

1 HOUSE BILL 381

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO UTILITIES; AMENDING A SECTION OF THE PUBLIC UTILITY
12 ACT TO PROVIDE FOR JURISDICTION BY THE PUBLIC REGULATION
13 COMMISSION OVER TRANSMISSION LINE LOCATIONS.

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

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

20 "62-9-3. LOCATION CONTROL--LIMITATIONS.--

21 A. The legislature finds that it is in the public
22 interest to consider any adverse effect upon the environment
23 and upon the quality of life of the people of the state that
24 may occur due to plants, facilities and transmission lines
25 needed to supply present and future electrical services. It is

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

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

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1 or more, to be constructed in connection with and to transmit
2 electricity from a ~~new~~ plant for which approval is or was
3 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]~~ commission determines that the applicant is able
13 to construct transmission lines with substantially similar
14 nominal voltage capacity and transmission benefits at another
15 location at a substantially similar or lower cost that will
16 result in less adverse effects on important environmental
17 values.

18 G. An application shall not be approved pursuant
19 to this section that violates an existing state, county or
20 municipal land use statutory or administrative regulation
21 unless the commission finds that the regulation is
22 unreasonably restrictive and compliance with the regulation
23 is not in the interest of the public convenience and
24 necessity, in which event and to the extent found by the
25 commission, the regulation shall be inapplicable and void as

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1 to the siting. When it becomes apparent to the commission
2 that an issue exists with respect to whether a regulation is
3 unreasonably restrictive and compliance with the regulation
4 is not in the interest of public convenience and necessity,
5 it shall promptly serve notice of that fact by certified mail
6 upon the agency, board or commission having jurisdiction for
7 land use of the area affected and shall make the agency,
8 board or commission a party to the proceedings upon its
9 request and shall give it an opportunity to respond to the
10 issue. The judgment of the commission shall be conclusive on
11 all questions of siting, land use, aesthetics and any other
12 state or local requirements affecting the siting.

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

20 (1) the public utility files an application
21 for construction, extension, rebuilding or improvement of the
22 electric transmission line or associated equipment under any
23 applicable county or municipal land use statute, ordinance or
24 administrative regulation; and

25 (2) the agency, board or commission of the

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1 county or municipality disapproves the application. For
2 purposes of this subsection, "disapprove" means the failure
3 of the county or municipal agency, board or commission to
4 issue a final order approving the application within two
5 hundred forty days of the public utility's filing of a
6 complete application with the agency, board or commission.
7 An application shall be deemed complete if within fifteen
8 working days of the public utility's filing of the
9 application, or a supplement or amendment thereto, the
10 agency, board or commission fails to send written notice to
11 the public utility enumerating the specific requirements
12 under the applicable county or municipal land use statute,
13 ordinance or administrative regulation that the application
14 fails to satisfy.

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

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

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

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

24 (2) if a public utility files an application
25 for approval of location of a transmission line pursuant to

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1 this section after its application for a certificate of
2 public convenience and necessity has been approved pursuant
3 to Subsection B of Section 62-9-1 NMSA 1978, the commission
4 shall issue its order granting or denying the application for
5 approval of location of a transmission line within ninety
6 days from the date the application is filed with the
7 commission; and

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

18 L. Failure to issue its order approving or
19 denying an application filed pursuant to this section within
20 the time periods set forth in Subsection ~~[J]~~ K of this
21 section is deemed to be approval of the application;
22 provided, however, that the commission may extend the time
23 for granting approval for a transmission line that is subject
24 to this section for an additional nine months upon finding
25 that the additional time is necessary to determine if the

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1 proposed location of the line will unduly impair important
2 environmental values.

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

6 (1) existing plans of the state, local
7 government, public utilities and private entities for other
8 developments at or in the vicinity of the proposed location;

9 (2) fish, wildlife and plant life;

10 (3) noise emission levels and interference
11 with communication signals;

12 (4) the proposed availability of the
13 location to the public for recreational purposes, consistent
14 with safety considerations and regulations;

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

18 (6) additional factors that require
19 consideration under applicable federal and state laws
20 pertaining to the location."