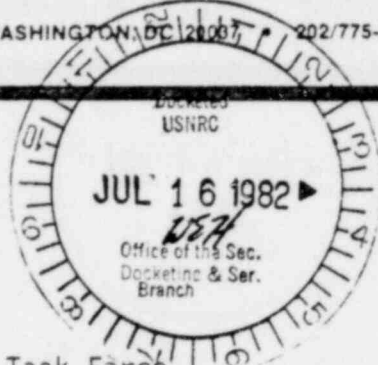


AMERICAN PUBLIC POWER ASSOCIATION

2301 M STREET, NW WASHINGTON, DC 20007 202/775-8300



July 16, 1982

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7/16/82*

26

DOCKET NUMBER PR-Misc Notice
PROPOSED RULE (47 FR 24044)

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Chairman
Regulatory Reform Task Force
U.S. Nuclear Regulatory Commission
1717 H Street
11th Floor
Washington, D.C. 20555

Dear Sir:

American Public Power Association, which represents more than 1,750 publicly-owned electric systems in 48 States, offers the following comments on the proposed legislation "Nuclear Standardization Act of 1982":

APPA supports the purposes of the draft bill. At the Association's 1975 annual conference, APPA members approved a resolution recognizing that "there is a need to insure that needed nuclear power plants are available in a timely fashion" and endorsing:

- Use of predesignated sites and plant standardization, coupled with early antitrust, safety, environmental, and safeguards review, to reduce time schedules for nuclear power plants.
- Development of a single composite application which would be the sole application required for Federal approval and designation of the Nuclear Regulatory Commission as lead Federal agency in handling the application.
- Creation of priorities and deadlines for regulatory action.
- Establishment of cooperative State-Federal procedures aimed at elimination of regulatory duplication, such as the preparation of separate environmental impact statements.

The proposed legislation does not address all of these APPA suggestions, but would advance a number of them. Today there are 34 public power systems -- including individual municipal electric utilities, state and federal authorities, and joint action agencies -- which hold an equity interest in more than 25,000,000 kilowatts of nuclear power capacity underway or on-line. While the draft bill is aimed at future

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PDR

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projects, assuming continued technical and economic viability of the nuclear generation option, its provisions could be of aid to public power systems which seek to expand their nuclear holdings or enter the field for the first time. However, there are two points about the proposal which APPA would like to bring to the attention of the task force:

1. Section 101 would amend Section 185 of the Atomic Energy Act to provide in subsection b. that: "In making a determination on the issuance of any permit or license, the Commission is authorized to rely upon the certification of need for power made by the Federal Energy Regulatory Commission or its successor. If the Commission declares its reliance upon such certification, it shall constitute a definitive determination of need for the power to be provided by the facility for the purposes of any other provision of Federal law administered by the Commission."

FERC currently has no authority to regulate or review activities of public power systems except to the extent that such authority is extended through issuance of a hydroelectric project license, and there is no existing Commission mandate to certify "need for power" in such cases. Under the provisions of Section 201 dealing with the transmission and sale of electric energy in interstate commerce, there is an explicit exemption of "the United States, a State or any political subdivision of a state, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto".

"Need for power" is now a local or state question. In the case of publicly-owned electric utilities, which are governed by a city council or an elected or appointed board of public officials, a determination is made by those having responsibility for setting the policies of the system. In some situations, affirmation of that decision may be required by a state agency with responsibility for approval of siting of bulk power supply facilities. Attached to this letter are tables contained in the "1980 Annual Report on Utility and Carrier Regulation" published by the National Association of Regulatory Utility Commissioners which depict state jurisdiction over this and related questions.

In the absence of present FERC responsibility -- and related expertise -- for determining "need for power" and in view of existing historical experience in answering this question at the local and/or state level, it would seem most useful to codify present arrangements rather than provide NRC with discretionary authority to accept FERC views on the matter. Assuming no attempt to pre-empt decision-making, the provision in the proposed legislation poses the prospect of duplicative actions at the federal and local and/or state level, time-consuming conflicts before FERC, and an unnecessary and unreasonable erosion of local and state control.

2. Section 102 authorizes the NRC to "issue a site permit approving use of a site or sites for one or more utilization or production facilities upon the application of any Federal, regional, State or local governmental agency, or a utility, notwithstanding the fact that no application for a construction permit or a combined construction permit and operating license

for such facility or facilities has been filed." No initial fee is required for a site permit. Site permits may be held for up to 20 years (with maximum renewal). The site can be used for "an alternate or modified type of energy facility or for any other purpose."

