

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2582

By: Rice

AS INTRODUCED

An Act relating to electric utilities; amending 11 O.S. 1991, Sections 24-102, 24-105 and 24-107, which relate to the Oklahoma Municipal Power Authority Act; modifying types for projects and products the Authority can participate in and provide; modifying definition of certain terms; modifying types of investments; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 1991, Section 24-102, is amended to read as follows:

Section 24-102. It is declared that the provision of adequate, reliable and economic sources of ~~electrical~~ energy is in the public interest; ~~that there~~. There is a need to establish a means by which municipalities and public trusts operating municipal electric systems may jointly plan, finance, own and operate facilities relating to ~~electrical~~ energy and acquire fuel and other supplies for the generation of ~~electrical~~ energy through the creation of a power authority in order to achieve economies and efficiencies not possible for municipalities and public trusts acting alone; ~~that~~

~~the.~~ The joint planning, financing, ownership and operation of facilities relating to ~~electrical~~ energy, the acquisition of fuel and other supplies for the generation of ~~electrical~~ energy and the issuance of revenue bonds as provided herein is for a public use and serves a valid public purpose; ~~and that the.~~ The Legislature finds it necessary and proper to provide a method for municipalities and public trusts operating municipal ~~electric~~ energy systems to jointly plan, finance, develop, own or operate, either by themselves or with other public agencies, utilities or persons, facilities appropriate to the present and projected needs of such municipalities and public trusts for ~~electrical~~ energy. It is further declared that the intent of this act is to consider all methods for the generation of ~~electrical~~ energy and to provide such energy in the most economical manner available.

SECTION 2. AMENDATORY 11 O.S. 1991, Section 24-105, is amended to read as follows:

Section 24-105. As used in this act the following words shall have the following meanings unless the context clearly indicates otherwise:

~~(a)~~ 1. "Authority" shall mean the Oklahoma Municipal Power Authority hereby created and any successor or successors thereto. Any change in name or composition of the Authority shall in no way affect the vested rights of any person under the provisions of this act or impair the obligations of any contracts existing under this act.~~;~~;

~~(b)~~ 2. "Board of Directors" shall mean the Board of Directors elected by the election committee as set forth in Section 4 24-104 of this ~~act~~ title which shall exercise all the powers and manage and control all the affairs and property of the Authority unless otherwise specifically provided herein or in the bylaws of the Authority as in effect from time to time.~~;~~;

~~(e)~~ 3. "Bonds" shall mean any revenue bonds, notes or other evidences of obligations of the Authority issued by the Authority under the provisions of this act, including, without limitation, bond anticipation notes and refunding bonds-i;

~~(d)~~ 4. "Eligible public agency" shall mean any municipality, authority or other public body which owns, maintains or operates an ~~electrical~~ energy generation, transmission or distribution system within the State of Oklahoma ~~on the date on which this act becomes law.~~;

~~(e)~~ 5. "Person" shall mean (i) any natural person; (ii) any eligible public agency as defined herein; (iii) any public trust as defined herein; (iv) the United States, any state, any municipality, political subdivision, municipal corporation, unit of local government, governmental unit or public corporation created by or pursuant to the laws of the United States or any state, or any board, corporation or other entity or body declared by the laws of the United States or any state to be a department, agency or instrumentality thereof; (v) any corporation, not for profit corporation, firm, partnership, cooperative association, electric cooperative or business trust of any nature whatsoever organized and existing under the laws of the United States or any state; or (vi) any foreign country, any political subdivision or governmental unit of any foreign country or any corporation, not for profit corporation, firm, partnership, cooperative association, electric cooperative or business trust of any nature whatsoever organized and existing under the laws of any foreign country or of any political subdivision or governmental entity thereof-i;

~~(f)~~ 6. "Project" shall mean any plant, works, system, facilities and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, located within or without the State of Oklahoma, used or useful in the generation, production, transmission, purchase, sale, exchange or

interchange of ~~electrical~~ energy and in the acquisition, extraction, processing, transportation or storage ~~or~~ of fuel of any kind for any such purposes or any interest in, or right to the use, services, output or capacity, of any such plant, works, system or facilities; ~~provided, however, a.~~ A project shall not include (i) any interest in any plant for the generation of ~~electrical~~ energy which is to be owned jointly with any investor-owned utility ~~if such plant is not existing on May 10, 1981,~~ or (ii) any interest in any nuclear powered generating plant. ~~For purposes of this definition, a plant shall be considered to be existing if construction shall have been commenced at the plant site, if orders have been placed for major components of equipment or if the plant is to consist of an additional unit at the site of an already existing unit which will use in common any of the existing facilities at such site.; and~~

