

PLEASE NOTE: The Office of the Revisor of Statutes **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Public Law
123rd Legislature
First Regular Session

Chapter 148
S.P. 215 - L.D. 678

**An Act Regarding Eminent Domain Authority and
Certificate of Public Convenience and Necessity
Requirements for the Construction of Transmission Lines**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRSA §3132, first ¶, as amended by PL 1999, c. 398, Pt. A, §46 and affected by §§104 and 105, is further amended to read:

~~A transmission and distribution utility~~ Except as provided in subsection 1-B, a person may not construct any transmission line covered by subsection 2 or rebuild or relocate any transmission line as investigated by the commission under subsection 3 unless the commission has issued a certificate of public convenience and necessity approving construction.

Sec. 2. 35-A MRSA §3132, sub-§1-B is enacted to read:

1-B. Exception; generator interconnection transmission facility. The construction of a generator interconnection transmission facility is not subject to the requirements of this section. For the purposes of this subsection, "generator interconnection transmission facility" means a transmission line, together with all associated equipment and facilities, that is constructed, owned and operated by a generator of electricity solely for the purpose of electrically and physically interconnecting such generator to the transmission system of a transmission and distribution utility.

Sec. 3. 35-A MRSA §3132, sub-§2, as amended by PL 2003, c. 506, §12, is further amended to read:

2. Construction of transmission line. Except as otherwise provided in subsection 3-A, whenever any ~~transmission and distribution utility or utilities~~ propose person proposes to erect within this State a transmission line capable of operating at 100 kilovolts, or more, or a transmission line capable of operating at 69 kilovolts or more that is proposed to be financed, permitted, constructed, owned in whole or in part or operated by the Northern Maine Transmission Corporation pursuant to Title 10, chapter 1003 or financed by the Finance Authority of Maine pursuant to Title 10, section 1053, subsection 6, paragraph F, ~~the utility or utilities or project proponent~~ that person shall file a petition for the approval of the proposed line. The petition for approval of the proposed transmission line must contain such information as the commission by rule prescribes. The petition for approval must be set down for public hearing. The commission shall issue its order within 6 months after the petition is filed unless this period

is extended either by agreement of all the parties or by the commission upon its determination that the party seeking the extension would, because of circumstances beyond that party's control, be unreasonably disadvantaged unless the extension were granted, provided that the party to that time had prosecuted its case in good faith and with due diligence.

At the time of filing of a petition for approval of a proposed line under this section, the ~~utility~~person filing the petition shall send a copy of the petition by certified mail to the municipal officers of the municipality or municipalities in which the line is to be located.

Sec. 4. 35-A MRSA §3132, sub-§4, as amended by PL 1999, c. 398, Pt. A, §46 and affected by §§104 and 105, is further amended to read:

4. Corridor of proposed transmission line. ~~The transmission and distribution utility or utilities~~person filing a petition under this section for approval of a proposed transmission line shall submit a map to the commission with its application. The map must:

- A. Be available to the public at the offices of the commission and at the local town office where any portion of the proposed transmission line is to be located;
- B. Indicate the proposed corridor or corridors of the transmission line and a description of any planned equipment and facilities to be placed there; and
- C. Be prepared in cooperation with the appropriate natural resource protection agencies and the affected municipalities.

Sec. 5. 35-A MRSA §3132, sub-§6, as amended by PL 1999, c. 398, Pt. A, §46 and affected by §§104 and 105, is further amended to read:

6. Commission order; certificate of public convenience. In its order, the commission shall make specific findings with regard to the need for the proposed transmission line. If the commission finds that a need exists, it shall issue a certificate of public convenience and necessity for the transmission line. If the commission orders or allows the erection of the transmission line, the order is subject to all other provisions of law and the right of any other agency to approve the transmission line. ~~The transmission and distribution utility~~A person may submit a petition for and obtain approval of a proposed transmission line under this section before applying for approval under municipal ordinances adopted pursuant to Title 30-A, Part 2, Subpart 6-A; and Title 38, section 438-A and, except as provided in subsection 4, before identifying a specific route or route options for the proposed transmission line. Except as provided in subsection 4, the commission may not consider the petition insufficient for failure to provide identification of a route or route options for the proposed transmission line. The issuance of a certificate of public convenience and necessity establishes that, as of the date of issuance of the certificate, the decision by the ~~utility~~person to erect or construct was prudent. At the time of its issuance of a certificate of public convenience and necessity, the commission shall send to each municipality through which a proposed corridor or corridors for a transmission line extends a separate notice that the issuance of the certificate does not override, supersede or otherwise affect municipal authority to regulate the siting of the proposed transmission line.

Sec. 6. 35-A MRSA §3132, sub-§7, as amended by PL 1999, c. 398, Pt. A, §46 and affected by §§104 and 105, is further amended to read:

7. Environmental protection agency modification. If the commission has issued a certificate of public convenience and necessity for a proposed transmission line and the Board of Environmental Protection in an order under Title 38, section 484 makes a modification in the location, size, character or design of the transmission line, the ~~company~~person proposing the transmission line shall:

A. Deliver a copy of the order to the commission; and

B. State the nature of the modifications and all cost adjustments occasioned by the modifications to the cost of the proposed transmission line relied upon by the commission in issuing its certificate of public convenience and necessity under this section.

Sec. 7. 35-A MRSA §3132, sub-§8, as amended by PL 1999, c. 398, Pt. A, §46 and affected by §§104 and 105, is further amended to read:

8. Cost adjustments. If the cost adjustments specified in subsection 7 exceed the cost relied upon by the commission in the original proceeding under this section by more than 20% of the original cost, the ~~utility~~person may not proceed with any construction of the proposed transmission line, the commission's original certificate of public convenience and necessity notwithstanding. The commission, upon notification of the cost increase, shall:

A. Reopen its original decision concerning the transmission line;

B. Make specific findings with regard to the need for the transmission line to the same extent and with the same authority as if the ~~company's~~person's petition for approval were before it; and

C. Except as modified in this section, retain all authority granted to it under section 1321.

Sec. 8. 35-A MRSA §3132, sub-§9, as amended by PL 1999, c. 398, Pt. A, §46 and affected by §§104 and 105, is further amended to read:

9. Filing fee; waiver of fee. When a petition is filed under this section, the ~~transmission and distribution utility or utilities~~person or persons involved shall pay to the commission an amount equal to 2/100 of 1% of the estimated cost to erect, rebuild or relocate the transmission line provided that in the case of a petition filed under subsection 2, the fee is 4/100 of 1%. The ~~utility~~person may, at the time of the filing of notice of its intent to file the petition, or, in the case of lines subject to subsection 2, at the time of the filing of the petition, request the commission to waive all or a portion of the filing fee. The commission shall rule on the request for waiver within 30 days.

Filing fees paid as required under this subsection must be segregated, apportioned and expended by the commission for the purposes of this section. Any portion of the filing fee that is received from any ~~utility~~person and is not expended by the commission to process the petition for a certificate of public convenience and necessity must be returned to the ~~utility~~person.

Sec. 9. 35-A MRSA §3132, sub-§11-A, as amended by PL 1999, c. 398, Pt. A, §46 and affected by §§104 and 105, is further amended to read:

11-A. Amendments, extensions and renewals of contracts originally subject to commission approval. This section applies to any amendment, extension or renewal of any contract between the ~~utility~~person and other parties with an ownership interest governing the terms of their

participation in the construction of a transmission line subject to this section, if the original contract was subject to approval by the commission. The commission may waive the approval requirements of this section with respect to a particular amendment, extension or renewal or a group of amendments, extensions or renewals upon request. If the commission does not respond to a request for waiver within 30 days, the request is deemed to have been granted. The commission shall prescribe by rule the content of a request for waiver and procedures for the expeditious processing of requests in certain circumstances.