There are a limited number of new sites for nuclear power plants. This is true because of the requirements for such sites. For instance, large amounts of land are required plus access to significant volumes of cooling water. They must be served by major transportation facilities for movement of massive components. Low population density is demanded. Appropriate weather conditions and geologic stability are needed. There must be adequate opportunity for heat dissipation, transmission access, and acceptable community impact. And the whole location must result in an economic and technically feasible plant, and pass the regulatory scrutiny of NRC and affected states.

Not every locale is suitable for a nuclear power plant, and even some states and regions may be hard pressed to find future sites which meet the requirements. Where the sites do exist, industrial organizations also seek to use them.

Because sites are a scarce commodity with a potential high value, there could be attempts to monopolize or control them in restraint of trade. This is a fact of particular importance because sites for nuclear power plants (or other kinds of generating facilities which might be built there) will be employed to produce an essential public service -- electricity.

Section 102 says nothing about how to handle the possibility of multiple applicants for a single site or what requirements and restrictions would be placed on a successful applicant in order to insure that others with an interest in nuclear power are treated fairly in competitive terms. It is theoretically possible under the terms of the draft bill that a single entity -- such as a big electric utility holding company -- whose application was first in time, might corner the market on sites, hang onto those rights, and bargain them away over a 20-year period or establish monopoly power over an important energy-related resource. While this occurrence must be considered unlikely, what is quite plausible is the creation of regional site fiefdoms in the hands of a small group composed of the larger utilities. The reason that this scenario seems realistic is that it echoes past patterns of conduct where similar consortia conspired to control access to generation and transmission to the detriment of smaller systems.

The solution to this problem could be two-fold:

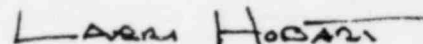
A. In the case of two or more applicants, give preference to public agencies as is done for hydroelectric permits and licenses under the Federal Power Act.

It is true that Section 102 of the proposed legislation provides that any federal, regional, state or local governmental agency may also apply for site permits. But there is no protection given the public interest which they represent, whether it be the non-profit development and dissemination of energy or the banking of sites for purposes of implementing land use and zoning decisions, and private speculators who do not have to gear their actions to a public purpose could end up dominating the field. To the extent that private parties can prevent use of the site for enterprise with which they do not agree,

they would be capable of thwarting a public will. Twenty years is a long time to grant a hold on a site without any requirement for development or forfeiture in the interim.

B. Apply to all applications for site permits the anticipatory antitrust provisions of Section 105 of the Atomic Energy Act, i.e. would the activities under the permit create or maintain a situation inconsistent with the antitrust laws, and apply appropriate remedial conditions to the permit where necessary.

Sincerely yours,



Larry Hobart
Deputy Executive Director

LH/tg



1980
ANNUAL REPORT ON
UTILITY AND CARRIER REGULATION
OF THE
NATIONAL ASSOCIATION OF
REGULATORY UTILITY COMMISSIONERS

Paul Rodgers
Administrative Director and
General Counsel

Geneva Beierlein
Editor

National Association of
Regulatory Utility Commissioners

Table 72 - SUMMARY OF STATE STATUTES RELATED TO POWER PLANT SITING
AND ENVIRONMENTAL PROTECTION

State	Power Plant Siting Law	One-Stop Process	Need Determination 1/	Environmental Review
Alabama	No	-	No	No
Alaska	No	5/	No	No
Arizona	Yes	Yes	Yes	Yes
Arkansas	Yes	No	Yes	No
California	Yes	Yes	Yes	Yes
Colorado	No 2/	No	Yes	No
Connecticut	Yes	Yes	Yes	Yes
Delaware	No	-	Yes	Partial
Florida	Yes	Yes	Yes	No
Georgia	No 2/	-	No	Partial
Hawaii	No	-	Yes	Yes
Idaho	No	-	No	No
Illinois	3/	-	Yes	No
Indiana	No	-	No	Yes
Iowa	Yes	Yes	Yes	Yes
Kansas	Yes	Yes	Yes	No
Kentucky	Yes	No	Yes	Yes
Louisiana	No	-	No	No
Maine	No	-	Yes	No
Maryland	Yes	Yes	Yes	Yes
Massachusetts	Yes	Yes	Yes	Yes
Michigan	No	-	Yes	Yes
Minnesota	Yes	Yes	Yes	Yes
Mississippi	No	-	Yes	No
Missouri	No	-	Yes	No
Montana	Yes	No	Yes	Yes
Nebraska	No	-	Yes	Partial
Nevada	Yes	Yes	Yes	Partial
New Hampshire	Yes	Yes	Yes	No
New Jersey	No 2/	-	No	Yes
New Mexico	Yes	Yes	No	No
New York	Yes	Yes	Yes	Yes
North Carolina	No	-	Yes	Yes
North Dakota	Yes	Yes	Yes	Yes
Nova Scotia 4/	No	-	No	Yes
Ohio	Yes	Yes	Yes	Yes
Oklahoma	No	-	No	No
Oregon	Yes	Yes	Yes	Yes
Pennsylvania	No 2/	-	No 2/	No
Rhode Island	No	-	No	No
South Carolina	Yes	Yes	Yes	No
South Dakota	Yes	Yes	No	Yes
Tennessee	No	-	No	No
Texas	No	-	Yes	Yes
Utah	No	-	No	No
Vermont	Yes	Yes	Yes	Yes
Virginia	Yes	No	Yes	Yes
Washington	Yes	Yes	Yes	Yes
West Virginia	No	-	Yes	No
Wisconsin	Yes	No	Yes	Yes
Wyoming	Yes	Yes	Yes	No

