

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 989

S. P. 347

In Senate, February 25, 1971

Referred to Committee on Natural Resources. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Wyman of Washington.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Regulating the Location, Operation and Maintenance of Major
Utility Generation and Transmission Facilities.

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

Sec. 1. R. S., T. 35, Part 1-A, additional. Title 35 of the Revised Statutes is amended by adding a new Part 1-A to read as follows:

PART 1-A

CHAPTER 30

UNIFORM UTILITY ENVIRONMENTAL PROTECTION ACT

§ 401. Short title

This chapter shall be known, and may be cited, as the "Uniform Utility Environmental Protection Act."

§ 402. Declaration of public policy

The Legislature finds and declares that there is at present and will continue to be a growing need for electric and gas public utility services which will require the construction of major new facilities. It is recognized that such facilities cannot be built without in some way affecting the physical environment where such facilities are located. The Legislature further finds that it is essential in the public interest to minimize any adverse effect upon the environment and upon the quality of life of the people of the State which such new facilities might cause. The Legislature further finds that present laws and practices relating to the location of such utility facilities should be strengthened to protect environmental values and to take into account the

total cost to society of such facilities. Present laws and practices have in some areas resulted in undue delays in new construction which have increased costs, eventually borne by the people of the State in the form of higher utility rates, and which have threatened the ability of utilities to meet the needs of the people of the State for economic and reliable utility services. Furthermore, the Legislature finds that existing provisions of law may not provide adequate opportunity for individuals, groups interested in conservation and the protection of the environment, state and regional agencies, local governments, and other public bodies to participate in timely fashion in decisions regarding the location and construction of major facilities. The Legislature therefore, declares that it shall be the purpose of this chapter to provide a forum for the expeditious resolution of all matters concerning the location and construction of electric generating plants and electric and gas transmission lines and associated facilities, presently under the jurisdiction of multiple state, regional and local agencies, and all matters of state, regional and local law, in a single proceeding to which access will be open to individuals, groups, state and regional agencies, local governments and other public bodies to enable them to participate in these decisions.

§ 403. Definitions

The following words, when used in this chapter, shall have the following meanings, unless otherwise clearly apparent from the context:

1. Commence to construct. "Commence to construct" means any clearing of land, excavation or other action that would adversely affect the natural environment of the site or route of a major utility facility, but does not include changes needed for temporary use of sites or routes for nonutility purposes, or uses in securing geological data, including necessary borings to ascertain foundation conditions.

2. Commission. "Commission" means the Public Utilities Commission of this State.

3. Major utility facility. "Major utility facility" means:

A. Electric generating plant and associated facilities designed for, or capable of, operation at a capacity of 25 megawatts or more;

B. An electric transmission line and associated facilities of a design capacity of 34 kilovolts or more; and

C. A gas transmission line and associated facilities designed for, or capable of, transporting gas at pressures in excess of 125 pounds per square inch.

Provided, that the words "major utility facility" shall not include electric or gas distribution lines and gas gathering lines and associated facilities as defined by the commission.

4. Person. "Person" includes any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government or other organization.

5. Public utility. "Public utility" or "utility" means any person engaged in the storage, sale, delivery or furnishing, directly or indirectly, of electricity or gas, or both, for public use.

§ 404. Certificate of environmental compatibility and public need

1. Certificate. No person shall hereafter commence to construct a major utility facility in the State without first having obtained a certificate of environmental compatibility and public need, hereafter in this chapter called a "certificate", issued with respect to such facility by the commission. The replacement of an existing facility with a like facility, as determined by the commission, shall not constitute construction of a major utility facility. Any facility, with respect to which a certificate is required, shall thereafter be constructed, operated and maintained in conformity with such certificate and any terms, conditions and modifications contained therein. A certificate may only be issued pursuant to this chapter, provided that any authorization relating to a major utility facility granted under other laws administered by the commission shall constitute a certificate under this chapter, if the requirements of this chapter have been complied with in the proceeding leading to the granting of such authorization.

2. —transfer. A certificate may be transferred, subject to the approval of the commission, to a person who agrees to comply with the terms, conditions and modifications contained therein.

3. —amendments. A certificate issued hereunder may be amended as provided.

4. Application. This chapter shall not apply to any major utility facility:

A. For which, prior to the effective date of this Act, an application for the approval of same has been made to any federal, state, regional or local governmental agency, which possesses the jurisdiction to consider the matters prescribed for finding and determination in section 409, subsection 1;

B. For which, prior to the effective date of this Act, a governmental agency has approved the construction of the same and indebtedness has been incurred to finance all or part of the cost of such construction; or

C. Over which an agency of the Federal Government has exclusive jurisdiction.

5. Waiver. Any person intending to construct a major utility facility excluded from this chapter pursuant to subsection 4, paragraphs A or B may elect to waive such exclusion by delivering notice of such waiver to the commission. This chapter shall thereafter apply to each such major utility facility identified in such notice from the date of its receipt by the commission.

