

AN ACT

RELATING TO ELECTRIC UTILITIES; PROVIDING AN ADDITIONAL  
CONSIDERATION FOR THE LOCATION OF GENERATION PLANT AND  
TRANSMISSION LINES.

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, facilities and transmission lines 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 a municipality, shall

begin the construction of a 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. If a person is a public utility regulated by the commission, application for approval shall be submitted and disposition made in connection with the application for a certificate of public convenience and necessity in accordance with the provisions of the Public Utility Act.

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

E. 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.

F. 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 or will unduly impair power system reliability. 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.

G. 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 or the operation of the proposed transmission lines will unduly impair power system reliability.

H. No application shall be approved pursuant to this section that 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.

I. 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. "

---