

HOUSE BILL 829

IN THE HOUSE

February 15, 1979

Introduced and referred to
Committee on Natural Resources.

1 *House* BILL NO. 829
 2 INTRODUCED BY *Barber*-----
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LAW RELATING TO MAJOR FACILITIES AND SITING; AMENDING
 6 SECTIONS 75-2-211, 75-20-103, 75-20-104, 75-20-203,
 7 75-20-211, 75-20-213 THROUGH 75-20-215, 75-20-218 THROUGH
 8 75-20-222, 75-20-301, 75-20-302, 75-20-304, 75-20-401,
 9 75-20-402, 75-20-406, 75-20-408, 75-20-501, AND 75-20-503,
 10 MCA; AND REPEALING SECTIONS 75-20-1101 THROUGH 75-20-1105,
 11 MCA."
 12

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

14 Section 1. Section 75-20-103, MCA, is amended to read:
 15 "75-20-103. Chapter supersedes other laws or rules.
 16 This chapter supersedes other laws or regulations except as
 17 provided in 75-20-401. If any provision of this chapter is
 18 in conflict with any other law of this state or any rule
 19 promulgated thereunder, this chapter shall govern and
 20 control and the other law or rule shall be deemed superseded
 21 for the purpose of this chapter. Amendments to this chapter
 22 shall have the same effect."

23 Section 2. Section 75-20-104, MCA, is amended to read:
 24 "75-20-104. Definitions. In this chapter, unless the
 25 context requires otherwise the following definitions apply:

1 (1) "Addition thereto" means the installation of new
 2 machinery and equipment which would significantly change the
 3 conditions under which the certificate was issued.

4 ~~(2) "Application" means an application for a~~
 5 ~~certificate submitted in accordance with this chapter and~~
 6 ~~the rules adopted hereunder.~~

7 ~~(3) "Associated facilities" includes but is not~~
 8 ~~limited to transportation links of any kind, aqueducts,~~
 9 ~~diversion dams, transmission substations, storage ponds,~~
 10 ~~reservoirs, and any other device or equipment associated~~
 11 ~~with the production or delivery of the energy form or~~
 12 ~~product produced by a facility, except that the term does~~
 13 ~~not include a facility.~~

14 ~~(4) "Board" means the board of natural resources~~
 15 ~~and conservation provided for in 2-15-3302.~~

16 ~~(5) "Certificate" means the certificate of~~
 17 ~~environmental compatibility and public need issued by the~~
 18 ~~board under this chapter that is required for the~~
 19 ~~construction or operation of a facility.~~

20 ~~(6) "Commence to construct" means:~~

21 (a) any clearing of land, excavation, construction, or
 22 other action that would affect the environment of the site
 23 or route of a facility but does not mean changes needed for
 24 temporary use of sites or routes for nonutility purposes or
 25 uses in securing geological data, including necessary

1 borings to ascertain foundation conditions;

2 (b) the fracturing of underground formations by any
3 means if such activity is related to the possible future
4 development of a gasification facility or a facility
5 employing geothermal resources but does not include the
6 gathering of geological data by boring of test holes or
7 other underground exploration, investigation, or
8 experimentation;

9 (c) the commencement of eminent domain proceedings
10 under Title 70, chapter 30, for land or rights-of-way upon
11 or over which a facility may be constructed;

12 (d) the relocation or upgrading of an existing
13 facility defined by (b) or (c) of subsection ~~(7)~~ (8),
14 including upgrading to a design capacity covered by
15 subsection ~~(7)~~ (8)(b), except that the term does not include
16 normal maintenance or repair of an existing facility.

17 ~~(6)~~(7) "Department" means the department of natural
18 resources and conservation provided for in Title 2, chapter
19 15, part 33.

20 ~~(7)~~(8) "Facility" means:

21 (a) each plant, unit, or other facility and
22 associated facilities, except for oil and gas refineries,
23 designed for or capable of:

24 (i) generating 50 megawatts of electricity or more or
25 any addition thereto (except pollution control facilities

1 approved by the department of health and environmental
2 sciences added to an existing plant) having an estimated
3 cost in excess of \$250,000;

4 (ii) producing 25 million cubic feet or more of gas
5 derived from coal per day or more or any addition thereto
6 having an estimated cost in excess of \$250,000;

7 (iii) producing 25,000 barrels of liquid hydrocarbon
8 products per day or more or any addition thereto having an
9 estimated cost in excess of \$250,000;

10 (iv) enriching uranium minerals or any addition thereto
11 having an estimated cost in excess of \$250,000; or

12 (v) utilizing, refining, or converting 500,000 tons of
13 coal per year or more or any addition thereto having an
14 estimated cost in excess of \$250,000;

15 (b) each electric transmission line and associated
16 facilities of a design capacity of more than 69 kilovolts,
17 except that the term does not include an electric
18 transmission line and associated facilities of a design
19 capacity of 230 kilovolts or less and 10 miles or less in
20 length;

21 (c) each pipeline and associated facilities designed
22 for or capable of transporting gas, water, or liquid
23 hydrocarbon products from or to a facility located within or
24 without this state of the size indicated in subsection ~~(7)~~
25 (8)(a) of this section;

1 (d) any use of geothermal resources, including the use
 2 of underground space in existence or to be created, for the
 3 creation, use, or conversion of energy, designed for or
 4 capable of delivery of geothermally delivered power
 5 equivalent to 25 million Btu per hour or more, or any
 6 addition thereto having an estimated cost in excess of
 7 \$250,000.

