

HOUSE BILL 452

IN THE HOUSE

January 29, 1979	Introduced and referred to Committee on Natural Resources.
January 30, 1979	Rereferred to Committee on Judiciary.
February 9, 1979	Committee recommend bill, as amended.
February 12, 1979	Printed and placed on members' desks.
February 13, 1979	Second reading, as amended.
February 15, 1979	Correctly engrossed.
February 16, 1979	Third reading, passed.

IN THE SENATE

February 17, 1979	Introduced and referred to Committee on Business and Industry.
March 13, 1979	Committee recommend bill, as amended.
March 16, 1979	Motion pass consideration until March 19, 1979.
March 19, 1979	Objection.
March 20, 1979	Second reading, concurred.
March 23, 1979	Third reading, as amended.

IN THE HOUSE

March 24, 1979	Returned from Senate.
March 26, 1979	On motion, consideration passed until the 71st Legislative day.
March 29, 1979	Second reading, amendments adopted.

GOVERNOR

April 5, 1979	Delivered to Governor.
April 10, 1979	Veto.

O'Connell
Seawright
Vanhook
NATH
Barnett
Magness
Darby
Ellis
Lein
Smith
H. H. H.
Coyle
Booth
Doyle
Wright
Bennett
Carlson
Mendon
Hend
Evans
Jensen
Spiller
Adams

House *Hayden*
 BILL NO. *452*
 INTRODUCED BY *George*
Benjamin Johnston
William Donelson
Stagnilla
Ward
Ellison
Mason
Blair
Wagon
E. P.
Wendroff
John
Shayne
Beck
Atchey
Paul
Burman
Blanch
Doyle
Doyle
Doyle
Doyle
Doyle

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 75-20-202, MCA, OF THE MONTANA MAJOR FACILITY SITING ACT BY EXEMPTING CERTAIN ELECTRIC GENERATING FACILITIES AND ASSOCIATED FACILITIES THAT HAVE BEEN THE SUBJECT OF AN ADMINISTRATIVE HEARING THAT COMMENCED PRIOR TO JANUARY 1, 1979; AND PROVIDING AN EFFECTIVE DATE."
 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-20-202, MCA, is amended to read:
 "75-20-202. Exemptions. (1) This chapter does not apply to a facility over which an agency of the federal government has exclusive jurisdiction.
 (2) A certificate is not required under this chapter for a facility under diligent onsite physical construction or in operation on January 1, 1973.
 (3) ~~(a) Notwithstanding the provisions of this chapter, as amended, and any other state law to the contrary, a certificate of environmental compatibility and public need under the provisions of this chapter, as amended, is not required for the construction of electric generating facilities and associated facilities, including transmission lines, which have been the subject of~~

1 administrative hearings commenced prior to January 1, 1979,
 2 under this chapter.
 3 (b) The operation of such electric generating
 4 facilities and associated facilities, including transmission
 5 lines, shall comply with applicable state and federal laws,
 6 regulations, standards, and implementation plans for air and
 7 water quality and permits issued pursuant to them.
 8 ~~(3)(4)~~ The board may adopt reasonable rules
 9 establishing exemptions from this chapter for the
 10 relocation, reconstruction, or upgrading of a facility that
 11 would otherwise be covered by this chapter and that is
 12 unlikely to have a significant environmental impact by
 13 reason of length, size, location, available space or
 14 right-of-way, or construction methods."
 15 Section 2. Effective date. This act is effective on
 16 passage and approval.

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 452

INTRODUCED BY CONROY, SCULLY, QUILICI, RAMIREZ,

SALES, FABREGA, KEYSER, MOORE, MARKS, ROTH,

BENGTSON, JOHNSTON, PISTORIA, KROPP, KVAALEN, MANNING,

WILLIAMS, DONALDSON, SEIFERT, HURWITZ, STAIGHILLER,

SIVERTSEN, SCHULTZ, THOFT, CURTISS, TROPILA, FAGG,

GOULD, WOOD, ELLISON, MANUEL, UNDERDAL, MEYER, BAETH,

VINGER, ELLIS, NORDTVEOT, PORTER, GERKE, LORY, HAYNE,

FEDA, STOBIE, LUND, ANDERSON, K. ROBBINS, GILLIGAN,

DASSINGER, GESEK, YARDLEY, O'CONNELL, HEMSTAD, KANDUCH,

NATHE, BURNETT, MAGONE, DAILY, ELLERD, LIEN, SMITH,

TEAGUE, ROSENTHAL, DOZIER, MYRICK, BENNETT, PAVLOVICH,

MENAHAN, HAND, ERNST, IVERSON, SPILKER, EUDAILY

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
75-20-202, MCA, OF THE MONTANA MAJOR FACILITY SITING ACT BY
EXEMPTING CERTAIN PROVIDING LEGISLATIVE RATIFICATION OF ANY
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED
ISSUED BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION
FOR ELECTRIC GENERATING FACILITIES AND ASSOCIATED FACILITIES
THAT HAVE BEEN THE SUBJECT OF AN ADMINISTRATIVE HEARING THAT
COMMENCED PRIOR TO JANUARY 1, 1979; AND PROVIDING AN
EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. THERE IS A NEW MCA SECTION THAT READS:

Purpose. The legislature states that the purpose of
[this act] is to validate, ratify, and approve any
certificate of environmental compatibility and public need
issued by the board of natural resources and conservation
for electric generating facilities and associated facilities
that have been the subject of an administrative hearing that
commenced prior to January 1, 1979, so that no further
administrative or judicial proceedings before agencies or
courts of the state under the Montana Major Facility Siting
Act are required prior to commencement of construction of
such facilities and associated facilities. It is also the
purpose of [this act] to require any applicant who has
received a certificate of environmental compatibility and
public need by the board of natural resources and
conservation for electric generating facilities and
associated facilities that have been the subject of an
administrative hearing that commenced prior to January 1,
1979, to fully comply with the terms and conditions of such
certificate.

Section 2. Section 75-20-202, MCA, is amended to read:

*75-20-202. Exemptions. (1) This chapter does not
apply to a facility over which an agency of the federal
government has exclusive jurisdiction.

(2) A certificate is not required under this chapter

1 for a facility under diligent onsite physical construction
2 or in operation on January 1, 1973.

3 ~~(3) (a) Notwithstanding the provisions of this~~
4 ~~chapter, as amended, and any other state law to the~~
5 ~~contrary, a certificate of environmental compatibility and~~
6 ~~public need under the provisions of this chapter, as~~
7 ~~amended, is not required for the construction of electric~~
8 ~~generating facilities and associated facilities, including~~
9 ~~transmission lines, which have been the subject of~~
10 ~~administrative hearings commenced prior to January 1, 1973,~~
11 ~~under this chapter. ANY CERTIFICATE OF ENVIRONMENTAL~~
12 ~~COMPATIBILITY AND PUBLIC NEED FOR ELECTRIC GENERATING~~
13 ~~FACILITIES AND ASSOCIATED FACILITIES ISSUED BY THE BOARD OF~~
14 ~~NATURAL RESOURCES AND CONSERVATION FOLLOWING AN~~
15 ~~ADMINISTRATIVE HEARING WHICH COMMENCED PRIOR TO JANUARY 1,~~
16 ~~1973, UNDER THIS CHAPTER IS RATIFIED AND APPROVED.~~

17 ~~(b) The operation of such electric generating~~
18 ~~facilities and associated facilities, including transmission~~
19 ~~lines, shall comply with applicable state and federal laws,~~
20 ~~regulations, standards, and implementation plans for air and~~
21 ~~water quality and permits issued pursuant to them. THE~~
22 ~~CONSTRUCTION AND OPERATION OF SUCH ELECTRIC GENERATING~~
23 ~~FACILITIES AND ASSOCIATED FACILITIES SHALL COMPLY WITH THE~~
24 ~~TERMS AND CONDITIONS OF SUCH CERTIFICATE.~~

25 ~~(3)(4) The board may adopt reasonable rules~~

1 establishing exemptions from this chapter for the
2 relocation, reconstruction, or upgrading of a facility that
3 would otherwise be covered by this chapter and that is
4 unlikely to have a significant environmental impact by
5 reason of length, size, location, available space or
6 right-of-way, or construction methods."

7 Section 3. Effective date. This act is effective on
8 passage and approval.

-End-

1 HOUSE BILL NO. 452

2 INTRODUCED BY CONROY, SCULLY, QUILICI, RAMIREZ,

3 SALES, FABREGA, KEYSER, MOORE, MARKS, ROTH,

4 BENGTON, JOHNSTON, PISTORIA, KROPP, KVAALEN, MANNING,

5 WILLIAMS, DONALOSON, SEIFERT, HURWITZ, STAIGMILLER,

6 SIVERTSEN, SCHULTZ, THOFT, CURTISS, TROPILA, FAGG,

7 GOULD, WOOD, ELLISON, MANUEL, UNDERDAL, MEYER, BAETH,

8 VINGER, ELLIS, NORDTVEDT, PORTER, GERKE, LORY, HAYNE,

9 FEDA, STOBIE, LUND, ANDERSON, K. ROBBINS, GILLIGAN,

10 DASSINGER, GESEK, YARDLEY, O'CONNELL, HEMSTAD, KANDUCH,

11 NATHE, BURNETT, MAGONE, DAILY, ELLERD, LIEN, SMITH,

12 TEAGUE, ROSENTHAL, DOZIER, MYRICK, BENNETT, PAYLOVICH,

13 MENAHAN, HAND, ERNST, IVERSON, SPILKER, EUDAILY

14
 15 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION
 16 75-20-202, MCA, OF THE MONTANA MAJOR FACILITY SITING ACT BY
 17 EXEMPTING CERTAIN PROVIDING LEGISLATIVE RATIFICATION OF ANY
 18 CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED
 19 WHICH HAS BEEN ISSUED BY THE BOARD OF NATURAL RESOURCES AND
 20 CONSERVATION FOR ELECTRIC GENERATING FACILITIES AND
 21 ASSOCIATED FACILITIES THAT HAVE BEEN THE SUBJECT OF AN
 22 ADMINISTRATIVE HEARING THAT COMMENCED PRIOR TO JANUARY 1,
 23 1979, AND WHICH IS DECLARED INVALID BY THE MONTANA SUPREME
 24 COURT DUE TO PROCEDURAL DEFICIENCIES IN THE HEARING PROCESS;
 25 AND PROVIDING AN EFFECTIVE DATE."

