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PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

Electrical Service: Require Long-Range Energy Resource Planning and Certification of Plant Facilities, Long-Term Power Purchases, and Demand-Side Capacity Options

CODE SECTIONS: O.C.G.A. §§ 46-3A-1 to -11 (new)
BILL NUMBER: HB 280
ACT NUMBER: 550
SUMMARY: The Act requires that regulated electric utilities submit to the Public Service Commission an integrated resource plan for meeting long-range energy needs, which the Commission must approve or devise a plan of its own. The Act also requires that the Commission certify the construction or sale of electric plants, purchases of long-term electric power, and expenditures for demand-side capacity options before the electric utility takes any of these actions. Once the Commission orders certification of such an action by the electric utility, the utility can automatically recover, with certain exceptions, the costs of such action from ratepayers.
EFFECTIVE DATE: January 1, 1992

History

Since the Act adds a new chapter to the Code title covering public utilities and transportation, the Act's history prior to its passage by the Georgia General Assembly is limited. The sponsor of the Act¹ not only brought a considerable amount of experience in the area of regulated

1. The Act was cosponsored by Rep. Boyd Pettit of the 19th and Rep. Sonny Watson of the 114th. Telephone Interview with Rep. Boyd Pettit (Apr. 2, 1991) [hereinafter Pettit Interview].

public utilities to the two year preparation of the Act,² but also had serious concerns that the current Georgia regulatory scheme for public electric utilities was not working well and that Georgia should be planning for its long-range energy needs.³ The experiences of the Georgia Power Company and the Public Service Commission with Plant Vogtle,⁴ a power plant built by Georgia Power that cost far more than anticipated, and with Plant Scherer,⁵ a Georgia Power plant a portion of which was recently sold to Florida utilities, were impetuses to the Act.⁶

Yet the most significant impetus to the Act was the trend in many states, begun by Wisconsin,⁷ toward long-range energy planning by regulated monopolies and commissions.⁸ Such long-range planning seeks to meet future energy needs and to avoid the energy brownouts and shortages experienced by northeastern states in peak demand periods such as late summer.⁹ In fact, many states now require that their regulated utilities give to their commissions so-called integrated resource plans that allow the commissions to be active in long-range energy planning and require that commissions certify new ways of providing electricity before they are established.¹⁰ A related impetus for the Act was the fast growth rate of Georgia's population and especially of Gwinnett and Cobb counties in the greater metropolitan Atlanta area.¹¹

HB 280

The purpose of the Act is twofold: to provide for long range energy planning by requiring utilities to file integrated resource plans with the

2. Rep. Pettit currently serves as Chairman of the House Committee on Public Services and Utilities, a subcommittee of the House Industry Committee, and also serves as vice-chair of the Southern States Energy Board (SSEB), a colloquium of 22 states that addresses the energy needs and policies of the region. Pettit Interview, *supra* note 1.

3. Pettit Interview, *supra* note 1.

4. In 1987, the Commission refused to allow Georgia Power Company to recover from ratepayers \$1 billion of the total \$8.87 billion cost of building Plant Vogtle. Ben Smith, III, *Power Plant Legislation Is Approved by House*, ATLANTA CONST., Feb. 13, 1991, at C3.

5. Charles Seabrook, *Ga. Power's Turnabout Angers Critics: Opponents of PSC Bill Cite Electricity Sale to Fla.*, ATLANTA J. & CONST., Feb. 17, 1991, at A1.

