power generating facilities and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

3 1. "Facility" means any electric power generating plant
4 or a combination of plants at a single site with a total
5 capacity of one hundred megawatts of electricity or more and
6 those associated transmission lines connecting the generating
7 plant to either a power transmission system or an
8 interconnected primary transmission system or both.

9 Transmission lines subject to the provisions of this Act shall
10 not require a franchise under chapter four hundred eighty-
11 nine (489) of the Code.

12 2. "Certificate" means a certificate of public convenience,
13 use and necessity issued pursuant to section six (6) of this
14 Act.

15 3. "Commence to construct" means significant alteration
16 of a site to install permanent equipment or structures but
17 does not include activities incident to preliminary
18 engineering, environmental studies or acquisition of a site
19 for a facility.

20 4. "Agency" means an agency as defined in section seventeen
21 A point two (17A.2), subsection one (1), of the Code.

22 5. "Regulatory agency" means an agency which issues
23 licenses or permits required for the construction, operation
24 or maintenance of a facility pursuant to statutes or rules
25 in effect on the date on which an application for a certificate
26 is accepted by the commission.

27 6. "Commission" means the Iowa state commerce commission.

28 Sec. 2. NEW SECTION. CERTIFICATE REQUIRED.

29 1. Commencing January 1, 1977, a person shall not com-
30 mence to construct a facility except as provided in section
31 nine (9) of this Act unless a certificate for the facility
32 has been issued by the commission. This Act shall not apply
33 to persons who prior to July 1, 1976:

- 34 a. Have acquired a site for a facility; and,
- 35 b. Have publicly announced the intention to construct

1 a facility; and,

2 c. Have let contracts for major components of a facility.

3 2. Any significant alteration, as determined by the commis-
4 sion, in the location, construction, maintenance, or operation
5 of a facility whether constructed before or after July 1,
6 1976 shall require an application for an amendment to a
7 certificate or a certificate, whichever is appropriate.
8 "Significant alteration" shall include but shall not be limited
9 to a change in the type of fuel used by the major electric
10 generating facility.

11 3. Any person required to obtain a certificate or an
12 amendment to a certificate shall construct, operate and
13 maintain the facility according to the terms of the certificate
14 and any amendments to the certificate. A certificate shall
15 only be issued pursuant to this Act.

16 Sec. 3. NEW SECTION. APPLICATION SUBMITTED--REVIEW.

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

26 Sec. 4. NEW SECTION. HEARING SCHEDULED--NOTICE.

27 1. The proceeding for the issuance of a certificate or
28 an amendment to a certificate shall be treated in the same
29 manner as a contested case pursuant to the provisions of
30 chapter seventeen A (17A) of the Code. Upon acceptance of
31 an application by the commission, a public hearing shall be
32 scheduled at least forty-five days but not more than one
33 hundred twenty-five days after the date on which the
34 application is accepted.

35 2. The commission shall serve notice of the proceeding

1 on the following:

2 a. Interested agencies, as determined by the commission,
3 and regulatory agencies.

4 b. County and city zoning authorities from the area in
5 which the proposed site is located.

6 c. Owners of record of real property located within one
7 thousand linear feet of the proposed site.

8 3. Notice of the proceeding in the form provided in section
9 seventeen A point twelve (17A.12), subsection two (2), of
10 the Code shall be published in a newspaper of general
11 circulation in each county in which the proposed site is
12 located once a week for two consecutive weeks with the second
13 publication being at least twenty days prior to the date of
14 the hearing. The commission shall be responsible for publi-
15 cation and delivery of notices required by this section.

16 Sec. 5. NEW SECTION. PROCEEDING--ROLE OF REGULATORY
17 AGENCIES AND LOCAL AUTHORITIES.

18 1. The commission shall conduct the contested case pro-
19 ceeding. Regulatory agencies which appear on record at the
20 proceeding shall state whether the application meets their
21 permit and licensing requirements. If the application does
22 not meet such requirements, the regulatory agency shall recom-
23 mend amendments to the application which outline actions
24 necessary to bring the applicant in compliance with the
25 regulatory agency's permit and licensing requirements. The
26 commission shall not issue a certificate for a facility which
27 does not meet the permit and licensing requirements of a
28 regulatory agency.

29 2. If a regulatory agency which received notice pursuant
30 to section four (4) of this Act fails to appear of record
31 in the contested case proceeding, the commission shall conclu-
32 sively presume that the facility meets the regulatory agency's
33 permit and licensing requirements and the regulatory agency
34 shall immediately issue any license or permit required for
35 the construction, operation or maintenance of the facility.

1 3. City and county zoning authorities designated as parties
2 to the proceeding may appear on record and may state whether
3 the facility meets city, county and airport zoning
4 requirements. The failure of a facility to meet zoning
5 requirements established pursuant to chapters three hundred
6 twenty-nine (329), three hundred fifty-eight A (358A) and
7 four hundred fourteen (414) of the Code shall not preclude
8 the commission from issuing the certificate and to that extent
9 the provisions of this subsection shall supersede the
10 provisions of chapters three hundred twenty-nine (329), three
11 hundred fifty-eight A (358A) and four hundred fourteen (414)
12 of the Code.

13 Sec. 6. NEW SECTION. DECISION--CRITERIA.

14 The commission shall render a decision on the applica-
15 tion within six months from the date of the acceptance of
16 the application. A certificate shall be issued to the
17 applicant if the commission finds that:

18 1. The services and operations resulting from the con-
19 struction of the facility are required by the present or
20 future public convenience, use and necessity; and,

21 2. The applicant is willing to perform such services and
22 construct, maintain, and operate the facility pursuant to
23 the provisions of the certificate and this Act; and,

24 3. The construction, maintenance, and operation of the
25 facility will cause minimum adverse land use, environmental,
26 and aesthetic impact and are consonant with reasonable utili-
27 zation of air, land and water resources for beneficial purposes
28 considering available technology and the economics of available
29 alternatives.