1/ Several states include the determination of need in a certificate of public convenience and necessity.

2/ States with pending legislation for power plant siting.

3/ Public Utilities Commission has review authority. State has no siting legislation.

4/ The Board has jurisdiction over construction and equipment cost approvals, but all engineering and environmental considerations are under jurisdiction of the Department of the Environment.

5/ Alaska Permit Information Center.

Table 73 - SITING BULK POWER SUPPLY FACILITIES

AGENCY	Electric Generating Equipment & Facilities						Electric Transmission Lines						Certification is:	
	Certificate:						Certificate:							
	Con- struc- tion	Oper- ation	Mainte- nance	Investor Owned	Public Owned	Co-op Owned	Con- struc- tion	Oper- ation	Mainte- nance	Investor Owned	Public Owned	Co-op Owned	Contingent on other Agency Approval	Manda- tory
FERC	Yes ^{57/}	Yes	Yes	Yes	Yes	Yes	Yes ^{57/}	Yes	Yes	Yes	Yes	Yes	No	Yes
ALABAMA PSC	Yes	No	No	Yes	No	No		No	No	Yes	No	No	No	Yes
ALASKA PUC	No	No	No	No	No	No	No	No	No	No	No	No		
ALBERTA PUB 1/	No	No	No	No	No	No	No	No	No	No	No	No		
ARIZONA CC	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes
ARKANSAS PSC	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes
CALIFORNIA PUC	Yes ^{3/}	Yes	Yes	Yes	No	Yes	Yes ^{3/}	Yes	Yes	Yes	No	Yes	^{3/}	Yes
COLORADO PUC	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
CONNECTICUT DPUC	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	No	Yes ^{5/}	Yes
DELAWARE PSC	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Yes	No	Yes	No	No
D. C. PSC														
FLORIDA PSC	No ^{9/}	No	No	No	No	No	No ^{9/}	No	No	No	No	No		
GEORGIA PSC	No	No	No	No	No	No	No	No	No	No	No	No		
GUAM PUC	No	No	No	No	No	No	No	No	No	No	No	No		
HAWAII PUC														
IDAHO PUC	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	No	No	Yes
ILLINOIS CC	Yes	Yes	Yes	Yes	No	^{11/}	Yes	Yes	Yes	Yes	No	^{11/}	No	Yes
INDIANA PSC	No	No	No	No	No	No	No	No	No	No	No	No		
IOWA SCC	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
KANSAS SCC	Yes	No	No	Yes	No	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes
KENTUCKY PSC	Yes			Yes		Yes	Yes			Yes		Yes	Yes ^{19/}	Yes
LOUISIANA PSC														
MAINE PUC	Yes	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes
MARYLAND PSC	Yes	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes
MASSACHUSETTS ^{61/}														
MICHIGAN PSC	No ^{26/}	No	No	No	No	No	No ^{26/}	No	No	No	No	No		
MINNESOTA PUC ^{27/}	Yes ^{27/}	Yes	No	Yes	Yes	Yes	Yes ^{27/}	Yes	Yes	Yes	Yes	Yes	Yes ^{27/}	Yes
MISSISSIPPI PSC	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	Yes
MISSOURI PSC	Yes ^{31/}	Yes	Yes	Yes	No	No	Yes ^{31/}	Yes	Yes	Yes	No	No	Yes ^{30/}	No
MONTEANA PSC	No	No	No	No	No	No	No	No	No	No	No	No		
NEBRASKA PSC	No	No	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes ^{32/}	Yes ^{31/}
NEVADA PSC	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
NEW HAMPSHIRE PUC	Yes	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes ^{35/}	No
NEW JERSEY BPU ^{37/}	No	No	No	No	No	No	No	No	No	No	No	No		
NEW MEXICO PSC	Yes ^{38/}	Yes	No	Yes	Yes	Yes	Yes ^{38/}	Yes	No	Yes	Yes	Yes	Yes	Yes ^{38/}
NEW YORK PSC	Yes ^{40/}	Yes	Yes	Yes	Yes	Yes	Yes ^{40/}	Yes	Yes	Yes	Yes	Yes	Yes ^{40/}	Yes
NORTH CAROLINA UC	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	No	No	No	Yes
NORTH DAKOTA PSC	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
NOVA SCOTIA PUB ^{51/}														
OHIO PUC ^{60/}	Yes	No	No	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes
OKLAHOMA CC	No	No	No	Yes	No	Yes	No	No	No	Yes	No	Yes	No	Yes
OREGON PUC ^{45/}	Yes ^{45/}	Yes	Yes	Yes	Yes	Yes	Yes ^{45/}	Yes	Yes	Yes	Yes	Yes	Yes ^{46/}	Yes
PENNSYLVANIA PUC	No	No	No	No	No	No	Yes	No	No	Yes	No	No	No	No
PUERTO RICO PSC	Yes			Yes			Yes			Yes				Yes
QUEBEC EGB	No ^{49/}						No ^{49/}							
RHODE ISLAND PUC	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	No	No	No	Yes
SOUTH CAROLINA PSC	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
SOUTH DAKOTA PUC	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
TENNESSEE PSC	No	No	No	No	No	No	No	No	No	No	No	No	No	No
TEXAS PUC	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
UTAH PSC	Yes	No	No	Yes	No	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes
VERMONT PSB	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
VIRGIN ISLANDS PSC	No	No	No				No	No	No					
VIRGINIA SCC	Yes	Yes	No	Yes	No	Yes	Yes	Yes ^{54/}	No	Yes	No	Yes	No	Yes
WASHINGTON UTC	No	No	No	No	No	No	No	No	No	No	No	No	No	Yes
WEST VIRGINIA PSC	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
WISCONSIN PSC	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
WYOMING PSC	Yes ^{56/}	Yes	Yes	Yes	Yes	Yes	Yes ^{56/}	Yes	Yes	Yes	Yes	Yes	No	Yes