6. Pettit Interview, *supra* note 1. Accord Telephone Interview with Rep. Doug Teper, House District No. 46 (Apr. 8, 1991) [hereinafter Teper Interview]. Rep. Teper opposed the bill as introduced and the Act as passed. *But cf.* Telephone Interview with Tom Gilliland, Chief of Staff, Lieutenant Governor's Office (Apr. 5, 1991) [hereinafter Gilliland Interview]. Mr. Gilliland believed that the Plant Vogtle experience had little or no impact on the bill's origin, stressing rather the trend in many states toward least cost planning. *Id.*

7. Indiana is also a prime example. Pettit Interview, *supra* note 1.

8. Pettit Interview, *supra* note 1; Gilliland Interview, *supra* note 6.

9. Pettit Interview, *supra* note 1; Gilliland Interview, *supra* note 6.

10. Gilliland Interview, *supra* note 6.

11. *Id.*

Commission and for the Commission to either approve or devise a plan of its own; and to require certification of the construction or sale of electric plants, long-term power purchases, expenditures for demand-side capacity options, and certain increases or decreases in electric capacity before such construction, sale, purchase, expenditure, or increase or decrease.¹² While the bill, as introduced, was changed significantly both in the House and Senate, the Act essentially retained these two purposes in its final form, keeping the spirit, if not the letter of the original bill.¹³

The Act begins by defining terms that it uses in Chapter 3A, specifically, capacity resource,¹⁴ commission,¹⁵ construction,¹⁶ demand-side capacity option,¹⁷ electric plant,¹⁸ long-term power purchase,¹⁹ integrated resource plan,²⁰ supply-side capacity option,²¹ and utility.²² The Act then sets forth the details of the two broad requirements noted above. First, the Act requires that every utility file an integrated resource plan, a twenty year projection of energy needs, with the Commission by January 31, 1992, and update the plan by filing again as often as every three years.²³ After a utility files its integrated

12. Pettit Interview, *supra* note 1; Gilliland Interview, *supra* note 6; Teper Interview, *supra* note 6.

13. Pettit Interview, *supra* note 1.

14. A capacity resource is "an electric plant, a long-term power purchase, or a demand-side capacity option." O.C.G.A. § 46-3A-1(2) (Supp. 1991).

15. "Commission means the Georgia Public Service Commission." O.C.G.A. § 46-3A-1(2) (Supp. 1991).

16. Construction includes "clearing of land, excavation, or other substantial activity leading to the operation of an electric plant other than planning, land surveying, land acquisition, subsurface exploration, design work, licensing or other regulatory activity, contracting for construction, or environmental protection measures and activities associated therewith." O.C.G.A. § 46-3A-1(3) (Supp. 1991).

17. A demand-side capacity option is "a program proposed by a utility or the commission for the reduction of future electricity requirements the utility's Georgia retail customers would otherwise impose, including, but not limited to, conservation, load management, cogeneration, and renewable energy technologies." O.C.G.A. § 46-3A-1(4) (Supp. 1991).

18. An electric plant is "any facility, or portion of a facility, that produces electricity or . . . is intended to produce electricity . . ." and includes "the realty and ancillary facilities for the construction of the plant." O.C.G.A. § 46-3A-1(5) (Supp. 1991).

19. Long-term power purchase means "a purchase of electric capacity and energy for a period exceeding one year, the principal purpose of which is to supply the requirements of the Georgia retail customers of a utility." O.C.G.A. § 46-3A-1(6) (Supp. 1991).

20. The definition of "plan" is detailed. *See* O.C.G.A. § 46-3A-1(7) (Supp. 1991).

21. A supply-side capacity option is "an electric plant, a long-term power purchase, or any other source of additional energy." O.C.G.A. § 46-3A-1(8) (Supp. 1991).

22. A utility is "any electric supplier whose rates are fixed by the commission." O.C.G.A. § 46-3A-1(9) (Supp. 1991). In Georgia, this Act applies only to Georgia Power Company and Savannah Electric Company. Pettit Interview, *supra* note 1.

