

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 172

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO UTILITIES; REQUIRING WATER CONSERVATION PLANS FOR
CERTAIN ELECTRIC POWER GENERATING PLANTS; PRESCRIBING APPROVAL
PROCEDURES; CHANGING RULING DEADLINES AND THE SIZE OF PLANTS
SUBJECT TO LOCATION APPROVAL.

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) 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

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

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

25 C. Application for approval shall contain all

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

9 D. ~~[No]~~ An approval shall not be required for:

10 (1) construction in progress on the effective
 11 date of this section or for additions to or modifications of an
 12 existing plant or transmission line; or

13 (2) plants that have received, by January 1,
 14 2003, the following permits, approvals or authorizations, if
 15 applicable:

16 (a) an authority to construct permit
 17 pursuant to the Air Quality Control Act;

18 (b) a ground water discharge permit
 19 pursuant to the Water Quality Act;

20 (c) a county site development plan
 21 approval; and

22 (d) Indian tribal or pueblo government
 23 permits.

24 E. The commission shall approve the application for
 25 the location of the generating plant unless the commission

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1 finds that the operations of the facilities for which approval
2 is sought will not be in compliance with all applicable air and
3 water pollution control standards and regulations existing.

4 The commission shall not require compliance with performance
5 standards other than those established by the agency of this
6 state having jurisdiction over a particular pollution source.

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

11 G. ~~No~~ An application shall not be approved
12 pursuant to this section ~~which~~ if it violates an existing
13 state, county or municipal land use statutory or administrative
14 regulation unless the commission finds that the regulation is
15 unreasonably restrictive and compliance with the regulation is
16 not in the interest of the public convenience and necessity, in
17 which event and to the extent found by the commission the
18 regulation shall be inapplicable and void as to the siting.

19 When it becomes apparent to the commission that an issue exists
20 with respect to whether a regulation is unreasonably
21 restrictive and compliance with the regulation is not in the
22 interest of public convenience and necessity, it shall promptly
23 serve notice of that fact by certified mail upon the agency,
24 board or commission having jurisdiction for land use of the
25 area affected and shall make the agency, board or commission a

1 party to the proceedings upon its request and shall give it an
 2 opportunity to respond to the issue. The judgment of the
 3 commission shall be conclusive on all questions of siting, land
 4 use, aesthetics and any other state or local requirements
 5 affecting the siting.

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

14 I. The commission shall issue its order granting or
 15 denying the application within [~~six~~] nine months from the date
 16 the application is filed with the commission. Failure to issue
 17 its order within [~~six~~] nine months is deemed to be approval of
 18 the application; provided, however, that the commission may
 19 extend the time for granting approval for a transmission line
 20 that is subject to this section for an additional ten months
 21 upon finding that the additional time is necessary to determine
 22 if the proposed location of the line will unduly impair
 23 important environmental values."

24 Section 2. A new section of the Public Utility Act is
 25 enacted to read:

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1 " ~~[NEW MATERIAL]~~ ELECTRIC POWER GENERATING PLANTS-- WATER
2 CONSERVATION PROVISIONS-- APPROVAL PROCESS. --

3 A. Notwithstanding the provisions of Subsection H
4 of Section 62-9-3 NMSA 1978, a person, including a
5 municipality, shall not begin construction or expansion of an
6 electric power generating plant that will consumptively use
7 more than one hundred acre-feet of water in a year for the sale
8 of electricity to the public within or without this state,
9 whether or not owned or operated by a person that is a public
10 utility subject to regulation by the commission, unless the
11 construction or expansion has been approved by the commission.
12 In considering an application to construct or expand an
13 electric power generating plant, the commission shall require
14 the applicant to submit a water utilization plan that:

15 (1) compares alternate water management
16 practices, including effects on capital and operating costs,
17 water use, wastewater management and energy efficiency; and

18 (2) includes information about alternative
19 power plant cooling methods, including dry cooling, hybrid wet-
20 dry cooling and the use of produced or other sources of waste
21 or degraded water.

22 B. The commission shall submit the water
23 utilization plan to the state engineer. Within forty-five
24 days, the state engineer shall evaluate the proposed water
25 utilization plan and provide the commission with a

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1 determination of whether the proposed plan is consistent with
 2 the conservation of water within the state. The state engineer
 3 may recommend to the commission any alternatives for
 4 consideration and shall comment on whether the plan meets the
 5 criteria set forth in Subsection C of this section.

6 C. The commission shall develop criteria for
 7 evaluating electric power generating plant water utilization
 8 plans, and shall reject an application that in its judgment
 9 does not meet the criteria. The criteria shall include:

10 (1) total all-in life-cycle costs for water
 11 acquisition, treatment, pumping, use and disposal;

12 (2) total all-in life-cycle costs for
 13 construction and operating costs;

14 (3) estimated impact of these costs on the
 15 retail cost of electric power;

16 (4) energy efficiency gains or losses; and

17 (5) any other derivative effects such as air
 18 pollution increases or decreases.

19 D. An applicant shall provide the commission at the
 20 time of filing the application with the commission proof that
 21 notice of the application, including a description of the
 22 proposed construction or expansion and how to obtain further
 23 information, has been:

24 (1) provided by certified mail to the
 25 owners of record, as shown by the most recent property tax

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1 schedule, of all properties within one-half mile of the
2 property on which the construction or expansion is proposed to
3 be located on or before the newspaper publication date required
4 by this subsection;

5 (2) provided by certified mail to all
6 municipalities and counties and tribal organizations within a
7 ten-mile radius of the property on which the construction or
8 expansion is proposed to be located on or before the newspaper
9 publication date required by this subsection;

10 (3) published once in a newspaper of
11 general circulation in the county in which the property on
12 which the construction or expansion is proposed to be located;
13 provided that this notice shall appear in either the classified
14 or legal advertisements section of the newspaper and at one
15 other place in the newspaper calculated to give the general
16 public the most effective notice, and shall be printed in both
17 English and Spanish;

18 (4) posted in at least four publicly
19 accessible and conspicuous places on or before the newspaper
20 publication date required by this subsection, including the
21 entrances to the existing or proposed power plant, if the
22 entrance is publicly accessible and conspicuous;

23 (5) mailed to all persons who have
24 made a written request to the commission for notice of this
25 application on or before the newspaper publication date

1 required by this subsection; and

2 (6) mailed by certified mail to all
3 persons on a list that shall be maintained by the commission of
4 individuals and organizations who have requested notice of
5 applications made pursuant to this section.

6 E. Within thirty days of receiving a
7 determination from the state engineer pursuant to Subsection B
8 of this section, the commission shall establish a date for a
9 public hearing on the application. At least thirty days but no
10 more than forty-five days prior to that date, the commission
11 shall provide public notice of the date, location and subject
12 of the hearing. The notice shall be distributed according to
13 the public notice requirements described in Subsection D of
14 this section.

15 F. The information required to be submitted
16 pursuant to this section and the findings required by this
17 section are supplemental to and do not supersede information
18 and findings otherwise required by law.

19 G. The requirements of this section apply only
20 to electric power generating units placed into service on or
21 after January 1, 2003. In addition, any expansion of an
22 electric power generating plant that has been placed into
23 service prior to January 1, 2003 and that results in a plant
24 capacity of three hundred thousand kilowatts or less is
25 exempted from the requirements of this section."

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