

**66-1,162. Same; hearing proceedings; transcript; costs; findings and decision; issuance of permit; construction authorized upon issuance of permit notwithstanding local zoning ordinances, resolutions or regulations.** Except as otherwise provided in this act, the rules and regulations adopted by the commission pursuant to K.S.A. 66-106, and amendments thereto, to govern the commission's proceedings shall be applicable to any proceeding before the commission under this act. The electric utility shall proceed with the introduction of evidence of the necessity for the proposed nuclear generation facility and of the reasonableness of the proposed location and size of the facility. The burden of proof on any such matter shall be upon the electric utility and shall be established by a preponderance of the evidence. All parties present or represented by counsel at the hearing shall have an opportunity to be heard and the right to cross-examine any witness appearing before the commission at the hearing. The commission shall cause a transcript to be made of the hearing. All costs of any hearing shall be taxed against the electric utility. The hearing and all parties' arguments shall be completed within 90 days after the commencement thereof. At any time after the commencement of the hearing, the electric utility may withdraw its application for the permit required by K.S.A. 66-1,159, and amendments thereto.

The commission shall make findings of fact and file such findings with its decision to grant, grant conditioned by such findings or withhold the permit applied for, except that whenever approval of applications are pending with or must be obtained from any state regulatory authority which relate to the operation of any such facility, the commission shall postpone its decision until proof of the approval or disapproval of any such application is received. In any case where a state regulatory authority cannot render final approval of any such application until the facility is in actual operation, the commission shall accept as proof of approval or disapproval the state regulatory authority's certification of probable acceptability or unacceptability of an application. Prior to making its determination with respect to the most reasonable location and size of a proposed nuclear generation facility, the commission shall make its determination of whether or not a necessity exists for the electric generation capacity of a proposed facility. In addition to any other consideration deemed necessary in making such determination, the commission shall consider and make determinations on the following factors: (1) Whether or not the electric generating capacity of the proposed facility meets or contributes to the meeting of the electrical energy needs of the people of this state considering the probable future statewide electrical energy needs thereof; and (2) whether or not available electrical generating capacity exists within the state that is capable of being distributed economically, reliably, technically and environmentally. Whenever the commission determines that a necessity exists for electric generation capacity to be provided by a proposed nuclear generation facility, the commission shall make its determinations with respect to the most reasonable size and location of any such facility. In addition to any other consideration deemed necessary in making a determination with respect to the size of a proposed facility, the commission shall consider the electric utility's total planned utilization of a proposed location for electric generation purposes as it relates to the necessity found by the commission for additional electric generating capacity in the state. In addition to any other consideration deemed necessary in making a determination with respect to the most reasonable location of a proposed facility, the commission shall consider the availability of natural resources necessary in the operation of a proposed facility as the same relates to each alternative location submitted by the electric utility as required by the provisions of K.S.A. 66-1,159, and amendments thereto. Upon a determination that a necessity exists for the proposed nuclear generation facility and that the proposed location and size of such facility are the most reasonable, the commission shall issue to the electric utility a permit to construct such facility, except that the commission may condition such permit with respect to the location and size of the proposed nuclear generation facility to provide for an alternate location or size, or both, thereof, but in no case shall the commission provide for a size larger than that applied for. Upon the issuance of such permit, no local ordinance, resolution or regulation shall prohibit the construction of the nuclear generation facility, and the electric utility may proceed with such facility notwithstanding any requirement to obtain any building permit under any local zoning ordinance, resolution or regulation.

**History:** L. 1976, ch. 283, § 5; L. 1979, ch. 209, § 5; L. 1988, ch. 356, § 245; L. 2000, ch. 2, § 5; L. 2007, ch. 113, § 7; July 1.