

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1442

By: Representatives Wilson, Cunningham, Day and Shaver

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE ANNOTATED SECTION 23-18-501 ET SEQ. (THE UTILITY FACILITY ENVIRONMENTAL AND ECONOMIC PROTECTION ACT); AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 23-18-501 is hereby amended to read as follows:

"23-18-501. Title. This subchapter shall be known, and may be cited as, the 'Energy Facility Environmental and Economic Protection Act'".

SECTION 2. Arkansas Code 23-18-502 is hereby amended to read as follows:

"23-18-502. Legislative Findings and Declarations.

(a) The General Assembly finds and declares that there is at present and will continue to be a growing need for electric power and natural gas supplies which will require the construction of major new facilities. It is recognized that such major energy facilities cannot be built without in some way affecting the physical environment where such facilities are located and without having a potential impact on the economic costs and reliability of service to energy consumers in the state. The General Assembly therefore declares that the construction and operation of all such facilities are matters which affect the health, safety and public welfare of the citizens in the state.

(b) The General Assembly further finds that it is essential to the protection of the public interest to minimize any adverse effect upon the environment and upon the quality of life of the people of the state which such new facilities might cause and to minimize the economic costs to the people of the state of obtaining reliable, clean, safe, and adequate energy supplies.

(c) The General Assembly further finds that this subchapter should be

further amended to clarify and reinforce the legislative intent with respect to the state's vital interest in the prior review and approval of new electric generating plants and electric and gas transmission lines and associated facilities in order to more fully and effectively provide for the proper and orderly planning of the energy needs of all energy consumers in the state, and to avoid the construction of unnecessary duplicative facilities that could unnecessarily raise the energy costs to the people of the state and threaten the reliability of public utility service in the state. To achieve these purposes, the General Assembly further finds that the obligations of public utilities to serve the public should be further clarified and defined.

(d) The General Assembly, therefore, declares that it shall be the purpose of this subchapter to provide a forum with exclusive and final jurisdiction, except as provided in §§23-18-505 and 23-18-506, for the expeditious resolution of all matters concerning the need for, location, financing, construction, and operation of electric generating plants, electric transmission lines and gas pipelines, and associated facilities in a single proceeding to which access will be open to individuals, groups, state and regional agencies, local governments, and other public bodies to enable them to participate in these decisions. These matters are declared to be of statewide interest."

SECTION 3. Arkansas Code 23-18-503 is hereby amended to read as follows:

"23-18-503. Definitions. As used in this subchapter, unless the context otherwise requires:

(1) "Commission" means the Arkansas Public Service Commission;

(2) "Major energy facility" means:

(A) Any electric generating facility or facilities and associated transportation and storage facilities for fuel and other facilities designed for, or capable of, operation at a capacity of ten (10) megawatts or more;

(B) Any electric transmission line and associated facilities constructed by any person, including substations, of a design voltage of one hundred (100) kilovolts or more, extending a distance of more than ten (10) miles, or of a design voltage of one hundred seventy (170) kilovolts or more, extending a distance of more than one (1) mile; and

(C) Any gas pipeline and associated facilities constructed by any person which is two (2) inches in diameter or greater or designed to deliver

gas at a pressure of twenty (20) pounds per square inch or greater, excepting however, those gas pipelines devoted solely to the gathering of gas from gas wells and located entirely within the limits of any gas field or fields as defined by the Oil and Gas Commission, and excepting those pipeline extensions by public utilities as defined in A.C.A. §23-3-201 (b);

(3) "Commence to construct" means any clearing of land, excavation, or other similar action for a major energy facility but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing survey or geological data, including necessary borings to ascertain foundation conditions;

(4) "Municipality" means any county or municipality within this state;

(5) "Person" includes any individual, group, firm, partnership, corporation, cooperative association, municipality, government subdivision, government agency, local government, or other organization;

(6) "Renewable energy technology" means any technology or source of energy such as solar, wind, biomass conversion, or geo-thermal, which is not depletable;

(7) "Nonrenewable energy technology" or "nonrenewable energy sources" means any technology or source of energy which depends upon the use of depletable fossil fuels such as oil, gas, and coal;

(8) "Energy-efficient" means economical in the use of energy;

(9) "Public utility" means any person engaged in the production, storage, distribution, sale, delivery, or furnishing of electricity or gas, or both, to or for the public, or as defined in §23-1-101(4) (A) (i) and (4) (B);

(10) "Applicant" means the person, specifically including those parties, public or private, which may not be defined as Arkansas jurisdictional public utilities, but which nonetheless desire to construct, operate or own a major energy facility and which consequently must make application to the commission for a certificate of environmental compatibility and public need."