30 Sec. 7. NEW SECTION. ISSUANCE OF CERTIFICATE--EFFECT.

31 1. Issuance of a certificate by the commission:

32 a. Authorizes construction of the facility on the site
33 designated in the certificate according to the terms and con-
34 ditions stated in the certificate and licenses and permits
35 issued by regulatory agencies during the proceeding; and,

1 b. Gives the applicant the power of eminent domain to
2 the extent and under such conditions as the commission may
3 approve, prescribe and find necessary for the public
4 convenience, use and necessity. The burden of proving the
5 necessity for the exercise of the power of eminent domain
6 shall be on the person issued the certificate.

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

13 Sec. 8. NEW SECTION. FURTHER APPROVALS PROHIBITED--
14 EXCEPTION. Upon issuance of a certificate, notwithstanding
15 any provision of law except statutory requirements relating
16 to the protection of employees engaged in the construction
17 of the facility, a regulatory agency, city or county shall
18 not require any further approval, permit or license for the
19 construction of the facility.

20 Sec. 9. NEW SECTION. ADVANCE SITE PREPARATION. Subsequent
21 to the hearing held pursuant to section five (5) of this Act
22 and in the event of extensive delay in the issuance of a
23 certificate, the commission may permit an applicant having
24 an application docketed for hearing to begin work to prepare
25 the site for construction of the facility. Any activities
26 conducted pursuant to this section shall have no probative
27 value in the commission's decision concerning the actual
28 issuance of a certificate.

29 Sec. 10. NEW SECTION. COSTS OF PROCEEDING. The applicant
30 for a certificate, or an amendment to certificate, shall pay
31 all the costs and expenses incurred by the commission in
32 reaching a decision on the application including the costs
33 of examinations of the site, the hearing, publishing of notice,
34 commission staff salaries, the cost of consultants employed
35 by the commission, and other expenses reasonably attributable

1 to the proceeding.

2 Sec. 11. NEW SECTION. SINGLE HEARING--JUDICIAL REVIEW.

3 Notwithstanding the provisions of chapter seventeen A (17A)
4 of the Code:

5 1. Any proceeding or oral presentation held on an applica-
6 tion for a certificate or an amendment to a certificate shall
7 be held in lieu of any other proceeding or oral presentation
8 required for a license or permit necessary for the construc-
9 tion, maintenance or operation of a facility.

10 2. The decision of the commission shall be considered
11 a single agency action. The agency action shall be subject
12 to judicial review in the manner provided in chapter seventeen
13 A (17A) of the Code.

14 3. Only parties to the proceeding before the commission
15 may seek judicial review of the final order of the commission.

16 Sec. 12. NEW SECTION. RULES. The commission shall adopt
17 rules pursuant to chapter seventeen A (17A) of the Code
18 necessary to implement the provisions of this Act including
19 but not limited to the promulgation of facility siting
20 criteria, the form for an application for a certificate and
21 an amendment to a certificate, the description of informa-
22 tion to be furnished by the applicant, the determination of
23 what constitutes a significant alteration to a facility, and
24 the establishment of minimum guidelines for public participa-
25 tion in the proceeding.

26 Sec. 13. NEW SECTION. STAFF ASSISTANCE--FEDERAL
27 PREEMPTION.

28 1. The commission may request staff assistance from other
29 federal, state and local agencies, pursuant to chapter twenty-
30 eight D (28D) of the Code, to assist in discharging the respon-
31 sibilities assigned to the commission pursuant to this Act.
32 The commission may exercise the powers and responsibilities
33 assigned to the commission under this Act jointly with other
34 governmental agencies pursuant to chapter twenty-eight E (28E)
35 of the Code.

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

8 Sec. 14. NEW SECTION. PENALTIES.

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

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

25 3. Persons convicted of violating any provision of this
26 Act shall be guilty of a misdemeanor and shall be fined not
27 more than one hundred dollars or be imprisoned for not more
28 than thirty days, or be punished by both such fine and
29 imprisonment.

30 Sec. 15. Section four hundred eighty-nine point fifteen
31 (489.15), unnumbered paragraph one (1), Code 1975, is amended
32 to read as follows:

33 Any person, company, or corporation having secured a fran-
34 chise as provided in this chapter, shall thereupon be vested
35 with the right of eminent domain to such extent as the commis-

1 sion may approve, prescribe and find to be necessary for
2 public use, not exceeding one hundred feet in width for right
3 of way and not exceeding one hundred sixty acres in any one
4 location, in addition to right of way, for the location of
5 ~~electric-power-generating-plants-and~~ electric substations
6 to carry out the purposes of said franchise; provided however,
7 that where two hundred K V lines or higher voltage lines are
8 to be constructed, the person, company, or corporation may
9 apply to the commerce commission for a wider right of way
10 not to exceed two hundred feet, and the commission may for
11 good cause extend the width of such right of way for such
12 lines to the person, company, or corporation applying for
13 the same. The burden of proving the necessity for public
14 use shall be on the person, company or corporation seeking
15 the franchise. A homestead site, cemetery, orchard or
16 schoolhouse location shall be condemned for the purpose
17 of erecting an ~~electric-power-generating-plant-or~~ electric
18 substation. If agreement cannot be made with the private
19 owner of lands as to damages caused by the construction of
20 said transmission line, ~~electric-power-generating-plants~~ or
21 electric substations, the same proceedings shall be taken
22 as provided for taking private property for works of internal
23 improvement.

24 Sec. 16. Section four hundred ninety A point twenty-seven
25 (490A.27), Code 1975, is repealed.

26 EXPLANATION

27 This bill establishes a consolidated hearing procedure
28 for the siting, construction, operation and maintenance of
29 electric power generating facilities including certain
30 associated transmission lines. The Iowa state commerce
31 commission is designated as the siting authority and issues
32 the final certificate. Before a certificate can be issued,
33 facilities must meet the permit and licensing requirements
34 of state agencies having permit and licensing responsibilities
35 for the construction, operation or maintenance of a facility

1 pursuant to rules and statutes in effect at the time the
2 application is filed. City and county zoning authorities
3 may participate in the public hearing and may state whether
4 the facility meets city and county zoning requirements.
5 Failure of a facility to meet such requirements shall not
6 preclude the commission from issuing a certificate.

