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SENATE BILL 199

50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO UTILITIES; AMENDING A SECTION OF THE PUBLIC UTILITY ACT; PROVIDING EXPEDITED SITING FOR TRANSMISSION LINES INTENDED TO ENABLE DEVELOPMENT OF NEW MEXICO ENERGY RESOURCES, FACILITATE ECONOMIC DEVELOPMENT IN NEW MEXICO AND PROMOTE CREATION OF INTERSTATE ENERGY MARKETS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 62-9-3 NMSA 1978 (being Laws 1971, Chapter 248, Section 1, as amended by Laws 2005, Chapter 339, Section 6 and by Laws 2005, Chapter 340, Section 2) is amended to read:

"62-9-3. LOCATION CONTROL--LIMITATIONS.--

A. The legislature finds that it is in the public interest to consider any adverse effect upon the environment

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1 and upon the quality of life of the people of the state that
2 may occur due to plants, facilities and transmission lines
3 needed to supply present and future electrical services. It is
4 recognized that such plants, facilities and transmission lines
5 will be needed to meet growing demands for electric services
6 and cannot be built without in some way affecting the physical
7 environment where these plants, facilities and transmission
8 lines are located. The legislature therefore declares that it
9 is the purpose of this section to provide for the supervision
10 and control by the commission of the location within this state
11 of new plants, facilities and transmission lines for the
12 generation and transmission of electricity for sale to the
13 public.

14 B. A person, including any municipality, shall not
15 begin the construction of any plant designed for or capable of
16 operation at a capacity of three hundred thousand kilowatts or
17 more for the generation of electricity for sale to the public
18 within or without this state, whether or not owned or operated
19 by a person that is a public utility subject to regulation by
20 the commission, or of transmission lines in connection with
21 such a plant, on a location within this state unless the
22 location has been approved by the commission. For the purposes
23 of this section, "transmission line" means any electric
24 transmission line and associated facilities designed for or
25 capable of operations at a nominal voltage of two hundred

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1 thirty kilovolts or more, to be constructed in connection with
2 and to transmit electricity from a new plant for which approval
3 is required.

4 C. Application for approval shall contain all
5 information required by the commission to make its
6 determination, be made in writing setting forth the facts
7 involved and be filed with the commission. The commission
8 shall, after a public hearing and upon notice as the
9 commission may prescribe, act upon the application. The
10 commission may condition its approval upon a demonstration by
11 the applicant that it has received all necessary air and
12 water quality permits. A public utility regulated by the
13 commission may submit an application pursuant to Section
14 62-9-1 NMSA 1978 for a certificate of public convenience and
15 necessity prior to filing an application for location
16 approval pursuant to this section in order to determine the
17 need for the generating plant or transmission line prior to
18 determination of the appropriate location.

19 D. Approval shall not be required for additions
20 to or modifications of an existing plant or transmission
21 line.

22 E. The commission shall approve the application
23 for the location of the generating plant unless the
24 commission finds that the operations of the facilities for
25 which approval is sought will not be in compliance with all

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1 applicable air and water pollution control standards and
2 regulations existing or will unduly impair system
3 reliability. The commission shall not require compliance
4 with performance standards other than those established by
5 the agency of this state having jurisdiction over a
6 particular pollution source.

7 F. The commission shall approve the application
8 for the location of the transmission lines unless the
9 commission finds that the location will unduly impair
10 important environmental values or the operation of the
11 proposed transmission lines will unduly impair power system
12 reliability.

13 G. An application shall not be approved pursuant
14 to this section that violates an existing state, county or
15 municipal land use statutory or administrative regulation
16 unless the commission finds that the regulation is
17 unreasonably restrictive and compliance with the regulation
18 is not in the interest of the public convenience and
19 necessity, in which event and to the extent found by the
20 commission, the regulation shall be inapplicable and void as
21 to the siting. When it becomes apparent to the commission
22 that an issue exists with respect to whether a regulation is
23 unreasonably restrictive and compliance with the regulation
24 is not in the interest of public convenience and necessity,
25 it shall promptly serve notice of that fact by certified mail

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1 upon the agency, board or commission having jurisdiction for
2 land use of the area affected and shall make the agency,
3 board or commission a party to the proceedings upon its
4 request and shall give it an opportunity to respond to the
5 issue. The judgment of the commission shall be conclusive on
6 all questions of siting, land use, aesthetics and any other
7 state or local requirements affecting the siting.

8 H. A public utility subject to the jurisdiction
9 of the commission may elect to file an application pursuant
10 to this section with the commission for location approval of
11 an electric transmission line or associated facilities
12 designed for or capable of operation at a nominal voltage of
13 one hundred fifteen kilovolts or more but less than two
14 hundred thirty kilovolts if:

15 (1) the public utility files an application
16 for construction, extension, rebuilding or improvement of the
17 electric transmission line or associated equipment under any
18 applicable county or municipal land use statute, ordinance or
19 administrative regulation; and

20 (2) the agency, board or commission of the
21 county or municipality disapproves the application. For
22 purposes of this subsection, "disapprove" means the failure
23 of the county or municipal agency, board or commission to
24 issue a final order approving the application within two
25 hundred forty days of the public utility's filing of a

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1 complete application with the agency, board or commission.
2 An application shall be deemed complete if within fifteen
3 working days of the public utility's filing of the
4 application, or a supplement or amendment thereto, the
5 agency, board or commission fails to send written notice to
6 the public utility enumerating the specific requirements
7 under the applicable county or municipal land use statute,
8 ordinance or administrative regulation that the application
9 fails to satisfy.