Table 71 - SITING BULK POWER SUPPLY FACILITIES (Continued)

AGENCY	Certification Standards				Public Participation							Proce- dures to Form Regional Certify- ing Bodies	Proce- dures to Con- sider Multi- State Impact	Cert. Grant Right of Eal- ment Domain
	Description and/or Source	For Im- pact on Environ- ment	For Envir. Impact of Alterna- tive Sites	For Eval- uation of Need	Public Notice	Optional Hearing	Manda- tory Hearing	Required Pre- Hearing Consul- tation	Right of In- terven- tion	Right of Appeal	Other Safe- guards			
FERC	<u>57/</u>	Yes	Yes	Yes	Yes	Yes	Yes <u>58/</u>	No	Yes	Yes	<u>59/</u>	No	No	Yes
ALABAMA PSC ALASKA PUC ALBERTA PUB <u>1/</u> ARIZONA CC ARKANSAS PSC	<u>2/</u>	No No Yes Yes	No No Yes Yes	Yes No Yes Yes	Yes No Yes Yes	No No Yes Yes	Yes No Yes Yes	No No No No	Yes No Yes Yes	Yes No Yes Yes	No No No No	No No Yes Yes	No No Yes Yes	Yes No Yes Yes
CALIFORNIA PUC COLORADO PUC CONNECTICUT DPUC DELAWARE PSC D. C. PSC	<u>4/</u> <u>6/</u> <u>8/</u>	Yes Yes Yes <u>7/</u> No	Yes Yes Yes <u>7/</u> No	Yes Yes Yes <u>7/</u> Yes	Yes Yes Yes <u>7/</u> Yes	Yes Yes Yes <u>7/</u> Yes	No No Yes <u>7/</u> No	No No No No	Yes Yes Yes <u>7/</u> No	Yes Yes Yes <u>7/</u> Yes	No No No No	No No No No	No No No No	Yes No Yes No
FLORIDA PSC GEORGIA PSC GUAM PUC HAWAII PUC IDAHO PUC ILLINOIS CC	<u>9/</u> <u>10/</u> <u>13/</u>	No Yes	No Yes	No Yes	Yes Yes	Yes Yes	No Yes	No No	Yes Yes	Yes Yes	<u>14/</u>	Yes No	No No	No No <u>14/</u>
INDIANA PSC IOWA SCC KANSAS SCC KENTUCKY PSC LOUISIANA PSC	<u>15/</u> <u>20/</u>	Yes Yes Yes	Yes No No	Yes Yes Yes	Yes Yes Yes	Yes Yes Yes	<u>16/</u> Yes Yes	Yes No No	Yes Yes Yes	Yes Yes Yes	<u>17/</u>	No No No	No No No	<u>18/</u> No No Yes
MAINE PUC MARYLAND PSC MASSACHUSETTS <u>61/</u> MICHIGAN PSC MINNESOTA PUC <u>27/</u>	<u>21/</u> <u>23/</u> <u>27/</u>	No No <u>24/</u> Yes	No No <u>24/</u> Yes	Yes No <u>24/</u> Yes <u>27/</u>	Yes Yes Yes	Yes Yes Yes	Yes No Yes	No No No	Yes Yes Yes	Yes Yes Yes	<u>25/</u>	No No No	No No Yes	Yes <u>22/</u> Yes Yes
