

HOUSE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

March 19, 2001  
Date

Committee on Local Government.

After consideration on the merits, the Committee recommends the following:

HB01-1195 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause, and  
2 substitute the following:

3           **"SECTION 1. Legislative declaration.** The general assembly  
4 finds, determines, and declares that there is considerable ambiguity in  
5 Colorado law as to the procedure for the resolution of conflicts between  
6 determinations made by the Colorado public utilities commission with  
7 respect to the need for reliable and economical major electrical and  
8 natural gas facilities, which benefit citizens throughout the state, and  
9 determinations made by local governments that are exercising reasonable  
10 constitutional, police, and licensing powers with respect to local land use  
11 concerns. The general assembly hereby finds, determines, and declares  
12 that due to the statewide impact of energy problems, this is a matter of  
13 statewide concern and that a procedure must be developed to resolve such  
14 conflicts in a reasonable manner.

15           **SECTION 2.** 29-20-108 (1) (d) and (2), Colorado Revised  
16 Statutes, are amended, and the said 29-20-108 is further amended BY  
17 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to  
18 read:

1           **29-20-108. Local government regulation - location,**  
2 **construction, or improvement of major electrical or natural gas**  
3 **facilities - legislative declaration.** (1) The general assembly finds,  
4 determines, and declares that the location, construction, and improvement  
5 of major electrical and natural gas facilities are matters of statewide  
6 concern. The general assembly further finds, determines, and declares  
7 that:

8           (d) It is critical that public utilities AND POWER AUTHORITIES that  
9 supply electric or natural gas service maintain the ability to meet the  
10 demands for such service as growth continues to occur statewide.

11           (2) Local government land use regulations shall require final local  
12 government action on any application of a public utility OR A POWER  
13 AUTHORITY providing electric or natural gas service that relates to the  
14 location, construction, or improvement of major electrical or natural gas  
15 facilities within one hundred twenty days after such utility's OR  
16 AUTHORITY'S submission of a preliminary application, if a preliminary  
17 application is required by the local government's land use regulations, or  
18 within ninety days after submission of a final application. If the local  
19 government does not take final action within such time, the application  
20 shall be deemed approved. Nothing in this subsection (2) shall be  
21 construed to supersede any timeline set by agreement between a local  
22 government and a public utility OR POWER AUTHORITY applying for local  
23 government approval of location, construction, or improvement of major  
24 facilities as defined in subsection (3) of this section.

25           (4)(a) A PUBLIC UTILITY OR POWER AUTHORITY SHALL NOTIFY THE  
26 AFFECTED LOCAL GOVERNMENT OF ITS PLANS TO SITE A MAJOR ELECTRICAL  
27 OR NATURAL GAS FACILITY WITHIN THE JURISDICTION OF THE LOCAL  
28 GOVERNMENT PRIOR TO SUBMITTING THE PRELIMINARY OR FINAL PERMIT  
29 APPLICATION, BUT IN NO EVENT LATER THAN FILING A REQUEST FOR A  
30 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO  
31 ARTICLE 5 OF TITLE 40, C.R.S., OR THE FILING OF ANY ANNUAL FILING  
32 WITH THE PUBLIC UTILITIES COMMISSION THAT PROPOSES OR RECOGNIZES  
33 THE NEED FOR CONSTRUCTION OF A NEW FACILITY OR THE EXTENSION OF  
34 AN EXISTING FACILITY. IF A PUBLIC UTILITY OR POWER AUTHORITY IS NOT  
35 REQUIRED TO OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE AND

1 NECESSITY PURSUANT TO ARTICLE 5 OF TITLE 40, C.R.S., OR FILE  
2 ANNUALLY WITH THE PUBLIC UTILITIES COMMISSION TO NOTIFY THE PUBLIC  
3 UTILITIES COMMISSION OF PROPOSED CONSTRUCTION OF A NEW FACILITY  
4 OR THE EXTENSION OF AN EXISTING FACILITY, THEN THE PUBLIC UTILITY OR  
5 POWER AUTHORITY SHALL NOTIFY ANY AFFECTED LOCAL GOVERNMENTS  
6 OF ITS INTENTION TO SITE A MAJOR ELECTRICAL OR NATURAL GAS FACILITY  
7 WITHIN THE JURISDICTION OF THE LOCAL GOVERNMENT WHEN SUCH  
8 UTILITY OR AUTHORITY DETERMINES THAT IT INTENDS TO PROCEED TO  
9 PERMIT AND CONSTRUCT THE FACILITY. FOLLOWING SUCH NOTIFICATION,  
10 THE PUBLIC UTILITY OR POWER AUTHORITY SHALL CONSULT WITH THE  
11 AFFECTED LOCAL GOVERNMENTS IN ORDER TO IDENTIFY THE SPECIFIC  
12 ROUTES OR GEOGRAPHIC LOCATIONS UNDER CONSIDERATION FOR THE SITE  
13 OF THE MAJOR ELECTRICAL OR NATURAL GAS FACILITY AND ATTEMPT TO  
14 RESOLVE LAND USE ISSUES THAT MAY ARISE FROM THE CONTEMPLATED  
15 PERMIT APPLICATION.

