

48:7-16 to 48:7-25

LEGISLATIVE HISTORY CHECKLIST

NJSA: 48:7-16 to 48:7-25

("Electric Facility  
need Assessment  
Act")

LAWS OF: 1983

CHAPTER: 115

Bill No: S975

Sponsor(s): Dalton, Zane and Stockman

Date Introduced: Feb. 8, 1982

Committee: Assembly: /////

Senate: Energy and Environment

Amended during passage: Yes

Amendments during passage  
denoted by asterisks

Date of Passage:

Assembly: Dec. 6, 1982

Senate: June 28, 1982

Date of Approval: May 30, 1983

Following statements are attached if available:

Sponsor statement:

Yes

Attached: Senate  
amendment, adopted  
12-16-82 (with  
statement)

Committee statement:

Assembly

No

Senate

Yes

Fiscal Note:

No

Veto Message:

No

Message on Signing:

Yes

Following were printed:

Reports:

No

Hearings:

No

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 975

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 8, 1982

By Senators DALTON, ZANE and STOCKMAN

Referred to Committee on Energy and Environment

AN ACT requiring the issuance of a certificate of need as a precondition to the construction, substantial expansion and financing of certain electric **\*[generating]\*** facilities, **\*\*[\*creating an Electric Generation Facility Needs Assessment Review Commission,\*]\*\*** and supplementing Title 48 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Electric  
2 **\*[Generation]\*** Facility Need Assessment Act."

1 2. The Legislature finds and determines that it is the obligation  
2 of the State to assure a safe and adequate supply of electricity to  
3 meet the needs of the residents of New Jersey; that, notwithstanding  
4 this obligation, any construction of new electric generation  
5 **\*\*[\*or transmission\*]\*\*** facilities, or substantial expansion of  
6 existing facilities, which brings electric generation capacity to a  
7 level significantly in excess of what will be required imposes a substantial and unreasonable financial burden on the ratepayers in the  
8 franchise area wherein these facilities are located; that widely  
9 fluctuating prices of fossil fuel resources and rapidly changing  
10 energy consumption patterns make long-term planning a complex  
11 and precarious enterprise; and, therefore, that a deliberative  
12 procedure assessing the future need for new electric generating  
13 capacity, taking into account existing capacity, long-range demand  
14 forecasts, prospective conservation efforts, and alternative means  
15 of satisfying this need, is necessary and appropriate to maintain  
16 electric rates at as low a level as possible consistent with the  
17 assurance of adequate supply.  
18

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate committee amendments adopted June 3, 1982.

\*\*—Assembly amendments adopted November 15, 1982.

\*\*\*—Senate amendment adopted December 16, 1982.

1 3. As used in this act:

2 a. "Commissioner" means the Commissioner of the Department  
3 of Energy;

4 b. "Construction" means on-site work to install any permanent  
5 equipment or structure for any facility, but does not include in-  
6 stallation of environmental monitoring equipment or any work  
7 related thereto;

8 c. "Department" means the Department of Energy;

9 d. "Electric **\*[generation]\*** facility" means **\*:\*** **\*[any electric**  
10 **power generating unit or combination of units at a single site with**  
11 **a combined production capacity of 100 megawatts or more and any**  
12 **facilities appurtenant thereto;**

13 e. "Substantial expansion" means the installation of additional  
14 generating facilities which will increase the installed capacity of an  
15 existing facility by 25%, or by 100 megawatts, whichever is  
16 smaller. **]\***

17 *\*(1) Any electric power generating unit or combination of units*  
18 *at a single site with a combined production of 100 megawatts or*  
19 *more and any facilities appurtenant thereto; **\*\*or\*\****

20 *(2) Any electric generating units added to an existing electric*  
21 *generating facility which will increase its installed capacity by*  
22 *25% or by more than 100 megawatts, whichever is smaller**\*\*[; or,***

23 *(3) An electric transmission line and associated facilities or an*  
24 *upgrading of those facilities, requiring new rights of way or land*  
25 *acquisition, with a design capacity of more than 138 kilovolts and*  
26 *more than 10 miles in length**\*\*]\***.*

1 4. No public utility shall commence construction of any electric  
2 **\*[generation]\*** facility **\*[, nor undertake a substantial expansion**  
3 **of an existing electric generation facility,]\*** without having ob-  
4 tained from the department a certificate of need therefor as  
5 hereinafter provided. No agency of the State, or any county or  
6 municipal government, shall issue any license or permit required  
7 for any such construction or substantial expansion prior to the  
8 issuance of a certificate of need therefor by the department.