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2 SECTION 1. THERE IS A NEW MCA SECTION THAT READS:

3
 4 Purpose. The legislature states that the purpose of
 5 [this act] is to validate, ratify, and approve any
 6 certificate of environmental compatibility and public need
 7 WHICH HAS BEEN issued by the board of natural resources and
 8 conservation for electric generating facilities and
 9 associated facilities that have been the subject of an
 10 administrative hearing that commenced prior to January 1,
 11 1979, AND WHICH IS DECLARED INVALID BY THE MONTANA SUPREME
 12 COURT DUE TO PROCEDURAL DEFICIENCIES IN THE HEARING PROCESS,
 13 so that no further administrative or judicial proceedings
 14 before agencies or courts of the state under the Montana
 15 Major Facility Siting Act are required prior to commencement
 16 of construction of such facilities and associated
 17 facilities. It is also the purpose of [this act] to require
 18 any applicant who has received a certificate of
 19 environmental compatibility and public need by the board of
 20 natural resources and conservation for electric generating
 21 facilities and associated facilities that have been the
 22 subject of an administrative hearing that commenced prior to
 23 January 1, 1979, to fully comply with the terms and
 24 conditions of such certificate.

25 Section 2. Section 75-20-202, MCA, is amended to read:

1 *75-20-202. Exemptions. (1) This chapter does not
2 apply to a facility over which an agency of the federal
3 government has exclusive jurisdiction.

4 (2) A certificate is not required under this chapter
5 for a facility under diligent onsite physical construction
6 or in operation on January 1, 1973.

7 ~~(3) (a) Notwithstanding the provisions of this~~
8 ~~chapter, as amended, and any other state law to the~~
9 ~~contrary, a certificate of environmental compatibility and~~
10 ~~public need under the provisions of this chapter, as~~
11 ~~amended, is not required for the construction of electric~~
12 ~~generating facilities and associated facilities, including~~
13 ~~transmission lines which have been the subject of~~
14 ~~administrative hearings commenced prior to January 1, 1979,~~
15 ~~under this chapter.~~ ANY CERTIFICATE OF ENVIRONMENTAL
16 COMPATIBILITY AND PUBLIC NEED FOR ELECTRIC GENERATING
17 FACILITIES AND ASSOCIATED FACILITIES WHICH HAS BEEN ISSUED
18 BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION FOLLOWING
19 AN ADMINISTRATIVE HEARING ~~WHICH~~ THAT COMMENCED PRIOR TO
20 JANUARY 1, 1979, UNDER THIS CHAPTER ~~IS~~ AND WHICH IS DECLARED
21 BY THE MONTANA SUPREME COURT TO BE INVALID BY REASON OF
22 PROCEDURAL DEFECTS IN THE HEARING PROCESS IN VALIDATED,
23 RAIIIFIED, AND APPROVED.

24 ~~(b) The operation of such electric generating~~
25 ~~facilities and associated facilities, including transmission~~

1 ~~lines shall comply with applicable state and federal laws~~
2 ~~regulatory standards and implementation plans for air and~~
3 ~~water quality and permits issued pursuant to them.~~ THE
4 CONSTRUCTION AND OPERATION OF SUCH ELECTRIC GENERATING
5 FACILITIES AND ASSOCIATED FACILITIES SHALL COMPLY WITH THE
6 TERMS AND CONDITIONS OF SUCH CERTIFICATE.

7 ~~(3)(b)~~ (1) The board may adopt reasonable rules
8 establishing exemptions from this chapter for the
9 relocation, reconstruction, or upgrading of a facility that
10 would otherwise be covered by this chapter and that is
11 unlikely to have a significant environmental impact by
12 reason of length, size, location, available space or
13 right-of-way, or construction methods."