7 This bill requires the filing of one application for a
8 facility resulting in a single proceeding utilizing the pro-
9 cedures available for a contested case pursuant to chapter
10 17A of the Code. However, regulatory agencies will still
11 issue their respective permits and licenses. The decision
12 of the commission shall be subject to judicial review.

13 A person may commence to prepare the site for construc-
14 tion, if, subsequent to the hearing and in the event of
15 extensive delay in the issuance of a certificate, the commis-
16 sion approves such construction. Issuance of a certificate
17 vests the person with the power of eminent domain to such
18 extent and under such conditions as the commission may approve,
19 prescribe and find necessary for the public convenience,
20 use and necessity.

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

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H-5594

- 1 Amend House File 1470 as follows:
- 2 1. Page 5, line 4, by inserting after the
- 3 word "necessity" the words ", proceeding in the
- 4 manner of works of internal improvement under
- 5 chapter four hundred seventy-two (472), Code 1975".

H-5594 FILED, ADOPTED (p. 1002) BY OAKLEY of Clinton
MARCH 8, 1976

H-5595

- 1 Amend House File 1470 as follows:
- 2 1. Page 2, line 32, by striking everything
- 3 after the word "at" and striking all of lines 33
- 4 and 34.
- 5 2. Page 4, lines 15 and 16, by striking the
- 6 words "within six months from the date of the accep-
- 7 tance of the application" and inserting in lieu
- 8 thereof the words "in an expeditious manner".

H-5595 FILED
MARCH 8, 1976

BY EVANS of Grundy
OAKLEY of Clinton

*Adopted as amended by 5598
3/8 (p. 1001)*

H-5598

- 1 Amend the Evans et al. amendment H-5595 as
- 2 follows:
- 3 Line 3, by striking the word "at" and inserting
- 4 in lieu thereof the word "scheduled."

H-5598 FILED, ADOPTED BY EVANS of Grundy
BY UNANIMOUS CONSENT (p. 1001)
MARCH 8, 1976

H-5604

- 1 Amend House File 1470 as follows:
- 2 1. Page 4, by striking lines 1 through 12
- 3 and inserting in lieu thereof the following:
- 4 "3. A facility shall not be certified which
- 5 violates state and local agency and local govern-
- 6 ing body requirements for licenses or permits
- 7 necessary for the construction, operation or main-
- 8 tenance of a major electric generating facility."

H-5604 FILED
MARCH 8, 1976
Loer 4/9 (1850)

BY RINAS of Linn
ANDERSON of Jasper
HINES of Story
CUSACK of Scott
PATCHETT of Johnson
SVOBODA of Iowa

H-5605

- 1 Amend House File 1470 as follows:
2 1. Page 4, line 8, by striking everything
3 after the word "certificate" and inserting in
4 lieu thereof a period.
5 2. Page 4, by striking lines 9, 10, 11 and
6 12.

H-5605 FILED BY RINAS of Linn
MARCH 8, 1976 ANDERSON of Jasper
Lost 34-54 4/9 (1851) HINES of Story
CUSACK of Scott
PATCHETT of Johnson
SVOBODA of Iowa
HARVEY of Scott

HOUSE FILE 1470

H-5606

- 1 Amend House File 1470 as follows:
2 1. Page 4, lines 31 and 32, by striking
3 the words "commission:
4 a. Authorizes" and inserting in lieu
5 thereof the words "commission authorizes"
6 2. Page 5, by striking lines 1 through 6.

H-5606 FILED BY ANDERSON of Jasper
MARCH 8, 1976 *Lost 4/9 28-62 (1852)*

H-5615

- 1 Amend the Cusack, et al amendment H-5608
2 to House File 1470 as follows:
3 1. Page 1, line 36, by striking the words
4 "continuously for one year".

H-5615 FILED *Adopted* BY VARLEY of Adair
MARCH 8, 1976 *3/8 (1009)*

H- 5

H-5616

- 1 Amend House File 1470 as follows:
2 1. Page 3, by inserting after line 15 the
3 following new subsection:
4 "4. The commission shall conduct the hearing,
5 as described in subsection three (3) of this
6 section, in the county in which the construction
7 of the greater portion of the facility is being
8 proposed."

H-5616 FILED BY HINES of Story
MARCH 8, 1976 RINAS of Linn
Adopted or amended JUNKER of Woodbury
by 5633 4/9 (1851) HARVEY of Scott
MONROE of Des Moines

H-5633

- 1 Amend amendment H-5616 to House File 1470 as
- 2 follows:
- 3 1. Page 1, by striking "three (3)" and inserting
- 4 "one (1)".

H-5633 FILED BY HINES of Story
MARCH 8, 1976 *Adopted 4/9 (1851)*

H-5634

- 1 Amend amendment H-5608 to House File 1470 as
- 2 follows:
- 3 1. Page 1, line 9 by striking the word "SAFETY".
- 4 2. Page 1, lines 16, 18, 20, 28, 29 and 31
- 5 by striking the word "safety".

H-5634 FILED, ADOPTED BY CUSACK of Scott
BY UNANIMOUS CONSENT (1009)
MARCH 8, 1976

H-5647

- 1 Amend amendment H-5608 to House File 1470 as
- 2 follows:
- 3 1. Page 1, line 11, by striking the word
- 4 "construct" and inserting in lieu thereof the
- 5 word "operate".
- 6 2. Page 1, line 20, by striking the word
- 7 "construction" and inserting in lieu thereof the
- 8 word "operation".
- 9 3. Page 1, line 26, by striking the word
- 10 "construction".

H-5647 FILED, LOST (1010) BY SMALL of Johnson
MARCH 8, 1976

HOUSE FILE 1470

H-5648

- 1 Amend amendment H-5608 to House File 1470 as
- 2 follows:
- 3 1. Strike lines 42 through 50 on page 1 and
- 4 line 1 on page 2.