16 (b) IN ADDITION TO ITS PREFERRED ALTERNATIVE WITHIN ITS  
17 PERMIT APPLICATION, THE PUBLIC UTILITY OR POWER AUTHORITY SHALL  
18 CONSIDER AND PRESENT REASONABLE SITING AND DESIGN ALTERNATIVES  
19 TO THE LOCAL GOVERNMENT OR EXPLAIN WHY NO REASONABLE  
20 ALTERNATIVES ARE AVAILABLE.

21 (5) (a) IF A LOCAL GOVERNMENT DENIES A PERMIT OR APPLICATION  
22 OF A PUBLIC UTILITY OR POWER AUTHORITY THAT RELATES TO THE  
23 LOCATION, CONSTRUCTION, OR IMPROVEMENT OF MAJOR ELECTRICAL OR  
24 NATURAL GAS FACILITIES, OR IF THE LOCAL GOVERNMENT IMPOSES  
25 REQUIREMENTS OR CONDITIONS UPON SUCH PERMIT OR APPLICATION THAT  
26 WILL UNREASONABLY IMPAIR THE ABILITY OF THE PUBLIC UTILITY OR  
27 POWER AUTHORITY TO PROVIDE SAFE, RELIABLE, AND ECONOMICAL  
28 SERVICE TO THE PUBLIC, THE PUBLIC UTILITY OR POWER AUTHORITY MAY  
29 APPEAL THE LOCAL GOVERNMENT ACTION TO THE PUBLIC UTILITIES  
30 COMMISSION FOR A DETERMINATION UNDER SECTION 40-4-102, C.R.S., SO  
31 LONG AS ONE OR MORE OF THE FOLLOWING CONDITIONS HAVE BEEN MET,  
32 UNLESS SUCH UTILITY OR AUTHORITY IS OWNED AND OPERATED BY A  
33 MUNICIPALITY OR IS A COOPERATIVE ELECTRIC ASSOCIATION EXEMPT FROM  
34 REGULATION PURSUANT TO SECTION 40-9.5-103, C.R.S.:

35 (I) THE PUBLIC UTILITY OR POWER AUTHORITY HAS APPLIED FOR OR

1 HAS OBTAINED A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
2 FROM THE PUBLIC UTILITIES COMMISSION PURSUANT TO SECTION 40-5-101,  
3 C.R.S., TO CONSTRUCT THE MAJOR ELECTRICAL OR NATURAL GAS FACILITY  
4 THAT IS THE SUBJECT OF THE LOCAL GOVERNMENT ACTION;

5 (II) A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IS  
6 NOT REQUIRED FOR THE PUBLIC UTILITY OR POWER AUTHORITY TO  
7 CONSTRUCT THE MAJOR ELECTRICAL OR NATURAL GAS FACILITY THAT IS  
8 THE SUBJECT OF THE LOCAL GOVERNMENT ACTION; OR

9 (III) THE PUBLIC UTILITIES COMMISSION HAS PREVIOUSLY ENTERED  
10 AN ORDER PURSUANT TO SECTION 40-4-102, C.R.S., THAT CONFLICTS WITH  
11 THE LOCAL GOVERNMENT ACTION.

12 (b) ANY APPEAL BROUGHT BY A PUBLIC UTILITY OR POWER  
13 AUTHORITY TO THE PUBLIC UTILITIES COMMISSION UNDER THIS SECTION  
14 SHALL BE CONDUCTED IN ACCORDANCE WITH THE PROCEDURAL  
15 REQUIREMENTS OF SECTION 40-6-109.5, C.R.S. IN ADDITION TO THE  
16 FORMAL EVIDENTIARY HEARING ON THE APPEAL, CONDUCTED IN  
17 ACCORDANCE WITH THE PROCEDURAL REQUIREMENTS OF SECTION  
18 40-6-109, C.R.S., THE PUBLIC UTILITIES COMMISSION SHALL TAKE  
19 STATEMENTS FROM THE PUBLIC CONCERNING THE APPEALED LOCAL  
20 GOVERNMENT ACTION AT AN OPEN HEARING HELD AT A LOCATION  
21 SPECIFIED BY THE LOCAL GOVERNMENT.