14 Section 3. Effective date. This act is effective on
15 passage and approval.

-End-

1 HOUSE BILL NO. 452

2 INTRODUCED BY CONROY, SCULLY, QUILICI, RAMIREZ,

3 SALES, FABREGA, KEYSER, MOORE, MARKS, ROTH,

4 BENGTSON, JOHNSTON, PISTORIA, KROPP, KYAALEN, MANNING,

5 WILLIAMS, DONALDSON, SEIFERT, MURWITZ, STAIGMILLER,

6 SIVLNTSEN, SCHULTZ, THOFT, CURTISS, TROPILA, FAGG,

7 GOULD, WOOD, ELLISON, MANUEL, UNDERDAL, MEYER, BAETH,

8 VINGER, ELLIS, NORDTVEDT, PORTER, GERKE, LORY, HAYNE,

9 FEDA, STOBIE, LUND, ANDERSON, K. ROBBINS, GILLIGAN,

10 DASSINGER, GESEK, YARDLEY, O'CONNELL, HEMSTAD, KANDUCH,

11 NATHE, BURNETT, MAGONE, DAILY, ELLERD, LIEN, SMITH,

12 TEAGUE, ROSENTHAL, DOZIER, WYRICK, BENNETT, PAVLOVICH,

13 MENAHAN, HAND, ERNST, IVERSON, SPILKER, EUDAILY

14

15 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION

16 75-20-202, MCA, OF THE MONTANA MAJOR FACILITY SITING ACT BY

17 EXEMPTING CERTAIN PROVIDING LEGISLATIVE RATIFICATION OF ANY

18 CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED

19 WHICH HAS BEEN ISSUED BY THE BOARD OF NATURAL RESOURCES AND

20 CONSERVATION FOR ELECTRIC GENERATING FACILITIES AND

21 ASSOCIATED FACILITIES THAT HAVE BEEN THE SUBJECT OF AN

22 ADMINISTRATIVE HEARING THAT COMMENCED PRIOR TO JANUARY 1,

23 1979, AND WHICH IS DECLARED INVALID BY THE MONTANA SUPREME

24 COURT DUE TO PROCEDURAL DEFICIENCIES IN THE HEARING PROCESS;

25 AND PROVIDING AN EFFECTIVE DATE."

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2 SECTION 1. THERE IS A NEW MCA SECTION THAT READS:

3

4 Purpose. The legislature states that the purpose of

5 [this act] is to validate, ratify, and approve any

6 certificate of environmental compatibility and public need

7 WHICH HAS BEEN issued by the board of natural resources and

8 conservation for electric generating facilities and

9 associated facilities that have been the subject of an

10 administrative hearing that commenced prior to January 1,

11 1979, AND WHICH IS DECLARED INVALID BY THE MONTANA SUPREME

12 COURT DUE TO PROCEDURAL DEFICIENCIES IN THE HEARING PROCESS,

13 so that no further administrative or judicial proceedings

14 before agencies or courts of the state under the Montana

15 Major Facility Siting Act are required prior to commencement

16 of construction of such facilities and associated

17 facilities. It is also the purpose of [this act] to require

18 any applicant who has received a certificate of

19 environmental compatibility and public need by the board of

20 natural resources and conservation for electric generating

21 facilities and associated facilities that have been the

22 subject of an administrative hearing that commenced prior to

23 January 1, 1979, to fully comply with the terms and

24 conditions of such certificate.

25 Section 2. Section 75-20-202, MCA, is amended to read:

1 "75-20-202. Exemptions. (1) This chapter does not
2 apply to a facility over which an agency of the federal
3 government has exclusive jurisdiction.

4 (2) A certificate is not required under this chapter
5 for a facility under diligent onsite physical construction
6 or in operation on January 1, 1973.

7 ~~(3) (a) Notwithstanding the provisions of this~~
8 ~~chapter, as amended, and any other state law to the~~
9 ~~contrary, a certificate of environmental compatibility and~~
10 ~~public need under the provisions of this chapter, as~~
11 ~~amended, is not required for the construction of electric~~
12 ~~generating facilities and associated facilities, including~~
13 ~~transmission lines, which have been the subject of~~
14 ~~administrative hearings commenced prior to January 1, 1979,~~
15 ~~under this chapter.~~ ANY CERTIFICATE OF ENVIRONMENTAL
16 COMPATIBILITY AND PUBLIC NEED FOR ELECTRIC GENERATING
17 FACILITIES AND ASSOCIATED FACILITIES WHICH HAS BEEN ISSUED
18 BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION FOLLOWING
19 AN ADMINISTRATIVE HEARING WHICH THAT COMMENCED PRIOR TO
20 JANUARY 1, 1979, UNDER THIS CHAPTER IS AND WHICH IS DECLARED
21 BY THE MONTANA SUPREME COURT TO BE INVALID BY REASON OF
22 PROCEDURAL DEFECTS IN THE HEARING PROCESS IS VALIDATED,
23 RATIFIED, AND APPROVED.

24 ~~(b) The operation of such electric generating~~
25 ~~facilities and associated facilities, including transmission~~

1 ~~lines, shall comply with applicable state and federal laws,~~
2 ~~regulatory standards, and implementation plans for air and~~
3 ~~water quality and permits issued pursuant to them.~~ THE
4 CONSTRUCTION AND OPERATION OF SUCH ELECTRIC GENERATING
5 FACILITIES AND ASSOCIATED FACILITIES SHALL COMPLY WITH THE
6 TERMS AND CONDITIONS OF SUCH CERTIFICATE.