8 (e) any underground in situ gasification of coal.

9 ~~(8) "Municipality" means any county or municipality~~
 10 ~~within this state.~~

11 (9) "Person" means any individual, group, firm,
 12 partnership, corporation, cooperative, association,
 13 government subdivision, government agency, local government,
 14 or other organization or entity.

15 ~~(10) "Transmission substation" means any structure,~~
 16 ~~device, or equipment assemblage, commonly located, and~~
 17 ~~designed for voltage regulation, circuit protection, or~~
 18 ~~switching necessary for the construction or operation of a~~
 19 ~~proposed transmission line.~~

20 ~~(11) "Utility" means any person engaged in any~~
 21 ~~aspect of the production, storage, sale, delivery, or~~
 22 ~~furnishing of heat, electricity, gas, hydrocarbon products,~~
 23 ~~or energy in any form for ultimate public use."~~

24 Section 3. Section 75-20-203, MCA, is amended to read:
 25 "75-20-203. Certificate transferable. A certificate

1 may be transferred, subject to the approval of the
 2 department board, to a person who agrees to comply with the
 3 terms, conditions, and modifications contained therein."

4 Section 4. Section 75-20-211, MCA, is amended to read:

5 "75-20-211. Application -- filing and contents --
 6 proof of service and notice. (1) (a) An applicant for a
 7 certificate shall file with the department a verified an
 8 application, in such form as the board by rule or the
 9 department by order prescribes, containing the following
 10 information:

11 (i) a description of the location and of the facility
 12 to be built thereon;

13 (ii) a summary of any studies which have been made of
 14 the environmental impact of the facility;

15 (iii) a statement explaining the need for the facility;

16 (iv) a description of any reasonable alternate location
 17 or locations for the proposed facility, a general
 18 description of the comparative merits and detriments of each
 19 location submitted, and a statement of the reasons why the
 20 primary proposed location is best suited for the facility;
 21 and

22 (v) such other information as the applicant considers
 23 relevant or as the board by rule or the department by order
 24 requires.

25 (b) A copy or copies of the studies referred to in

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1 subsection (1)(a)(ii) above shall be filed with the
2 department, if ordered, and shall be available for public
3 inspection.

4 (2) An application may consist of an application for
5 two or more facilities in combination which are physically
6 and directly attached to each other and are operationally a
7 single operating entity.

8 (3) An application shall be accompanied by proof of
9 service of a copy of the application on the chief executive
10 officer of each municipality and the head of each government
11 agency county commissioners, city or county planning boards,
12 and federal agencies charged with the duty of protecting the
13 environment or of planning land use in the area in which any
14 portion of the proposed facility is to be located, both
15 as primarily and as alternatively proposed, and on the
16 following state government agencies:

17 (a) environmental quality council;

18 (b) department of health and environmental sciences;

19 (c) department of public service regulation;

20 (d) department of fish and game;

21 (e) department of state lands;

22 (f) department of community affairs;

23 (g) department of highways;

24 (h) department of revenue;

25 (i) the attorney general.

1 (4) The copy of the application shall be accompanied
2 by a notice specifying the date on or about which the
3 application is to be filed.

4 (5) An application shall also be accompanied by proof
5 that public notice thereof was given to persons residing in
6 the ~~municipalities entitled to receive notice under~~
7 ~~subsection (3) of this section by the publication of a~~
8 ~~summary of the application and the date on or about which it~~
9 ~~is to be filed in those newspapers as will serve~~
10 ~~substantially to inform those persons of the application~~
11 ~~area or alternative areas in which any portion of the~~
12 ~~proposed facility may be located, by publication of a~~
13 ~~summary of the application in those newspapers that will~~
14 ~~substantially inform those persons of the application.~~

15 (6) In addition, the department may, after filing,
16 require the applicant to serve notice of the application or
17 copies thereof, or both, upon such other persons, and file
18 proof thereof, as the department may deem appropriate."

19 Section 5. Section 75-20-213, MCA, is amended to read:

20 "75-20-213. Amendment -- restrictions. (1) An
21 application for an amendment of an application or a
22 certificate shall be in such form and contain such
23 information as the board by rule or the department by order
24 prescribes. Notice of such an application shall be given as
25 set forth in (3), (4), and (5) of 75-20-211.

1 (2) ~~if an amendment to an original application would~~
2 ~~result in a substantial change of the original application,~~
3 An application for an amendment of an application is
4 required if the department determines that there is a
5 substantial change in the location, design, or operation of
6 all or a portion of the facility other than as provided in
7 the alternates set forth in the original application, such
8 Such an amendment shall be considered as a new application
9 and a new filing fee shall be required.

10 (3) If the department determines that a proposed
11 change in the location, design, or operation of a proposed
12 facility results from the requirements of other government
13 agencies and would result in less environmental impact, an
14 application for an amendment is required. However, if the
15 proposed change is such that it prevents the department from
16 carrying out its duties and responsibilities under this
17 chapter, the department shall require a new application and
18 filing fee."

19 Section 6. Section 75-20-214, MCA, is amended to read:

20 "75-20-214. Notice of intent to file. A potential
21 applicant for a certificate may file a notice of intent to
22 file an application for a certificate for a facility defined
23 in ~~75-20-104(7)~~ 75-20-104(8) at least 12 months prior to the
24 actual filing of an application. The notice of intent shall
25 specify the type and size of facility to be applied for, its

1 preferred location, a description of reasonable alternative
2 locations, and such information as the board by rule or
3 department by order requires. An applicant complying with
4 this section is entitled to a 5% reduction of the filing fee
5 required under 75-20-215."

