

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1660

H.P. 1135

House of Representatives, April 24, 1991

Reference to the Committee on Utilities suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CLARK of Millinocket.

Cosponsored by Senator COLLINS of Aroostook, Senator BALDACCI of Penobscot and Representative MORRISON of Bangor.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Establish the Electric Facilities Siting Council.

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

2
4 Sec. 1. 35-A MRSA §3132, sub-§6, as amended by PL 1989, c.
796, §2, is further amended to read:

6 6. **Commission order; certificate of public convenience.** In
8 its order, the commission shall make specific findings solely
with regard to the technical need for the proposed facilities.
10 The technical need must be determined by reviewing the capability
of the electric utility to satisfy voltage and other reliability
12 requirements of the area to be served. If the commission
determines that the electric utility is not capable of satisfying
14 the current and reasonably projected voltage and other
reliability requirements of the area to be served, then a
16 technical need must be found to exist. The electric utility is
not required to identify a specific route or route options for
18 the facilities until it applies for the facility siting
certificate under section 3204. If the specific identification
20 of the route for the facilities results in a cost adjustment that
exceeds the cost relied upon by the commission in its original
22 proceedings under this section by more than 20%, the electric
utility shall comply with the requirements specified in
24 subsection 8. If the commission finds that a technical need
exists, it shall issue a certificate of public convenience and
26 necessity for the facilities. If the commission orders or allows
the erection of the facilities, the order shall ~~be~~ is subject to
28 all other provisions of law and the right of any other agency to
approve the facilities. The electric utility may submit a
30 petition for and obtain approval of a proposed transmission line
under this section before applying for approval under municipal
32 ordinances adopted pursuant to Title 30-A, Part 2, Subpart 6-A;
and Title 38, section 438-A, or before identifying a specific
34 route or route options for the proposed transmission line. The
commission may not consider the petition insufficient for failure
36 to provide identification of a route or route options for the
proposed transmission line. The issuance of a certificate of
38 public convenience and necessity establishes that, as of the date
of issuance of the certificate, the decision by the utility to
erect or construct was prudent.

40 Sec. 2. 35-A MRSA §3136, sub-§4, as enacted by PL 1987, c.
42 141, Pt. A, §6, is amended to read:

44 4. **Commission or Electric Facilities Siting Council**
46 **approval; environmental factors.** A If the Electric Facilities
Siting Council, as established in section 3202, has approved a
48 location for such transmission or distribution line by issuing a
facility siting certificate, the electric utility may exercise
eminent domain to take that location in accordance with section
50 3211. But if the Electric Facilities Siting Council has denied
the application, a location to be taken by eminent domain for
52 such transmission or distribution lines must be approved by the

2 commission. Environmental factors to be considered for proper
3 location of a transmission line are not subject to review by the
4 commission or the Electric Facilities Siting Council when the
5 location of the transmission line has received site location of
6 development approval under Title 38, section 484. The electric
7 utility shall send notice to potentially affected landowners by
8 first class registered mail at the time the electric utility
9 submits its application for eminent domain to the Electric
10 Facilities Siting Council or the commission.

11 **Sec. 3. 35-A MRSA c. 31, sub-c. VII is enacted to read:**

12 **SUBCHAPTER VII**

13 **ELECTRIC FACILITIES SITING**

14 **§3201. Definitions**

15 As used in this subchapter, unless the context otherwise
16 indicates, the following terms have the following meanings.

17 1. Applicant. "Applicant" means a person or persons who
18 apply to the council for a certificate.

19 2. Certificate. "Certificate" means a facility siting
20 certificate as provided for in section 3204.

21 3. Committee. "Committee" means the Municipal Advisory
22 Committee as established in section 3203.

23 4. Construction. "Construction" means any placement,
24 assembly or installation of facilities or equipment defined under
25 subsection 6.

26 5. Council. "Council" means the Electric Facilities Siting
27 Council established in section 3202.