23. O.C.G.A. § 46-3A-2(a) (Supp. 1991).

resource plan, the Commission has sixty days to conduct public hearings on the plan. Once hearings are held, the Commission must determine whether to approve the plan.²⁴ The Act lists the explicit criteria that the Commission must consider in its determination.²⁵ Whatever the Commission decides, it must approve and adopt an integrated resource plan within 120 days of the filing of each integrated resource plan.²⁶ That is, the Commission need not adopt the utility's proposed plan, but it has an affirmative obligation to adopt some plan, whether its own or another.²⁷

Second, beginning February 1, 1992, a utility cannot begin to construct a new plant, sell an existing one, make a long-term purchase of power, or make expenditures for a demand-side capacity option unless it first gets the Commission to certify, that is, approve the action.²⁸ Further, a utility may not increase or decrease the capacity of a capacity resource by more than fifteen percent without first getting a certificate from the Commission that the increase or decrease is convenient and necessary to the public.²⁹ The Commission will issue a certificate if it finds a need for the proposed capacity resource at the time, if public convenience and necessity requires, and if the certificate complies with the formal requirements of the Act and any other rules of the Commission.³⁰

Once the Commission receives the utility's application for a certificate, it has thirty days to conduct a public hearing on the proposed certificate.³¹ Also, the Commission must either grant or deny the application for a certificate within 300 days of the first filing or within 180 days of every other application.³² If the Commission fails to either grant or deny the application within this deadline, the certificate is automatically granted to the utility.³³

Within sixty days of the utility's filing for a certificate or amendment to a certificate, the Commission must establish an application fee, which the utility must pay.³⁴ The purpose of this fee is to defray the "reasonably necessary" costs of reviewing the application, conducting public hearings, securing technical advice, and similar functions.³⁵ The General Assembly

24. O.C.G.A. § 46-3A-2(b) (Supp. 1991).

25. *Id.*

26. O.C.G.A. § 46-3A-2(c) (Supp. 1991).

27. *Id.*; Pettit Interview, *supra* note 1.

28. O.C.G.A. § 46-3A-3(a) (Supp. 1991).

29. O.C.G.A. § 46-3A-3(b) (Supp. 1991). Still, no certificate is required if the increase or decrease is caused by a rule, regulation, or law, or by other factors. *Id.*

30. O.C.G.A. § 46-3A-4(a) (Supp. 1991). Specifically, the application must contain the utility's integrated resource plan and a cost-benefit analysis. O.C.G.A. § 46-3A-4(b), (c) (Supp. 1991).

31. O.C.G.A. § 46-3A-5(b) (Supp. 1991).

32. *Id.*

33. *Id.*

34. O.C.G.A. § 46-3A-5(c) (Supp. 1991).

35. *Id.*

intended the Commission to have the discretion to vary the amount of the application fee depending on the complexity of the certificate or amendment sought.³⁶ If the Commission ultimately denies the utility's certificate application, the utility cannot recover the costs of the fee from its ratepayers; by inference, it may recover these costs if the certificate or amendment is granted.³⁷ Finally, the utility's application is not considered to be properly filed, and thus the Commission may not act on the application, until the utility pays the fee into the State's general fund.³⁸ This means that the Commission's 120 day deadline does not begin to run until the utility has paid the application fee.

The Act also allows the Commission, either on its own initiative or upon the utility's motion, to re-examine any certificate granted and to modify or revoke the certificate.³⁹ If the Commission re-examines a certificate and finds that the certified capacity resource is not needed or must be expanded, then the Commission can modify the certificate or can revoke the certificate entirely.⁴⁰ Naturally, such action will substantially affect the utility's investment in the facility.⁴¹ Thus, the Act provides that if the utility must cancel, abandon, or increase the capacity resource because of the Commission's modification or revocation, the utility may recover its costs from ratepayers, but only to the extent the investment was made according to the certificate as originally granted.⁴² However, the utility cannot recover these costs if the utility has engaged in fraud or concealment, has failed to disclose a material fact, has been imprudent, or has committed criminal misconduct.⁴³

Assuming the Commission does not modify or revoke a certificate for an electric plant, the Act provides an electric utility extraordinary protection: the utility cannot be prevented from recovering its construction costs from ratepayers.⁴⁴ Still, limitations do exist. Again, the utility cannot recover construction costs if it has engaged in fraud,

36. Pettit Interview, *supra* note 1; Gilliland Interview, *supra* note 6.

37. Pettit Interview, *supra* note 1; Gilliland Interview, *supra* note 6.

38. Pettit Interview, *supra* note 1; Gilliland Interview, *supra* note 6.

39. O.C.G.A. § 46-3A-6 to -7 (Supp. 1991).

40. O.C.G.A. § 46-3A-6 (Supp. 1991).

41. Pettit Interview, *supra* note 1; Gilliland Interview, *supra* note 6.

42. O.C.G.A. § 46-3A-6 (Supp. 1991). The utility can recover:

	<i>amount of its investment</i>
+	<i>cost of carrying unamortized portion of the investment</i>
	(total)
-	<i>actual salvage value of the capacity resource</i>
	(total amount recoverable)

Id.