6 Section 7. Section 75-20-215, MCA, is amended to read:

7 "75-20-215. Filing fee -- accountability -- refund --
8 use. (1) A filing fee shall be deposited in the earmarked
9 revenue fund for the use of the department in administering
10 this chapter. The applicant shall pay to the department a
11 filing fee ~~with the application,~~ based upon the estimated
12 cost of the facility according to the declining scale which
13 follows:

14 (a) 2% of any estimated cost up to \$1 million; plus

15 (b) 1% of any estimated cost over \$1 million and up to
16 \$20 million; plus

17 (c) 0.5% of any estimated cost over \$20 million and up
18 to \$100 million; plus

19 (d) 0.25% of any amount of estimated cost over \$100
20 million and up to \$300 million; plus

21 (e) .125% of any amount of estimated cost over \$300
22 million.

23 (2) (a) The total filing fee shall be submitted to the
24 department upon submission of an application unless the
25 applicant and the department have previously agreed to a

1 schedule of payments whereby a filing fee may be paid in
2 installments.

3 (b) If the applicant and department agree to the
4 payment of a filing fee on the installment basis, the
5 revenue derived from the filing fee must be sufficient to
6 enable the department, the board, the duly authorized state
7 air and water quality agencies, the agencies listed in
8 75-20-216(4), and the attorney general to carry out their
9 responsibilities under this chapter.

10 (c) If an agreement is not entered but the applicant
11 desires to pay the filing fee in installments, the applicant
12 may pay the filing fee in accordance with a schedule of
13 installments developed by the department, provided that no
14 one installment may exceed 20% of the total filing fee
15 provided for in subsection (1).

16 (3) The estimated cost of upgrading an existing
17 transmission substation may not be included in the estimated
18 cost of a proposed facility for the purpose of calculating a
19 filing fee.

20 (2)(4) If an application consists of a combination of
21 two or more facilities, the filing fee shall be based on the
22 total estimated cost of the combined facilities.

23 (3)(5) The applicant is entitled to an accounting of
24 moneys expended and to a refund with interest at the rate of
25 6% a year of that portion of the filing fee not expended by

1 the department in carrying out its responsibilities under
2 this chapter. A refund shall be made after all
3 administrative and judicial remedies have been exhausted by
4 all parties to the certification proceedings.

5 (4)(6) The revenues derived from filing fees shall be
6 used by the department in compiling the information required
7 for rendering a decision on a certificate and for carrying
8 out its and the board's other responsibilities under this
9 chapter with respect to the facility covered by the
10 certificate for a period not to exceed 5 years after the
11 certificate is issued for facilities defined in
12 75-20-104(7)(b) and (c) or not to exceed 10 years after the
13 certificate is issued for facilities defined in
14 75-20-104(7)(c) and (d), except that a minimum of 5%
15 of the revenues derived shall be allocated to the attorney
16 general by the department if he becomes an active party to
17 the certification proceedings."

18 Section 8. Section 75-20-215, MCA, is amended to read:
19 "75-20-215. Study, evaluation, and report on proposed
20 facility -- assistance by other agencies. (1) After receipt
21 of an application, the department shall within 30 days
22 notify the applicant in writing that:

23 (a) the application is in compliance and is accepted
24 as complete; or

25 (b) the application is not in compliance and list the

1 deficiencies therein; and upon correction of these
 2 deficiencies and resubmission by the applicant, the
 3 department shall within 30 days notify the applicant in
 4 writing that the application is in compliance and is
 5 accepted as complete.

6 (2) If an application is accepted as complete, within
 7 60 days of the original receipt by the department under
 8 subsection (1)(a), the application's effective filing and
 9 receipt date relates back to the original date the
 10 application was filed. In all other cases the effective
 11 filing and receipt date is the date on which the department
 12 accepts the application as complete.

13 (3) Upon receipt of an application complying with
 14 75-20-211 through 75-20-215, and this section, the
 15 department shall commence an intensive study and evaluation
 16 of the proposed facility and its effects, considering all
 17 the criteria listed in 75-20-301 and 75-20-503. The
 18 department shall use, to the extent it considers applicable,
 19 valid and useful existing studies and reports submitted by
 20 the applicant or compiled by a state or federal agency.

21 (4) Within 2 years following receipt acceptance of
 22 an application for a facility as defined in (a) and (d) of
 23 75-20-104(7) 75-20-104(8) and for a facility as defined in
 24 (b) and (c) of 75-20-104(7) 75-20-104(3) which is more than
 25 30 miles in length and within 1 year for a facility as

1 defined in (b) and (c) of ~~75-20-104(7)~~ 75-20-104(2) which is
 2 30 miles or less in length, the department shall make a
 3 report to the board which shall contain the department's
 4 studies, evaluations, recommendations, other pertinent
 5 documents resulting from its study and evaluation, and the
 6 ~~final~~ an environmental impact statement or analysis prepared
 7 pursuant to the Montana Environmental Policy Act, if such an
 8 analysis is required. If the application is for a
 9 combination of two or more facilities, the department shall
 10 make its report to the board within the greater of the
 11 lengths of time provided for in this subsection for either
 12 of the facilities.

