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HOUSE BILL 109

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Bill McCamley

AN ACT

RELATING TO UTILITIES; AMENDING A SECTION OF THE PUBLIC UTILITY
ACT TO PROVIDE FOR LOCATION OF TRANSMISSION LINES WITHIN
DESIGNATED CORRIDORS PREDETERMINED TO MINIMIZE IMPACTS.

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
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

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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 transmission lines in connection with
18 such a plant, on a location within this state unless the
19 location has been approved by the commission. For the purposes
20 of this section, "transmission line" means any electric
21 transmission line and associated facilities designed for or
22 capable of operations at a nominal voltage of two hundred
23 thirty kilovolts or more, to be constructed in connection with
24 and to transmit electricity from a new plant for which approval
25 is required.

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

16 D. Approval shall not be required for additions
17 to or modifications of an existing plant or transmission
18 line.

19 E. The commission shall approve the application
20 for the location of the generating plant unless the
21 commission finds that the operations of the facilities for
22 which approval is sought will not be in compliance with all
23 applicable air and water pollution control standards and
24 regulations existing or will unduly impair system
25 reliability. The commission shall not require compliance

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1 with performance standards other than those established by
2 the agency of this state having jurisdiction over a
3 particular pollution source.

4 F. The commission shall approve the application
5 for the location of the transmission lines unless the
6 commission finds that the location will unduly impair
7 important environmental values or the operation of the
8 proposed transmission lines will unduly impair power system
9 reliability. The commission shall conduct studies and
10 planning and designate appropriate corridors within which
11 transmission lines may be sited to minimize impacts on
12 environmental values, power system reliability, land use
13 conflicts and aesthetics and to meet other state or local
14 requirements affecting the siting. The commission shall not
15 approve a proposed transmission line that is located outside
16 designated corridors.

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

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

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

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

24 (2) the agency, board or commission of the
25 county or municipality disapproves the application. For

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

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

23 J. Nothing in this section shall be deemed to
24 confer upon the commission power or jurisdiction to regulate
25 or supervise any person, including a municipality, that is

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

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

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

23 (2) if a public utility files an application
24 for approval of location of a transmission line pursuant to
25 this section after its application for a certificate of

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

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

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

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1 environmental values.

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

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

8 (2) fish, wildlife and plant life;

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

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

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

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