SECTION 4. Arkansas Code 23-18-504 is hereby amended to read as follows:

"23-18-504. Exemptions - Waiver. (a) This subchapter shall not apply to any major energy facility:

(1) For which, prior to July 24, 1973, an application for the approval of the facility has been made to any federal, state, regional, or local governmental agency, which agency possesses the jurisdiction to consider

the matters prescribed for finding and determination in §23-18-519(a) and (b);
or

(2) For which, prior to July 24, 1973, the Commission has issued a certificate of convenience and necessity or otherwise approved the construction of the facility.

(b) (1) Any person intending to construct any major energy facility excluded or exempted from this subchapter may elect to waive the exclusion or exemption by delivering notice of the waiver to the commission."

(2) This subchapter shall thereafter apply to each such major energy facility identified in such notice from the date of its receipt by the Commission.

SECTION 5. Arkansas Code 23-18-507 is hereby amended to read as follows:

"23-18-507. Authority of the Commission. (a) With the exception of the authority conferred upon the Commission by this Act, nothing in this subchapter shall be deemed to confer upon the Commission power or jurisdiction to regulate or supervise the rates, or securities of any person not otherwise subject to the commission's jurisdiction.

(b) The Commission, in the discharge of its duties under this subchapter or any other act, is authorized to make joint investigations, hold joint hearings in or outside the state, and to issue joint or concurrent orders in conjunction or concurrence with any official or agency of any other state or of the United States, whether in the holding of such investigations or hearings or in the making of such orders the commission functions under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce, or as an agency of the United States, or otherwise.

(c) In the discharge of its duties under this subchapter, the commission is further authorized to negotiate and enter into agreements or compacts with agencies of other states, pursuant to any consent of Congress, for cooperative efforts in certification, construction, financing, operation, and maintenance of major energy facilities in accord with the purposes of this subchapter and for the enforcement of the respective state laws regarding them.

(d) The Commission is deemed to be the agency of the State of Arkansas that shall be the member of any regional hearing authority or commission created by the terms of any compact between Arkansas and other states or

between Arkansas and the United States of America otherwise concerning the implementation of this subchapter, except as may be provided by §§23-18-505 and 23-18-506.

(e) It is the intent of the General Assembly to confer upon the commission, under this subchapter, broad rule-making authority adequate to enable it to comply with any requirements imposed by state or federal legislation dealing with the subject matter of this subchapter upon state-administered certification programs and to enable it to comply with any state or federal requirements for facilitating the issuance of tax-exempt bonds should their issuance be authorized."

SECTION 6. Arkansas Code 23-18-508 is hereby amended to read as follows:

"23-18-508. Rules and regulations. The Commission shall have, and is granted, the power and authority to prescribe, issue, make, amend, and rescind from time to time, after reasonable notice and hearing, reasonable orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this subchapter and to establish exemptions from some or all of the requirements of this subchapter for the construction, reconstruction, or expansion of any major energy facility which is unlikely to have major adverse environmental or economic impact by reason of length, size, location, available space, or right-of-way on or adjacent to existing utility facilities and similar reasons."

SECTION 7. Arkansas Code 23-18-509 is hereby amended to read as follows:

"23-18-509. Employees of commission. The Commission is empowered to employ additional consultants to assist it as it deems necessary for an adequate appraisal of the applications for certificates of environmental compatibility and public need."

SECTION 8. Arkansas Code 23-18-510(a) is hereby amended to read as follows:

"(a) No person shall commence to construct or operate a major energy facility in the state, except those exempted as provided in subsection (b) of this section, §§23-18-504(a), §23-18-508, and §23-3-201(b), without first having obtained a certificate of environmental compatibility and public need, hereafter called a "certificate," issued with respect to such facility by the

commission. The replacement or expansion of an existing gas pipeline or electric transmission facility with a similar facility, in substantially the same location, or the rebuilding, upgrading, modernizing, or reconstruction for the purposes of increasing transmission capacity shall not constitute construction of a major energy facility if no increase in width of right-of-way beyond fifteen (15) feet is required.