13 (5) The departments of health and environmental
 14 sciences, highways, community affairs, fish and game, state
 15 lands, revenue, and public service regulation shall report
 16 to the department information relating to the impact of the
 17 proposed site on each department's area of expertise. The
 18 report may include opinions as to the advisability of
 19 granting, denying, or modifying the certificate. The
 20 department shall allocate funds obtained from filing fees to
 21 the departments making reports to reimburse them for the
 22 costs of compiling information and issuing the required
 23 report."

24 Section 9. Section 75-20-219, MCA, is amended to read:
 25 "75-20-219. Hearing date -- location -- department to

1 ~~act as staff -- hearings to be held jointly.~~ 11 Upon
 2 receipt of the department's report submitted under
 3 75-20-216, the board shall set a date for a hearing to begin
 4 not more than 120 days after the receipt. Except for those
 5 hearings involving applications submitted for facilities as
 6 defined in (b) and (c) of ~~75-20-104(7)~~ 75-20-104(3),
 7 certification hearings shall be conducted by the board in
 8 the county seat of Lewis and Clark County or the county in
 9 which the facility or the greater portion thereof is to be
 10 located.

11 ~~(2) If the department does not participate as an~~
 12 ~~active party in a certification proceeding it shall act as~~
 13 ~~the staff for the board throughout the decisionmaking~~
 14 ~~process and the board may request the department to present~~
 15 ~~testimony or cross-examine witnesses as the board considers~~
 16 ~~necessary and appropriate.~~

17 ~~(3) The duly authorized state air and water quality~~
 18 ~~agencies shall hold any required permit hearings required~~
 19 ~~under laws administered by those agencies in conjunction~~
 20 ~~with the board certification hearing. The time periods~~
 21 ~~established for reviewing an application and for issuing a~~
 22 ~~decision on certification of a proposed facility under this~~
 23 ~~chapter supersede the time periods specified in other laws~~
 24 ~~administered by the duly authorized state air and water~~
 25 ~~quality agencies."~~

1 Section 10. Section 75-20-219, MCA, is amended to
 2 read:

3 "75-20-219. Hearing on amendment of application
 4 ~~certificate.~~ 11 On an application for an amendment of a
 5 certificate, the board shall hold a hearing in the same
 6 manner as a hearing is held on an application for a
 7 certificate if ~~the board determines that~~ the proposed change
 8 in the facility would result in any material increase in any
 9 environmental impact of the facility or a substantial change
 10 in the location of all or a portion of the facility other
 11 than as provided in the alternates set forth in the
 12 application.

13 ~~(2) If an application for an amendment results from~~
 14 ~~the request of an affected landowner upon whose land the~~
 15 ~~facility is located or from the requirements of other~~
 16 ~~government agencies and if the amendment would not result in~~
 17 ~~any material increase in any environmental impact and if the~~
 18 ~~amendment would not result in a substantial change in the~~
 19 ~~location of all or a portion of the facility, the board, may~~
 20 ~~upon recommendation by the department, grant an amendment to~~
 21 ~~the certificate upon such terms, conditions, or~~
 22 ~~modifications as the board considers appropriate. The~~
 23 ~~board's decision shall be made after 30 days' notice to~~
 24 ~~affected parties.~~

25 ~~(3) A decision made by the board pursuant to~~

1 subsections (1) and (2) above is subject to judicial review
 2 under the Montana Administrative Procedure Act."

3 Section 11. Section 75-20-220, MCA, is amended to
 4 read:

5 "75-20-220. Hearing examiner -- restrictions --
 6 duties. (1) If the board appoints a hearing examiner to
 7 conduct any certification proceedings under this chapter,
 8 the hearing examiner may not be a member of the board or, an
 9 employee of the department, or a member or employee of a
 10 duly authorized state air and water quality agency. A
 11 hearing examiner, if any, shall be appointed by the board
 12 within 20 days after the department's report has been filed
 13 with the board. If a duly authorized state air and water
 14 quality agency permit hearing is required, the board and the
 15 agency shall mutually agree on the appointment of a hearing
 16 examiner.

17 (2) A prehearing conference shall be held following
 18 notice within 60 days after the department's report has been
 19 filed with the board.

20 (3) The prehearing conference shall be organized and
 21 supervised by the hearing examiner.

22 (4) The prehearing conference shall be directed toward
 23 a determination of the issues presented by the application,
 24 the department's report, and an identification of the
 25 witnesses and documentary exhibits to be presented by the

1 active parties who intend to participate in the hearing.

2 (5) The hearing examiner shall require the active
 3 parties to submit, in writing, and serve upon the other
 4 active parties, all direct testimony which they propose and
 5 any studies, investigations, reports, or other exhibits that
 6 any active party wishes the board to consider. These written
 7 exhibits and any documents that the board itself wishes to
 8 use or rely on shall be submitted and served in like manner,
 9 at least 20 days prior to the date set for the hearing. For
 10 good cause shown, the hearing examiner may allow the
 11 introduction of new evidence at any time.

12 (6) Public witnesses and other interested public
 13 parties may appear and present oral testimony at the hearing
 14 or submit written testimony to the hearing examiner at the
 15 time of their appearance. These witnesses are subject to
 16 cross-examination.

17 (7) The hearing examiner shall issue a prehearing
 18 order specifying the issues of fact and of law, identifying
 19 the witnesses of the active parties, naming the public
 20 witnesses and other interested parties who have submitted
 21 written testimony, scheduling times for the presentation of
 22 oral testimony by public parties, outlining the order in
 23 which the hearing shall proceed, and establishing any other
 24 special rules to expedite the hearing which the hearing
 25 examiner may adopt.