1 *\*5. Any utility planning to construct an electric facility shall, at*  
2 *least 1 year prior to the formal application for a certificate of*  
3 *need therefor, submit to the department a notice of intent on forms*  
4 *and in a manner specified by the department. Receipt by the*  
5 *department of the notice of intent shall initiate the early assess-*  
6 *ment stage of the certificate of need process. During the early*  
7 *assessment stage, the department shall hold public hearings, in*  
8 *the franchise area served by that utility, to solicit the views of*  
9 *concerned individuals and groups on the proposed facility; provide*

10 *advice to the utility on the proposed facility and on relevant*  
 11 *alternative ways of meeting projected electricity demand which*  
 12 *will minimize rate increases, reduce any adverse environmental*  
 13 *impacts of the proposed facility, and address other objections to*  
 14 *the proposed facility; and develop a comprehensive view of how*  
 15 *the proposed facility and any suggested alternatives thereto will*  
 16 *affect the long range energy plans and economic development of the*  
 17 *State and otherwise promote the public interest. Notice of each*  
 18 *public hearing shall be published in a newspaper of general circula-*  
 19 *tion in the region where the hearing is to be held, and in any other*  
 20 *newspapers of general circulation which the commissioner deter-*  
 21 *mines appropriate to reach the greatest possible number of affected*  
 22 *citizens.*

23 *During the early assessment stage, the department shall publish,*  
 24 *in a manner designed to reach the maximum number of affected*  
 25 *people, interim reports on the progress of its analysis of the pro-*  
 26 *posed facility. No later than 9 months after receipt of a notice of*  
 27 *intent, the department shall publish a comprehensive report pre-*  
 28 *senting its preliminary assessment concerning the proposed*  
 29 *facility. The report shall address the major concerns expressed*  
 30 *during the early assessment stage, and compare the proposed*  
 31 *facility with feasible alternatives thereto.\**

1 \***[5.]**\* \*6.\* A certificate of need shall be issued only if the  
 2 commissioner determines that the proposed facility \***[or substan-**  
 3 **tial expansion]**\* is necessary to meet the projected need for  
 4 electricity in the area to be served, and that no more efficient,  
 5 economical, or environmentally sound alternative is available. The  
 6 commissioner shall make these determinations only if he finds that:

7 a. The probable result of denial of a certificate of need would  
 8 adversely affect the future adequacy, reliability, or efficiency of the  
 9 electric energy supply to the public utility's customers, or to the  
 10 people of New Jersey, taking into account:

11 (1) The accuracy of the public utility's demand forecast for the  
 12 level of electric energy that would be supplied by the proposed  
 13 facility \***[or substantial expansion]**\*;

14 (2) The probable effects of existing or prospective State and  
 15 federal conservation programs;

16 (3) The effect of promotional practices of the public utility  
 17 which may have given rise to the demand for this facility \***[or**  
 18 **substantial expansion]**\*;

19 (4) The ability of current and planned facilities not requiring  
 20 certificates of need, and to which the public utility has access, to  
 21 meet the future demand; and

22 (5) The effect of the proposed facility \***[or substantial expansion]**\* in making efficient use of resources.

24 b. The consequences of issuing the certificate of need outweigh  
25 the consequences of denying the certificate, taking into account:

26 (1) The relationship of the proposed facility \***[or substantial expansion]**\* to overall State energy needs as determined by the  
27 State Energy Master Plan adopted pursuant to the "Department  
28 of Energy Act," P. L. 1977, c. 146 (C. 52:27F-1 et seq.);

30 (2) The role of the proposed facility \***[or substantial expansion]**\* in inducing future development; and

32 (3) The socially beneficial uses of the output of the proposed  
33 facility \***[or substantial expansion]**\*, including its uses to protect  
34 or enhance environmental quality.

35 c. There is not a more reasonable and prudent alternative to the  
36 proposed facility \***[or substantial expansion]**\*, taking into  
36A account:

37 (1) The appropriateness of the size, type, and timing of the pro-  
38 posed facility \***[or substantial expansion]**\* compared to those of  
39 reasonable alternatives;

40 (2) The cost of the proposed facility \***[or substantial expansion]**\* and the cost of electric energy to be supplied by the pro-  
41 posed facility \***[or substantial expansion]**\* compared to the costs  
42 of reasonable alternatives and the cost of electric energy that  
43 would be supplied by reasonable alternatives;

45 (3) The impact of the proposed facility upon the social, economic,  
46 and health environments compared to the impact of reasonable  
47 alternatives; and

48 (4) The expected reliability of the proposed facility \***[or sub-  
49 stantial expansion]**\* compared to the expected reliability of  
50 reasonable alternatives.

