

1 ENGROSSED SENATE
2 BILL NO. 1050

By: Treat and Allen of the
Senate

3 and

4 Osborn of the House
5
6

7 An Act relating to environmental regulatory agencies;
8 amending 17 O.S. 2011, Section 286, which relates to
9 electric transmission costs; removing reference to
10 certain tribal authority; amending 27A O.S. 2011,
11 Section 2-16-106, which relates to refining
12 facilities; removing reference to certain tribal
13 authority; updating statutory reference; and
14 declaring an emergency.

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

16 SECTION 1. AMENDATORY 17 O.S. 2011, Section 286, is
17 amended to read as follows:

18 Section 286. A. 1. The portion of costs incurred by an
19 electric utility, which is subject to rate regulation by the
20 Corporation Commission, for transmission upgrades approved by a
21 regional transmission organization to which the utility is a member
22 and resulting from an order of a federal regulatory authority having
23 legal jurisdiction over interstate regulation of transmission rates,
24 shall be presumed recoverable by the utility. The presumption
established in this paragraph may be rebutted by evidence that the
costs so incurred by the utility for the transmission upgrades

1 exceed the scope of the project authorized by the regional
2 transmission organization or order issued by the federal regulatory
3 authority having jurisdiction over interstate regulation of
4 transmission rates. The Commission shall transmit rules to
5 implement the requirements of this subsection to the Legislature on
6 or before April 1, 2006. The rules may authorize an electric
7 utility to periodically adjust its rates to recover all or a portion
8 of the costs so incurred by the utility for the transmission
9 upgrades.

10 2. Reasonable costs incurred by an electric utility for
11 transmission upgrades:

- 12 a. needed to develop wind generation in this state,
- 13 b. approved by the Southwest Power Pool, and
- 14 c. placed into service before December 31, 2013,

15 shall be presumed recoverable through a periodic adjustment in the
16 rates of the utility, provided that the presumption of the recovery
17 of such costs or the recovery of such costs through a periodic
18 adjustment in rates may be rebutted by evidence presented to the
19 Commission. The determination of whether the costs shall be
20 recovered and whether the costs shall be recovered through a
21 periodic adjustment of rates shall be made by the Commission
22 following proper notice and hearing in a cause to be filed by the
23 electric utility in which it files such information as the
24 Commission may require.

1 B. An electric utility subject to rate regulation by the
2 Corporation Commission may file an application seeking Commission
3 authorization of a plan by the utility to make capital expenditures
4 for equipment or facilities necessary to comply with the federal
5 Clean Air Act (CAA), the Clean Water Act (CWA), the Comprehensive
6 Environmental Response, Compensation, and Liability Act (CERCLA),
7 the Emergency Planning & Community Right-to-Know Act (EPCRA), the
8 Endangered Species Act (ESA), the National Environmental Policy Act
9 (NEPA), the Occupational Safety and Health Act (OSHA), the Oil
10 Pollution Act (OPA), the Pollution Prevention Act (PPA), the
11 Resource Conservation and Recovery Act (RCRA), the Safe Drinking
12 Water Act (SDWA), the Toxic Substances Control Act (TSCA), all as
13 amended, and, as the Commission may deem appropriate, federal,
14 state, or local ~~or tribal~~ environmental requirements which apply to
15 generation facilities. If approved by the Commission, after notice
16 and hearing, the equipment or facilities specified in the approved
17 utility plan are conclusively presumed used and useful. The utility
18 may elect to periodically adjust its rates to recover the costs of
19 the expenditures. The utility shall file a request for a review of
20 its rates pursuant to Section 152 of this title no more than twenty-
21 four (24) months after the utility begins recovering the costs
22 through a periodic rate adjustment mechanism and no more than
23 twenty-four (24) months after the utility begins recovering the
24 costs through any subsequent periodic rate adjustment mechanism.