1 (8) At the conclusion of the hearing, the hearing
 2 examiner shall declare the hearing closed and shall, within
 3 90 days of that date, prepare and submit to the board and
 4 the duly authorized state air and water quality agency, if
 5 necessary, proposed findings of fact, conclusions of law,
 6 and a recommended decision.

7 (9) The hearing examiner appointed to conduct a
 8 certification proceeding under this chapter shall insure
 9 that the time of the proceeding, from the date the
 10 department's report is filed with the board until the
 11 recommended report and order of the examiner is filed with
 12 the board, does not exceed 12 calendar months unless
 13 extended by the board for good cause.*

14 Section 12. Section 75-20-221, MCA, is amended to
 15 read:

16 "75-20-221. Parties to certification proceeding --
 17 waiver -- attorney general. (1) The parties to a
 18 certification proceeding may include as active parties:

19 (a) the applicant;

20 (b) each municipality political entity and government
 21 agency entitled to receive service of a copy of the
 22 application under 75-20-211(3);

23 (c) any person residing in a municipality entitled to
 24 receive service of a copy of the application under
 25 75-20-211(5);

1 (d) any nonprofit organization formed in whole or in
 2 part to promote conservation or natural beauty; to protect
 3 the environment, personal health, or other biological
 4 values; to preserve historical sites; to promote consumer
 5 interests; to represent commercial and industrial groups; or
 6 to promote the orderly development of the areas in which the
 7 facility is to be located; or

8 (e) any other interested person who establishes an
 9 interest in the proceeding; and

10 (f) the department; and

11 (g) the attorney general.

12 (2) The parties to a certification proceeding may also
 13 include, as public parties, any Montana citizen and any
 14 party referred to in (b), (c), (d), or (e) of subsection
 15 (1).

16 (3) Any party identified in (b), (c), (d), and or
 17 (e) of subsection (1) waives his the right to be a party if
 18 he the party does not participate or attend in the hearing
 19 before the board.

20 (4) The attorney general shall participate as an
 21 active party in certification proceedings involving
 22 facilities described in 75-20-104(8)(a).

23 (5) The attorney general shall be the representative
 24 of the public interest on all matters raised in the hearings
 25 related to the criteria established in 75-20-301 and

1 75-20-503."

2 Section 13. Section 75-20-222, MCA, is amended to
3 read:

4 "75-20-222. Record of hearing -- procedure -- rules of
5 evidence -- burden of proof. (1) Any studies,
6 investigations, reports, or other documentary evidence,
7 including those prepared by the department, which any party
8 wishes the board to consider or which the board itself
9 expects to utilize or rely upon shall be made a part of the
10 record.

11 (2) A record shall be made of the hearing and of all
12 testimony taken.

13 (3) ~~except as expressly modified in 75-20-220.~~ The the
14 contested case procedures of the Montana Administrative
15 Procedure Act shall apply to the hearing, except that
16 neither common law nor statutory rules of evidence need
17 apply. The board may make rules designed to exclude
18 repetitive, redundant, or irrelevant testimony.

19 (4) In a certification proceeding held under this
20 chapter, the applicant has the burden of showing by clear
21 and convincing evidence that the application should be
22 granted and that the criteria of 75-20-301 are met."

23 Section 14. Section 75-20-301, MCA, is amended to
24 read:

25 "75-20-301. Decision of board -- findings necessary

1 for certification. (1) Within ~~90~~ 60 days after the ~~last day~~
2 ~~of the hearing,~~ submission of the recommended decision by
3 ~~the hearing examiner,~~ the board shall make complete
4 findings, issue an opinion, and render a decision upon the
5 record, either granting or denying the application as filed
6 or granting it upon such terms, conditions, or modifications
7 of the construction, operation, or maintenance of the
8 facility as the board considers appropriate.

9 (2) The board may not grant a certificate either as
10 proposed by the applicant or as modified by the board unless
11 it shall find and determine:

12 (a) the basis of the need for the facility;
13 (b) the nature of the probable environmental impact;
14 (c) that the facility represents the ~~minimum~~ adverse
15 environmental impact, considering the state of available
16 technology and the nature and economics of the various
17 alternatives;

18 (d) each of the criteria listed in 75-20-503;

19 (e) in the case of an electric, gas, or liquid
20 transmission line or aqueduct:

21 (i) what part, if any, of the line or aqueduct shall
22 be located underground;

23 (ii) that the facility is consistent with regional
24 plans for expansion of the appropriate grid of the utility
25 systems serving the state and interconnected utility

1 systems; and

2 (iii) that the facility will serve the interests of
3 utility system economy and reliability;

4 (f) that the location of the facility as proposed
5 conforms to applicable state and local laws and regulations
6 issued thereunder, except that the board may refuse to apply
7 any local law or regulation if it finds that, as applied to
8 the proposed facility, the law or regulation is unreasonably
9 restrictive in view of the existing technology, of factors
10 of cost or economics, or of the needs of consumers, whether
11 located inside or outside of the directly affected
12 government subdivisions;

13 (g) that the facility will serve the public interest,
14 convenience, and necessity; and

15 (h) that duly authorized state air and water quality
16 agencies have certified that the proposed facility will not
17 violate state and federally established standards and
18 implementation plans. The judgments of duly authorized air
19 and water quality agencies are conclusive on all questions
20 related to the satisfaction of state and federal air and
21 water quality standards.