51 d. \***[That the]**\* *The* design, construction, and operation of the  
52 proposed facility \***[or substantial expansion]**\* would comply with  
53 all relevant State and federal laws, rules, regulations and policies.

1 \***[6.]**\* *7.* a. Application for a certificate of need shall be made  
2 to the department, and shall be in such form and contain such  
3 information as the department may prescribe. The department  
4 may charge and collect a non-returnable fee of not more than  
5 \***[\$1,000.00]**\* \*\***[\$500,000.00]**\*\* \*\*\***[\$5,000.00]**\*\*\*  
6 \*\*\*\$250,000.00\*\*\* for the filing, processing, and review of an  
6A application for a certificate of need. *This fee shall cover the costs*  
6B *of the department's review of applications for a renewal of a*  
6C *certificate of need.*

7 b. Upon receipt of a completed application, the department shall  
 8 forward copies thereof to the board and to other appropriate State  
 9 departments, agencies and instrumentalities for their review. These  
 10 departments, agencies, and instrumentalities shall provide adequate  
 11 mechanisms for full consideration of these applications, and for  
 12 developing recommendations thereon. These recommendations  
 13 shall be forwarded to the commissioner and to the applicant within  
 14 \*~~60~~\* *120*\* days of the date of referral. Recommendations con-  
 15 cerning certificates of need shall be governed and based upon the  
 16 principles and criteria set forth in section \*~~5~~\* *6*\* of this act.

17 \***c.** In reviewing each application for a certificate of need, the  
 18 commissioner shall hold at least one public hearing in the franchise  
 19 area wherein the proposed facility or substantial expansion would  
 20 be constructed. Notice of each public hearing shall be published in  
 21 a newspaper of general circulation in the region where the hearing  
 22 is to be held, and in any other newspapers of general circulation  
 23 which the commissioner determines appropriate to reach the  
 24 greatest possible number of affected citizens.]\*

1 \***7. a.** Within 6 months of the receipt of a completed application  
 2 for a certificate of need, the commissioner, after consideration of  
 3 the recommendations of the board and all State agencies and instru-  
 4 mentalities to which the application has been referred, the testimony  
 5 presented at all public hearings conducted concerning the applica-  
 6 tion, and all information submitted to him by the applicant and  
 7 other relevant parties, shall issue or deny the certificate of need, or  
 8 issue the certificate contingent upon the satisfaction of conditions.  
 9 The commissioner shall support his decision with a detailed and  
 10 comprehensive written statement.]\*

1 \**8. a. Upon receipt of a completed application for a certificate of*  
 2 *need, the department shall transmit the application and all sup-*  
 3 *porting documents, including the department's early assessment*  
 4 *report, to the Office of Administrative Law, which shall conduct a*  
 5 *hearing on the application pursuant to the provisions of P. L.*  
 6 *1978, c. 67 (C. 52:14F-1 et seq.). This hearing shall be an adjudi-*  
 7 *catory proceeding, and shall be conducted as a contested case*  
 8 *pursuant to the "Administrative Procedure Act," P. L. 1968,*  
 9 *c. 410 (C. 52:14B-1 et seq.). The Division of Rate Counsel in the*  
 10 *Department of the Public Advocate shall be deemed to be a party*  
 11 *of interest in this proceeding and the Division of Rate Counsel*  
 12 *shall be entitled to assess the applicant utility in the manner set*  
 13 *forth in section 20 of P. L. 1974, c. 27 (C. 52:27E-19). Intervention*  
 14 *in this hearing by any other person shall be as provided in the*  
 15 *"Administrative Procedure Act."*

16 *b. The provisions of the "Administrative Procedure Act" to the*  
 17 *contrary notwithstanding, within 6 months of receipt of the deci-*  
 18 *sion of the presiding administrative law judge, the department*  
 19 *shall approve, conditionally approve, or deny the application. The*  
 20 *department shall base its decision on the criteria set forth in*  
 21 *section 6 of this act, and shall support its decision with a written*  
 22 *report. The report shall address the issues raised and arguments*  
 23 *advanced in the materials and information compiled during the*  
 24 *early assessment stage, in the department's preliminary assess-*  
 25 *ment report, in the materials and information developed by State*  
 26 *agencies, departments, and instrumentalities, in the analyses of*  
 27 *outside consultants retained by the department, in the record of*  
 28 *the adjudicatory proceeding conducted by the administrative law*  
 29 *judge, and in the written decision of the presiding administrative*  
 30 *law judge.*