1 Provided further, that a periodic rate adjustment or adjustments are
2 not intended to prevent a utility from seeking cost recovery of
3 capital expenditures as otherwise may be authorized by the
4 Commission. However, the reasonableness of the costs to be
5 recovered by the utility shall be subject to Commission review and
6 approval. The Commission shall promulgate rules to implement the
7 provisions of this subsection, such rules to be transmitted to the
8 Legislature on or before April 1, 2007.

9 C. 1. An electric utility subject to rate regulation by the
10 Corporation Commission may elect to file an application seeking
11 approval by the Commission to construct a new electric generating
12 facility, to purchase an existing electric generation facility or
13 enter into a long-term contract for purchased power and capacity
14 and/or energy, subject to the provisions of this subsection. If,
15 and to the extent that, the Commission determines there is a need
16 for construction or purchase of the electric generating facility or
17 long-term purchase power contract, the generating facility or
18 contract shall be considered used and useful and its costs shall be
19 subject to cost recovery rules promulgated by the Commission. The
20 Commission shall enter an order on an application filed pursuant to
21 this subsection within two hundred forty (240) days of the filing of
22 the application, following notice and hearing and after
23 consideration of reasonable alternatives.

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1 2. Following receipt of an application filed pursuant to this
2 subsection, the Corporation Commission staff may file a request to
3 assess the specific costs, to be paid by the electric utility and
4 which shall be deemed to be recoverable, for the costs associated
5 with conducting the analysis or investigation of the application
6 including, but not limited to, the cost of acquiring expert
7 witnesses, consultants, and analytical services. The request shall
8 be filed at and heard by the Corporation Commissioners in the docket
9 opened by the electric utility pursuant to this subsection. After
10 notice and hearing, the Commission shall decide the request.

11 3. Additionally, following receipt of an application filed
12 pursuant to this subsection, the Office of the Attorney General may
13 file a request with the Corporation Commission for the assessment of
14 specific costs, to be paid by the electric utility and which shall
15 be deemed to be recoverable, associated with the performance of the
16 Attorney General's duties as provided by law. Those costs may
17 include, but are not limited to, the cost of acquiring expert
18 witnesses, consultants and analytical services. The request shall
19 be filed at and heard by the Corporation Commissioners in the docket
20 opened by the electric utility pursuant to this subsection. After
21 notice and hearing, the Commission shall decide the request.

22 4. The Commission shall promulgate rules to implement the
23 provisions of this subsection. The rules shall be transmitted to
24 the Legislature on or before April 1, 2006. In promulgating rules

1 to implement the provisions of this subsection, the Commission shall
2 consider, among other things, rules which would:

3 a. permit contemporaneous utility recovery from its
4 customers, the amount necessary to cover the
5 Corporation Commission staff and Attorney General
6 assessments as authorized by this subsection,

7 b. establish how the cost of facilities approved pursuant
8 to this subsection shall be timely reviewed, approved,
9 and recovered or disapproved, and

10 c. establish the information which an electric utility
11 must provide when filing an application pursuant to
12 this subsection.

13 5. The Commission shall also consider rules which may permit an
14 electric utility to begin to recover return on or return of
15 Construction-Work-In-Progress expenses prior to commercial operation
16 of a newly constructed electric generation facility subject to the
17 provisions of this subsection.

18 SECTION 2. AMENDATORY 27A O.S. 2011, Section 2-16-106,
19 is amended to read as follows:

20 Section 2-16-106. A. Upon the written request of a prospective
21 applicant for authorization of a refinery facility in the State of
22 Oklahoma, the Department of Environmental Quality shall act as the
23 lead state agency for the purpose of coordinating all applicable
24 state and federal authorizations and environmental reviews of the

1 refining facility. To the maximum extent practicable under
2 applicable state and federal law, the Executive Director of the
3 Department of Environmental Quality shall coordinate the state and
4 federal authorization and review process with any federal, state,
5 ~~tribal~~, and local agencies responsible for conducting separate
6 permitting and environmental reviews of the refining facility.