H-5648 FILED BY LIPSKY of Linn
MARCH 8, 1976 - *Adopted 3/9 (p. 1024)*

H-5614

- 1 Amend House File 1470 as follows:
- 2 1. Page 7, lines 28 and 29 by striking the words
- 3 "days, or be punished by both such fine and imprison-
- 4 ment." and inserting in lieu thereof the word "days."

H-5614 FILED
MARCH 8, 1976 By DOYLE of Woodbury

HOUSE FILE 1470

H-5728

- 1 Amend House File 1470 as follows:
- 2 1. Page 7, line 9, by striking the words "major
- 3 electric".
- 4 2. Page 7, line 10, by striking the word
- 5 "generating".
- 6 3. Page 7, line 12, by striking the words "major
- 7 electric generating".

H-5728 FILED BY DOYLE of Woodbury
MARCH 10, 1976 *Adopted 4/9 (1853)*

H-6244

- 1 Amend H-5604 to page 4 of House File 1470 as
- 2 follows:
- 3 1. Page 1, line 8, by striking the words
- 4 "major electric generating".

H-6244 FILED, ADOPTED BY BY RINAS of Linn
UNANIMOUS CONSENT (1850)
APRIL 9, 1976

H-6245

- 1 Amend amendment H-5606, to page 4 of House
- 2 File 1470, as follows:
- 3 1. Page 1, by inserting after line 5 the
- 4 following:
- 5 "_____". Page 4, line 35, by striking "; and,"
- 6 and inserting in lieu thereof a period.

H-6245 FILED, ADOPTED BY JUNKER of Woodbury
BY UNANIMOUS CONSENT (1852)
APRIL 9, 1976

H-6007

- 1 Amend House File 1470 as follows:
- 2 1. Page 7, by striking lines 30 through 35.
- 3 2. Page 8, by striking lines 1 through 23.

H-6007 FILED BY ANDERSON of Jasper
MARCH 26, 1976
Withdrawn 4/9 (1853)

H-5614

- 1 Amend House File 1470 as follows:
- 2 1. Page 7, lines 28 and 29 by striking the words
- 3 "days, or be punished by both such fine and imprison-
- 4 ment." and inserting in lieu thereof the word "days."

H-5614 FILED - *Adopted 4/9* BY DOYLE of Woodbury
MARCH 8, 1976 (1853)

1 Amend House File 1470 as follows:

2 1. Page 1, by inserting after line 27 the follow-
3 ing:

4 "7. "Spent fuel" means fuel removed from a nuclear
5 reactor which can no longer be used in its form at the
6 time of its removal for the nuclear generation of
7 electricity."

8 2. Page 7, by inserting after line 7 the following:

9 "Sec. ____ . NEW SECTION. PRELIMINARY SAFETY PER-
10 MIT.

11 1. A person shall not commence to construct a
12 facility which will use a nuclear reactor to generate
13 electricity or make significant alterations to an
14 existing facility which include the construction or
15 expansion of storage facilities for spent fuel un-
16 less the person has obtained a preliminary safety
17 permit from the commission. The application for a
18 preliminary safety permit shall be filed on such forms
19 as the commission may prescribe. Persons required to
20 obtain a preliminary safety permit for the construction
21 or alteration of a facility shall file the application
22 for the permit either before the filing of an applica-
23 tion for a certificate or an amendment to a certificate
24 or simultaneously with the application for a certificate
25 or an amendment. Regulatory agencies shall not issue
26 licenses and permits required for the construction,
27 operation or maintenance of a facility which requires
28 a preliminary safety permit unless the preliminary
29 safety permit has been issued by the commission.

30 2. The commission shall issue the preliminary
31 safety permit if the person proves by clear and con-
32 vincing evidence that:

33 a. A plant which reprocesses spent fuel and which
34 is licensed by the United States nuclear regulatory
35 commission has been operating within the United States
36 continuously for one year; and

37 b. The plant is capable of reprocessing the spent
38 fuel of the facility on a continuing basis; and

39 c. The person has contracted for or made other
40 permanent arrangements for the reprocessing of the
41 spent fuel of the facility.

42 3. Upon presentation of evidence to the commission
43 indicating that the facility is not disposing of its
44 spent fuel through a plant licensed by the United
45 States nuclear regulatory commission, the commission
46 shall order a hearing. Unless the facility proves
47 by clear and convincing evidence that the spent fuel
48 is being reprocessed on a continuing basis through a
49 licensed plant, any subsequent capital costs of the
50 facility shall not be included in the consumer rate

Page 2

1 base of the public utility."

2 3. By renumbering the remaining sections in
3 accordance with this amendment.

5608 FILED - *Loeb* BY CUSACK of Scott
MARCH 8, 1976 *3/4* (p.1025) ANDERSON of Jasper
HOWELL of Floyd
GRIFFEE of Chickasaw
SVOBODA of Iowa
HARGRAVE of Johnson
JESSE of Polk
MIDDLETON of Black Hawk
HINES of Story

Sen. Energy 4/15 - Pass 4/20

HOUSE FILE 1470

By COMMITTEE ON ENERGY

(As Amended and Passed by the House)

Passed House, Date _____ Passed Senate, Date 4-22-76 (1404)

Vote: Ayes _____ Nays _____ Vote: Ayes 38 Nays 11

Approved _____
Motion to reconsider (1404) Lost 4/25 (p. 1503)

A BILL FOR

1 An Act relating to the location and construction of electric
2 power generating facilities and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments _____

S-5549

- 1 Amend House File 1470 as follows:
- 2 1. Page 5, line 1, by striking the figures and
- 3 word "; and," and inserting in lieu thereof the
- 4 figure ".".
- 5 2. Page 5, by striking lines 2 through 9.