Sec. 10. 35-A MRSA §3132, sub-§11-B, as enacted by PL 1993, c. 91, §3, is amended to read:

11-B. Amendments, extensions and renewals of contracts not originally subject to commission approval. For any amendment, extension or renewal of any contract otherwise subject to this section, but when the original contract was not subject to approval by the commission, the ~~utility~~person shall file a copy of the proposed amendment, extension or renewal with the commission within 7 days of the day when the utility receives notice of the proposal, but approval under this section is not required.

Sec. 11. 35-A MRSA §3132, sub-§13 is enacted to read:

13. Public lands. The State, any agency of the State or any political subdivision of the State may not sell, lease or otherwise convey any interest in public land, other than a future interest or option to purchase an interest in land that is conditioned on satisfaction of the terms of this subsection, to any person for the purpose of constructing a transmission line, unless the following conditions are met:

A. For a transmission line subject to the requirements of subsection 2, the person has received a certificate of public convenience and necessity from the commission pursuant to this section; or

B. For a transmission line capable of operating at 69 kilovolts or more but less than 100 kilovolts that is not subject to the requirements of subsection 2, the person has provided written notice of the proposed transmission line to the commission and:

(1) Within 30 days of the filing of the notice, the commission has not acted to initiate an investigation of the proposed transmission line; or

(2) Within 30 days of the filing of the notice, the commission has initiated an investigation of the proposed transmission line and notified the person of the requirement to file a petition for approval of the proposed transmission line in accordance with subsection 2, and:

(a) The commission has, as a result of the investigation, issued a certificate of public convenience and necessity for the transmission line; or

(b) The commission has determined that an investigation is no longer needed in this instance and has terminated the investigation.

As used in this subsection, "public land" means land that is owned or controlled by the State, by an instrumentality of the State or by a political subdivision of the State.

As used in this subsection, "future interest or option to purchase an interest in land" includes an option, purchase and sale agreement or other equivalent legal instrument that conveys the intent to pursue a future sale, lease or other conveyance of land.

Sec. 12. 35-A MRSA §3136, sub-§1, as amended by PL 1999, c. 398, Pt. A, §51 and affected by §§104 and 105, is further amended to read:

1. Land necessary for location of transmission lines carrying 5,000 volts.

AnySubject to approval by the commission under subsection 4, a transmission and distribution utility may take and hold by right of eminent domain lands and easements necessary for the proper location of its transmission lines that are designed to carry voltages of 5,000 volts or more and of necessary appurtenances, located within the territory in which the utility is authorized to do public utility business, in the same manner and under the same conditions as set forth in chapter 65.

Sec. 13. 35-A MRSA §3136, sub-§3, as amended by PL 2001, c. 608, §3, is further amended to read:

3. Prior right to locate distribution lines and appurtenances in right-of-way limits of public way.

TransmissionSubject to approval by the commission under subsection 4, transmission and distribution utilities may take and hold by right of eminent domain land or easements necessary for the proper location of their distribution lines and the necessary appurtenances, but only where the transmission and distribution utilities had a prior right to locate their distribution lines and necessary appurtenances in the right-of-way limits of a public way and the body having jurisdiction over the public way has caused the utility to remove its distribution lines and appurtenant structures outside the right-of-way limits of the public way. This right does not apply to lands or easements as specified in subsection 2, paragraphs B, C, D and E.

Sec. 14. 35-A MRSA §3136, sub-§4, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

4. Commission approval required; certificate of public convenience and necessity; environmental factors.

A location to be taken by eminent domain for such transmission or distribution lines must be approved by the commission before a transmission and distribution utility can exercise the right of eminent domain granted in subsection 1 or subsection 3. The commission may not approve a location to be taken by eminent domain for the construction, rebuilding or relocation of a transmission line that requires a certificate of public convenience and necessity under section 3132, unless the commission has issued a certificate of public convenience and necessity for that transmission line. Environmental factors to be considered for proper location of a transmission line are not subject to review by the commission under this section when the location of the transmission line has received site location of development approval under Title 38, section 484.

Effective September 20, 2007