§ 405. Application for certificate

1. Application. An applicant for a certificate shall file with the commission an application, in such form as the commission may prescribe, containing the following information:

A. A description of the location and of the major utility facility to be built thereon;

B. A summary of any studies which have been made of the environmental impact of the facility;

C. A statement explaining the need for the facility;

D. A description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

E. Such other information as the applicant may consider relevant or as the commission may by regulation or order require. A copy or copies of the studies referred to in paragraph B shall be filed with the commission, if ordered, and shall be available for public inspection.

2. —service. Each application shall be accompanied by proof of service of a copy of such application on the executive director of the Environmental Improvement Commission, on the clerk of each county and municipality in the area in which any portion of such facility is to be located, both as primarily and as alternatively proposed, and on the Attorney General, Commissioners of the Departments of Inland Fisheries and Game, Sea and Shore Fisheries, Health and Welfare, Forestry, Director of the Park and Recreation Commission, Chairman of the State Highway Commission and the State Planning Director. The copy of such application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

3. —public notice. Each application shall also be accompanied by proof that public notice thereof was given to persons, residing in the counties and municipalities entitled to receive notice under subsection 2, by the publication of a summary of the application, and the date on or about which it is to be filed, in a newspaper of general circulation in the proposed locality of the facility or facilities.

4. —failure of notice. Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections 2 and 3 may be cured pursuant to orders of the commission designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the commission may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the commission may deem appropriate.

5. —amendment. An application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe. Notice of such an application shall be given as set forth in subsections 2 and 3.

§ 406. Hearing on application for certificate; amendment

1. Hearing. Upon the receipt of an application complying with section 405, the commission shall promptly fix a date for the commencement of a

public hearing thereon, not less than 30 nor more than 60 days after such receipt, and shall conclude the proceeding as expeditiously as practicable. The testimony presented at such hearing may be presented in writing or orally, provided that the commission may make rules designed to exclude repetitive, redundant or irrelevant testimony.

2. Amendment. On an application for an amendment of a certificate, the commission shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

§ 407. Parties to certification proceedings

1. Inclusion. The parties to a certification proceeding shall include:

A. The applicant;

B. The Environmental Improvement Commission;

C. Each county, municipality and state agency entitled to receive service of a copy of the application under section 405, subsection 2, if it has filed with the commission a notice of intervention as a party, within 20 days after the date it was served with a copy of the application; and

D. Any person residing in a county or municipality entitled to receive service of a copy of the application under section 405, subsection 2; any domestic nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located; or any other person; if such a person or organization has petitioned the commission for leave to intervene as a party, within 20 days after the date given in the published notice as the date for filing the application, and if such petition has been granted by the commission for good cause shown.

2. Limited appearance. Any person may make a limited appearance in the 30 days after the date given in the published notice as the date for filing the application. No person making a limited appearance shall be a party or shall have the right to present oral testimony or argument or cross-examine witnesses.

3. Intervene. The commission may, in extraordinary circumstances for good cause shown, grant a petition for leave to intervene as a party to participate in subsequent phases of the proceeding, filed by a municipality, government agency, person or organization who is identified in subsection 1, paragraphs B or C, but who failed to file a timely notice of intervention or petition for leave to intervene, as the case may be.

§ 408. Conduct of the hearing

A record shall be made of the hearing and of all testimony taken and the

cross-examination thereon. The commission may provide for the consolidation of the representation of parties having similar interests.

§ 409. The decision

1. Decision. The commission shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions or modifications of the construction, operation or maintenance of the major utility facility as the commission may deem appropriate. The commission may not grant a certificate for the construction, operation and maintenance of a major utility facility, either as proposed or as modified by the commission, unless it shall find and determine:

- A. The basis of the need for the facility;
- B. The nature of the probable environmental impact;
- C. That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- D. In the case of an electric transmission line, what part, if any, of the line shall be located underground; that such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving the State and interconnected utility systems; and that such facilities will serve the interests of electric system economy and reliability;
- E. That the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the commission may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, such law or regulation is unreasonably restrictive in view of the existing technology, or of factors of cost or economics, or of the needs of consumers whether located inside or outside of the directly affected government subdivisions; and
- F. That the facility will serve the public interest, convenience and necessity.