43. *Id.* This litany of blameworthy conduct by the utility that can prevent the utility from recovering its investment or costs reappears throughout the Act. The House version added "failure to disclose a material fact" and "imprudence" to the blameworthy conduct listed in HB 280. Pettit Interview, *supra* note 1.

44. O.C.G.A. § 46-3A-7(a) (Supp. 1991).

concealment, failure to disclose a material fact, imprudence, or criminal misconduct.⁴⁵ Also, the utility cannot generally recover costs that exceed 100% of those the Commission had approved at certification, though it may recover costs in excess of 100% if it can show that the costs were "reasonable and prudent."⁴⁶

Further, the utility may request that the Commission conduct a review of electric plant construction as the work proceeds, or the Commission may do so on its own initiative.⁴⁷ The Act also requires that at least every three years,⁴⁸ the utility must file progress reports indicating any proposed revisions as construction proceeds.⁴⁹ After the utility files a progress report, the Commission has 180 days to approve the report.⁵⁰ If it fails to do so, the report is considered approved by operation of law.⁵¹

Significantly, once the Commission verifies expenditures the utility makes under a certified capacity resource, the Commission cannot later prevent the utility from recovering those costs from ratepayers unless the utility has engaged in fraud, concealment, failure to disclose a material fact, imprudence, or criminal misconduct.⁵² Likewise, if the Commission disapproves revisions proposed in the utility's progress report, and if the utility must subsequently cancel construction of all or part of an electric plant, the utility can recover the amount of its actual investment⁵³ in the partially completed construction, again, absent the presence of the blameworthy conduct noted above.⁵⁴ In either case, the Act protects the utility.

As the Act allows the utility to recover the costs of construction of electric plants and revision, so it allows the utility to recover from ratepayers the cost of purchasing any certified⁵⁵ long-term power purchase⁵⁶ and the cost of any certified demand-side capacity option.⁵⁷

Finally, the Act addresses certain procedural issues concerning integrated resource planning and certification. The Commission must consider "changed revenues and changed risks" when setting rates for

45. *Id.*

46. *Id.* The House version reduced the 125% recovery allowed by the original bill to the present 100%. HB 280 (HFSFA), 1991 Ga. Gen. Assem.; Pettit Interview, *supra* note 1.

47. O.C.G.A. § 46-3A-7(b) (Supp. 1991).

48. Or more frequently as the Commission may require. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. O.C.G.A. § 46-3A-7(c) (Supp. 1991).

53. Again, plus the cost of carrying the unamortized balance of the investment, less actual salvage value. O.C.G.A. § 46-3A-7(d) (Supp. 1991).

54. *Id.*

55. The Act uses the term "certificated." O.C.G.A. § 46-3A-8 (Supp. 1991).

56. Plus an additional sum which the Commission determines to encourage such

certified capacity resources.⁵⁸ The Commission must base its decision on evidence of record.⁵⁹ While the Commission's findings are subject to judicial review, they are not subject to relitigation in any other proceeding.⁶⁰ Still, a certificate issued to a utility by the Commission does not prevent any legitimate governmental body from regulating the utility.⁶¹ Thus, for example, a state or federal environmental agency can regulate the utility's actions regardless of whether the Commission has granted certification. Since the Act adds "imprudence" to its litany of bad behavior which would prevent the utility from recovering its costs from ratepayers, it creates a corresponding presumption of prudence: if the utility has complied with the provisions of the Commission's certificate, then the utility is presumed to have been prudent, and the burden of proving imprudence shifts to the Commission.⁶² Finally, the Act emphasizes that this chapter of the Code applies only to the electric utilities whose rates are fixed by the Commission.⁶³