SECTION 9. Arkansas Code 23-18-511 is hereby amended to read as follows:

"23-18-511. Application for certificate - Contents generally. An applicant for a certificate shall file with the Commission a verified application in such form as the Commission may prescribe and containing the following information:

(1) A general description of the location and type of the major energy facility proposed to be built;

(2) A general description of any reasonable alternate location or locations considered for the proposed facility;

(3) A statement of the need and reasons for construction of the facility and an explanation of how, considering the possible benefits and potential adverse impacts to the public, the proposed facility will serve the overall public interest, convenience and necessity;

(4) A statement of the estimated costs of the facility and the proposed method of financing the construction of the facility;

(5) (A) A general description of any reasonable alternate methods of financing the construction of the facility;

(B) A description of the comparative merits and detriments of each alternate financing method considered;

(C) If, at the time of filing of the application, the federal income tax laws and the state laws would permit the issuance of tax-exempt bonds to finance the construction of the proposed facility for the applicant by a state financing agency, the application shall also include a discussion of the merits and detriments of financing the facility with such bonds.

(6) An analysis of the projected economic or financial impact on the applicant and the local community where the facility is to be located as a result of the construction and the operation of the proposed facility;

(7) An analysis of the estimated effects on energy prices paid by

consumers as a result of the construction and operation of the proposed facility.

(8) (A) An exhibit containing an environmental impact statement, which shall fully develop the four (4) factors listed in subdivision (8) (B), treating in reasonable detail such considerations, if applicable, as the proposed facility's direct and indirect effect on the ecology of the land, air and water environment, established park and recreational areas, and on any sites of natural, historic, and scenic values and resources of the area in which the facility is to be located, and any other relevant environmental effects.

(B) The environmental impact statement shall set out:

(i) The environmental impact of the proposed action;

(ii) Any adverse environmental effects which cannot be avoided;

(iii) A description of the comparative merits and detriments of each alternate location or for generating plants, the energy production process considered, and a statement of the reasons why the proposed location and production process were selected for the facility;

(iv) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(9) Such other information of an environmental or economic nature as the applicant may consider relevant or as the commission may by regulation or order require."

SECTION 10. Arkansas Code 23-18-513(a) is hereby amended to read as follows:

"(a) Each application for a certificate of environmental compatibility and public need shall be accompanied by proof of service of a copy of the application on:

(1) The mayor of each municipality; and

(2) The county judge; and

(3) The chairman of the county planning board, if any, where the facility is proposed to be located or any alternate proposed location; and

(4) Each member of the General Assembly in whose district the facility or any alternative location listed in the application is to be located; and

(5) The office of the Governor; and

(6) The director or other administrative head of the following state agencies or departments:

(A) Department of Pollution Control and Ecology;

(B) Arkansas State Highway and Transportation Department;

(C) Arkansas Game and Fish Commission;

(D) Department of Finance and Administration;

(E) Attorney General;

(F) Land Commission

(G) Any other state agency or department designated by commission regulation or order.

SECTION 11. Arkansas Code 23-18-514(a)(1) is hereby amended to read as follows:

"(a) (1) Promptly after the filing of an application for a certificate of environmental compatibility and public need, the staff of the Commission shall invite comments from all state agencies entitled to service under §23-18-513 as to the adequacy of applicant's statements.

SECTION 12. Arkansas Code 23-18-516(a)(1) is hereby amended to read as follows:

"(a) (1) Upon receipt of an application complying with §§23-18-511 - 23-18-514, the Commission shall promptly fix a date for the commencement of a public hearing thereon, which date shall be not less than forty (40) days nor more than ninety (90) days after the receipt of the application, and shall conclude the proceedings as expeditiously as practicable.