31 *c. In the case of a conditional approval of an application, the*  
 32 *department shall provide the applicant utility with a clear state-*  
 33 *ment of the conditions to be met, including any modifications in the*  
 34 *proposed electric facility.*

35 *d. The provisions of any law, rule or regulation to the contrary*  
 36 *notwithstanding, the department's action on an application shall*  
 37 *be considered the final agency action thereon for the purposes of*  
 38 *the "Administrative Procedure Act," and shall be subject only to*  
 39 *judicial review as provided in the Rules of Court.\**

1 *\*[b.]\* \*9.\* A certificate of need shall be valid for \*[1 year]\* \*3*  
 2 *years\*, and shall be renewable \*[annually]\* subject to review by*  
 3 *the commissioner; provided, however, that no renewal shall be*  
 4 *denied without the approval of the board. In the event that the*  
 5 *commissioner and the board cannot agree on any renewal decision,*  
 6 *a designee of the Governor shall arbitrate the matter, and his*  
 7 *decision shall be binding. If any renewal is denied, the holder of*  
 8 *the certificate shall have the option of continuing the project*  
 9 *\*[without authority to include any further construction costs in*  
 10 *the rate base]\*, or to terminate or alter the project under terms*  
 11 *and conditions, established \*[by the commissioner and]\* \*\*by\*\**  
 12 *the board, which equitably balance the interests of the stockholders,*  
 13 *the rate payers, and the public utility.*

1 *\*\*[\*10. Any electric facility under construction on the effective*  
 2 *date of this act, and with a proposed operational date at least*  
 3 *2 years subsequent thereto shall be subject to a needs assessment*  
 4 *review as hereinafter provided.*

1 *11. There is established a public body corporate and politic, with*  
 2 *corporate succession, to be known as the Electric Generation Facil-*

3 *ity Needs Assessment Review Commission, hereinafter referred*  
4 *to as the commission. The commission shall constitute an instru-*  
5 *mentality of the State, exercising public and essential govern-*  
6 *mental functions, and the exercise by the commission of the*  
7 *powers conferred by this act shall be deemed and held to be an*  
8 *essential governmental function of the State. It shall be the duty*  
9 *of the commission to review, on the basis of the criteria set forth*  
10 *in section 16 of this act, any electric facility subject to a needs*  
11 *assessment review pursuant to section 10 of this act and to recom-*  
12 *mend whether continuation of the construction of the facility is*  
13 *warranted. The commission's recommendation shall be made to*  
14 *the board and shall be non-binding.*

1 12. a. *The commission shall consist of nine members, four of*  
2 *whom shall be the Commissioner of the Department of Energy,*  
3 *the President of the Board of Public Utilities, the Commissioner of*  
4 *the Department of Commerce and Economic Development, and the*  
5 *Commissioner of the Department of the Public Advocate, or their*  
6 *designees, who shall serve ex officio; and five appointed members,*  
7 *one of whom shall be a person representing organized labor in this*  
8 *State, to be appointed by the President of the Senate; two of whom*  
9 *shall be persons with a formal education or background in the*  
10 *field of engineering or physical sciences, and possessing knowledge*  
11 *of electrical and other forms of energy production and supply,*  
12 *who are not employees of any electric utility company, to be*  
13 *appointed by the President of the Senate; and two persons with a*  
14 *formal education or background in economics, and with a knowledge*  
15 *of utility regulation, ratemaking utility economics, who are not*  
16 *employees of an electric utility company, to be appointed by the*  
17 *Speaker of the General Assembly. The Commissioner of the*  
18 *Department of Energy shall serve as chairman of the commission.*  
19 *Any vacancy in the appointed membership of the commission shall*  
20 *be filled in the same manner as the original appointment.*

21 b. *The powers of the commission shall be vested in the members*  
22 *thereof in office, and a majority of the total authorized membership*  
23 *of the commission shall be required to exercise its powers at any*  
24 *of its meetings.*

25 c. *The members of the commission shall serve without compensa-*  
26 *tion, but may, within the limits of funds appropriated or otherwise*  
27 *made available to the commission, be reimbursed for expenses*  
28 *necessarily incurred in the discharge of their official duties.*

29 d. *The chairman of the commission shall coordinate the work of*  
30 *the commission, and set the schedule of commission meetings.*

31 e. *The commission shall hold at least two public hearings to*



32 receive testimony from interested parties, and shall announce its  
33 decision at a public meeting, at which each commission member  
34 shall individually state and explain his decision.