10 I. Upon consideration of the application and the
11 standards set forth in Subsection G of this section, the
12 commission may authorize construction, extension, rebuilding
13 or improvement of the transmission line or facilities
14 notwithstanding the prior disapproval of the county or
15 municipal agency, board or commission. The judgment of the
16 commission shall be conclusive on all questions of siting,
17 land use, aesthetics and any other state or local
18 requirements affecting the siting.

19 J. Nothing in this section shall be deemed to
20 confer upon the commission power or jurisdiction to regulate
21 or supervise any person, including a municipality, that is
22 not otherwise a public utility regulated and supervised by
23 the commission, with respect to its rates and service and
24 with respect to its securities, nor shall any other provision
25 of the Public Utility Act be applicable with respect to such

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1 a person, including a municipality.

2 K. The commission may approve an application
3 filed pursuant to this section without a formal hearing if no
4 protest is filed within sixty days of the date that notice is
5 given that the application has been filed. The commission
6 shall issue its order granting or denying the application
7 within six months from the date the application is filed with
8 the commission; provided, however, that:

9 (1) if a public utility simultaneously files
10 an application for approval of location of a transmission
11 line pursuant to this section and an application for a
12 certificate of public convenience and necessity pursuant to
13 Subsection B of Section 62-9-1 NMSA 1978, the commission
14 shall issue its order granting or denying the applications
15 within nine months from the date the applications are filed
16 with the commission; provided, however, that the commission
17 may extend the time for granting approval an additional six
18 months for good cause shown;

19 (2) if a public utility files an application
20 for approval of location of a transmission line pursuant to
21 this section after its application for a certificate of
22 public convenience and necessity has been approved pursuant
23 to Subsection B of Section 62-9-1 NMSA 1978, the commission
24 shall issue its order granting or denying the application for
25 approval of location of a transmission line within ninety

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1 days from the date the application is filed with the
2 commission; ~~and~~

3 (3) if a public utility files an application
4 for approval of location of a transmission line pursuant to
5 this section while its application for a certificate of
6 public convenience and necessity is pending pursuant to
7 Subsection B of Section 62-9-1 NMSA 1978, and the application
8 for a certificate is subsequently approved, the commission
9 shall issue its order granting or denying the application for
10 approval of location of a transmission line within ninety
11 days from the date the application for certificate of public
12 convenience and necessity is approved; and

13 (4) if a person files an application for
14 approval of a transmission line that has been approved by a
15 regional transmission organization or other transmission
16 planning coordinator, the commission shall issue a final
17 order on the application within one hundred eighty days after
18 the application was filed, notwithstanding any other
19 provision of this section allowing for additional time for
20 consideration by the commission, or the application shall be
21 deemed approved. The commission may approve the application
22 notwithstanding the prior negative finding, rejection,
23 failure to act or disapproval of a county or municipal
24 agency, board or commission, and the judgment of the
25 commission shall be conclusive on all questions of siting,

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1 land use, aesthetics and any other state or local
2 requirements affecting the siting. As used in this
3 paragraph, "transmission line" means an electric transmission
4 line and associated facilities designed for or capable of
5 operations at a nominal voltage of two hundred thirty
6 kilovolts or more.

7 L. Failure to issue its order approving or
8 denying an application filed pursuant to this section within
9 the time periods set forth in Subsection [J] K of this
10 section is deemed to be approval of the application;
11 provided, however, that the commission may extend the time
12 for granting approval for a transmission line that is subject
13 to this section for an additional nine months upon finding
14 that the additional time is necessary to determine if the
15 proposed location of the line will unduly impair important
16 environmental values.

17 M. In determining if the proposed location of the
18 transmission line will unduly impair important environmental
19 values, the commission may consider the following factors:

20 (1) existing plans of the state, local
21 government and private entities for other developments at or
22 in the vicinity of the proposed location;

23 (2) fish, wildlife and plant life;

24 (3) noise emission levels and interference
25 with communication signals;

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1 (4) the proposed availability of the
2 location to the public for recreational purposes, consistent
3 with safety considerations and regulations;

4 (5) existing scenic areas, historic,
5 cultural or religious sites and structures or archaeological
6 sites at or in the vicinity of the proposed location; and

7 (6) additional factors that require
8 consideration under applicable federal and state laws
9 pertaining to the location.

10 N. An electric transmission company that is not
11 otherwise subject to the jurisdiction of the commission may
12 apply to the commission for an expedited location approval to
13 develop transmission lines pursuant to Subsection K of this
14 section."

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