7 B. 1. The Executive Director, in coordination with the state
8 agencies and, as appropriate, with federal, ~~tribal~~ and local
9 agencies that are willing to coordinate their separate permitting
10 and environmental reviews with the state permitting and reviews
11 process, shall establish a schedule with prompt and binding
12 intermediate and ultimate deadlines for the review of, and state
13 authorization decisions relating to, refinery facility siting and
14 operation applications.

15 2. Prior to establishing the schedule, the Executive Director
16 shall provide an expeditious preapplication process that allows
17 applicants to confer with the agencies involved and to have each
18 agency communicate to the prospective applicant within sixty (60)
19 days:

- 20 a. the likelihood of approval for a potential refinery
21 facility, and
- 22 b. key issues of concern for the agencies and the local
23 community.

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1 3. The Executive Director shall consider the preapplication
2 findings under paragraph 2 of this subsection when setting the
3 schedule and shall ensure that once an application has been
4 submitted with the necessary information, as determined by the
5 Executive Director, a draft permit shall be completed within six (6)
6 months or, where circumstances require otherwise, as soon as
7 thereafter practicable. An applicant may request that the
8 permitting process be stopped at anytime by agreement with the
9 Executive Director and Administrator.

10 4. If a state administrative agency does not complete a
11 refinery application authorization process in accordance with the
12 schedule established by the Executive Director pursuant to this
13 subsection, the applicant may pursue remedies set forth in
14 subsection F of this section.

15 C. 1. The RPCA shall address the coordination of all
16 applicable state and federal actions necessary for complying with
17 the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et
18 seq.), if applicable, and shall identify the entity responsible for
19 preparing any environmental impact statement or any other form of
20 environmental review that is required.

21 2. If the United States Environmental Protection Agency
22 determines an environmental impact statement is required, the
23 Department of Environmental Quality shall work with the Agency to
24 prepare a single environmental impact statement, which shall

1 consolidate the environmental reviews of all state and federal
2 agencies considering any aspect of the refinery facility covered by
3 the environmental impact statement.

4 D. Each state agency considering an aspect of the siting or
5 operation of a refinery facility in the State of Oklahoma shall
6 cooperate with the Department of Environmental Quality and comply
7 with the deadlines established by the Department in the preparation
8 of an environmental impact statement or such other form of
9 environmental review that is required.

10 E. The Department of Environmental Quality shall, with the
11 cooperation of state and federal administrative agencies and
12 officials, maintain a complete consolidated record of all decisions
13 made or actions taken by the Department, by a state administrative
14 agency or officer acting under delegated federal authority, or by a
15 federal administrative agency with respect to the siting or
16 operation of a refinery facility in the state. The record shall be
17 the exclusive record for any state administrative proceeding that is
18 an appeal or review of any refinery facility siting or operation
19 decision made or action taken.

20 F. If a state agency has denied state authorization required
21 for a refinery facility in the state, or has failed to act by a
22 deadline established by the Director pursuant to subsection B of
23 this section, the applicant may file an appeal with a review panel
24 comprised of the Oklahoma Secretary of the Environment or a

1 designee, the Secretary of Energy or a designee, and the Secretary
2 of Transportation or a designee. Based on the record maintained
3 pursuant to subsection E of this section, and in consultation with
4 the affected state agency, the review panel may then either order
5 the immediate issuance of the necessary state authorization with
6 appropriate conditions, or deny the appeal. The review panel shall
7 issue a decision within sixty (60) days after the filing of the
8 appeal. In making a decision under this subsection, the review
9 panel shall adhere to applicable requirements of state and federal
10 law, including each of the laws referred to in subsection E of
11 Section ~~5~~ 2-16-105 of this ~~act~~ title. Any judicial appeal of the
12 decision of the review panel shall be to an Oklahoma court of
13 competent jurisdiction as allowed under the Constitution of the
14 State of Oklahoma.

15 SECTION 3. It being immediately necessary for the preservation
16 of the public peace, health and safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

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