22 (3) In determining that the facility will serve the
23 public interest, convenience, and necessity under subsection
24 (2)(g) of this section, the board shall consider:

25 (a) the items listed in subsections (2)(a) and (2)(b)

1 of this section;

2 (b) the benefits to the applicant and the state
3 resulting from the proposed facility;

4 (c) the effects of the economic activity resulting
5 from the proposed facility;

6 (d) the effects of the proposed facility on the public
7 health, welfare, and safety;

8 (e) any other factors that it considers relevant.

9 (4) Considerations of need, public need, or public
10 convenience and necessity and demonstration thereof by the
11 applicant shall apply only to utility facilities.

12 (5) If the duly authorized state air and water quality
13 agency is required to hold a hearing, the agency shall,
14 within 45 days after submission of the recommended decision
15 by the hearing examiner, make complete findings, issue an
16 opinion, and render a decision upon the record, which shall
17 be certified to the board within 10 days. The agency
18 decision constitutes the judgment of the agency on all
19 questions related to the satisfaction of state and federal
20 air and water quality standards and implementation plans.
21 The final decision of the agency is conclusive on all
22 matters related to the satisfaction of state and federal air
23 and water quality standards and the decision shall include
24 the permits required under the laws administered by the duly
25 authorized state air and water quality agencies."

1 Section 15. Section 75-20-302, MCA, is amended to
2 read:

3 "75-20-302. Conditions imposed. If the board
4 determines that the location of all or a part of the
5 proposed facility should be modified, it may condition its
6 certificate upon such modification, provided that the
7 ~~municipalities and persons residing therein in the area~~
8 affected by the modification have been given reasonable
9 notice of the modification."

10 Section 16. Section 75-20-304, MCA, is amended to
11 read:

12 "75-20-304. Waiver of provisions of certification
13 proceedings. ~~(1) Any of the provisions described in~~
14 ~~75-20-216 through 75-20-222 and this part may be waived by~~
15 ~~the board for good cause shown with respect to applications~~
16 ~~filed before January 1, 1975. Applications for certificates~~
17 ~~under this subsection must be promptly filed.~~

18 (2)(1) The board may waive compliance with any of the
19 provisions of 75-20-216 through 75-20-222, 75-20-501, and
20 this part if the applicant makes a clear and convincing
21 showing to the board at a public hearing that an immediate,
22 urgent need for a facility exists and that the applicant did
23 not have knowledge that the need for the facility existed
24 sufficiently in advance to fully comply with the provisions
25 of 75-20-216 through 75-20-222, 75-20-501, and this part.

1 (3)(2) The board may waive compliance with any of the
2 provisions of this chapter upon receipt of notice by a
3 utility or person subject to this chapter that a facility or
4 associated facility has been damaged or destroyed as a
5 result of fire, flood, or other natural disaster or as the
6 result of insurrection, war, or other civil disorder and
7 there exists an immediate need for construction of a new
8 facility or associated facility or the relocation of a
9 previously existing facility or associated facility in order
10 to promote the public welfare."

11 Section 17. Section 75-20-401, MCA, is amended to
12 read:

13 "75-20-401. Additional requirements by other
14 governmental agencies not permitted after issuance of
15 certificate -- exceptions. (1) Notwithstanding any other
16 law, no state or regional agency or municipality or other
17 local government may require any approval, consent, permit,
18 certificate, or other condition for the construction,
19 operation, or maintenance of a facility authorized by a
20 certificate issued pursuant to this chapter, except that the
21 state air and water quality agency or agencies shall retain
22 authority, excluding the authority to conduct hearings and
23 issue permits other than as herein provided, which they have
24 or may be granted to determine compliance of the proposed
25 facility with state and federal standards and implementation

1 plans for air and water quality and to enforce those
2 standards.

3 (2) This chapter does not prevent the application of
4 state laws for the protection of employees engaged in the
5 construction, operation, or maintenance of a facility."

6 Section 18. Section 75-20-402, MCA, is amended to
7 read:

8 "75-20-402. Monitoring. The board ~~and~~ the department,
9 ~~and the state air and water quality agencies~~ shall monitor
10 the operations of all certificated facilities for assuring
11 continuing compliance with this chapter and certificates
12 issued hereunder and for discovering and preventing
13 noncompliance with this chapter and the certificates. ~~The~~
14 ~~applicant shall pay all expenses related to the monitoring~~
15 ~~plan established in subsection (3)(a)(v) of 75-20-303."~~

16 Section 19. Section 75-20-406, MCA, is amended to
17 read:

18 "75-20-406. Judicial review of board decision. (1) Any
19 ~~active~~ party as defined in 75-20-221 aggrieved by the final
20 decision of the board on an application for a certificate
21 may obtain judicial review of that decision by the filing of
22 a petition in a state district court of competent
23 jurisdiction.

24 (2) The judicial review procedure shall be the same as
25 that for contested cases under the Montana Administrative

1 Procedure Act."

2 Section 20. Section 75-20-408, MCA, is amended to
3 read:

4 "75-20-408. Penalties for violation of chapter --
5 civil action by attorney general. (1) (a) Whoever commences
6 to construct or operate a facility without first obtaining a
7 certificate required under 75-20-201 or a waiver thereof
8 under 75-20-304(3); having first obtained a certificate,
9 constructs, operates, or maintains a facility other than in
10 compliance with the certificate; violates any other
11 provision of this chapter or any rule or order adopted
12 thereunder; knowingly submits false information in any
13 report, ~~10-year plan~~ or application required by this chapter
14 or rule or order adopted thereunder; or causes any of the
15 aforementioned acts to occur shall be liable to a civil
16 penalty of not more than \$10,000 for each violation.

