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SENATE BILL 452

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

William H. Payne

AN ACT

RELATING TO THE PUBLIC REGULATION COMMISSION; REQUIRING
UTILITY RIGHT-OF-WAY APPLICATIONS TO BE PROCESSED WITHIN SIX
MONTHS; AMENDING SECTIONS OF THE NMSA 1978.

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) 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
and upon the quality of life of the people of the state
[which] that may occur due to plants, facilities and
transmission lines needed to supply present and future
electrical services. It is recognized that such plants, lines
and facilities will be needed to meet growing demands for

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1 electric services and cannot be built without in some way
2 affecting the physical environment where these plants,
3 facilities and transmission lines are located. The
4 legislature therefore declares that it is the purpose of this
5 section to provide for the supervision and control by the
6 commission of the location within this state of new plants,
7 facilities and transmission lines for the generation and
8 transmission of electricity for sale to the public.

9 B. No person, including any municipality, shall
10 begin the construction of any plant designed for or capable of
11 operation at a capacity of three hundred thousand kilowatts or
12 more for the generation of electricity for sale to the public
13 within or without this state, whether or not owned or operated
14 by a person ~~[which]~~ that is a public utility subject to
15 regulation by the commission, ~~[within this state]~~ or of
16 transmission ~~[line or]~~ lines in connection with such a plant,
17 on a location within this state unless the location has been
18 approved by the commission. For the purposes of this section,
19 "transmission line" means any electric transmission line and
20 associated facilities designed for or capable of operations at
21 a nominal voltage of two hundred thirty kilovolts or more, to
22 be constructed in connection with and to transmit electricity
23 from a new plant for which approval is required.

24 C. If a person is a public utility regulated by
25 the commission, application for approval shall be submitted

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1 and disposition made in connection with the application for a
2 certificate of public convenience and necessity in accordance
3 with the provisions of the Public Utility Act.

4 D. If a person is not a public utility regulated
5 by the commission, application for approval shall be made in
6 writing setting forth the facts involved and filed with the
7 commission. The commission shall, after a public hearing and
8 upon notice as the commission may prescribe, act upon the
9 application.

10 E. No approval shall be required for construction
11 in progress on the effective date of this ~~[act]~~ section or for
12 additions to or modifications of an existing plant or
13 transmission line.

14 F. The commission shall approve the application
15 for the location of the generating plant unless the commission
16 finds that the operations of the facilities for which approval
17 is sought will not be in compliance with all applicable air
18 and water pollution control standards and regulations
19 existing. The commission shall not require compliance with
20 performance standards other than those established by the
21 agency of this state having jurisdiction over a particular
22 pollution source.

23 G. The commission shall approve the application
24 for the location of the transmission ~~[line or]~~ lines unless
25 the commission finds that the location will unduly impair

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1 important environmental values.

2 H. No application shall be approved pursuant to
3 this section which violates an existing state, county or
4 municipal land use statutory or administrative regulation
5 unless the commission [~~shall find~~] finds that [~~such~~] the
6 regulation is unreasonably restrictive and compliance
7 [~~therewith~~] with the regulation is not in the interest of the
8 public convenience and necessity, in which event and to the
9 extent found by the commission [~~such~~] the regulation shall be
10 inapplicable and void as to the siting. When it becomes
11 apparent to the commission that an issue exists with respect
12 to whether [~~such~~] a regulation is unreasonably restrictive and
13 compliance [~~therewith~~] with the regulation is not in the
14 interest of public convenience and necessity, it shall
15 promptly serve notice of [~~such~~] that fact by certified mail
16 upon the agency, board or commission having jurisdiction for
17 land use of the area affected and shall make [~~such~~] the
18 agency, board or commission a party to the proceedings upon
19 its request and shall give it an opportunity to respond to
20 [~~such~~] the issue. The judgment of the commission shall be
21 conclusive on all questions of siting, land use, aesthetics
22 and any other state or local requirements affecting the
23 siting.

24 I. Nothing in this section shall be deemed to
25 confer upon the commission power or jurisdiction to regulate

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1 or supervise any person, including a municipality, that is not
2 otherwise a public utility regulated and supervised by the
3 commission, with respect to its rates and service and with
4 respect to its securities, nor shall any other provision of
5 the Public Utility Act be applicable with respect to such a
6 person, including a municipality.

7 J. The commission shall issue its order granting
8 or denying the application within six months from the date the
9 application is filed with the commission. Failure to issue
10 its order within six months is deemed to be approval of the
11 application. "

12 Section 2. Section 62-9-3.2 NMSA 1978 (being Laws 1980,
13 Chapter 20, Section 18, as amended) is amended to read:

14 "62-9-3.2. APPLICATION FOR DETERMINATION OF RIGHT-OF-WAY
15 WIDTH. --

16 A. Unless otherwise agreed to by the parties, no
17 person shall begin the construction of any transmission line
18 requiring a width for right of way of greater than one hundred
19 feet without first obtaining from the commission a
20 determination of the necessary right-of-way width to construct
21 and maintain the transmission line. For the purposes of this
22 subsection, "construction" does not include acquisition of
23 rights of way, preparation of surveys or ordering of
24 equipment.

25 B. For the purposes of this section, "transmission

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1 line" means any electric transmission line and associated
2 facilities requiring a width for right of way of greater than
3 one hundred feet.

4 C. If the person is regulated by the commission,
5 application for the right-of-way width determination may be
6 submitted and disposition made in connection with application
7 for a certificate of public convenience and necessity in
8 accordance with the provisions of the Public Utility Act.
9 Application may be submitted as provided in Subsection D of
10 this section for persons not regulated by the commission.

11 D. If the person is not regulated by the
12 commission or has already procured a certificate of public
13 necessity and convenience, application for the right-of-way
14 width determination shall be made in writing, setting forth
15 the facts involved, and filed with the commission.

16 E. The applicant shall cause notice of the time
17 and place of hearing on the application for the right-of-way
18 determination to be given to any owner of property proposed to
19 be taken and, if applicable, to the person in actual occupancy
20 of the property. Notice shall be given by mailing a copy by
21 ordinary first class mail at least twenty days before the time
22 set for hearing. Proof of the giving of notice shall be made
23 on or before the hearing and filed in the proceeding.

24 F. The commission shall, after public hearing, act
25 upon the application.

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G. The commission shall issue its order granting or denying the application within six months from the date the application is filed with the commission. Failure to issue its order within six months is deemed to be approval of the application. "