35 f. The commission shall provide for a true copy of the minutes  
36 of every meeting to be prepared and made available to the public  
37 as soon as possible after the conclusion of each meeting.

38 g. No commission member shall engage in ex-parte contact with  
39 any utility owning any interest in an electric facility under review  
40 by the commission, or with any officer or employee of that utility,  
41 during the period of its review. In the event that a commission  
42 member has such an ex-parte contact, the commission member shall  
43 end the contact as soon as possible, and, at the next meeting of the  
44 commission, state on the record the substance of the contact and  
45 whether the contact will in any way effect his impartiality.

46 h. The commission may call upon the assistance of any State  
47 department, board, or agency to assist it in its work.

1 13. a. The commission may assess any utility owning an electric  
2 facility under its review a sum not to exceed \$100,000.00 to provide  
3 for the expenses incurred by the commission in conducting its  
4 review. If any electric facility under review is owned by more than  
5 one utility, each utility shall be assessed in proportion to its share  
6 of ownership.

7 b. Any utility assessed pursuant to subsection a. of this section  
8 shall pay the assessed amount to the Department of the Treasury.  
9 The State Treasurer shall forward the amount paid by the utility  
10 or utilities to the commission as a credit on which it may draw for  
11 the purposes of its review. Any amount assessed and not expended  
12 by the commission shall be returned to the utility or utilities. The  
13 State Treasurer shall appoint a member of his staff to serve as the  
14 budgetary officer for the commission.

15 c. The board shall consider all expenses incurred by an electric  
16 utility in complying with the provisions of this section as a current  
17 expense of providing utility service, which shall be charged to all  
18 ratepayers of the utility in the same manner as are other current  
19 operating expenses incurred in providing utility service.

1 14. a. The President of the Senate and Speaker of the General  
2 Assembly shall make their appointments to the commission within  
3 15 days of the effective date of this act.

4 b. The chairman of the commission shall call an organizational  
5 meeting of the commission within 15 days of the appointment of  
6 commission members by the President of the Senate and Speaker  
7 of the General Assembly.

8 c. Within 60 days of its organizational meeting, the commission

9 shall hold its public hearings, conduct its deliberations, and submit  
10 its written recommendation to the Governor, the Legislature, and  
11 the board.

1 15. Upon the effective date of this act, the commissioner of the  
2 Department of Energy shall establish a preliminary working  
3 schedule for the commission, begin the collection and compilation  
4 of all documents and materials which will be necessary for the  
5 commission's review, and take any other steps necessary to expe-  
6 dite the commission's review.

1 16. The commission's review of any electric facility shall include,  
2 but not necessarily be limited to, a consideration of:

3 a. The best projection of the electricity requirements of the  
4 State during the next decade;

5 b. Whether the electric facility under review constitutes the most  
6 reliable, least expensive, and most environmentally sound way of  
7 providing for the State's electricity needs;

8 c. The actual final cost of the electric facility under review, and  
9 the effect this cost, and other associated costs, will have on elec-  
10 tricity rates in the area;

11 d. The availability, reliability, and practicability of obtaining the  
12 capacity of the electric facility under review through long term  
13 contracts for electricity from outside the Pennsylvania-Jersey-  
14 Maryland power pool agreement;

15 e. The practicability of obtaining the capacity of the electric  
16 facility under review, or a portion of it, through a program of  
17 utility investment in energy conservation programs, the encourage-  
18 ment of improved energy efficiency, and other alternative energy  
19 sources;

20 f. The financial impact of continuing or terminating the con-  
21 struction of the electric facility under review on the utility or  
22 utilities constructing the facility, on their stockholders, bond-  
23 holders and on the bond rating of the utility;

24 g. The financial impact of continuing or terminating the con-  
25 struction of the electric facility under review on the ratepayers  
26 of the utility or utilities constructing the facility;

27 h. The impact of continuing or terminating the construction of  
28 the electric facility under review on the State's potential for eco-  
29 nomic growth and development, specifically with reference to  
30 industries with large electricity demands;

31 i. The impact of continuing or terminating the construction of  
32 the electric facility under review on the employment situation in  
33 the area surrounding the facility, compared to any increase in  
34 employment which would result from an alternative way of obtain-  
35 ing the capacity of the electric facility under review.