S-5549 FILED *Ruled out of order with*
APRIL 21, 1976 *consideration and loss*
of 5560 4/22 (1403)

BY NORMAN RODGERS
C. JOSEPH COLEMAN
JAMES E. BRILES
KENNETH SCOTT
FRED W. NOLTING

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

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19 for a facility.

20 4. "Agency" means an agency as defined in section seventeen
21 A point two (17A.2), subsection one (1), of the Code.

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25 in effect on the date on which an application for a certificate
26 is accepted by the commission.

27 6. "Commission" means the Iowa state commerce commission.

28 Sec. 2. NEW SECTION. CERTIFICATE REQUIRED.

29 1. Commencing January 1, 1977, a person shall not com-
30 mence to construct a facility except as provided in section
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33 to persons who prior to July 1, 1976:

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35 b. Have publicly announced the intention to construct

1 a facility; and,

2 c. Have let contracts for major components of a facility.

3 2. Any significant alteration, as determined by the commis-
4 sion, in the location, construction, maintenance, or operation
5 of a facility whether constructed before or after July 1,
6 1976 shall require an application for an amendment to a
7 certificate or a certificate, whichever is appropriate.

8 "Significant alteration" shall include but shall not be limited
9 to a change in the type of fuel used by the major electric
10 generating facility.

11 3. Any person required to obtain a certificate or an
12 amendment to a certificate shall construct, operate and
13 maintain the facility according to the terms of the certificate
14 and any amendments to the certificate. A certificate shall
15 only be issued pursuant to this Act.

16 Sec. 3. NEW SECTION. APPLICATION SUBMITTED--REVIEW.

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

26 Sec. 4. NEW SECTION. HEARING SCHEDULED--NOTICE.

27 1. The proceeding for the issuance of a certificate or
28 an amendment to a certificate shall be treated in the same
29 manner as a contested case pursuant to the provisions of
30 chapter seventeen A (17A) of the Code. Upon acceptance of
31 an application by the commission, a public hearing shall be
32 scheduled,

33 2. The commission shall serve notice of the proceeding
34 on the following:

35 a. Interested agencies, as determined by the commission,

1 and regulatory agencies.

2 b. County and city zoning authorities from the area in
3 which the proposed site is located.

4 c. Owners of record of real property located within one
5 thousand linear feet of the proposed site.

6 3. Notice of the proceeding in the form provided in section
7 seventeen A point twelve (17A.12), subsection two (2), of
8 the Code shall be published in a newspaper of general
9 circulation in each county in which the proposed site is
10 located once a week for two consecutive weeks with the second
11 publication being at least twenty days prior to the date of
12 the hearing. The commission shall be responsible for publi-
13 cation and delivery of notices required by this section.

14 4. The commission shall conduct the hearing, as
15 described in subsection one (1) of this section, in
16 the county in which the construction of the greater
17 portion of the facility is being proposed.

18 Sec. 5. NEW SECTION. PROCEEDING--ROLE OF REGULATORY
19 AGENCIES AND LOCAL AUTHORITIES.

20 1. The commission shall conduct the contested case pro-
21 ceeding. Regulatory agencies which appear on record at the
22 proceeding shall state whether the application meets their
23 permit and licensing requirements. If the application does
24 not meet such requirements, the regulatory agency shall recom-
25 mend amendments to the application which outline actions
26 necessary to bring the applicant in compliance with the
27 regulatory agency's permit and licensing requirements. The
28 commission shall not issue a certificate for a facility which
29 does not meet the permit and licensing requirements of a
30 regulatory agency.

31 2. If a regulatory agency which received notice pursuant
32 to section four (4) of this Act fails to appear of record
33 in the contested case proceeding, the commission shall conclu-
34 sively presume that the facility meets the regulatory agency's
35 permit and licensing requirements and the regulatory agency

1 shall immediately issue any license or permit required for
2 the construction, operation or maintenance of the facility.

3 3. City and county zoning authorities designated as parties
4 to the proceeding may appear on record and may state whether
5 the facility meets city, county and airport zoning
6 requirements. The failure of a facility to meet zoning
7 requirements established pursuant to chapters three hundred
8 twenty-nine (329), three hundred fifty-eight A (358A) and
9 four hundred fourteen (414) of the Code shall not preclude
10 the commission from issuing the certificate and to that extent
11 the provisions of this subsection shall supersede the
12 provisions of chapters three hundred twenty-nine (329), three
13 hundred fifty-eight A (358A) and four hundred fourteen (414)
14 of the Code.

15 Sec. 6. NEW SECTION. DECISION--CRITERIA.

16 The commission shall render a decision on the applica-
17 tion in an expeditious manner. A certificate shall be issued to the
18 applicant if the commission finds that:

19 1. The services and operations resulting from the con-
20 struction of the facility are required by the present or
21 future public convenience, use and necessity; and,

22 2. The applicant is willing to perform such services and
23 construct, maintain, and operate the facility pursuant to
24 the provisions of the certificate and this Act; and,

25 3. The construction, maintenance, and operation of the
26 facility will cause minimum adverse land use, environmental,
27 and aesthetic impact and are consonant with reasonable utili-
28 zation of air, land and water resources for beneficial purposes
29 considering available technology and the economics of available
30 alternatives.

31 Sec. 7. NEW SECTION. ISSUANCE OF CERTIFICATE--EFFECT.

32 1. Issuance of a certificate by the commission:

33 a. Authorizes construction of the facility on the site
34 designated in the certificate according to the terms and con-
35 ditions stated in the certificate and licenses and permits

1 issued by regulatory agencies during the proceeding; and,
2 b. Gives the applicant the power of eminent domain to
3 the extent and under such conditions as the commission may
4 approve, prescribe and find necessary for the public
5 convenience, use and necessity, proceeding in the manner
6 of works of internal improvement under chapter four hundred
7 seventy-two (472), Code 1975. The burden of proving the
8 necessity for the exercise of the power of eminent domain
9 shall be on the person issued the certificate.