MISSISSIPPI PSC MISSOURI PSC MONTANA PSC NEBRASKA PSC NEVADA PSC	<u>28/</u> <u>31/</u> <u>32/</u> <u>34/</u>	Yes No No Yes	Yes No No Yes	Yes No No Yes	Yes Yes Yes Yes	Yes Yes No Yes	Yes No No No	No No Yes No	Yes Yes Yes Yes	Yes Yes Yes Yes	No No No No	No No No No	Yes Yes Yes Yes	
NEW HAMPSHIRE PUC NEW JERSEY BPU <u>37/</u> NEW MEXICO PSC NEW YORK PSC NORTH CAROLINA UC	<u>36/</u> <u>38/</u> <u>41/</u> <u>42/</u>	Yes <u>36/</u> No Yes Yes	Yes <u>36/</u> No Yes Yes	Yes <u>36/</u> No Yes Yes	Yes Yes Yes Yes	Yes Yes Yes Yes	Yes No Yes No <u>43/</u>	No No Yes No	Yes Yes Yes Yes	Yes Yes Yes Yes	<u>39/</u> <u>65/</u>	No No No No	No Yes No	Yes Yes <u>62/</u> Yes
NORTH DAKOTA PSC NOVA SCOTIA PUB <u>63/</u> OHIO PUC OKLAHOMA CC OREGON PUC <u>45/</u> PENNSYLVANIA PUC	<u>44/</u> <u>50/</u> <u>47/</u>	Yes Yes No Yes No	Yes Yes No No No	Yes Yes No Yes Yes	Yes Yes No Yes Yes	Yes Yes No Yes Yes	Yes No No Yes No	No No No No Yes	Yes Yes Yes Yes Yes	Yes Yes Yes Yes Yes	No No No No No	No No No No Yes	No No No No Yes <u>48/</u>	Yes No Yes Yes
PUERTO RICO PSC QUEBEC ESB RHODE ISLAND PUC SOUTH CAROLINA PSC SOUTH DAKOTA PUC	<u>49/</u> <u>50/</u>	Yes No	Yes No	Yes No	Yes Yes	Yes No	Yes Yes	No No	Yes Yes	Yes Yes	No No	Yes No	Yes No	Yes No
TENNESSEE PSC TEXAS PUC UTAH PSC VERMONT PSB VIRGIN ISLANDS PSC	<u>51/</u> <u>52/</u> <u>28/</u> <u>53/</u>	No Yes No Yes	No Yes No Yes	No Yes Yes Yes	No Yes Yes Yes	No Yes No Yes	No Yes Yes No	No No No No	No Yes Yes Yes	No Yes Yes Yes	No No No No	No No No No	No No No No	Yes Yes Yes Yes
VIRGINIA SCC WASHINGTON UTC WEST VIRGINIA PSC WISCONSIN PSC WYOMING PSC	<u>54/</u> <u>55/</u> <u>54/</u> <u>56/</u>	Yes No Yes Yes	Yes No Yes Yes	Yes No Yes Yes	Yes Yes Yes Yes	Yes Yes Yes Yes	Yes No Yes No	No No Yes No	Yes Yes Yes Yes	Yes Yes Yes Yes	No No No No	No No Yes Yes	No No Yes Yes	Yes Yes Yes Yes