36 *j. The effectiveness of the energy conservation program cur-*  
 37 *rently being implemented by the utility or utilities constructing the*  
 38 *electric facility under review.*

39 *k. The practicability of obtaining the generating capacity of an*  
 40 *electric generation facility under review, or a portion of it, through*  
 41 *the refurbishing of existing electric generation facilities currently*  
 42 *scheduled for retirement during the next decade.*

1 *17. In the event that the construction of an electric facility under*  
 2 *review by the commission is abandoned by a utility subsequent to*  
 3 *the receipt, by the board, of the recommendations of the commis-*  
 4 *sion, the board shall consider funds prudently spent by the utility*  
 5 *on the construction of the facility during the period of review by*  
 6 *the commission as a current expense of providing utility service*  
 7 *which shall be charged to all ratepayers of the utility in a manner*  
 8 *to be determined by the board.\*\**

1 *\*[8.]\* \*\*[\*18.]\* \*\*10.\*\* The department shall, within *\*[60]\**  
 2 *\*90\** days of the effective date of this act and pursuant to the  
 3 “Administrative Procedure Act,” P. L. 1968, c. 410 (C. 52:14B-1  
 4 et seq.), adopt rules and regulations necessary to carry out the  
 5 provisions of *\*sections 1 through 9 of\** this act.*

1 *\*[9.]\* \*\*[\*19.]\* \*\*11.\*\* This act shall take effect immediately,*  
 2 *but sections 1 through *\*[7.]\* \*9.\** shall remain inoperative for*  
 3 *90 days following enactment *\*\*[\*and sections 10 through 17 shall**  
 4 *expire on the 61st day following the organizational meeting of the*  
 5 *commission\*\**.

---

## STATEMENT

Over the past several years, electric rates have increased dramatically. Much of that increase is attributable, of course, to the sharp escalation in the prices of fossil fuels needed to generate electricity. But another significant factor in the increase is the expense of building the electric generation facilities themselves, the costs of which are passed along to consumers—as construction is in progress—in their rates.

Especially costly and wasteful are those electric generation plants which were undertaken to meet projected needs for electricity that, due ironically to high fuel costs and conservations efforts, never materialized. In fact, New Jersey has the dubious distinction of leading the nation in abandoned power plant projects. These abandoned plants will likely never generate electricity, but their expense—already in the billions of dollars—will continue to be borne by consumers for many years.

The “Electric Generation Facility Need Assessment Act” will address this problem. It requires every public utility to secure a certificate of need from the Commissioner of Energy before embarking on the construction of any major electric generation facility or significant expansion of an existing facility. The certificate of need shall be issued by the commissioner only upon a finding that the demand forecasts justify the need for the additional capacity, and that the proposed facility is the most efficient, economical, and environmentally benign way of satisfying that need. The bill would also require an annual review of each project for which a certificate was issued to assure that the conditions prevailing at the time of approval warrant continuation of the project. If an annual review discloses that the situation has changed materially and that the project no longer meets the criteria applicable when the original approval was granted, the board shall no longer extend authority to the utility to include construction costs in the rate base.

In sum, the philosophy of the bill is that an independent need assessment for major electric generation projects, and continuing oversight, are needed to assure the utility consumer that he is paying for no more capacity than he will need.

S 975 (1983)

**ADOPTED**  
DEC 16 1982

R-47  
12/16/82

OK  
TKM

Senate \_\_\_\_\_ Amendments

to

Senate \_\_\_\_\_ Bill No. \_\_\_\_\_ 975 .Sca Aa ~~\_\_\_\_\_~~

A.R. / 048

Amend:

Proposed by Senator Dalton  
December 16, 1982

Page	Sec.	Line
4	7	5

Omit <sup>H</sup> ~~\*\*\*~~ \$5,000.00 <sup>K</sup> ~~\*\*\*~~ insert "\$250,000.00"

STATEMENT

This amendment increases the maximum fee which the Department of Energy may charge an electric utility to review an application for a certificate of need from \$5,000.00 to \$250,000.00.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO

**SENATE, No. 975**

with Senate committee amendment

**STATE OF NEW JERSEY**

DATED: JUNE 3, 1982

As introduced, Senate Bill No. 975 required electric utility companies to obtain a certificate of need from the Department of Energy prior to the construction of a new electric generating plant or the substantial expansion of an existing one. The department would issue a certificate of need only if it found that electricity demand forecasts justified the construction of the plant, and that the proposed plant was the most efficient, economical, and environmentally satisfactory way of obtaining the capacity. Senate Bill No. 975 also provided for an annual review of each project for which a certificate of need was issued to assure that continued construction of the plant is still warranted.

The committee's consideration of the bill focused on two main issues: (1) which State agency, the Department of Energy or the Board of Public Utilities, should be authorized to conduct the needs assessment; and, (2) whether the purview of the bill should be expanded to include a review of the Hope Creek I generating plant, the only plant now under construction.