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

16 Sec. 8. NEW SECTION. FURTHER APPROVALS PROHIBITED--
17 EXCEPTION. Upon issuance of a certificate, notwithstanding
18 any provision of law except statutory requirements relating
19 to the protection of employees engaged in the construction
20 of the facility, a regulatory agency, city or county shall
21 not require any further approval, permit or license for the
22 construction of the facility.

23 Sec. 9. NEW SECTION. ADVANCE SITE PREPARATION. Subsequent
24 to the hearing held pursuant to section five (5) of this Act
25 and in the event of extensive delay in the issuance of a
26 certificate, the commission may permit an applicant having
27 an application docketed for hearing to begin work to prepare
28 the site for construction of the facility. Any activities
29 conducted pursuant to this section shall have no probative
30 value in the commission's decision concerning the actual
31 issuance of a certificate.

32 Sec. 10. NEW SECTION. COSTS OF PROCEEDING. The applicant
33 for a certificate, or an amendment to certificate, shall pay
34 all the costs and expenses incurred by the commission in
35 reaching a decision on the application including the costs

1 of examinations of the site, the hearing, publishing of notice,
2 commission staff salaries, the cost of consultants employed
3 by the commission, and other expenses reasonably attributable
4 to the proceeding.

5 Sec. 11. NEW SECTION. SINGLE HEARING--JUDICIAL REVIEW.
6 Notwithstanding the provisions of chapter seventeen A (17A)
7 of the Code:

8 1. Any proceeding or oral presentation held on an applica-
9 tion for a certificate or an amendment to a certificate shall
10 be held in lieu of any other proceeding or oral presentation
11 required for a license or permit necessary for the construc-
12 tion, maintenance or operation of a facility.

13 2. The decision of the commission shall be considered
14 a single agency action. The agency action shall be subject
15 to judicial review in the manner provided in chapter seventeen
16 A (17A) of the Code.

17 3. Only parties to the proceeding before the commission
18 may seek judicial review of the final order of the commission.

19 Sec. 12. NEW SECTION. RULES. The commission shall adopt
20 rules pursuant to chapter seventeen A (17A) of the Code
21 necessary to implement the provisions of this Act including
22 but not limited to the promulgation of facility siting
23 criteria, the form for an application for a certificate and
24 an amendment to a certificate, the description of informa-
25 tion to be furnished by the applicant, the determination of
26 what constitutes a significant alteration to a facility, and
27 the establishment of minimum guidelines for public participa-
28 tion in the proceeding.

29 Sec. 13. NEW SECTION. STAFF ASSISTANCE--FEDERAL
30 PREEMPTION.

31 1. The commission may request staff assistance from other
32 federal, state and local agencies, pursuant to chapter twenty-
33 eight D (28D) of the Code, to assist in discharging the respon-
34 sibilities assigned to the commission pursuant to this Act.
35 The commission may exercise the powers and responsibilities

1 assigned to the commission under this Act jointly with other
2 governmental agencies pursuant to chapter twenty-eight E (28E)
3 of the Code.

4 2. This Act shall not apply to any facility over which
5 an agency of the federal government has exclusive jurisdic-
6 tion. When concurrent jurisdiction exists with certain powers
7 reserved to the state, the state shall exercise those powers
8 with respect to facilities operating within this state to
9 the full extent permitted by the Constitution and the laws
10 of the United States.

11 Sec. 14. NEW SECTION. PENALTIES.

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

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

28 3. Persons convicted of violating any provision of this
29 Act shall be guilty of a misdemeanor and shall be fined not
30 more than one hundred dollars or be imprisoned for not more
31 than thirty days.

32 Sec. 15. Section four hundred eighty-nine point fifteen
33 (489.15), unnumbered paragraph one (1), Code 1975, is amended
34 to read as follows:

35 Any person, company, or corporation having secured a fran-

1 chise as provided in this chapter, shall thereupon be vested
2 with the right of eminent domain to such extent as the commis-
3 sion may approve, prescribe and find to be necessary for
4 public use, not exceeding one hundred feet in width for right
5 of way and not exceeding one hundred sixty acres in any one
6 location, in addition to right of way, for the location of
7 ~~electric-power-generating-plants-and~~ electric substations
8 to carry out the purposes of said franchise; provided however,
9 that where two hundred K V lines or higher voltage lines are
10 to be constructed, the person, company, or corporation may
11 apply to the commerce commission for a wider right of way
12 not to exceed two hundred feet, and the commission may for
13 good cause extend the width of such right of way for such
14 lines to the person, company, or corporation applying for
15 the same. The burden of proving the necessity for public
16 use shall be on the person, company or corporation seeking
17 the franchise. A homestead site, cemetery, orchard or
18 schoolhouse location shall not be condemned for the purpose
19 of erecting an ~~electric-power-generating-plant-or~~ electric
20 substation. If agreement cannot be made with the private
21 owner of lands as to damages caused by the construction of
22 said transmission line, ~~electric-power-generating-plants~~ or
23 electric substations, the same proceedings shall be taken
24 as provided for taking private property for works of internal
25 improvement.

26 Sec. 16. Section four hundred ninety A point twenty-seven
27 (490A.27), Code 1975, is repealed.

28 EXPLANATION

29 This bill establishes a consolidated hearing procedure
30 for the siting, construction, operation and maintenance of
31 electric power generating facilities including certain
32 associated transmission lines. The Iowa state commerce
33 commission is designated as the siting authority and issues
34 the final certificate. Before a certificate can be issued,
35 facilities must meet the permit and licensing requirements

1 of state agencies having permit and licensing responsibilities
2 for the construction, operation or maintenance of a facility
3 pursuant to rules and statutes in effect at the time the
4 application is filed. City and county zoning authorities
5 may participate in the public hearing and may state whether
6 the facility meets city and county zoning requirements.
7 Failure of a facility to meet such requirements shall not
8 preclude the commission from issuing a certificate.

9 This bill requires the filing of one application for a
10 facility resulting in a single proceeding utilizing the pro-
11 cedures available for a contested case pursuant to chapter
12 17A of the Code. However, regulatory agencies will still
13 issue their respective permits and licenses. The decision
14 of the commission shall be subject to judicial review.