Footnotes - Table 73 - SITING BULK POWER SUPPLY FACILITIES

- 1/ Siting under jurisdiction of Alberta Energy Resources Conservation Board.
- 2/ Arkansas Statutes Chapters 73-276, 73-240; agency regulations and judicial decisions.
- 3/ California Energy Commission also has certification authority over the siting of thermal power plants and associated transmission lines for which construction is planned to commence after 1/7/78. For such facilities, prior authorization by the Energy Commission will be required.
- 4/ G.O. 131-B, PUC Rule 17.1.
- 5/ Contingent on prior approval of NRC, when applicable, and State Power Facilities Evaluation Council.
- 6/ Connecticut PUCA has authority with respect to method and manner of construction following certification by Power Facilities Evaluation Council.
- 7/ Power Facilities Evaluation Council determines environmental compatibility, public need and ultimate location of plant or transmission facility.
- 8/ In Paragraph 7, Delaware Public Service Commission Docket No. 829, p. 4, Order No. 1536 (Delmarva Power and Light Company), the Applicant was ordered to enter into no contracts for construction of generating capacity and associated transmission facilities not presently under construction until such contracts have been approved by the Commission. In seeking such approval, the Applicant should be prepared to demonstrate a need for the construction and to present evidence of the capacity of the customers to pay the costs associated with the construction. It was the intention of the Commission that such application not be made until the annual system peak of Applicant for 1976 has been experienced and analyzed. The applicant was directed to report to the Commission within thirty (30) days as to the changes in method of computation of anticipated demand proposed by the Applicant. This paragraph was based on the authority vested in the Commission by 26 Del. C. §§201, 215 and 302.
- 9/ Certifying authority resides with the Cabinet pursuant to the Florida Electric Power Plant Site Act. The Commission provides statements as to the necessity for the plant based on either kilowatt demand and/or economics resulting from improved efficiencies.
- 10/ Idaho Code Section 61-528: financial ability, good faith of applicant, need for additional service, public convenience and necessity. In addition, Commission would consider environmental questions under its residual jurisdiction.
- 11/ Co-ops must get an order from the Commission for the right to exercise eminent domain.
- 12/ No other state agencies.
- 13/ Section 55 of the Illinois Public Utilities Act; Illinois CC General Orders 154 and 160; judicial decisions.
- 14/ Individual landowners are notified by mail. Staff inspects site.
- 15/ Conformance to Iowa Law: Section 489.2 (necessary to serve a public use, fits into a program of comprehensive utility planning, meets land use and zoning ordinances); Section 489.18 (routing requirements); Section 489.20 (clearance from buildings); and Sections 489.25 and .26 (clearance over railroads). In addition, require conformance to Iowa Electrical Safety Code. Agency regulations and judicial decisions also provide guidelines.
- 16/ Mandatory hearing if written objection is filed after notice.
- 17/ On projects involving over one mile of line over 34.5 kV, there must be an "Informational Meeting" held in each county. A commission representative reads a summary of legal rights and utility representatives answer questions about the line. Utility may not negotiate easements prior to this meeting.
- 18/ Request for eminent domain is in addition to the one for certification, but both are heard at the same hearing.
- 19/ Contingent on prior recommendation of Department of Natural Resources, another State agency, on environmental compatibility.
- 20/ Demand and need; feasibility; environmental compatibility. Standards are in statutes, agency regulations; and judicial decisions.
- 21/ The facility must be justified in terms of need, as detailed in General Order No. 39.
- 22/ Applies to transmission lines of 5000 volts or more.
- 23/ Article 78 of the Annotated Code of Maryland, Sections 54A and 54B; Commission regulations.
- 24/ Commission regulations, however, propound extensive information requests and studies.
- 25/ By law, a local governing body has the opportunity to participate during the hearings with the Commission but not in the decision-making process. Commission must consider recommendations of such local governing body and of other State agencies including Department of Natural Resources, Department of Health and Mental Hygiene, Department of Transportation, Department of Economic and Community Development, and Department of State Planning. In addition, applicants are required to notify affected property owners of a proposed high voltage transmission line at least 30 days prior to a hearing.
- 26/ The only circumstance under which the Michigan Commission might be considered to have certification authority is where the utility proposes to initiate operations in a municipality where another utility or agency is already engaged in rendering the same sort of service.
- 27/ The Minnesota Environmental Quality Board (MEQB) certifies the site of large (50,000 Kw or more) generating plants and issues construction permits for high voltage (200 Kv. or more) transmission lines (Minn. Stat., Sec. 116C.51-69). Various state agencies issue water appropriation, NPDES, etc. permits. Siting and routing criteria are contained in Minn. Reg. MEQC 71-75. Before the siting or routing process can be completed, the Minnesota Energy Agency must issue a Certificate of Need.
- 28/ The Public Service Commission grants certificates of public convenience and necessity for construction of all bulk power plant facilities and transmission lines. The Commission holds public hearings to determine the need, feasibility, and environmental impact of bulk power plants and transmission lines. Agency regulations prescribe criteria.
- 29/ Commission regulates only safety of co-op owned transmission lines.
- 30/ Need approval of NRC, when applicable, and State Air and Water Commissions.
- 31/ Investor-owned systems do not meet certification if proposed construction is within their certificated service areas. As far as the operation and maintenance is concerned, no separate "certificate" is necessary, but all of this is included when such construction certificate is issued. In addition, any expenses for operation and maintenance are reviewed to see if proper and reasonable. Standards for issuing certificates are contained in statutes and judicial decisions.
- 32/ Approval contingent on approval of another State agency. Standards for certification are set forth in State statutes and commission regulations.
- 33/ Mandatory for publicly-owned systems.
- 34/ Nevada Revised Statutes, Chapter 704, and Commission regulations.
- 35/ Prior approval required of State Site Evaluation Committee.