The committee decided that the Department of Energy was the most appropriate State agency to conduct the needs assessment procedure. The committee believes that public confidence in the Board of Public Utilities has been shaken by the record of abandoned projects during recent years, although it does not believe that the abandonments were the result of incompetence. The decisions to invest in the Forked River Plant, the floating nuclear plants, and in Hope Creek II were originally deemed prudent by most responsible parties. In the 1960's, decisions to construct generating plants were made in the context of a steadily rising electricity demand, a stable international energy market, and an economy with low interest and inflation rates. And, because the per kilowatt cost of electricity had steadily declined during the 1950's and 60's, little consideration was given to alternatives to constructing new generating plants. Decisions to proceed with construction were essentially decisions concerning the best way to finance the construction, which the Board of Public Utilities has historically been equipped to handle.

This economic and energy climate totally changed in the 1970's. The price of imported crude oil rose from \$2.00 to almost \$40.00 a barrel, inflation and interest rates ranged at double digit levels, and by 1980 the demand for electricity in the State was rising at an annual rate of between 1% and 2%, in comparison to annual rates of increase of 7% just a decade before. The New Jersey Department of Energy was established in response to the changed energy situation of the 1970's, and in contrast to the rate making and financial focus of the Board of Public Utilities, was envisioned as an energy policy and planning department. The department was constituted to develop a grasp of world and national fossil fuel supply and cost projections, a knowledge of federal and State conservation programs and their likely effect on electricity demand, an independent forecasting capacity, a knowledge of alternative means of providing additional electricity generating capacity or reducing or spreading out demand, and a comprehensive State Energy Master Plan. Clearly, the construction of new electricity generating plants—now so costly in terms of a megawatt of new capacity that all alternatives to construction must be fully explored—has now become as much, if not more a matter of energy policy and planning as of ratemaking. Therefore, the committee believes that the Department of Energy is the most appropriate State agency to determine the need for new electricity generating capacity.

While keeping the needs assessment procedure within the Department of Energy, the committee did amend the section of the bill relative to the needs assessment of future electric generating plants as follows:

1. The definition of "electric facility" is expanded to include electric transmission lines of more than 138 kilovolts capacity and 10 miles in length.

2. A utility planning to file an application for a certificate of need must, 1 year before formal application, submit to the Department of Energy a notice of intent to apply for a certificate of need. The Department of Energy will study the proposed facility and issue a preliminary report on the facility within 9 months of receipt of a utility's notice of intent to apply for a certificate of need.

3. The fee for a formal application for a certificate of need is established at \$500,000.00. (The \$1,000.00 application fee in the original bill was a typographical error.)

4. The certificate of need procedure would include a contested case adjudicatory proceeding, presided over by an administrative law judge.

Upon receipt of an application for a certificate of need, the Department of Energy would forward it to the Office of Administrative Law for a contested case hearing by an administrative law judge. The public advocate would be entitled to assess the applicant utility as in a rate

case proceeding. At the close of the contested case proceeding, the administrative law judge would forward his decision to the Commissioner of the Department of Energy.

The Department of Energy will issue, issue with conditions, or deny the application for a certificate of need within 6 months of receiving the decision from the administrative law judge.

5. The certificate of need would be reviewed every 3 years, instead of annually as originally provided in the bill.

6. The reference to construction work in progress (CWIP) in the original subsection b. of section 7 is deleted.

The committee also amended the bill to provide for a review of the Hope Creek I generating plant now under construction. The committee agreed that submitting the plant to the needs assessment procedure established for prospective plants would be too time consuming, especially for a plant 40% complete. The committee nevertheless believes that, in recent months, sufficient questions have been expressed concerning both the need and the final cost of Hope Creek I to warrant an expeditious and credible review. When Hope Creek I and II were planned over a decade ago, the projected cost for the two power plants, with a combined capacity of 2,000 megawatts, was about \$500 million. Hope Creek I was cancelled late last year, and the cost for the Hope Creek I 1,000 megawatt plant is now estimated to be between \$3.3 and \$5 billion.

The committee amended Senate Bill No. 975 to establish a special Needs Assessment Review Commission, a blue ribbon panel, which would make a recommendation to the board concerning Hope Creek I within 90 days. The main components of this special procedure are as follows:

1. The commission would consist of nine members:

The Commissioner of the Department of Energy, to serve as chairman;

The President of the Board of Public Utilities;

The Commissioner of the Department of the Public Advocate;

The Commissioner of the Department of Commerce;

One representative of organized labor in the State, appointed by the President of the Senate;

Two persons with formal training in engineering or physical sciences, who are not full-time employees of the electric utility industry, appointed by the President of the Senate; and

Two persons with formal training in economics, with a knowledge of utility rate making, regulation, or utility economics, who are not full-time employees of the electric utility industry, appointed by the Speaker of the General Assembly.