15 A person may commence to prepare the site for construc-
16 tion, if, subsequent to the hearing and in the event of
17 extensive delay in the issuance of a certificate, the commis-
18 sion approves such construction. Issuance of a certificate
19 vests the person with the power of eminent domain to such
20 extent and under such conditions as the commission may approve,
21 prescribe and find necessary for the public convenience,
22 use and necessity.

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

26

S-5587

1 Amend House File 1470 as amended, passed and re-
2 printed by the House as follows:

3 1. Page 5, line 5, by inserting after the word
4 "necessity," the words "not exceeding six hundred
5 forty acres for the construction of a facility and".

S-5587 FILED
APRIL 26, 1976

BY PHILIP B. HILL
H. L. HEYING
NORMAN RODGERS
BASS VAN GILST

(Motion to reconsider was defeated)

S-5550

1 Amend House File 1470 as amended and passed by
 2 the House as follows:
 3 1. Page 1, by inserting after line 27 the
 4 following:
 5 "7. "Spent fuel" means fuel removed from a nuclear
 6 reactor which can no longer be used in its form at
 7 the time of its removal for the nuclear generation
 8 of electricity."
 9 2. Page 2, by inserting after line 15 the fol-
 10 lowing:
 11 "Sec. ____ . NEW SECTION. PRELIMINARY PERMIT
 12 REQUIRED.
 13 1. Commencing July 1, 1976, a person shall not
 14 commence to construct a facility which will use a
 15 nuclear reactor to generate electricity unless the
 16 person has obtained a preliminary permit from the
 17 commission. The application for a preliminary permit
 18 shall be filed on such forms as the commission may
 19 prescribe. Persons required to obtain a preliminary
 20 permit who are also required to obtain a certificate
 21 pursuant to this Act shall file the application for
 22 the permit either before the filing of the application
 23 for a certificate or simultaneously with the
 24 application for the certificate. If a certificate
 25 is required for the construction of the facility,
 26 the certificate shall not be issued until the person
 27 has obtained a preliminary permit.
 28 2. The commission shall not issue a preliminary
 29 permit unless the person proves by clear and con-
 30 vincing evidence that:
 31 a. A plant which reprocesses spent fuel and which
 32 is licensed by the United States-nuclear regulatory
 33 commission has been operating at its average design
 34 capacity within the United States for at least six
 35 months; and,
 36 b. The plant is capable of reprocessing the spent
 37 fuel of the facility on a continuing basis; and,
 38 c. The person has contracted for the reprocessing
 39 of the spent fuel of the facility.
 40 3. This section shall apply only to the new con-
 41 struction of facilities which will use a nuclear
 42 reactor to generate electricity and shall not apply
 43 to alterations to existing facilities which use a
 44 nuclear reactor to generate electricity, even if the
 45 alteration may require a certificate or an amendment
 46 to a certificate pursuant to this Act."
 47 3. By renumbering the remaining sections and
 48 correcting internal references in accordance with
 49 this amendment.

PAGE 2

BY WILLIAM E. GLUBA
 NORMAN G. RODGERS
 ROBERT M. CARR
 EARL M. WILLITS
 WILLIAM N. PLYMAT
 MINNETTE F. DODERER
 JAMES V. GALLAGHER
 JOAN ORR

S- 5552

1 Amend House File 1470 as amended, and passed
2 and reprinted by the House as follows:

3 1. Page 2, by inserting after line 2 the
4 following:

5 "d. Have, where applicable, obtained the
6 necessary construction licenses or permits
7 from federal regulatory agencies."

S-5552 FILED - *Lost 7-30 (1401)*
APRIL 21, 1976

BY ROBERT CARR
WILLIAM PALMER
C. JOSEPH COLEMAN

S-5560

1 Amend House File 1470 as amended, passed and re-
2 printed by the House as follows:

3 1. Page 4, lines 32 and 33 by striking the words
4 "commission:

5 a. Authorizes" and inserting in lieu thereof the
6 words "commission authorizes".

7 2. Page 5, line 1, by striking the words
8 "proceeding; and," and inserting in lieu thereof the
9 word "proceeding."

10 3. Page 5, by striking lines 2 through 9.

S-5560 FILED & LOST *19-29 (1403)*

BY NORMAN G. RODGERS
C. JOSEPH COLEMAN
JAMES E. BRILES
KENNETH D. SCOTT
FRED W. NOLTING

APRIL 22, 1976

S-5561

1 Amend House File 1470 as amended, passed and
2 reprinted by the House as follows:

3 1. Page 4, lines 32 and 33 by striking the
4 words "commission:

5 a. Authorizes" and inserting in lieu thereof the
6 words "commission authorizes".

7 2. Page 5, line 1, by striking the words "pro-
8 ceeding; and," and inserting in lieu thereof the
9 word "proceeding."

10 3. Page 5, by striking lines 2 through 9.

11 4. Page 7, by striking lines 32 through 35.

12 5. Page 8, by striking lines 1 through 25.

S-5561 FILED & LOST *22-24 (1403)*
APRIL 22, 1976

BY PHILIP HILL

S-5564

1 Amend House File 1470 as amended, passed and
2 reprinted by the House as follows:

3 1. Page 5, line 9, by inserting after the
4 word "certificate.", the words "This section shall
5 not permit private investor-owned utilities to
6 exercise the power of eminent domain."

S-5564 FILED & LOST *8-41 (1404)*
APRIL 22, 1976

BY WILLIAM E. GLUBA

HOUSE FILE 1470

AN ACT

RELATING TO THE LOCATION AND CONSTRUCTION OF ELECTRIC POWER
GENERATING FACILITIES AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

1. "Facility" means any electric power generating plant or a combination of plants at a single site with a total capacity of one hundred 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 Act shall not require a franchise under chapter four hundred eighty-nine (489) of the Code.