17 (b) Each day of a continuing violation shall
18 constitute a separate offense.

19 (c) The penalty shall be recoverable in a civil suit
20 brought by the attorney general on behalf of the state in
21 the first district court of Montana.

22 (2) Whoever knowingly and willfully violates
23 subsection (1) shall be fined not more than \$10,000 for each
24 violation or imprisoned for not more than 1 year, or both.
25 Each day of a continuing violation shall constitute a

1 separate offense.

2 (3) In addition to any penalty provided in subsections
3 (1) or (2), whenever the department determines that a person
4 is violating or is about to violate any of the provisions of
5 this section, it may refer the matter to the attorney
6 general who may bring a civil action on behalf of the state
7 in the first district court of Montana for injunctive or
8 other appropriate relief against the violation and to
9 enforce this chapter or a certificate issued hereunder. Upon
10 a proper showing, a permanent or preliminary injunction or
11 temporary restraining order shall be granted without bond.

12 (4) The department shall also enforce this chapter and
13 bring legal actions to accomplish the enforcement through
14 its own legal counsel.

15 (5) All fines and penalties collected shall be
16 deposited in the earmarked revenue fund for the use of the
17 department in administering this chapter."

18 Section 21. Section 75-20-501, MCA, is amended to
19 read:

20 "75-20-501. Annual long-range plan submitted --
21 contents -- available to public. (1) Each utility and each
22 person contemplating the construction of a facility within
23 this state in the ensuing 10 years shall furnish annually to
24 the department for its review a long-range plan for the
25 construction and operation of facilities.

1 (2) The plan shall be submitted on April 1 of each
2 year and shall include the following:

3 (a) the general location, size, and type of all
4 facilities to be owned and operated by the utility or person
5 whose construction is projected to commence during the
6 ensuing 10 years, as well as those facilities to be removed
7 from service during the planning period;

8 (b) in the case of utility facilities, a description
9 of efforts by the utility or person to coordinate the plan
10 with other utilities or persons so as to provide a
11 coordinated regional plan for meeting the energy needs of
12 the region;

13 (c) a description of the efforts to involve
14 environmental protection and land use planning agencies in
15 the planning process, as well as other efforts to identify
16 and minimize environmental problems at the earliest possible
17 stage in the planning process;

18 (d) projections of the demand for the service rendered
19 by the utility or person and explanation of the basis for
20 those projections and a description of the manner and extent
21 to which the proposed facilities will meet the projected
22 demand; and

23 (e) additional information that the board by rule or
24 the department on its own initiative or upon the advice of
25 interested state agencies might request in order to carry

1 out the purposes of this chapter.

2 (3) The plan shall be made available to the public by
3 the department. The utility or person shall give public
4 notice throughout the state of its plan by filing the plan
5 with the environmental quality council, the department of
6 health and environmental sciences, the department of
7 highways, the department of public service regulation, the
8 department of state lands, and the department of community
9 affairs. Citizen environmental protection and resource
10 planning groups and other interested persons may obtain a
11 plan by written request and payment therefor to the
12 department.

13 ~~(4) A rural electric cooperative may furnish the~~
14 ~~department with a copy of the long-range plan and 2-year~~
15 ~~work plan required to be completed under federal rural~~
16 ~~electrification statutes in lieu of the long-range plan~~
17 ~~required in subsection (1).~~

18 ~~(5) No person may file an application for a facility~~
19 ~~unless the facility had been adequately identified in a~~
20 ~~long-range plan at least 2 years prior to acceptance of an~~
21 ~~application by the department."~~

22 Section 22. Section 75-20-503, MCA, is amended to
23 read:

24 "75-20-503. Environmental factors evaluated. In
25 evaluating long-range plans, conducting 5-year site reviews,

1 and evaluating applications for certificates, the board and
2 department shall give consideration to the following list of
3 environmental factors, where applicable, and may by rule add
4 to the categories of this section:

5 (1) energy needs:

6 (a) growth in demand and projections of need;

7 (b) availability and desirability of alternative
8 sources of energy;

9 (c) availability and desirability of alternative
10 sources of energy in lieu of the proposed facility;

11 (d) promotional activities of the utility which may
12 have given rise to the need for this facility;

13 (e) socially beneficial uses of the output of this
14 facility, including its uses to protect or enhance
15 environmental quality;

16 (f) conservation activities which could reduce the
17 need for more energy;

18 (g) research activities of the utility of new
19 technology available to it which might minimize
20 environmental impact;

21 (2) land use impacts:

22 (a) area of land required and ultimate use;

23 (b) consistency with areawide state and regional land
24 use plans;

25 (c) consistency with existing and projected nearby

1 land use;

2 (d) alternative uses of the site;

3 (e) impact on population already in the area,

4 population attracted by construction or operation of the

5 facility itself;

6 (f) impact of availability of energy from this

7 facility on growth patterns and population dispersal;

8 (g) geologic suitability of the site or route;

9 (h) seismologic characteristics;

10 (i) construction practices;

11 (j) extent of erosion, scouring, wasting of land, both

12 at site and as a result of fossil fuel demands of the

13 facility;

14 (k) corridor design and construction precautions for

15 transmission lines or aqueducts;

16 (l) scenic impacts;

17 (m) effects on natural systems, wildlife, plant life;

18 (n) impacts on important historic architectural,

19 archeological, and cultural areas and features;

