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**HOUSE BILL 292**

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

**INTRODUCED BY**

Don Tripp

**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; REPEALING LAWS 1998, CHAPTER 108, SECTION 82.**

**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**

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

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

10           D. ~~[No]~~ An approval shall not be required for  
11 construction in progress on the effective date of this  
12 section or for additions to or modifications of an existing  
13 plant or transmission line.

14           E. The commission shall approve the application  
15 for the location of the generating plant unless the  
16 commission finds that the operations of the facilities for  
17 which approval is sought will not be in compliance with all  
18 applicable air and water pollution control standards and  
19 regulations existing. The commission shall not require  
20 compliance with performance standards other than those  
21 established by the agency of this state having jurisdiction  
22 over a particular pollution source.

23           F. The commission shall approve the application  
24 for the location of the transmission lines unless the  
25 commission finds that the location will unduly impair

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1 important environmental values.

2 G. ~~[No]~~ An application shall not be approved  
3 pursuant to this section ~~[which]~~ if it violates an existing  
4 state, county or municipal land use statutory or  
5 administrative regulation unless the commission finds that  
6 the regulation is unreasonably restrictive and compliance  
7 with the regulation is not in the interest of the public  
8 convenience and necessity, in which event and to the extent  
9 found by the commission the regulation shall be inapplicable  
10 and void as to the siting. When it becomes apparent to the  
11 commission that an issue exists with respect to whether a  
12 regulation is unreasonably restrictive and compliance with  
13 the regulation is not in the interest of public convenience  
14 and necessity, it shall promptly serve notice of that fact by  
15 certified mail upon the agency, board or commission having  
16 jurisdiction for land use of the area affected and shall make  
17 the agency, board or commission a party to the proceedings  
18 upon its request and shall give it an opportunity to respond  
19 to the issue. The judgment of the commission shall be  
20 conclusive on all questions of siting, land use, aesthetics  
21 and any other state or local requirements affecting the  
22 siting.

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

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

18 "[NEW MATERIAL] ELECTRIC POWER GENERATING PLANTS--WATER  
19 CONSERVATION PROVISIONS--APPROVAL PROCESS.--

20 A. A person, including a municipality, shall not  
21 begin construction or expansion of an electric power  
22 generating plant that will use more than one hundred acre-  
23 feet of water in a year for the sale of electricity to the  
24 public within or without this state, whether or not owned or  
25 operated by a person that is a public utility subject to

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1 regulation by the commission, unless the construction or  
2 expansion has been approved by the commission. The  
3 commission shall not approve the construction or expansion of  
4 such a plant unless an application for approval has been made  
5 to the commission that:

6 (1) contains a water conservation plan  
7 explaining how the plant will use the best economically  
8 feasible water management practices and technologies  
9 available to conserve water;

10 (2) includes an evaluation that details  
11 alternative water management practices and technologies that  
12 are available for use by the plant, including dry cooling,  
13 and that meets the requirements of Subsection B of this  
14 section; and

15 (3) is determined by the state engineer to  
16 satisfy the criteria described in Subsection C of this  
17 section.

18 B. An evaluation of alternative water management  
19 practices and technologies submitted pursuant to Subsection A  
20 of this section shall include a detailed description and cost  
21 estimate of the use of water from the source of water to the  
22 final disposition of wastewater. The cost estimate shall  
23 include sufficient information, including categories of  
24 costs, engineering and other relevant assumptions, and  
25 sources of data, to allow the estimate to be confirmed by an

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1 independent review. In addition:

2 (1) the evaluation of dry cooling shall  
3 assume an air-cooled condenser designed to produce steam  
4 turbine-rated power on the typical peak temperature day for  
5 its location;

6 (2) the cost estimate for dry cooling shall  
7 include the following elements, at a minimum the:

- 8 (a) steam turbine cost;  
9 (b) cost of fuel penalty;  
10 (c) cost of land acquisition; and  
11 (d) estimated effect on generation  
12 cost per kilowatt hour using dry cooling versus wet cooling;  
13 and

14 (3) an evaluation of and cost estimate for  
15 wet cooling shall include the following elements, at a  
16 minimum the:

- 17 (a) ground water rights acquisition;  
18 (b) ground water wells and pumps;  
19 (c) water pipeline from sources to  
20 plant;  
21 (d) supplemental water supplies;  
22 (e) steam turbine cost;  
23 (f) circulating water pumps, pump  
24 motors and piping;  
25 (g) fan and pump electrical

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1 installation;

2 (h) cooling tower and surface  
3 condenser;

4 (i) cold water basin;

5 (j) cooling tower wastewater  
6 treatment; and

7 (k) brine evaporation ponds.

8 C. Upon its receipt of an application pursuant to  
9 Subsection A of this section, the commission shall transmit a  
10 copy of the application to the state engineer. Within forty-  
11 five days, the state engineer shall evaluate the proposed  
12 water conservation plan and alternative water management  
13 evaluation and provide the commission with a determination of  
14 whether the following criteria are satisfied:

15 (1) the information provided is complete and  
16 accurate;

17 (2) the proposed water conservation plan is  
18 technically sound and conservation goals are reasonable;

19 (3) the water user has established a means  
20 of implementing the water conservation plan;

21 (4) the facility to be constructed or  
22 expanded will use the best economically feasible water  
23 management practices and technologies available to conserve  
24 water; and

25 (5) the proposed use of water will not be



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1 contrary to the conservation of water in the state or  
2 detrimental to the public welfare.

3 D. The state engineer may recommend to the  
4 commission any changes or additions to or conditions to be  
5 made on the application by the commission.

6 E. An applicant shall provide the commission at  
7 the time of filing the application with the commission proof  
8 that notice of the application, including a description of  
9 the proposed construction or expansion and how to obtain  
10 further information, has been:

11 (1) provided by certified mail to  
12 the owners of record, as shown by the most recent property  
13 tax schedule, of all properties within one-half mile of the  
14 property on which the construction or expansion is proposed  
15 to be located on or before the newspaper publication date  
16 required by this subsection;

17 (2) provided by certified mail to  
18 all municipalities and counties and tribal organizations  
19 within a ten-mile radius of the property on which the  
20 construction or expansion is proposed to be located on or  
21 before the newspaper publication date required by this  
22 subsection;

23 (3) published once in a newspaper  
24 of general circulation in the county in which the property on  
25 which the construction or expansion is proposed to be

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1 located; provided that this notice shall appear in either the  
2 classified or legal advertisements section of the newspaper  
3 and at one other place in the newspaper calculated to give  
4 the general public the most effective notice, and shall be  
5 printed in both English and Spanish;

6 (4) posted in at least four  
7 publicly accessible and conspicuous places on or before the  
8 newspaper publication date required by this subsection,  
9 including the entrances to the existing or proposed power  
10 plant, if the entrance is publicly accessible and  
11 conspicuous;

12 (5) mailed to all persons who have  
13 made a written request to the commission for notice of this  
14 application on or before the newspaper publication date  
15 required by this subsection; and

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

20 F. Within thirty days of receiving a  
21 determination from the state engineer pursuant to Subsection  
22 C of this section, the commission shall establish a date for  
23 a public hearing on the application. At least thirty days  
24 but no more than forty-five days prior to that date, the  
25 commission shall provide public notice of the date, location

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1 and subject of the hearing. The notice shall be distributed  
2 according to the public notice requirements described in  
3 Subsection E of this section.

4 G. The information required to be  
5 submitted pursuant to this section and the findings required  
6 by this section are supplemental to and do not supersede  
7 information and findings otherwise required by law. "

8 Section 3. REPEAL. -- Laws 1998, Chapter 108, Section  
9 82 is repealed.