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SENATE BILL 500

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO UTILITIES; AMENDING A SECTION OF THE PUBLIC UTILITY ACT; PROVIDING EXPEDITED SITING FOR TRANSMISSION FACILITIES INTENDED TO ENABLE DEVELOPMENT OF NEW MEXICO ENERGY RESOURCES, FACILITATE ECONOMIC DEVELOPMENT IN NEW MEXICO AND PROMOTE CREATION OF INTERSTATE ENERGY MARKETS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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

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

14 B. A person, including any municipality, shall not  
15 begin the construction of any plant designed for or capable of  
16 operation at a capacity of three hundred thousand kilowatts or  
17 more for the generation of electricity for sale to the public  
18 within or without this state, whether or not owned or operated  
19 by a person that is a public utility subject to regulation by  
20 the commission, or of transmission lines in connection with  
21 such a plant, on a location within this state unless the  
22 location has been approved by the commission. For the purposes  
23 of this section, "transmission line" means any electric  
24 transmission line and associated facilities designed for or  
25 capable of operations at a nominal voltage of two hundred

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1 thirty kilovolts or more, to be constructed in connection with  
2 and to transmit electricity from a new plant for which approval  
3 is required.

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

19 D. Approval shall not be required for additions  
20 to or modifications of an existing plant or transmission  
21 line.

22 E. The commission shall approve the application  
23 for the location of the generating plant unless the  
24 commission finds that the operations of the facilities for  
25 which approval is sought will not be in compliance with all

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1 applicable air and water pollution control standards and  
2 regulations existing or will unduly impair system  
3 reliability. The commission shall not require compliance  
4 with performance standards other than those established by  
5 the agency of this state having jurisdiction over a  
6 particular pollution source.

7 F. The commission shall approve the application  
8 for the location of the transmission lines unless the  
9 commission finds that the location will unduly impair  
10 important environmental values or the operation of the  
11 proposed transmission lines will unduly impair power system  
12 reliability.

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

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1 upon the agency, board or commission having jurisdiction for  
2 land use of the area affected and shall make the agency,  
3 board or commission a party to the proceedings upon its  
4 request and shall give it an opportunity to respond to the  
5 issue. The judgment of the commission shall be conclusive on  
6 all questions of siting, land use, aesthetics and any other  
7 state or local requirements affecting the siting.

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

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

20 (2) the agency, board or commission of the  
21 county or municipality disapproves the application. For  
22 purposes of this subsection, "disapprove" means the failure  
23 of the county or municipal agency, board or commission to  
24 issue a final order approving the application within two  
25 hundred forty days of the public utility's filing of a

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1 complete application with the agency, board or commission.  
2 An application shall be deemed complete if within fifteen  
3 working days of the public utility's filing of the  
4 application, or a supplement or amendment thereto, the  
5 agency, board or commission fails to send written notice to  
6 the public utility enumerating the specific requirements  
7 under the applicable county or municipal land use statute,  
8 ordinance or administrative regulation that the application  
9 fails to satisfy.

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

19 J. Nothing in this section shall be deemed to  
20 confer upon the commission power or jurisdiction to regulate  
21 or supervise any person, including a municipality, that is  
22 not otherwise a public utility regulated and supervised by  
23 the commission, with respect to its rates and service and  
24 with respect to its securities, nor shall any other provision  
25 of the Public Utility Act be applicable with respect to such

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1 a person, including a municipality.

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

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

19 (2) if a public utility files an application  
20 for approval of location of a transmission line pursuant to  
21 this section after its application for a certificate of  
22 public convenience and necessity has been approved pursuant  
23 to Subsection B of Section 62-9-1 NMSA 1978, the commission  
24 shall issue its order granting or denying the application for  
25 approval of location of a transmission line within ninety

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1 days from the date the application is filed with the  
2 commission; and

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

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

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

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

4 (2) fish, wildlife and plant life;

5 (3) noise emission levels and interference  
6 with communication signals;

7 (4) the proposed availability of the  
8 location to the public for recreational purposes, consistent  
9 with safety considerations and regulations;

10 (5) existing scenic areas, historic,  
11 cultural or religious sites and structures or archaeological  
12 sites at or in the vicinity of the proposed location; and

13 (6) additional factors that require  
14 consideration under applicable federal and state laws  
15 pertaining to the location.

16 N. An electric transmission company that is not  
17 otherwise subject to the jurisdiction of the commission may  
18 apply to the commission for an expedited siting certificate  
19 to develop eligible facilities.

20 O. An application for an expedited siting  
21 certificate shall contain all of the following:

22 (1) evidence that the eligible facility has  
23 been approved by a regional transmission organization or  
24 third-party transmission coordinator;

25 (2) the planned site for construction of the

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1 eligible facility;

2 (3) a detailed description of the proposed  
3 eligible facility, including its route and its expected  
4 configuration and use;

5 (4) information addressing potential effects  
6 of the proposed eligible facility on public health;

7 (5) information indicating that the proposed  
8 eligible facility will comply with all applicable state and  
9 federal environmental standards, laws and rules;

10 (6) a description and evaluation of one or  
11 more alternate routes for the proposed eligible facility and  
12 a statement of why the proposed route was selected; and

13 (7) other information reasonably required by  
14 commission rules.

15 P. Upon the filing of an application pursuant to  
16 Subsection N of this section, the commission shall set the  
17 date for a public hearing on the application, which shall not  
18 be more than ninety days after the date the application was  
19 filed, to determine the reasonableness of the location of the  
20 proposed transmission line. The commission may conduct an  
21 evidentiary hearing on the application filed pursuant to this  
22 section at such time and place as the commission deems  
23 appropriate. The commission shall issue a final order on the  
24 application within one hundred twenty days after the date the  
25 application was filed.

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1           Q. The commission shall grant an expedited siting  
2 certificate if it determines that the proposed or alternate  
3 route to be authorized is feasible and reasonable.

4           R. If the commission grants an expedited siting  
5 certificate for a route for an eligible facility pursuant to  
6 this section, the certificate takes precedence over any  
7 conflicting local ordinance, law, rule, regulation, policy or  
8 practice that prohibits or regulates the location or  
9 construction of the transmission line. A zoning ordinance or  
10 limitation imposed after the qualified builder files for a  
11 certificate shall not limit or impede the transmission line's  
12 construction, operation or maintenance.

13           S. As used in this section, "eligible facility"  
14 means an electricity transmission project that has been  
15 approved by a regional transmission organization or third-  
16 party transmission coordinator to ensure the long-term  
17 reliability of the state's bulk power system or to provide  
18 support for energy development in the state."