20 (o) extent of recreation opportunities and related

21 compatible uses;

22 (p) public recreation plan for the project;

23 (q) public facilities and accommodation;

24 (r) opportunities for joint use with energy-intensive

25 industries or other activities to utilize the waste heat

1 from facilities;

2 (3) water resources impacts:

3 (a) hydrologic studies of adequacy of water supply and

4 impact of facility on streamflow, lakes, and reservoirs;

5 (b) hydrologic studies of impact of facilities on

6 groundwater;

7 (c) cooling system evaluation, including consideration

8 of alternatives;

9 (d) inventory of effluents, including physical,

10 chemical, biological, and radiological characteristics;

11 (e) hydrologic studies of effects of effluents on

12 receiving waters, including mixing characteristics of

13 receiving waters, changed evaporation due to temperature

14 differentials, and effect of discharge on bottom sediments;

15 (f) relationship to water quality standards;

16 (g) effects of changes in quantity and quality on

17 water use by others, including both withdrawal and in situ

18 uses;

19 (h) relationship to projected uses;

20 (i) relationship to water rights;

21 (j) effects on plant and animal life, including algae,

22 macroinvertebrates, and fish population;

23 (k) effects on unique or otherwise significant

24 ecosystems, e.g., wetlands;

25 (l) monitoring programs;

1 (4) air quality impacts:

2 (a) meteorology--wind direction and velocity, ambient

3 temperature ranges, precipitation values, inversion

4 occurrence, other effects on dispersion;

5 (b) topography--factors affecting dispersion;

6 (c) standards in effect and projected for emissions;

7 (d) design capability to meet standards;

8 (e) emissions and controls:

9 (i) stack design;

10 (ii) particulates;

11 (iii) sulfur oxides;

12 (iv) oxides of nitrogen; and

13 (v) heavy metals, trace elements, radioactive

14 materials, and other toxic substances;

15 (f) relationship to present and projected air quality

16 of the area;

17 (g) monitoring program;

18 (5) solid wastes ~~impact~~ impacts:

19 (a) solid waste inventory;

20 (b) disposal program;

21 (c) relationship of disposal practices to

22 environmental quality criteria;

23 (d) capacity of disposal sites to accept projected

24 waste loadings;

25 (6) radiation impacts:

1 (a) land use controls over development and population;

2 (b) wastes and associated disposal program for solid,

3 liquid, radioactive, and gaseous wastes;

4 (c) analyses and studies of the adequacy of

5 engineering safeguards and operating procedures;

6 (d) monitoring--adequacy of devices and sampling

7 techniques;

8 (7) noise impacts:

9 (a) construction period levels;

10 (b) operational levels;

11 (c) relationship of present and projected noise levels

12 to existing and potential stricter noise standards;

13 (d) monitoring--adequacy of devices and methods."

14 Section 23. Section 75-2-211, MCA, is amended to read:

15 "75-2-211. Permits for construction, installation,

16 alteration, or use. (1) The department shall provide for the

17 issuance, suspension, revocation, and renewal of a permit

18 issued under this section.

19 (2) Not later than 180 days before construction begins

20 of any machine, equipment, device, or facility which the

21 board finds may directly or indirectly cause or contribute

22 to air pollution or which is intended primarily to prevent

23 or control the emission of air pollutants and not later than

24 120 days before installation, alteration, or use begins, the

25 owner or operator shall file with the department the

1 appropriate permit application on forms available from the
2 department.

3 (3) The department may, for good cause shown, waive
4 the provisions of subsection (2) or shorten the time
5 required for filing the appropriate applications.

6 (4) The department shall require that applications for
7 permits be accompanied by any plans, specifications, and
8 other information it considers necessary.

9 (5) An application is not considered filed until the
10 applicant has submitted all information and completed all
11 application forms required by subsections (2), (3), and (4).
12 However, if the department fails to notify the applicant in
13 writing within 30 days after the purported filing of an
14 application that the application is incomplete and fails to
15 list the reasons why the application is considered
16 incomplete, the application is considered filed as of the
17 date of the purported filing.

18 (6) Where an application for a permit requires the
19 compilation of an environmental impact statement under the
20 Montana Environmental Policy Act, the department shall
21 notify the applicant in writing within 130 days of the
22 receipt of a filed application, as defined in subsection
23 (5), of the approval or denial of the application. However,
24 where an application does not require the compilation of an
25 environmental impact statement, the department shall notify

1 the applicant in writing within 60 days of the receipt of a
2 filed application, as defined in subsection (5), of the
3 approval or denial of the application.

4 (7) When the department approves or denies the
5 application for a permit under this section, a person who is
6 jointly or severally adversely affected by the department's
7 decision may request, within 15 days after the department
8 renders its decision, upon affidavit setting forth the
9 grounds therefor, a hearing before the board. A hearing
10 shall be held under the provisions of the Montana
11 Administrative Procedure Act.

12 (8) The department's decision on the application is
13 not final unless 15 days have elapsed and there is no
14 request for a hearing under this section. The filing of a
15 request for a hearing postpones the effective date of the
16 department's decision until the conclusion of the hearing
17 and issuance of a final decision by the board.

18 (9) For a facility defined in 75-20-104, an
19 application for a permit under this chapter must be filed so
20 as to insure coordination and compliance with the provisions
21 of Title 75, chapter 20, and this chapter."

22 Section 24. Repealer. Sections 75-20-1101 through
23 75-20-1105, MCA, are repealed.

-End-