Footnotes - Table 73 - SITING BULK POWER SUPPLY FACILITIES (Continued)

- 36/ The PUC must find that the proposed facility is required to meet the present and future demand for electric power and will not adversely affect system stability and reliability and economic factors. Environmental criteria are not within jurisdiction of the PUC, but New Hampshire has a Site Evaluation Committee comprised of 13 members who are representatives of key state agencies, including the Chairman of PUC and Chief Engineer of PUC. This Committee holds joint hearings with the full PUC. The Site Committee must find that the proposed project: (1) Will not unduly interfere with the orderly development of the region with due consideration having been given to the views of municipal and regional planning commissions and municipal legislative bodies; and (2) Will not have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, and the public health and safety. These findings are sent to the PUC. The PUC makes its own findings and then issues a decision incorporating all findings and all licenses of other state agencies. This decision is the Certificate of Site and Facility and it is final subject to judicial review.
- 37/ The New Jersey BPU has not promulgated any rules or regulations requiring prior certification of construction, operation or maintenance of electric generating equipment and transmission lines of electric utilities under its jurisdiction. However, pursuant to the authority under N.J.S.A. 48:2-13, the Board has general supervision and regulation of and jurisdiction and control over all public utilities and their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of maintaining safe, adequate and proper utility services. Further, in accordance with N.J.S.A. 48:2-23, the Board is authorized to require performance and furnishing of such services in a manner that tends to conserve and preserve the quality of the environment and prevent the pollution of the waters, land and air of this State.
- In accordance with various statutory and regulatory requirements, the construction, operation and maintenance programs of electric utilities in New Jersey are closely monitored through several aspects such as financing, zoning and planning, power of eminent domain and condemnation proceedings to acquire a right of way or construct electric generating facilities, and safety in general where not preempted by federal regulation.
- Under Docket No. 762-194, the Board has commenced an inquiry into the reasonableness of present and planned construction programs of all electric utilities.
- 38/ Concerning location, generating stations capable of 300,000 kilowatts or more or transmission lines of 230 kilovolts or more must receive commission approval, which shall not be denied if air and water standards (generating) or important environmental standards (transmission) are met. Except for extensions, no public utilities shall begin the construction or operation of any plant or system without first obtaining a certificate from the Commission.
- 39/ La statute, the Attorney General may intervene on behalf of consumers.
- 40/ For generating equipment with a capacity of 50,000 Kw. or more; for transmission lines with voltage of 125 Kv. or more for a distance of at least one mile and 100-124 Kv. for a distance of more than 10 miles. The New York Public Service Commission is solely responsible for certifying transmission lines. Certification of generating facilities is done by a Siting Board, in the Department of Public Service, with the PSC Chairman being one of five members on the board and also chairman of the Siting Board. The PSC staff participates fully in both certification proceedings.
- 41/ The decision must be based upon the record and must find and determine in regard to construction applications: (1) the basis of need for the facility; (2) the nature of the probable environmental impact; (3) that the facility represents the minimum adverse environmental impact considering available technology and economics of alternatives; and (4) that the facility is consistent with long range planning objectives. In regard to operation and maintenance, the New York Public Service Commission has issued orders on required maintenance to assure reliable and adequate capacity.
- 42/ North Carolina Utilities Commission Rule R8-42 and R8-43 and N.C.G.S. 62-110.1. The Utilities Commission has confined its review and investigations primarily to the following areas: (1) the need for new power generating facilities; (2) economic justification for the type of facility; (3) site specific environmental impact; (4) alternative types of facilities and sites; and (5) safety.
- 43/ Hearing mandatory if requested by complainant.
- 44/ PSC Regulation R49-22-10.
- 45/ Certificates issued by Oregon Energy Facility Siting Council.
- 46/ By Governor.
- 47/ Oregon statutes, Chapter 469; Rules and Regulations of Energy Facilities Siting Council.
- 48/ Varies with facility involved.
- 49/ The authority of the Rhode Island Public Utilities Commission and Division of Public Utilities in regard to facility siting is derived from its oversight of eminent domain and the issuance of securities. All utilities are required to obtain the agency's permission prior to exercising any power of condemnation or issuing securities. No certificate for construction is required, however, public hearings and commission decisions on construction issues may result from these two authorities.
- 50/ South Carolina Statutes 58-1801 through 58-1832.
- 51/ Property dedicated to public use, as set out in statutes and judicial decisions.
- 52/ The general criteria are set out in the Texas Public Utility Regulatory Act and Substantive Rules. They are: nondiscrimination, adequacy of existing service, need for additional service, effect of the grant on the recipient and other like utilities, and factors such as community values, recreational and park areas, historical and aesthetic values, environmental integrity, cost.
- 53/ 30 VSA §248.
- 54/ Construction and operation of the proposed facilities must be for the public convenience and necessity. The location and construction of facilities must minimize adverse environmental impact. Criteria are set out in statutes, regulations and judicial decisions.
- 55/ Statutes require that the proposed facility must be in the public interest, required by the public convenience and necessity, and not adversely affecting another utility.
- 56/ The Wyoming PSC has authority over transmission lines only. Authority with respect to plant siting was transferred to a new agency created for this purpose - the Industrial Siting Council. Air Quality and water quality administered by the Department of Environmental Quality; also water quality by the Health Department/U.S. Environmental Protection Agency, and water use by the State engineer.

