

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

B. No person, including any municipality, shall begin the construction of any plant designed for or capable

of operation at a capacity of three hundred thousand kilowatts or more for the generation of electricity for sale to the public within or without this state, whether or not owned or operated by a person that is a public utility subject to regulation by the commission, or of transmission lines in connection with such a plant, on a location within this state unless the location has been approved by the commission. For the purposes of this section, "transmission line" means any electric transmission line and associated facilities designed for or capable of operations at a nominal voltage of two hundred thirty kilovolts or more, to be constructed in connection with and to transmit electricity from a new plant for which approval is required.

C. Application for approval shall contain all information required by the commission to make its determination, be made in writing setting forth the facts involved and be filed with the commission. The commission shall, after a public hearing and upon notice as the commission may prescribe, act upon the application. The commission may condition its approval upon a demonstration by the applicant that it has received all necessary air and water quality permits.

D. No approval shall be required for construction in progress on the effective date of this section or for additions to or modifications of an existing plant or transmission line.

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

F. The commission shall approve the application for the location of the transmission lines unless the commission finds that the location will unduly impair important environmental values.

G. No application shall be approved pursuant to this section which violates an existing state, county or municipal land use statutory or administrative regulation unless the commission finds that the regulation is unreasonably restrictive and compliance with the regulation is not in the interest of the public convenience and necessity, in which event and to the extent found by the commission the regulation shall be inapplicable and void as to the siting. When it becomes apparent to the commission that an issue exists with respect to whether a regulation is unreasonably restrictive and compliance with the regulation is not in the interest of public convenience and necessity, it shall promptly serve notice of that fact by certified

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

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

I. 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; provided, however, that the commission may extend the time for granting approval for a transmission line that is subject to this section for an additional ten months upon finding that the additional time is necessary to determine if the proposed location of the line will unduly impair important environmental values. "

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

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

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

B. For the purposes of this section, "transmission line" means any electric transmission line and associated facilities requiring a width for right of way of greater than one hundred feet.

C. Application for the right-of-way width determination shall contain all information required by the commission to make its determination, be made in writing, setting forth the facts involved, and be filed with the commission.

D. The applicant shall cause notice of the time and place of hearing on the application for the right-of-way determination to be given to any owner of property proposed

to be taken and, if applicable, to the person in actual occupancy of the property. Notice shall be given by mailing a copy by ordinary first class mail at least twenty days before the time set for hearing. Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding.

E. The commission shall, after public hearing, act upon the application.

F. 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. "

---

---