HB 280 evolved in three versions: the bill as introduced by its House sponsors,⁶⁴ the House Floor Substitute Floor Amendment version (House version),⁶⁵ and the Senate Committee on Finance and Public Utilities Substitute version (Senate version).⁶⁶ The latter was in fact the final version of the Act that passed. Thus, HB 280 was first introduced and debated in the House, where it passed; it was sent to the Senate Committee on Finance and Public Utilities; it returned to the Senate, which passed the bill; and, finally, the House passed the Senate version of the bill.⁶⁷ When the House version went to the Senate, the Public Service Commission was critical of Georgia Power Company for pushing through the legislation and voiced numerous concerns about the legislation.⁶⁸ Still, the Commission's input into the legislation was inserted into the Act as it passed through the Senate Committee on Finance

purchases. *Id.* The Commission must consider lost revenues, changed risks, and an equitable sharing of benefits between the utility and its retail customers. *Id.*

57. O.C.G.A. § 46-3A-9 (Supp. 1991). Again, plus an additional sum to encourage the development of such conservation resources. The Commission must consider the same factors in section 8. *Id.*

58. O.C.G.A. § 46-3A-10 (Supp. 1991).

59. *Id.*

60. *Id.* The practical and constitutional implications of this part of the Act were not addressed by the General Assembly.

61. *Id.*

62. *Id.*

63. O.C.G.A. § 46-3A-11 (Supp. 1991). *See* O.C.G.A. § 46-3A-1(9) (Supp. 1991).

64. Again, House Reps. Pettit and Watson cosponsored HB 280, 1991 Ga. Gen. Assem. *See supra* note 1.

65. HB 280 (HFSFA), 1991 Ga. Gen. Assem.

66. HB 280 (SCS), 1991 Ga. Gen. Assem.

67. Pettit Interview, *supra* note 1.

68. Ben Smith, III, *PSC Rips Ga. Power for House Legislation: Firm Would Need Approval to Build*, ATLANTA CONST., Feb. 5, 1991, at D3.

and Public Utilities.⁶⁹ Indeed, what helped the Act to pass both the House, where the bill was introduced, and the Senate, which gave the bill its final form, was the conviction of the House, Senate, and Lieutenant Governor that long-range energy planning was not merely possible but necessary and would ultimately benefit Georgians.⁷⁰ During this evolution, HB 280 went through myriad changes, especially at the Senate and the Lieutenant Governor's initiative.⁷¹ Some of these changes were not substantial in nature, but others were more significant.

One significant change was the Senate version's expansion of the definition of "plan" in HB 280,⁷² a change chiefly attributable to the Lieutenant Governor.⁷³ While HB 280 and the House version did define what is an integrated resource plan, the Senate version substantially expanded this subsection, synthesizing it with former section two of the bill and House version.⁷⁴ The Act not only lists what the "plan" must contain, but also requires it to address many other issues, for instance, the environmental impact of the proposed capacity resource.⁷⁵ These particular expansions require the utility to state in considerable detail how it will meet the needs it outlines in its integrated resource plan, thus making available to the Commission the full benefit of the utility's thinking.⁷⁶

More significant still was the Senate version's addition of the requirement that the Commission must approve the utility's integrated resource plan within 120 days of filing.⁷⁷ In HB 280 and in the House version, the Commission was not required to approve or disapprove the utility's integrated resource plan.⁷⁸ Rather, the Commission could use the plan as it saw fit, and could use the utility's plan to deny a certificate that the utility requested.⁷⁹ The Senate instead required the Commission to approve the plan or, if it disapproved, to adopt another plan, largely because of a difference in philosophy.⁸⁰ The Senate wanted to require the Public Service Commission and the regulated electric utilities to commit themselves to long-range energy planning because of the

69. Gilliland Interview, *supra* note 6.

70. *Id.* Rep. Pettit noted an unusual spirit of cooperation between House and Senate as HB 280 made its way through the Legislature, which was credited to the importance of long-range energy planning for the state. Pettit Interview, *supra* note 1.