~~(g)~~ 7. "Public trust" shall mean any public trust created and existing under the provisions of the Trusts for Furtherance of Public Functions Law, as provided by Sections 176 et seq. of Title 60 of the Oklahoma Statutes, and the Oklahoma Trust Act, as provided by Sections 175 et seq. of Title 60 of the Oklahoma Statutes, which has as its beneficiary a municipality and which owns, maintains or operates an ~~electrical~~ energy generation, transmission or distribution system serving the residents and consumers of such municipality and existing on the date on which this act becomes law or created hereafter with an eligible public agency as the beneficiary.

SECTION 3. AMENDATORY 11 O.S. 1991, Section 24-107, is amended to read as follows:

Section 24-107. ~~(a)~~ A. The Authority shall have and is hereby authorized to exercise all powers, rights and privileges enumerated in this section. Such powers, rights and privileges shall be exercised by its Board of Directors unless otherwise specifically

provided herein or by the bylaws of the Authority as in effect from time to time.

~~(b)~~ B. The Authority may plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend or otherwise participate, individually or jointly with other persons, in one or more projects, proposed, existing or under construction, and may act as agent, or designate one or more persons, whether or not participating in a project, to act as its agent, in connection with the planning, financing, acquisition, construction, reconstruction, ownership, lease, operation, maintenance, repair, extension or improvement of the project.

~~(c)~~ C. The Authority may investigate the desirability of and necessity for additional sources and supplies of ~~electrical~~ energy and fuel and other supplies of any kind for such purpose, and make studies, surveys and estimates as may be necessary to determine the feasibility and cost thereof.

~~(d)~~ D. The Authority may cooperate with other persons in the development of sources and supplies of ~~electrical~~ energy and fuel and other supplies of any kind for such purposes, and give assistance with personnel and equipment in any project.

~~(e)~~ E. The Authority may apply to any person for consents, authorizations or approvals required for any project within its powers and take all actions necessary to comply with the conditions thereof.

~~(f)~~ F. The Authority may perform any act authorized by this act through, or by means of, its officers, agents or employees or by contract with any person, including, without limitation, the employment of engineers, architects, attorneys, appraisers, financial advisors and such other consultants and employees as may be required in the judgment of the Board of Directors, and fix and pay their compensation from funds available to the Authority therefor.

~~(g)~~ G. The Authority may acquire, hold, use and dispose of income, revenues, funds and money.

~~(h)~~ H. The Authority may, individually or jointly with other persons, acquire, own, hire, use, operate and dispose of personal property and any interest therein.

~~(i)~~ I. The Authority may, individually or jointly with other persons, acquire, own, use, lease as lessor or lessee, operate and dispose of real property and interests in real property, including projects existing, proposed or under construction, and make improvements thereon.

~~(j)~~ J. The Authority may grant the use by franchise, lease or otherwise and make charges for the use of any property or facility owned or controlled by it.

~~(k)~~ K. The Authority may borrow money and issue negotiable bonds, secured or unsecured, in accordance with this act.

~~(l)~~ L. The Authority may invest money of the Authority not required for immediate use, including proceeds from the sale of any bonds.

~~(m)~~ M. The Authority may exercise the power of eminent domain in accordance with the provisions of Section ~~10~~ 24-110 of this title.

~~(n)~~ N. The Authority may determine the location and character of, and all other matters in connection with, any and all projects it is authorized to acquire, hold, establish, effectuate, operate or control.

~~(o)~~ O. The Authority may contract with any person for the planning, development, construction, operation, sale or lease as lessor or lessee of any project or for any interest therein, on such terms and for such period of time as its Board of Directors shall determine.

