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Department of Attorney General

MEMORANDUM

To: Philip Ahrens, Deputy Attorney General
From: ~~Jeffrey~~ Pidot, Assistant Attorney General
Date: June 16, 1988
Subject: Utility Line Installation in LURC Jurisdiction

With apologies for the delay, I wanted to get back to you on your question regarding whether a permit is required from LURC for the installation of a new electric utility line to serve premises lying just south of Baxter Park. My understanding from you was that the line involved would be several miles in length.

As expected, LURC regulations generally provide that such a major new utility installation requires a permit. However, LURC is not the final arbiter of this issue. The Legislature has provided an exemption from any such regulatory permit where the installation will be undertaken by an electric utility company in accordance with 35-A M.R.S.A. §§ 2305 and 2501, et seq. Of particular application here are §§ 2502 and 2503. These sections require that, where a utility line is to be strung along a "public way", approval must be obtained from the State Department of Transportation when the public way is a state, state aid or federal aid highway, from the municipal officers when the public way is a city street or town way (not at issue here) and from the county commissioners for all other public ways. Generally, § 2503(3) contemplates objection to the issuance of such a permit only by a person owning property which abuts the public way involved. Indeed, my sense of § 2503, in its entirety, is that it is designed to provide a maximally facilitated process for obtaining such permits. To nail the coffin shut, § 2503(20) makes this permitting process exclusive and exempts the utility involved from having to comply with any other licensing requirement in order to locate a utility line along a public way.

In sum, much depends upon whether the utility line involved will lie along a so-called public way. If only a small portion of the line will not be within the public way, it may be possible for the utility to argue that whatever small extension is required beyond the public way (in order to serve the premises involved) is a "service drop" which is also exempt

from LURC permitting requirements. If this be the case, it would appear that one's only recourse is to attempt to object under the provisions of § 2503, and consequently probably not even be heard on the matter. If, on the other hand, a significant portion of the utility line involved will not be along a public way, a LURC permit will be required.

I hope that this has been an enjoyable experience.

/d