SECTION 13. Arkansas Code 23-18-517(a) is hereby amended to read as follows:

"(a) The parties to a certification proceeding shall include:

(1) The applicant;

(2) Each municipality, county, and government agency or department or other person entitled to receive service of a copy of the application under §23-18-513(a) and (b) if it has filed with the Commission a notice of intervention as a party within thirty (30) days after service;

(3) Any person residing in a municipality or county which is

entitled to receive service of a copy of the application under §23-18-513(a) and (b); or

(4) Any domestic nonprofit corporation, formed in whole or in part to promote conservation or natural beauty, to promote energy conservation, to protect the environment, personal health, or other biological values, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located, where such person or organization has an interest which may be directly affected by the commission's action and which interest is not adequately represented by other parties, if such a person or corporation has petitioned the commission for leave to intervene as a party within thirty (30) days after the date given in the public notice as the date of filing the application.

SECTION 14. Arkansas Code 23-18-518 is hereby amended to read as follows:

"23-18-518. Conduct of hearing.

(a) A record shall be made of the hearing and of all testimony taken and the cross-examination thereon.

(b) Rules of evidence, as specified by the Commission, shall apply to the proceeding.

(c) The commission may provide for the consolidation of the representation of parties having similar interests."

SECTION 15. Arkansas Code 23-18-519(a) and (b) is hereby amended to read as follows:

"(a) The Commission shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the location, financing, construction, operation, or maintenance of the major energy facility as the commission may deem appropriate.

(b) The commission may not grant a certificate for the location, financing, construction, operation, and maintenance of a major energy facility, either as proposed or as modified by the commission, unless it shall find and determine:

- (1) The basis of the overall public need for the facility;
- (2) That the facility, considering the potential benefits and

adverse impacts to the public, will serve the overall public interest, convenience, and necessity;

(3) The nature of the probable environmental impact of the facility;

(4) That the facility represents an acceptable adverse environmental and economic impact, considering the need for the facility, the state of available technology, the requirements and impact upon the customers receiving energy service, the nature and economics of the proposal, and the various alternatives, if any, and other pertinent considerations;

(5) The nature of the probable economic impact of the facility;

(6) That the facility financing method either as proposed or as modified by the commission represents an acceptable economic impact, considering economic conditions and the need for and cost of additional facilities;

(7) In the case of an electric transmission line, that such facility is not inconsistent with known plans of other electric systems serving the state, which plans have been filed with the commission;

(8) In the case of a gas pipeline, that the location of the line will not pose an undue hazard to persons or property along the area to be traversed by the line;

(9) That the energy efficiency of the power production facility has been given significant weight in the decision-making process; and

(10) That the location of the facility as proposed conforms as closely as practicable to applicable state, regional, and local laws and regulations issued thereunder, except that the commission may refuse to apply all or any part of any regional or local law or regulation if it finds that, as applied to the proposed facility, that law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions.

SECTION 16. Arkansas Code 23-18-520(a) is hereby amended to read as follows:

"(a) In rendering a decision on the application for a certificate, the Commission shall issue and serve an order upon all parties. This order shall include or be accompanied by findings of fact stating its reasons for the action taken.

SECTION 17. Arkansas Code 23-18-521 is hereby amended to read as follows:

"23-18-521. Issuance of certificate - Effect.

(a) A certificate may only be issued pursuant to this subchapter.

(b) Any certificate issued hereunder to a public utility shall be in lieu of, and exempt the public utility from, the requirements of obtaining a certificate of convenience and necessity pursuant to §23-3-201 et seq. The certificate shall also entitle any applicant to a permit under §§23-3-501 - 23-3-513 without any further notice or hearing if the applicant has filed with the commission the consent or authorization required by §23-3-504(7) and paid the damages set out in §§23-3-501 - 23-3-513."

SECTION 18. Arkansas Code 23-18-523 is hereby amended to read as follows:

"23-18-523. Transfer of certificates. Subject to the approval of the Commission, a certificate and title to the facilities which are subject to such certificate may be transferred to a person who agrees to comply with the terms, conditions, and modifications contained therein. Such certificate and title shall also be transferable by operation of law to any receiver, trustee, or other similar assignee under a mortgage, deed of trust, or similar instrument."

SECTION 19. Arkansas Code 23-18-524(b) is hereby amended to read as follows:

"(b) Any party aggrieved by the final decision of the Commission on rehearing may obtain judicial review thereof in accordance with the provisions of §§23-2-401 and 23-2-421 - 23-2-424."