~~(p)~~ P. The Authority may contract with any eligible public agency, any public trust, or any other person for the sale of power

and energy, transmission services, power supply development services or other services within or without the State of Oklahoma on such terms and conditions as the Board of Directors shall approve. Any such contract may be for the sale of output and services of a particular project or may be for output and services generally without regard to a specific project and may be for the supply of a specific quantity of output or a percentage of the output of a specific project or other specific facility or may be based on the requirements of the purchaser or may be on such other terms and conditions as the Board of Directors deems appropriate.

~~(q)~~ Q. The Authority may enter into any contract or agreement necessary, appropriate or incidental to the effectuation of its lawful purposes and the exercise of the powers granted by this act, including, without limitation, contracts or agreements for the purchase, sale, exchange, interchange, wheeling, pooling, transmission or storage of electric power and energy, and fuel and other supplies of any kind for any such purposes, within and without the State of Oklahoma, in such amounts as it shall determine to be necessary and appropriate to make the most effective use of its powers and to meet its responsibilities, on such terms and for such period of time as the Board of Directors determines.

~~(r)~~ R. In any case in which the Authority participates in a project as a joint owner with one or more persons, the Authority may enter into an agreement or agreements with respect to such project with the other person or persons participating therein, and any such agreement may contain such terms, conditions and provisions consistent with the provisions of the act as the parties thereto shall deem to be in their best interest. Any such agreement may include, but need not be limited to, provisions defining what constitutes a default thereunder and providing for the rights and remedies of the parties thereto upon the occurrence of such a default deemed appropriate by the Board of Directors including, to

the extent deemed appropriate, the acquisition by nondefaulting parties of all or any part of the defaulting party's interest; provisions setting forth such restraints on alienation of the interests of the parties in the project as the Board of Directors deems appropriate; provisions for the construction, operation and maintenance of such electric generation or transmission facility by any one or more of the parties to such agreement which party or parties shall be designated in or pursuant to such agreement as agent or parties thereto or by such other means as may be determined by the parties thereto; and provisions for a method or methods of determining and allocating, among or between the parties, costs of construction, operation, maintenance, renewals, replacements, improvements and disposals with respect to such project. In exercising its power to participate in a project as a joint owner with one or more persons, the Authority may not loan its credit to any person which is a joint owner of such project; provided, however, the appropriate allocations of the costs of construction, operation, maintenance, renewals, replacements, improvements and disposals with respect to such project between the Authority and such persons shall not be a loan of credit by the Authority to such persons. In carrying out its functions and activities as such agent with respect to construction, operation and maintenance of a project, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties. Notwithstanding anything contained in any other law to the contrary, pursuant to the terms of any such agreement, the Authority may delegate its powers and duties with respect to the construction, operation and maintenance of such project to the person acting as agent; and all actions taken by such agent in accordance with the provisions of such agreement may be

made binding upon the Authority without further action or approval by the Authority.

~~(s)~~ S. The Authority may procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as it deems desirable, or may self-insure against such losses.

~~(t)~~ T. The Authority may contract for and accept any gifts, grants or loans of funds or property or financial or other aid in any form from any person, and may comply, subject to the provisions of this act, with the terms and conditions thereof.

~~(u)~~ U. The Authority may adopt a corporate seal and may sue or be sued.

~~(v)~~ V. The Authority may exercise all other powers not inconsistent with the Constitution of the State of Oklahoma or the United States Constitution, which powers may be reasonably necessary or appropriate for or incidental to effectuate its authorized purposes or to the exercise of any of the powers enumerated in this act.

~~(w)~~ W. Notwithstanding any other provision herein seemingly to the contrary, the Authority may not sell output (i) at retail to the ultimate consumers thereof, (ii) to any municipality which does not qualify as an eligible public agency under the definition set forth in Section ~~5(d)~~ 24-105 of this ~~act~~ title, or (iii) to any trust created and existing under the provisions of the Local Industrial Development Act, as provided by Sections 651 et seq. of Title 62 of the Oklahoma Statutes, or the Trusts for Furtherance of Public Functions Law, as provided by Sections 176 et seq. of Title 60 of the Oklahoma Statutes, which does not qualify as a public trust under the definition set forth in Section ~~5(g)~~ 24-105 of this ~~act~~ title.

SECTION 4. This act shall become effective July 1, 1998.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-8351

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