7 ~~(3)~~(4) The board may adopt reasonable rules
8 establishing exemptions from this chapter for the
9 relocation, reconstruction, or upgrading of a facility that
10 would otherwise be covered by this chapter and that is
11 unlikely to have a significant environmental impact by
12 reason of length, size, location, available space or
13 right-of-way, or construction methods."

14 Section 3. Effective date. This act is effective on
15 passage and approval.

-End-

HOUSE BILL NO. 452

INTRODUCED BY CONROY, SCULLY, QUILICI, RAMIREZ,

SALES, FABREGA, KEYSER, MOORE, MARKS, ROTH,

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SIVERTSEN, SCHULTZ, THOFT, CURTISS, TROPILA, FAGG,

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FEDA, STOBIE, LUND, ANDERSON, K. ROBBINS, GILLIGAN,

DASSINGER, GESEK, YARDLEY, O'CONNELL, HEMSTAD, KANDUCH,

NATHE, BURNETT, MAGONE, DAILY, ELLERD, LIEN, SMITH,

TEAGUE, ROSENTHAL, DOZIER, WYRICK, BENNETT, PAVLOVICH,

MENAHAN, HAND, ERNST, IVERSON, SPILKER, EUDAILY

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 75-20-202, MCA, OF THE MONTANA MAJOR FACILITY SITING ACT BY EXEMPTING CERTAIN PROVIDING LEGISLATIVE RATIFICATION OF ANY CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED WHICH HAS BEEN ISSUED BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION FOR ELECTRIC GENERATING FACILITIES AND ASSOCIATED FACILITIES THAT HAVE BEEN THE SUBJECT OF AN ADMINISTRATIVE HEARING THAT COMMENCED PRIOR TO JANUARY 1, 1979, AND WHICH IS DECLARED INVALID BY THE MONTANA SUPREME COURT DUE TO PROCEDURAL DEFICIENCIES IN THE HEARING PROCESS; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. THERE IS A NEW MCA SECTION THAT READS:

Purpose. The legislature states that the purpose of [this act] is to validate, ratify, and approve any certificate of environmental compatibility and public need WHICH HAS BEEN issued by the board of natural resources and conservation for electric generating facilities and associated facilities that have been the subject of an administrative hearing that commenced prior to January 1, 1979, AND WHICH IS DECLARED INVALID BY THE MONTANA SUPREME COURT DUE TO PROCEDURAL DEFICIENCIES IN THE HEARING PROCESS, so that no further administrative or judicial proceedings before agencies or courts of the state under the Montana Major Facility Siting Act are required prior to commencement of construction of such facilities and associated facilities. It is also the purpose of [this act] to require any applicant who has received a certificate of environmental compatibility and public need issued by the board of natural resources and conservation for electric generating facilities and associated facilities that have been the subject of an administrative hearing that commenced prior to January 1, 1979, to fully comply with the terms and conditions of such certificate.

Section 2. Section 75-20-202, MCA, is amended to read:

-2- Second Corrected HB 452
THIRD READING

1 "75-20-202. Exemptions. (1) This chapter does not
2 apply to a facility over which an agency of the federal
3 government has exclusive jurisdiction.

4 (2) A certificate is not required under this chapter
5 for a facility under diligent onsite physical construction
6 or in operation on January 1, 1973.

7 ~~(3) (a) Notwithstanding the provisions of this~~
8 ~~chapter, as amended, and any other state law to the~~
9 ~~contrary, a certificate of environmental compatibility and~~
10 ~~public need under the provisions of this chapter, as~~
11 ~~amended, is not required for the construction of electric~~
12 ~~generating facilities and associated facilities, including~~
13 ~~transmission lines, which have been the subject of~~
14 ~~administrative hearings commenced prior to January 1, 1979,~~
15 ~~under this chapter. ANY CERTIFICATE OF ENVIRONMENTAL~~
16 ~~COMPATIBILITY AND PUBLIC NEED FOR ELECTRIC GENERATING~~
17 ~~FACILITIES AND ASSOCIATED FACILITIES WHICH HAS BEEN ISSUED~~
18 ~~BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION FOLLOWING~~
19 ~~AN ADMINISTRATIVE HEARING WHICH THAT COMMENCED PRIOR TO~~
20 ~~JANUARY 1, 1979, UNDER THIS CHAPTER IS AND WHICH IS DECLARED~~
21 ~~BY THE MONTANA SUPREME COURT TO BE INVALID BY REASON OF~~
22 ~~PROCEDURAL DEFECTS IN THE HEARING PROCESS IS VALIDATED,~~
23 ~~RATIFIED, AND APPROVED.~~

24 (b) ~~The operation of such electric generating~~
25 ~~facilities and associated facilities, including transmission~~

1 ~~lines shall comply with applicable state and federal laws~~
2 ~~regulatory standards and implementation plans for air and~~
3 ~~water quality and permits issued pursuant to them. THE~~
4 ~~CONSTRUCTION AND OPERATION OF SUCH ELECTRIC GENERATING~~
5 ~~FACILITIES AND ASSOCIATED FACILITIES SHALL COMPLY WITH THE~~
6 ~~TERMS AND CONDITIONS OF SUCH CERTIFICATE.~~

7 ~~(3)(4)~~ The board may adopt reasonable rules
8 establishing exemptions from this chapter for the
9 relocation, reconstruction, or upgrading of a facility that
10 would otherwise be covered by this chapter and that is
11 unlikely to have a significant environmental impact by
12 reason of length, size, location, available space or
13 right-of-way, or construction methods."