Concerning transmission lines, the Commission evaluates and rules upon any matters relating to certification, including: jurisdiction; public need and purpose; construction, operation, maintenance and financial feasibility; adequacy of financing; ownership, management and operations arrangements; prospective rate impact; and pricing.

Footnotes - Table 73 - SITING BULK POWER SUPPLY FACILITIES (Continued)

- 57/ The Commission is empowered to issue licenses pursuant to Sections 4(e) and 15 of the Federal Power Act (FPA). Such licenses apply only to hydroelectric generating facilities constructed by all private and non-Federal public entities.
The Commission's authority with respect to construction and operation is pursuant to Sections 9, 10, 11, and 13 of the Federal Power Act.
Regulations under the Federal Power Act applicable to its authority to license hydroelectric facilities are contained in 18 CFR 4 through 9, 12, and 16.
The Commission's jurisdiction extends to all hydroelectric projects which occupy navigable waters of the United States, affect government lands, use water or water power from a government dam, or affects the interests of interstate commerce. Transmission lines licensed by the Commission must be primary lines as defined in Section 3(11) of the Federal Power Act, i.e., a line connecting the hydroelectric plant with a distribution system or interconnected transmission system.
- 58/ May be waived at request of applicant.
- 59/ All applications for license and amendment of license are circulated for comments to all appropriate Federal, State, and local agencies. Any person may also comment on applications. Section 4(e) of the Federal Power Act specifically requires comments from the Department of the Interior, Department of Agriculture and the U.S. Corps of Engineers.
60/ Separate Power Siting Commission.
- 61/ Separate Power Siting Council.
- 62/ A certificate issued under Article VII or Article VIII of the Public Service Law cannot grant the right of eminent domain to an applicant. However, an applicant who already possesses this right must obtain a certificate before it may exercise its right of eminent domain.
- 63/ The Board has jurisdiction over construction and equipment cost approvals, but all engineering and environmental considerations are under jurisdiction of the Department of the Environment.
- 64/ Certificate required for transmission lines operated at voltage levels of 200 KV and higher.
- 65/ By statute, Attorney General and Public Staff intervene on behalf of consumers.