71. Ben Smith, III, *Panel Approves Altered Ga. Power Rate-Hike Bill*, ATLANTA CONST., Mar. 5, 1991, at D3; Ben Smith, III, *Power Plant Bill Still Stalled: Publicity on Leases of Utility's Lake Lots Apparently a Factor*, ATLANTA CONST., Mar. 12, 1991, at C3.

72. O.C.G.A. § 46-3A-1(7) (Supp. 1991).

73. Pettit Interview, *supra* note 1; Gilliland Interview, *supra* note 6; Teper Interview, *supra* note 6.

74. Pettit Interview, *supra* note 1; Gilliland Interview, *supra* note 6.

75. O.C.G.A. § 46-3A-1(7)(A)-(H) (Supp. 1991).

76. Gilliland Interview, *supra* note 6.

77. O.C.G.A. § 46-3A-2(b) and (c) (Supp. 1991). *But see* O.C.G.A. § 46-3A-5(c) (Supp. 1991) (application deemed filed only when fee is paid to commission).

78. Pettit Interview, *supra* note 1.

79. *Id.*

80. Gilliland Interview, *supra* note 6.

increasing demands for electricity placed on the State's electric utilities.⁸¹ Still, as pointed out by the Act's sponsor, the Act essentially retained the basic features of requiring public utilities to file long-range energy plans with the Commission and to obtain certification from the Commission (thus preapproval to recover costs from ratepayers) before constructing capacity resources, purchasing long-term power, or engaging in demand-side capacity options.⁸² Indeed, the Senate version of the bill passed the House because it retained these basic features, albeit with substantial changes.⁸³

Another significant change HB 280 and the House version experienced in the Senate was the addition of a requirement for public hearings by the Public Service Commission.⁸⁴ The Senate, and especially the Lieutenant Governor, felt that the Commission should have an obligation to hold public hearings on any certificate or amendment to a certificate proposed by a utility, and thus added section five, subsection (b) to the House version.⁸⁵ The idea behind this Senate version of the bill was that the public should have an opportunity to voice its opinion and exercise its influence upon the Commission's consideration of the certificate or amendment.⁸⁶

The Senate version also expanded the section of the Act dealing with fees that a utility must pay to the Public Service Commission.⁸⁷ The Senate and Lieutenant Governor thought that the Commission would have serious financial costs in considering a certificate or amendment application, and thus should have a measure of discretion about what fee to charge the applying utility to defray these costs.⁸⁸ The Commission itself can determine how to pay for the application process in light of the varying degrees of complexity of applications.⁸⁹ Since the House version of the bill had also required a nonrefundable application fee, the House agreed to the expansion of the fees section by the Senate.⁹⁰

The Senate version also deleted a statement in the House version which would have changed the common law requirement that public utilities serve all of the State's citizens.⁹¹ The House version of section five, subsection (b) included the sentence, "[t]he utility shall only be obligated to serve the requirements contained in the forecast adopted

81. *Id.*

82. Pettit Interview, *supra* note 1.

83. *Id.* Rep. Pettit also noted that he was allowed to accompany the bill through the Senate process and participate in the Senate Committee's discussion of the bill. *Id.*

84. O.C.G.A. § 46-3A-5(b) (Supp. 1991).

85. *Id.*; Pettit Interview, *supra* note 1.