SECTION 20. Arkansas Code 23-18-525 is hereby amended to read as follows:

"23-18-525. Jurisdiction of courts. Except as expressly set forth in §§23-18-505, 23-18-506, and 23-18-524, no court of this state shall have jurisdiction to hear or determine any issue, case, or controversy concerning any matter which was or could have been determined in a proceeding before the Commission under this subchapter or to stop or delay the financing,

construction, operation, or maintenance of a major energy facility except to enforce compliance with this subchapter or the provisions of a certificate issued pursuant to this subchapter."

SECTION 21. Arkansas Code 23-18-526 is hereby amended to read as follows:

"23-18-526. Powers of local governments and state agencies. Notwithstanding any other provision of law, no municipality, local government unit, or state department or agency, except the Department of Pollution Control and Ecology as set out in §23-18-506, may require any approval, consent, permit, certificate, or other condition for the construction, operation, or maintenance of a major energy facility authorized by a certificate issued pursuant to the provisions of this subchapter. Nothing in this subchapter shall prevent the application of state laws for the protection of employees engaged in the construction, operation, or maintenance of the facility."

SECTION 22. Arkansas Code 23-18-527 is hereby amended to read as follows:

"23-18-527. Cooperation of state agencies. All state agencies and departments entitled to service under §23-18-513(a) and (b) are directed to cooperate with and render assistance to the Commission in discharging its responsibilities under this subchapter."

SECTION 23. Arkansas Code 23-18-528 is hereby amended to read as follows:

"23-18-528. Eminent domain.

(a) (1) As used in this section, the word "land" shall include any estate or interest therein.

(2) Whenever a certificate has been issued to a public utility subject to the jurisdiction of the Commission for the construction of any major energy facility under the provisions of this subchapter, and such public utility is unable to reach agreement with the owner of land to construct, operate, maintain, and obtain reasonable access to the major energy facility in accordance with the certificate, it may acquire the land by the exercise of the power of eminent domain in a state court of competent jurisdiction in the

judicial district in which such land is located.

(b) (1) The petition shall contain or have annexed thereto:

(A) A statement of the authority under which and the use for which such land is taken;

(B) A description of the land taken sufficient for the identification thereof;

(C) A statement of the estate or interest in the land taken for such use;

(D) A statement that a certificate has been issued to petitioner;

(E) A statement of the sum of money estimated by the public utility to be just compensation for the land taken.

(c) In the event the property sought to be condemned is owned by one (1) person and is situated in more than one (1) county, the petition may be filed in the court of any county where a part of the property may be located.

(d) (1) After the filing of such petition and upon the deposit in court of a sum determined by the court to be sufficient to secure compensation to the owner of the property or interest therein sought to be condemned, the court shall immediately enter an order finding title to the land in fee simple absolute, or such less estate or interest therein as is prayed in the petition, to be vested in the public utility. The land, or interest therein, shall be deemed to be condemned and taken for the use of the public utility.

(d) (2) Upon entry of the order vesting title to the public utility, the public utility shall serve on the owner of land a copy of the order along with a notice that should the owner of land object to the order, he has five days excluding Sundays and legal holidays from the service of the order to file an objection. If an objection is filed, the court shall forthwith schedule a hearing to determine:

(A) The authority under which and the use for which such land is taken;

(B) The identification of and the estate or interest in the land taken;

(C) That a certificate has been issued; or

(D) The time within which and the terms upon which the party in possession shall be required to surrender possession.

After the hearing, the court may modify its previous order as justified by the

evidence.

(d) (3) Upon the application of any party in interest, and upon due notice to all parties, the court may order that the money deposited in the registry of the court, or any part thereof, be paid forthwith to the person or persons entitled thereto. If the compensation finally awarded shall exceed the amount of money so deposited, the court shall enter judgment against the public utility and in favor of the parties entitled thereto for the amount of the deficiency. If the compensation finally awarded shall be less than the amount of money so deposited and paid to the persons entitled thereto, the court shall enter judgment in favor of the public utility and against the proper parties for the amount of the excess.