14 Section 3. Effective date. This act is effective on
15 passage and approval.

-End-

HOUSE BILL NO. 452

INTRODUCED BY CONROY, SCULLY, QUILICI, RAMIREZ,

SALES, FABREGA, KEYSER, MOORE, MARKS, ROTH,

BENGTSON, JOHNSTON, PISTORIA, KROPP, KVAALEN, MANNING,

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DASSINGER, GESEK, YARDLEY, O'CONNELL, HEMSTAD, KANDUCH,

NATHE, BURNETT, MAGONE, DAILY, ELLERD, LIEN, SMITH,

TEAGUE, ROSENTHAL, DOZIER, WYRICK, BENNETT, PAVLOVICH,

MENAHAN, HAND, ERNST, IVERSON, SPILKER, EUDAILY

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 75-20-202, MCA, OF THE MONTANA MAJOR FACILITY SITING ACT BY EXEMPTING CERTAIN ~~PROVIDING LEGISLATIVE RATIFICATION OF ANY CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED WHICH HAS BEEN ISSUED BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO CURE ANY POSSIBLE PROCEDURAL DEFICIENCY IN THE HEARING PROCESS FOR ELECTRIC GENERATING FACILITIES AND ASSOCIATED FACILITIES THAT HAVE BEEN THE SUBJECT OF AN ADMINISTRATIVE HEARING THAT COMMENCED PRIOR TO JANUARY 1, 1979, AND WHICH IS DECLARED INVALID BY THE MONTANA SUPREME COURT OR BY PROVIDING LEGISLATIVE RATIFICATION OF ANY~~

~~CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR SUCH FACILITIES AND ASSOCIATED FACILITIES ISSUED BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION WHICH MAY BE AFFECTED BY ANY PROCEDURAL DEFICIENCIES DEFICIENCY IN THE HEARING PROCESS; PROVIDING THAT THE CONSTRUCTION AND OPERATION OF SUCH FACILITIES AND ASSOCIATED FACILITIES SHALL COMPLY WITH THE TERMS AND CONDITIONS OF SUCH CERTIFICATE AS ORIGINALLY ISSUED OR AS THE TERMS AND CONDITIONS OF SUCH CERTIFICATE ARE AMENDED PURSUANT TO THE AMENDMENT PROCEDURES OF THE MONTANA MAJOR FACILITY SITING ACT; AND PROVIDING AN EFFECTIVE DATE."~~

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. ~~THERE IS A NEW MCA SECTION THAT READS:~~

Purpose. The legislature states that the purpose of [this act] is to ~~validate~~ ~~ratify~~ ~~and~~ ~~approve~~ CURE ANY POSSIBLE PROCEDURAL DEFICIENCY IN THE HEARING PROCESS FOR ELECTRIC GENERATING FACILITIES AND ASSOCIATED FACILITIES THAT HAVE BEEN THE SUBJECT OF AN ADMINISTRATIVE HEARING THAT COMMENCED PRIOR TO JANUARY 1, 1979, BY VALIDATING, RATIFYING, AND APPROVING any certificate of environmental compatibility and public need ~~WHICH HAS BEEN~~ issued by the board of natural resources and conservation for SUCH electric generating facilities and associated facilities ~~that have been the subject of an administrative hearing that~~

1 commenced prior to January 1, 1979, AND ~~WHICH IS DECLARED~~
 2 ~~INVALID BY THE MONTANA SUPREME COURT TO BE INVALID BY REASON OF~~
 3 ~~DEFICIENCIES IN THE HEARING PROCESS,~~ so that no further
 4 administrative or judicial proceedings before agencies or
 5 courts of the state under the Montana Major Facility Siting
 6 Act are required FOR PROCEDURAL REASONS prior to
 7 commencement of construction of such facilities and
 8 associated facilities. It is also the purpose of [this act]
 9 to require any applicant who has received a certificate of
 10 environmental compatibility and public need issued by the
 11 board of natural resources and conservation for electric
 12 generating facilities and associated facilities that have
 13 been the subject of an administrative hearing that commenced
 14 prior to January 1, 1979, to fully comply with the terms and
 15 conditions of such certificate AS ISSUED OR AS AMENDED
 16 PURSUANT TO THE AMENDMENT PROCEDURES OF THE MONTANA MAJOR
 17 FACILITY SITING ACT.