22 (c) AN APPEAL BROUGHT PURSUANT TO THIS SUBSECTION (5) SHALL  
23 INCLUDE A STATEMENT OF THE REASONS WHY THE LOCAL GOVERNMENT  
24 ACTION WOULD UNREASONABLY IMPAIR THE ABILITY OF A PUBLIC UTILITY  
25 OR POWER AUTHORITY TO PROVIDE SAFE, RELIABLE, AND ECONOMICAL  
26 SERVICE TO THE PUBLIC.

27 (d) THE PUBLIC UTILITIES COMMISSION SHALL BALANCE THE LOCAL  
28 GOVERNMENT INTEREST WITH THE STATEWIDE INTEREST IN THE LOCATION,  
29 CONSTRUCTION, OR IMPROVEMENT OF MAJOR ELECTRICAL OR NATURAL  
30 GAS FACILITIES. IN STRIKING SUCH BALANCE, THE PUBLIC UTILITIES  
31 COMMISSION SHALL RENDER A DECISION THAT IS CONSISTENT WITH  
32 ARTICLE 65.1 OF TITLE 24, C.R.S., INCLUDING SECTION 24-65.1-105,  
33 C.R.S., AND THE COMMISSION SHALL CONSIDER THE FOLLOWING FACTORS:

1 (I) THE DEMONSTRATED NEED FOR THE MAJOR ELECTRICAL OR  
2 NATURAL GAS FACILITY;

3 (II) THE EXTENT TO WHICH THE PROPOSED FACILITY IS  
4 INCONSISTENT WITH EXISTING APPLICABLE LOCAL OR REGIONAL LAND USE  
5 ORDINANCES, RESOLUTIONS, OR MASTER OR COMPREHENSIVE PLANS;

6 (III) WHETHER THE PROPOSED FACILITY WOULD EXACERBATE A  
7 NATURAL HAZARD;

8 (IV) APPLICABLE UTILITY ENGINEERING STANDARDS, INCLUDING  
9 SUPPLY ADEQUACY, SYSTEM RELIABILITY, AND PUBLIC SAFETY  
10 STANDARDS;

11 (V) THE RELATIVE MERIT OF ANY REASONABLY AVAILABLE AND  
12 ECONOMICALLY FEASIBLE ALTERNATIVES PROPOSED BY THE PUBLIC  
13 UTILITY, THE POWER AUTHORITY, OR THE LOCAL GOVERNMENT;

14 (VI) THE IMPACT THAT THE LOCAL GOVERNMENT ACTION WOULD  
15 HAVE ON THE CUSTOMERS OF THE PUBLIC UTILITY OR POWER AUTHORITY  
16 WHO RESIDE WITHIN AND WITHOUT THE BOUNDARIES OF THE JURISDICTION  
17 OF THE LOCAL GOVERNMENT;

18 (VII) THE BASIS FOR THE LOCAL GOVERNMENT'S DECISION TO DENY  
19 THE APPLICATION OR IMPOSE ADDITIONAL CONDITIONS TO THE  
20 APPLICATION; AND

21 (VIII) THE IMPACT THE PROPOSED FACILITY WOULD HAVE ON  
22 RESIDENTS WITHIN THE LOCAL GOVERNMENT'S JURISDICTION.

23 (e) THE PUBLIC UTILITIES COMMISSION SHALL DENY ANY APPEAL  
24 BROUGHT UNDER THIS SECTION UNLESS THE PUBLIC UTILITY OR POWER  
25 AUTHORITY HAS COMPLIED WITH THE NOTIFICATION AND CONSULTATION  
26 REQUIREMENTS OF SUBSECTION (4) OF THIS SECTION.