86. HB 280 (SCS), 1991 Ga. Gen. Assem.; Gilliland Interview, *supra* note 6.

87. O.C.G.A. § 46-3A-5(c) (Supp. 1991).

88. HB 280 (SCS), 1991 Ga. Gen. Assem.

89. *Id.*

90. HB 280 (HFSFA), 1991 Ga. Gen. Assem.; Pettit Interview, *supra* note 1.

91. HB 280 (SCS), 1991 Ga. Gen. Assem.; Gilliland Interview, *supra* note 6.

by the commission and certified by the commission."⁹² The Lieutenant Governor and Senate refused to allow regulated electric utilities to be relieved of their obligation to serve all the needs of the State, a position which is consistent with the common law view that regulated monopolies cannot limit their obligation to serve a state's needs for electricity.⁹³ Again, despite these and other expansions, deletions, or changes, the House version remained intact, and thus passed both chambers of the General Assembly.⁹⁴

While environmental groups were generally pleased with the bill,⁹⁵ some legislators opposed the bill.⁹⁶ Opponents generally agreed that long-range energy planning was not only needed but prudent and, indeed, critical to maintaining the growth of business and a healthy economy in Georgia.⁹⁷ Thus, opponents tended to support the integrated resource planning that the Act requires.⁹⁸ Nonetheless, opponents did not support the preplant certification process, which comprises most of the Act, and which has been characterized as a revolution in the history of electric utility rate setting.⁹⁹

The reasons for not supporting the Commission's preapproval of an electric utility's plant, and thus preapproval of the utility's recovery of its costs from ratepayers, are several. First, opponents expressed a concern that the Public Service Commission lacks the staff, money, resources, and technical expertise to adequately respond to a complex certificate application within the deadlines and in the manner prescribed by the Act.¹⁰⁰ While application fees supposedly address this weakness, these fees go into the State's general fund with no assurance that they will go to the Commission to help it meet its added burden.¹⁰¹ The effect could be that an electric utility would find it considerably easier to get the Commission's preapproval of its construction plans and a virtual guarantee of recovering its costs through rates.¹⁰² This is a much different practice than in the recent past when the utility had to seek

92. HB 280 (HFSFA), 1991 Ga. Gen. Assem. The bill originally read, "the utility shall have no obligation to serve requirements in excess of those contained in the forecast adopted by the commission and certificated by the commission." HB 280, as introduced, 1991 Ga. Gen. Assem.

93. HB 280, as introduced, 1991 Ga. Gen. Assem.

94. Pettit Interview, *supra* note 1; Ben Smith, III, *Power Plant Legislation is Approved by House*, ATLANTA CONST., Feb. 13, 1991, at C3.

95. Gilliland Interview, *supra* note 6.

96. Rep. Doug Teper of DeKalb County was one of a number of legislators who opposed the bill. Teper Interview, *supra* note 6.

97. *Id.*

98. *Id.*

99. *Id.*; see Ben Smith, III, *Assembly OKs Bill to Shift Risk of Power Plants: Measure Awaiting Miller's Signature*, ATLANTA J. & CONST., Mar. 14, 1991, at E1.

100. Teper Interview, *supra* note 6.

101. *Id.*; see O.C.G.A. § 46-3A-5(c) (Supp. 1991).

102. Teper Interview, *supra* note 6.

approval to recover costs from ratepayers after constructing an electric plant.¹⁰³

A second reason that some legislators opposed the certification process is that a utility can easily show that peak demand for electricity has grown, and therefore that it must build new plants to accommodate the need.¹⁰⁴ While agreeing that the State's electricity needs should be met, opponents held that the Act neither strongly encourages nor demands that the electric utilities of Georgia aggressively pursue demand-side capacity options (energy conservation options) or long-term power purchases from other utilities.¹⁰⁵ Their concern was that the Act does not require the Georgia regulated electric utilities, Georgia Power Company and Savannah Electric Company, to pursue these options vigorously enough, and thus encourages these companies to continue to build as many new plants as the companies desire¹⁰⁶ rather than to take a more forward looking view of energy resources and conservation.¹⁰⁷

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103. *Id.*

104. *Id.*

105. *Id.*

106. Ben Smith, III, *Battle Brews Over PSC Bill*, ATLANTA CONST., Feb. 4, 1991, at D2.

107. Teper Interview, *supra* note 6. The largest part of the Act addresses the certification of new construction. Compare O.C.G.A. §§ 46-3A-3 to -7 with §§ 46-3A-8 to -9 (Supp. 1991).