2. Time schedule of commission's work:
  - a. The Commissioner of the Department of Energy would begin to organize the schedule and materials for the work of the commission upon the effective date of this act;
  - b. The President of the Senate and Speaker of the General Assembly would make appointments within 15 days of the effective date of this act;
  - c. An organizational meeting of the commission is to be held within 15 days of the naming of the appointed members;
  - d. The commission shall announce its decisions within 60 days of its organizational meeting;
  - e. The total time to reach the decisions: 90 days.
3. The commission may assess the utility up to \$100,000.00 to defray the cost of the review. Any such assessment is to be considered an operating cost which the utility will be authorized to pass along to all ratepayers.
4. The commission shall hold two public hearings during its review to take testimony and information from concerned individuals and groups.
5. *Ex parte* contact between commission members and the affected utility company or companies is prohibited during the commission's review.
6. If the commission of Hope Creek I is terminated subsequent to the recommendation of the commission, the utility will be authorized to recover all funds prudently spent during the period of the review in a manner determined by the board.
7. In the course of its review, the commission shall:
  - a. Establish the best projection of the electricity requirements of the State during the next decade;
  - b. Determine whether Hope Creek I constitutes the most reliable, least expensive, and most environmentally sound way of providing for the State's electricity needs;
  - c. Determine the actual final cost of Hope Creek I, and the effect this cost, and other associated costs, will have on electricity rates in the area;
  - d. Explore the availability, reliability, and practicability of obtaining the capacity of Hope Creek I through long term contracts for electricity from outside the Pennsylvania-Jersey-Maryland power pool agreement;
  - e. Determine the actual final cost of Hope Creek I, or a portion of it, through a program of utility investment in energy conservation programs, the promotion of improved energy efficiency, and the development of other alternative energy sources;

- f. Evaluate the financial impact of continuing or terminating the construction of Hope Creek I on the utility constructing the facility, on its stockholders, bondholders and on the bond rating of the utility;
  - g. Determine the financial impact of continuing or terminating the construction of Hope Creek I on the ratepayers of the utility constructing the facility;
  - h. Evaluate the impact of continuing or terminating the construction of Hope Creek I on the State's potential for economic growth and development, specifically with reference to industries with large electricity demands;
  - i. Evaluate the impact of continuing or terminating the construction of Hope Creek I on the employment situation in the area surrounding the facility, compared to any increase in employment which would result from an alternative way of obtaining the capacity of Hope Creek I;
  - j. Evaluate the energy conservation program currently being implemented by the utility constructing Hope Creek I; and
  - k. Determine the practicability of obtaining the generating capacity of Hope Creek I, or a portion thereof, through the refurbishing of existing electric generation facilities currently scheduled for retirement during the next decade.
8. The commission would expire on the 61st day after its first meeting.
-

OFFICE OF THE GOVERNOR

RELEASE: IMMEDIATE, MARCH 30, 1983

CONTACT: CARL GOLDEN

Governor Thomas H. Kean signed legislation requiring that a certificate of need be obtained by a utility prior to the construction of a new electrical generating plant or the substantial expansion of an existing facility.

The legislation, S-975, was sponsored by Senator Daniel Dalton, D-Camden.

Under the terms of the law, the State Department of Energy would issue a certificate of need if it found that electricity demand forecasts justified the construction of a new facility and that the proposed plant was the most efficient, economical and environmentally sound method of providing the needed power.

"This legislation will provide a much more coordinated approach to meeting New Jersey's future energy demands," Kean said. "We will be in a position to determine how best to provide for energy output as well as whether there exists a more appropriate and alternate form of energy generation."

"The law is designed to avoid situations in which a power facility is constructed in an area, only to have demands drop and costs rise for residences or businesses in the area," Kean said. "Under this legislation, state government will be in a much more advantageous position to assure that not only is a facility required, but that the power output will be at the most affordable cost."

The legislation requires the Department of Energy to hold a public hearing in the franchise area served by a utility which applies for a certificate of need to solicit the views of individuals or groups in that area.

The Department is authorized to impose a fee of up to \$250,000 for the filing, processing and review of an application, and requires that a completed application be forwarded to the Office of Administrative Law which will conduct a hearing on the application. The legislation requires a decision within six months of receipt of the application by the Office of Administrative Law.