27 (f) THE PUBLIC UTILITIES COMMISSION MAY CONSULT WITH THE  
28 DEPARTMENT OF LOCAL AFFAIRS ON LAND USE ISSUES IN CONNECTION  
29 WITH ANY APPEAL. ALL INFORMATION PROVIDED BY THE DEPARTMENT OF

1 LOCAL AFFAIRS TO THE PUBLIC UTILITIES COMMISSION SHALL BE PART OF  
2 THE OFFICIAL RECORD OF THE APPEAL AND SHALL BE SUBJECT TO  
3 CROSS-EXAMINATION OR COMMENTS BY THE PARTIES TO THE APPEAL.

4 (g) UNLESS OTHERWISE SPECIFIED IN THIS SUBSECTION (5), THE  
5 APPEAL SHALL BE CONDUCTED IN ACCORDANCE WITH ARTICLE 6 OF TITLE  
6 40, C.R.S., INCLUDING THE PROVISIONS OF SECTION 40-6-116, C.R.S.,  
7 CONCERNING ANY STAY OR SUSPENSION OF THE FINAL DETERMINATION  
8 MADE BY THE PUBLIC UTILITIES COMMISSION.

9 (h) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR  
10 DIMINISH THE RIGHT OF A PUBLIC UTILITY, POWER AUTHORITY, OR LOCAL  
11 GOVERNMENT TO APPEAL A LOCAL GOVERNMENT, PUBLIC UTILITY, OR  
12 POWER AUTHORITY ACTION, DECISION, OR DETERMINATION TO A COURT OF  
13 LAW PURSUANT TO ANY OTHER PROVISION OF LAW.

14 **SECTION 3.** 29-20-103, Colorado Revised Statutes, is amended  
15 BY THE ADDITION OF A NEW SUBSECTION to read:

16 **29-20-103. Definitions.** As used in this article, unless the context  
17 otherwise requires:

18 (2) "POWER AUTHORITY" MEANS AN AUTHORITY CREATED  
19 PURSUANT TO SECTION 29-1-204.

20 **SECTION 4.** 40-4-102 (1), Colorado Revised Statutes, is  
21 amended to read:

22 **40-4-102. Extensions and improvements prescribed, when.**  
23 (1) Whenever the commission, after a hearing upon its own motion,  
24 UPON APPEAL BY A PUBLIC UTILITY OR POWER AUTHORITY FROM A LOCAL  
25 GOVERNMENT ACTION PURSUANT TO SECTION 29-20-108 (5), C.R.S., or  
26 upon complaint, finds THAT the additions, extensions, repairs, or  
27 improvements to or change in the existing plant, equipment, facilities, or  
28 other physical property of any public utility or of any two or more public  
29 utilities ought reasonably to be made, ~~or~~ that a new structure should be  
30 erected to promote the security or convenience of its employees or the  
31 public or in any other way to secure adequate service or facilities, OR

1 THAT THE CONDITIONS IMPOSED BY A LOCAL GOVERNMENT ACTION  
2 UNREASONABLY IMPAIR THE ABILITY OF A PUBLIC UTILITY OR POWER  
3 AUTHORITY TO PROVIDE SAFE, RELIABLE, AND ECONOMICAL SERVICE, the  
4 commission shall make and serve an order directing that such additions,  
5 extensions, repairs, improvements, or changes be made or such structure  
6 be erected in the manner and within the time specified in such order. If  
7 the commission orders the erection of a new structure, the selection of the  
8 site for such structure shall be subject to the approval of the commission.  
9 IF A PUBLIC UTILITY OR POWER AUTHORITY APPEALS AN ORDER FROM A  
10 LOCAL GOVERNMENT ACTION UNDER SECTION 29-20-108, C.R.S., THE  
11 COMMISSION MAY REQUIRE THAT THE PUBLIC UTILITY OR POWER  
12 AUTHORITY REIMBURSE THE COMMISSION FOR THE REASONABLE EXPENSES,  
13 ATTORNEY FEES, AND EXPERT WITNESS FEES THE COMMISSION INCURS IN  
14 REVIEWING THE APPEAL. ANY FEE COLLECTED PURSUANT TO THIS SECTION  
15 SHALL BE REMITTED TO THE STATE TREASURER, WHO SHALL CREDIT SUCH  
16 FEE TO THE PUBLIC UTILITIES FIXED UTILITY FUND CREATED PURSUANT TO  
17 SECTION 40-2-114.

18           **SECTION 5. Safety clause.** The general assembly hereby finds,  
19 determines, and declares that this act is necessary for the immediate  
20 preservation of the public peace, health, and safety."

21 Page 1, line 103, strike "UTILITIES." and substitute "UTILITIES THAT  
22 PROVIDE ENERGY FOR CONSUMPTION."

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