2. Modification. If the commission determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipalities, and persons residing therein, affected by the modification, shall have been given reasonable notice thereof.

3. Service of copy. A copy of the decision and any opinion issued therewith shall be served upon each party.

§ 410. Opinion to be issued with decision

In rendering a decision on an application for a certificate, the commission shall issue an opinion stating its reasons for the action taken. If the commission has found that any regional or local law or regulation, which would be otherwise applicable, is unreasonably restrictive pursuant to section 409, subsection 1, paragraph E, it shall state in its opinion the reasons therefor.

§ 411. Rehearing; judicial review

1. Application. Any party aggrieved by any decision issued on an application for a certificate may apply for a rehearing or reopening within 20 days after issuance of the decision. Any party aggrieved by the final decision of the commission on rehearing or reopening may obtain judicial review thereof by the law court in accordance with chapter 15.

2. Law court determination. The law court in the proceeding shall have the power to make and enter an order enforcing, modifying and enforcing as so modified, remanding for further specific evidence or findings, or setting aside in whole or in part, such decision of the commission. No objection that has not been urged by the aggrieved party in his application for rehearing or reopening before the commission shall be considered by the court, unless the failure or neglect to urge each objection shall be excused because of extraordinary circumstances. The findings of fact on which such decision is based shall be conclusive if supported by substantial evidence on the record considered as a whole. All such proceedings shall be heard and determined by the law court as expeditiously as practicable and with lawful precedence over other matters.

3. —limitations. The grounds for and scope of review of the law court shall be limited to whether the decision and opinion of the commission is:

- A. In conformity with the Constitution and the laws of the State and of the United States;
- B. Supported by substantial evidence in the record;
- C. Made in accordance with the procedures set forth in this chapter or established by order, rule or regulation of the commission; and
- D. Not arbitrary, capricious or an abuse of discretion.

§ 412. Jurisdiction of courts

Except as expressly set forth in section 411, no court of this State shall have jurisdiction to hear or determine any issue, case or controversy concerning any matter which was or could have been determined in a proceeding before the commission under this chapter or to stop or delay the construction, operation or maintenance of a major utility facility except to enforce compliance with this chapter or the provisions of a certificate issued hereunder.

§ 413. Powers of local governments and state agencies

Notwithstanding any other provision of law, no state or regional agency, municipality or other local government may require any approval, consent, permit, certificate or other condition for the construction, operation or maintenance of a major utility facility authorized by a certificate issued pursuant to this chapter, except that nothing in this chapter shall prevent the application of Title 38, sections 413 and 590 requiring licenses for discharges into the waters and air of this State, nor the application of state laws for the protection of employees engaged in the construction, operation or maintenance of such facility.

§ 414. Joint hearings and orders

The commission, in the discharge of its duties under this chapter or any other chapter is authorized to make joint investigations, hold joint hearings within or without the State, and issue joint or concurrent orders in conjunction or concurrence with any official or agency of any state or of the United States, whether in the holding of such investigations or hearings, or in the making of such orders, the commission shall function under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce, or as an agency of the United States, or otherwise. The commission, in the discharge of its duties under this chapter is further authorized to negotiate and enter into agreements or compacts with agencies of other states, pursuant to any consent of Congress, for cooperative efforts in certificating the construction, operation and maintenance of major utility facilities in accord with the purposes of this chapter and for the enforcement of the respective state laws regarding same.

§ 415. Forecasts of loads and resources

Each public utility shall annually furnish a report to the commission for its review containing a 10-year forecast of loads and resources. Such report shall describe the major utility facilities which, in the judgment of such utility, will be required to supply system demands during the forecast period. The forecast shall cover the 10-year period next succeeding the date of such report, shall be made available to the public and furnished upon request to municipalities and government agencies charged with the duty of protecting the environment or of planning land use. The report shall be in such form and shall contain such information as may be prescribed by the commission.

§ 416. Eminent domain

Whenever a certificate has been issued to a public utility under this chapter and such utility is unable to reach agreement with the owner of land for the acquisition of the necessary estate or interest in land, hereafter in this section the word "land" shall include any estate or interest therein, to construct, operate and maintain the major utility facility in accordance with the certificate, it may acquire the same by the exercise of the power of eminent domain in the same manner as lands, easements and necessary appurtenances may be acquired under chapters 171, 181 and 263, provided that any conditions and restrictions provided in chapter 171 applicable to electric transmission facilities shall continue to apply to takings for such facilities.

STATEMENT OF FACT

The purpose of this bill is stated in section 402. The proposed legislation is a uniform bill proposed by the National Association of Regulatory Utility Commissioners.