(d) (4) In the event that any party in interest is aggrieved by the amount of the estimated compensation as deposited by the public utility in the registry of the court, such party shall, upon written request, be entitled to a hearing, at which time evidence may be heard and received concerning the adequacy of the deposit. Thereafter, the court shall, in its discretion, determine whether the present deposit is adequate, and if not, shall determine such additional amount which the public utility or rural electric cooperative shall deposit; provided that such additional amount ordered deposited shall remain in the registry of the court without withdrawal until final adjudication of just compensation, but such additional deposits shall not prevent the accrual of interest on the difference in the amount of the original deposit and the compensation awarded. This hearing and adjudication shall in no way interfere with the possession of the premises by the public utility or rural electric cooperative.

The right to just compensation for the same fee or for such lesser interest as may be taken shall vest in the person entitled thereto.

(d) (5) However, any taking of lands in fee simple absolute under the authority granted in this section shall be limited to taking for electric generating plant sites and substation sites, compressor station sites, and meter station sites only. Nothing in this section shall be construed as authorizing a public utility to take fee simple title to lands for gas pipelines or electric transmission line or distribution line rights-of-way purposes.

(e) The compensation shall be determined by a jury pursuant to §18-15-506.

(f) Upon filing of a petition, the court shall have power to fix the time

within which and the terms upon which the party in possession shall be required to surrender possession to such public utility.

(g) The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and such other charges, if any, as shall be just and equitable.

(h) No appeal in the proceeding or any bond or undertaking given therein shall operate to prevent or delay the vesting of title to such land in the public utility.

(i) The right to exercise the power of eminent domain and to take possession and title in advance of final judgment in the proceeding and all powers delegated in this section shall be in addition to any right, power, or authority conferred by any other laws of the state or of franchises, contracts, or agreements and shall not be construed as abrogating, limiting, or modifying any such right, power, authority, franchise, contract, or agreement."

SECTION 24. Arkansas Code 23-18-529 is hereby amended to read as follows:

"23-18-529. Forecasts of loading and resources - Reports.

(a) (1) Each public utility, excepting, however, distribution electric cooperatives, shall annually furnish to the Commission, for its review, a report containing a forecast of loads and resources and describing the major energy facilities which, in the judgment of such utility, will be required to supply system demands during the forecast period.

(2) The forecast shall cover a period of at least two (2) calendar years next succeeding the date of the report, and such additional longer-range forecast reports as the commission may find necessary and may require by rule or regulation from time to time.

(3) All such reports shall be available to public inspection. A copy of any report shall be furnished by the commission to any municipality, county, or government agency charged with the duty of protecting the environment or the duty of planning land use if that agency requests a copy of such report in writing.

(4) The report shall be in such form and shall contain such information as may be reasonably prescribed by the commission by rule or regulation.

(b) Pursuant to this section, the commission may also require each public utility to furnish, from time to time, reports concerning actions taken by the public utility to encourage the conservation of energy by its customers."

SECTION 25. Subchapter 5 of Chapter 18 of Title 23 of the Arkansas Code is hereby amended by adding two additional sections at the end thereof to read as follows:

"23-18-530. Obligation of Service. Whenever any customer of a public utility reduces or terminates its purchases or services from such public utility and receives service from or through an alternative energy source or facility other than that public utility, the public utility shall not be required to provide any service to such customer other than that which may otherwise be required by the Public Utility Regulatory Policies Act of 1978 ("PURPA") or successor legislation and/or the Commission by rule or regulation or order.

23-18-531. Compelling compliance with provisions of this subchapter and Commission orders. The Commission shall have the right, and it is made its duty, to file suit against any person or corporation in any court of competent jurisdiction by mandamus proceedings to compel compliance with the provisions of this Act or any order of the Commission; or, by injunction proceedings, to prevent violations of this Act or any order of the Commission, and to seek such further relief as may be appropriate including restitution or other equitable relief for any losses resulting to any person or corporation as a result of the action which is the subject of the injunction."

SECTION 26. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 27. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 28. EMERGENCY CLAUSE. Whereas the present laws are unclear and therefore inadequate to protect the public utility ratepayers of this state from the wasteful duplication of energy facilities and corresponding detrimental financial and other impacts to public utility ratepayers; and

whereas it is in the public interest, convenience and necessity that clarifying legislation be enacted; and whereas it is in the public interest, convenience and necessity that any new construction of energy facilities into or within the state of Arkansas be subject to the prior certificate approval of the Arkansas Public Service Commission in light of public interest, safety and health factors; it is hereby found and determined by the General Assembly that an emergency exists and that this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval.