18 Section 2. Section 75-20-202, MCA, is amended to read:
 19 "75-20-202. Exemptions. (1) This chapter does not
 20 apply to a facility over which an agency of the federal
 21 government has exclusive jurisdiction.

22 (2) A certificate is not required under this chapter
 23 for a facility under diligent onsite physical construction
 24 or in operation on January 1, 1973.

25 (3) (a) Notwithstanding the provisions of this

1 chapters as amended and any other state law to the
 2 contrary, a certificate of environmental compatibility and
 3 public need under the provisions of this chapter as
 4 amended is not required for the construction of electric
 5 generating facilities and associated facilities including
 6 transmission lines which have been the subject of
 7 administrative hearings commenced prior to January 1, 1979,
 8 under this chapter. ANY CERTIFICATE OF ENVIRONMENTAL
 9 COMPATIBILITY AND PUBLIC NEED FOR ELECTRIC GENERATING
 10 FACILITIES AND ASSOCIATED FACILITIES WHICH HAS BEEN ISSUED
 11 BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION FOLLOWING
 12 AN ADMINISTRATIVE HEARING WHICH THAT COMMENCED PRIOR TO
 13 JANUARY 1, 1979, UNDER THIS CHAPTER IS AND WHICH IS DECLARED
 14 BY THE MONTANA SUPREME COURT TO BE INVALID BY REASON OF
 15 BE AFFECTED BY ANY PROCEDURAL DEFECTS DEFECT IN THE HEARING
 16 PROCESS IS VALIDATED, RATIFIED, AND APPROVED.

17 (b) ~~The operation of such electric generating~~
 18 ~~facilities and associated facilities including transmission~~
 19 ~~lines shall comply with applicable state and federal laws~~
 20 ~~regulations, standards, and implementation plans for air and~~
 21 ~~water quality and permits issued pursuant to them.~~ THE
 22 OPERATION OF SUCH ELECTRIC GENERATING FACILITIES AND
 23 ASSOCIATED FACILITIES SHALL COMPLY WITH APPLICABLE STATE AND
 24 FEDERAL LAWS, REGULATIONS, STANDARDS, AND IMPLEMENTATION
 25 PLANS FOR AIR AND WATER QUALITY AND PERMITS ISSUED PURSUANT

1 ~~TO THEM. THE CONSTRUCTION AND OPERATION OF SUCH ELECTRIC~~
2 ~~GENERATING FACILITIES AND ASSOCIATED FACILITIES SHALL COMPLY~~
3 ~~WITH THE TERMS AND CONDITIONS OF SUCH CERTIFICATE AS~~
4 ~~ORIGINALLY ISSUED OR AS AMENDED PURSUANT TO THE AMENDMENT~~
5 ~~PROCEDURES OF THIS CHAPTER.~~

6 ~~{3}{4}~~ The board may adopt reasonable rules
7 establishing exemptions from this chapter for the
8 relocation, reconstruction, or upgrading of a facility that
9 would otherwise be covered by this chapter and that is
10 unlikely to have a significant environmental impact by
11 reason of length, size, location, available space or
12 right-of-way, or construction methods."

13 Section 3. Effective date. This act is effective on
14 passage and approval.

-End-

March 13, 1979

SENATE STANDING COMMITTEE REPORT
(Business & Industry)

That House Bill No. 452 be amended as follows:

1. Title, line 16.
Following: "ACT"
Strike: "BY"
2. Title, lines 17 through 20.
Following: "CERTAIN"
Strike: the remainder of line 17 through "CONSERVATION" on line 20
Insert: "TO CURE ANY POSSIBLE PROCEDURAL DEFICIENCY IN THE HEARING PROCESS"
3. Title, lines 23 and 24.
Following: "1979," on line 23
Strike: the remainder of line 23 through "TO" on line 24
Insert: "BY PROVIDING LEGISLATIVE RATIFICATION OF ANY CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR SUCH FACILITIES AND ASSOCIATED FACILITIES ISSUED BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION WHICH MAY BE AFFECTED BY ANY"
4. Title, line 24.
Following: "PROCEDURAL"
Strike: "DEFICIENCIES"
Insert: "DEFICIENCY"
Following: " ;"
Insert: "PROVIDING THAT THE CONSTRUCTION AND OPERATION OF SUCH FACILITIES AND ASSOCIATED FACILITIES SHALL COMPLY WITH THE TERMS AND CONDITIONS OF SUCH CERTIFICATE AS ORIGINALLY ISSUED OR AS THE TERMS AND CONDITIONS OF SUCH CERTIFICATE ARE AMENDED PURSUANT TO THE AMENDMENT PROCEDURES OF THE MONTANA MAJOR FACILITY SITING ACT;"
5. Page 2, line 5.
Following: "to"
Strike: "validate, ratify, and approve"
Insert: "cure any possible procedural deficiency in the hearing process for electric generating facilities and associated facilities that have been the subject of an administrative hearing that commenced prior to January 1, 1979, by validating, ratifying, and approving"
6. Page 2, line 7.
Following: line 6
Strike: "WHICH HAS BEEN"
7. Page 2, line 8.
Following: "for"
Insert: "such"
8. Page 2, lines 9 through 12.
Following: "facilities" on line 9
Strike: the remainder of line 9 through "PROCESS" on line 12

