STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

SENATE BILL 1050 By: Treat

AS INTRODUCED

An Act relating to environmental regulatory agencies; amending 17 O.S. 2011, Section 286, which relates to electric transmission costs; removing reference to certain tribal authority; amending 27A O.S. 2011, Section 2-6-106, which relates to refining facilities; removing reference to certain tribal authority; and declaring an emergency.

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

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

Section 286. A. 1. The portion of costs incurred by an electric utility, which is subject to rate regulation by the Corporation Commission, for transmission upgrades approved by a regional transmission organization to which the utility is a member and resulting from an order of a federal regulatory authority having legal jurisdiction over interstate regulation of transmission rates, 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

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

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

a. needed to develop wind generation in this state,

b. approved by the Southwest Power Pool, and

c. placed into service before December 31, 2013,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. the likelihood of approval for a potential refinery facility, and

b. key issues of concern for the agencies and the local community.

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

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

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

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

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

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

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

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

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

SECTION 3. 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.

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