2. "Certificate" means a certificate of public convenience, use and necessity issued pursuant to section six (6) of this Act.

3. "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.

4. "Agency" means an agency as defined in section seventeen A point two (17A.2), subsection one (1), of the Code.

5. "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 commission.

6. "Commission" means the Iowa state commerce commission.

Sec. 2. NEW SECTION. CERTIFICATE REQUIRED.

1. Commencing January 1, 1977, a person shall not com-

mence to construct a facility except as provided in section nine (9) of this Act unless a certificate for the facility has been issued by the commission. This Act 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 commission, 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 Act.

Sec. 3. NEW SECTION. APPLICATION SUBMITTED--REVIEW. An application for a certificate or an amendment to a certificate shall be submitted to the commission on such forms as the commission 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.

Sec. 4. NEW SECTION. 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 seventeen A (17A) of the Code. Upon acceptance of an application by the commission, a public hearing shall be

scheduled.

2. The commission shall serve notice of the proceeding on the following:

a. Interested agencies, as determined by the commission, 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 seventeen A point twelve (17A.12), subsection two (2), of the Code 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 commission shall be responsible for publication and delivery of notices required by this section.

4. The commission shall conduct the hearing, as described in subsection one (1) of this section, in the county in which the construction of the greater portion of the facility is being proposed.

Sec. 5. NEW SECTION. PROCEEDING--ROLE OF REGULATORY AGENCIES AND LOCAL AUTHORITIES.

1. The commission 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 commission 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 four (4) of this Act fails to appear of record in the contested case proceeding, the commission shall conclu-

sively 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 three hundred twenty-nine (329), three hundred fifty-eight A (358A) and four hundred fourteen (414) of the Code shall not preclude the commission from issuing the certificate and to that extent the provisions of this subsection shall supersede the provisions of chapters three hundred twenty-nine (329), three hundred fifty-eight A (358A) and four hundred fourteen (414) of the Code.

Sec. 6. NEW SECTION. DECISION--CRITERIA.

The commission shall render a decision on the application in an expeditious manner. A certificate shall be issued to the applicant if the commission finds that:

1. The services and operations resulting from the construction of the facility are required by the present or future public convenience, use and necessity; and,

2. The applicant is willing to perform such services and construct, maintain, and operate the facility pursuant to the provisions of the certificate and this Act; and,

3. The construction, maintenance, and operation of the facility will cause minimum adverse land use, environmental, and aesthetic impact and are consonant with reasonable utilization of air, land and water resources for beneficial purposes considering available technology and the economics of available alternatives.

Sec. 7. NEW SECTION. ISSUANCE OF CERTIFICATE--EFFECT.

1. Issuance of a certificate by the commission:

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 commission may approve, prescribe and find necessary for the public convenience, use and necessity, proceeding in the manner of works of internal improvement under chapter four hundred seventy-two (472), Code 1975. 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 commission, 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.

Sec. 8. NEW SECTION. 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.

Sec. 9. NEW SECTION. ADVANCE SITE PREPARATION. Subsequent to the hearing held pursuant to section five (5) of this Act and in the event of extensive delay in the issuance of a certificate, the commission 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 commission's decision concerning the actual issuance of a certificate.

Sec. 10. NEW SECTION. COSTS OF PROCEEDING. The applicant for a certificate, or an amendment to certificate, shall pay all the costs and expenses incurred by the commission in reaching a decision on the application including the costs of examinations of the site, the hearing, publishing of notice, commission staff salaries, the cost of consultants employed

by the commission, and other expenses reasonably attributable to the proceeding.

Sec. 11. NEW SECTION. SINGLE HEARING--JUDICIAL REVIEW. Notwithstanding the provisions of chapter seventeen A (17A) of the Code:

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 commission shall be considered a single agency action. The agency action shall be subject to judicial review in the manner provided in chapter seventeen A (17A) of the Code.

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

Sec. 12. NEW SECTION. RULES. The commission shall adopt rules pursuant to chapter seventeen A (17A) of the Code necessary to implement the provisions of this Act 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.

Sec. 13. NEW SECTION. STAFF ASSISTANCE--FEDERAL PREEMPTION.

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

2. This Act 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.

Sec. 14. NEW SECTION. PENALTIES.

1. Any person who commences to construct a facility as provided in this Act without having first obtained a certificate, or who constructs, operates or maintains any facility other than in compliance with a certificate issued by the commission or a certificate amended pursuant to this Act, 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 Act.

3. Persons convicted of violating any provision of this Act shall be guilty of a misdemeanor and shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

Sec. 15. Section four hundred eighty-nine point fifteen (489.15), unnumbered paragraph one (1), Code 1975, is amended to read as follows:

Any person, company, or corporation having secured a franchise as provided in this chapter, shall thereupon be vested with the right of eminent domain to such extent as the commission may approve, prescribe and find to be necessary for public use, not exceeding one hundred feet in width for right of way and not exceeding one hundred sixty acres in any one location, in addition to right of way, for the location of ~~electric-power-generating-plants-and~~ electric substations

to carry out the purposes of said franchise; provided however, that where two hundred K V lines or higher voltage lines are to be constructed, the person, company, or corporation may apply to the commerce commission for a wider right of way not to exceed two hundred feet, and the commission may for good cause extend the width of such right of way for such lines to the person, company, or corporation applying for the same. The burden of proving the necessity for public use shall be on the person, company or corporation seeking the franchise. A homestead site, cemetery, orchard or schoolhouse location shall not be condemned for the purpose of erecting an ~~electric-power-generating-plant-or~~ electric substation. If agreement cannot be made with the private owner of lands as to damages caused by the construction of said transmission line, ~~electric-power-generating-plants or~~ electric substations, the same proceedings shall be taken as provided for taking private property for works of internal improvement.

Sec. 16. Section four hundred ninety A point twenty-seven (490A.27), Code 1975, is repealed.

DALE M. COCHRAN
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 1470, Sixty-sixth General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved May 20, 1976

ROBERT D. RAY
Governor