9. Page 2, line 15.

Following: "required"

Insert: "for procedural reasons"

10. Page 2, line 24.

Following: "certificate"

Insert: "as issued or as amended pursuant to the amendment procedures
of the Montana Major Facility Siting Act"

11. Page 3, line 17.

Following: "ASSOCIATED FACILITIES"

Strike: "WHICH HAS BEEN"

12. Page 3, lines 20 and 21.

Following: "WHICH" on line 20

Strike: the remainder of line 20 and line 21 in its entirety

Insert: "may be affected by any"

13. Page 3, line 22.

Following: "PROCEDURAL"

Strike: "DEFECTS"

Insert: "defect"

14. Page 4, line 3.

Following: "them"

Insert: "The operation of such electric generating facilities and
associated facilities shall comply with applicable state and
federal laws, regulations, standards, and implementation plans
for air and water quality and permits issued pursuant to them."

15. Page 4, line 6.

Following: "CERTIFICATE"

Insert: "as originally issued or as amended pursuant to the amendment
procedures of this chapter"

State of Montana
Office of The Governor
Helena 59601

THOMAS L. JUDGE
GOVERNOR

April 10, 1979

The Honorable William Mathers
President of the Senate
State Capitol
Helena, Montana 59601

The Honorable Harold Gerke
Speaker of the House
State Capitol
Helena, Montana 59601

Dear President Mathers and Speaker Gerke:

In accordance with the power vested in me as Governor by the constitution and the laws of the State of Montana, I hereby veto House Bill No. 452, "AN ACT TO AMEND SECTION 75-20-202, MCA, OF THE MONTANA MAJOR FACILITY SITING ACT TO CURE ANY POSSIBLE PROCEDURAL DEFICIENCY IN THE HEARING PROCESS FOR ELECTRIC GENERATING FACILITIES AND ASSOCIATED FACILITIES THAT HAVE BEEN THE SUBJECT OF AN ADMINISTRATIVE HEARING THAT COMMENCED PRIOR TO JANUARY 1, 1979, BY PROVIDING LEGISLATIVE RATIFICATION OF ANY CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC NEED FOR SUCH FACILITIES AND ASSOCIATED FACILITIES ISSUED BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION WHICH MAY BE AFFECTED BY ANY PROCEDURAL DEFICIENCY IN THE HEARING PROCESS; PROVIDING THAT THE CONSTRUCTION AND OPERATION OF SUCH FACILITIES AND ASSOCIATED FACILITIES SHALL COMPLY WITH THE TERMS AND CONDITIONS OF SUCH CERTIFICATE AS ORIGINALLY ISSUED OR AS THE TERMS AND CONDITIONS OF SUCH CERTIFICATE ARE AMENDED PURSUANT TO THE AMENDMENT PROCEDURES OF THE MONTANA MAJOR FACILITY SITING ACT; AND PROVIDING AN EFFECTIVE DATE."

House Bill No. 452 is special legislation. I have not, and will not, lend the authority of this office to extend special privilege to the Montana Power Company or to anyone else. True equality may be an impossibility, but legislated inequality is intolerable.

This bill seeks to circumvent the duly established processes of law and it proposes to avoid pending judicial action.

House Bill No. 452 is a hybrid piece of legislation intended to cure, validate and circumvent, but it may ultimately only guarantee a new round of litigation and consequent delay.

The Honorable William Mathers
The Honorable Harold Gerke
April 10, 1979
Page Two

Our energy needs in this state and this region are critical and I continue to support the construction of Colstrip 3 and 4. I appreciate, and I share, the justifiable frustration of members of this legislature, and the public we all represent, as they view the seemingly endless process for certification of Colstrip 3 and 4. That unwieldy and expensive process needs revision and I have proposed legislation that would streamline the major facility siting act.

Six years is too long, but House Bill No. 452 is not the answer. It subverts the process, interferes with judicial decision making, adds new confusion, and virtually guarantees new litigation. House Bill No. 452, if passed will be counterproductive. This legislation raises the most complex legal issues in an attempt to cure past procedural errors. It raises issues of definition over which lawyers will argue and the courts will mull for years to come. It raises the spectre of unknown constitutional questions. It is legislation special in nature, curative in design, confusing in legal contemplation and sure to generate delay.

Signing House Bill No. 452 would be a disservice to the people of Montana and to the accepted processes of state government, and to the energy needs of this state ... any one of those reasons require rejection of this bill; taken together they are a command to veto.

For these reasons, I veto House Bill No. 452.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas L. Judge". The signature is fluid and cursive, with a large, looping initial "T".

THOMAS L. JUDGE
Governor

cc: The Honorable Frank Murray