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FISCAL IMPACT REPORT

SPONSOR Cervantes DATE TYPED 3/10/05 HB 903/aHBIC/aHJC

SHORT TITLE Utility Construction & Location SB _____

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			NFI		

Duplicates SB 847

Relates to SB 627 and HB 748

SOURCES OF INFORMATION

LFC Files

Responses Received From

Environment Department (ED)

Energy, Minerals & Natural Resources (EMNRD)

Department of Cultural Affairs (DCA)

Public Regulation PRC (PRC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment removes the entire HBIC Amendment.

The amendment also states that a public utility subject to the jurisdiction of the PRC may elect to file an application pursuant to this section with the PRC for location approval for of an electric transmission line or associated facilities designed for or capable of operation at a nominal voltage of 115 kilovolts or more but less than 230 kilovolts.

If the public utility files an application for construction, extension, rebuilding or improvement of the electric transmission line or associated equipment under any applicable county or municipal land use statute, ordinance or administrative regulation and the agency, board or PRC of the county or municipality disapproves the application.

The amendment further sets out procedural requirements and provides definitions. For purposes of this subsection, "disapprove" means the failure of the county or municipal agency, board or commission to issue a final order approving the application within 240 days of the public utility's filing of a complete application with the agency, board or commission. An application shall be deemed complete if within 15 working days of the public utility's filing of the application, or a supplement or amendment thereto, the agency, board or commission fails to send written notice to the public utility enumerating the specific requirements under the applicable county or municipal land use statute, ordinance or administrative regulation that the application fails to satisfy.

In addition, the amendment states that the PRC upon consideration of the application and the standards set forth in this section, may authorize construction, extension, rebuilding or improvement of the transmission line or facilities notwithstanding the prior disapproval of the county or municipal agency, board or commission. The judgment of the PRC shall be conclusive on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting.

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to House Bill 903 adds that a public utility subject to the jurisdiction of the PRC may elect to file with the PRC for location approval for construction, extension, rebuilding or improvement of transmission lines and associated facilities, if the public utility has filed an application with the local jurisdiction for approval and the local jurisdiction disapproved or failed to act on the public utility's application within six months.

Synopsis of Original Bill

House Bill 903 amends the Certificate of Public Convenience and Necessity (CCN) and the Location Control statute of the Public Utility Act. The modifications provide time limits for PRC action on CCNs and location approvals, enunciation of ratemaking principles at the time a CCN is given, separation of CCN and location approvals for regulated utilities, establishing factors to be considered when approving applications for location approvals and minor language corrections.

Significant Issues

The PRC provided the following:

This bill applies to both generation and transmission facilities and appears to provide additional certainty for utilities of rate recovery of the costs associated with facilities that are placed into service after a CCN is received, irrespective of future changed circumstances and public interest. Currently, in order to protect the public interest, the PRC has been able to evaluate the continuing need of generation and transmission facilities and remove them from rates, if warranted, following proper notice and public hearing. To limit the PRC's authority in this area, in the manner proposed in this bill, may jeopardize the ability of the PRC to protect the public interest in the future.

CCN approvals by the PRC will bind future PRC actions over the 40+ year life of generation and transmission facilities. Utilities will gain certainty with regard to future regulatory treatment of such facilities.

The PRC may specify future rate treatment to be the same as exists today, incorporating language such as: “rate recovery shall be allowed only while the facility is considered used and useful to ratepayers and, in the future, if the facilities are not found to be used and useful, no rate recovery will be allowed from that time onwards.”

Depending upon how PRC approvals are drafted, future PRC’s ability to protect the public interest may be compromised.

EMNRD provided the following

This bill provides a mechanism by which a public utility may seek greater certainty from the PRC regarding the ratemaking principles and treatment that will be applied to the utility’s proposed generation and transmission facilities. This will better inform and assist a utility in determining how the costs of a proposed project will be handled by regulators, thereby helping it estimate the impacts of such costs on ratepayers or shareholders throughout the project’s useful life.

The bill also streamlines the PRC regulatory process for permitting and siting of transmission facilities in New Mexico. In essence, it affords a utility the opportunity to have the PRC determine whether a new electric plant or transmission line is needed before seeking approval of the specific location or route of such facilities. The intent of these provisions appears to be to avoid a situation such as what happened to Public Service Company of New Mexico when it proposed the Ojo Line Extension (OLE’) project. In that case, PNM spent in excess of \$12 million on activities relating to a transmission project that was ultimately rejected by the PRC.

The ED provided the following:

Construction of a transmission line that creates a disturbance that is one acre or greater in size, must be done in accordance with an individual or general construction storm water permit issued by the U.S. Environmental Protection Agency pursuant to the federal Clean Water Act. Construction storm water permits are designed to ensure that sediment generated during construction activities is contained on site, so as to prevent an impact to surface water quality.

There is no obvious link between the ratemaking principles added and air quality. The addition of specific important environmental values that the PRC can consider is significant environmentally. The additions to the statute are: (1) existing plans for other development; (2) fish, wildlife and plant life; (3) noise emission levels and interference with communication signals; (4) the proposed availability of the location to the public for recreation; (5) existing scenic areas, historic, cultural, archaeological or religious sites; (6) additional factors that require consideration under applicable federal and state laws pertaining to the location.

This bill provides specific factors that are considered to be significant environmentally and allows the PRC to consider these in approving locations of transmission lines. While further clarification will assist in interpretation of the statute, some of these factors would require further detail in any regulation adopted pursuant to this statute. This amendment would not substantively affect the air quality bureau.

The DCA provided the following:

Cultural resources, as well as the environmental values that are called out specifically in the bill, can be impacted by public utility approvals. The language within this bill should identify cultural resources more clearly and separately from environmental values.

Potential impacts of the location of a generating plant to environmental values including cultural resources are not considered.

Sufficient time during the application and approval process must be provided for adequate cultural resource investigations and review and coordination required under current state and federal statutes.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 903 duplicates SB 847 and relates to SB 627 and HB 748, Renewable Energy Transmission and Storage Act.

TECHNICAL ISSUES

The PRC suggests on page 4, line 2 following “notice is given” insert “pursuant to PRC order.”

DW/lg:yr