28 6. Facility. "Facility" means:

29 A. Any new electric transmission line that has a design
30 rating of 100 kilovolts or more and that is one mile or more
31 in length. "Facility" does not mean the reconducting,
32 rebuilding, relocating or upgrading of existing transmission
33 lines at the same right-of-way; or

34 B. Any ancillary structures, including, but not limited to,
35 substations that are an integrated part of the operation of
36 any electric generating unit or transmission line that is a
37 facility.

2 7. Local government. "Local government" means any
4 political subdivision of the State, including any county, city,
town or unorganized township.

6 §3202. Electric Facilities Siting Council; filing fees

8 1. Establishment. There is established the Electric
10 Facilities Siting Council, which is responsible for implementing
the energy policies contained in this subchapter, to provide an
12 energy supply for the State with a minimum impact on the
environment at the lowest reasonable cost.

14 2. Membership. The council consists of all the members of
16 the commission, the Commissioner of Conservation, the
Commissioner of Environmental Protection, the Director of the
18 State Planning Office and one representative from a municipal
advisory committee as established in section 3203.

20 The chair of the commission shall serve as the chair of the
22 council and its chief executive officer. The chair shall
designate one member of the council to act as vice-chair who
24 possesses all the power of the chair during the chair's absence
or disability. The council shall meet at such times and places
26 as the chair designates. Four members constitute a quorum.

28 3. Funding and staffing. In carrying out its functions,
30 the council must receive the cooperation of every agency of State
Government and local government that may be concerned with any
32 matter under the purview of the council. State and local
government agencies are directed to provide information and
34 recommendations that are requested. The council shall cooperate
with other states and with the Federal Government or any agency
36 of the Federal Government, as authorized under section 3210 and
as otherwise authorized by law. The council may receive and
38 expend any funds that are appropriated or that are made available
to it from the funds of any other agency. The administrative
40 director of the commission also serves as the administrative
director of the council.

42 4. Filing fees. When an application is filed under this
44 subchapter, the electric utility or electric utilities involved
must pay to the council an amount equal to 2/100 of 1% of the
46 estimated cost to erect the facility. The electric utility may,
at the time of filing of notice of its intent to file the
48 application, request the council waive all or a portion of the
filing fee. The council shall rule on the request for waiver
within 30 days.

50 Filing fees paid as required under this subsection must be
52 segregated, apportioned and expended by the council for the
purposes of this subchapter. Any portion of the filing fee that

2 is received from any electric utility and is not expended by the
3 council to process the application for the certificate must be
4 returned to the electric utility.

5 5. Powers and duties. The council has the following powers
6 and duties.

7 A. The council may prescribe the duties of other persons
8 that are required to assist the council in performing its
9 functions, including staff and consultants; and may engage
10 or accept the loan of the services of such persons that may
11 be provided for the legislative appropriation or
12 authorization.

13 B. The council shall adopt and publish rules consistent
14 with the purpose of this subchapter and may amend the same
15 from time to time.

16 C. The council shall accept applications for facility
17 siting certificates on forms that it prescribes, consistent
18 with the provisions of section 3205; conduct preliminary
19 investigations and solicit information and recommendations
20 relating to the applications; conduct public hearings in
21 accordance with the provisions of sections 3206 and 3207;
22 and shall supervise the enforcement of the terms and
23 conditions of certificates so issued.

24 **§3203. Municipal advisory committee**

25 1. Establishment and membership. For each application,
26 there must be established a municipal advisory committee composed
27 of a representative from each municipality, unorganized township
28 and plantation in which any part of the proposed facility is
29 located. The town managers or mayors notified of a proposed
30 facility shall each appoint a member of the municipal advisory
31 committee within 30 days of that notification pursuant to section
32 3205. County commissioners shall designate a committee member to
33 represent an unincorporated township and assessors of plantations
34 shall designate a committee member to represent a plantation.

35 2. Meetings. The committee shall meet as soon as
36 practicable following appointment of its members and shall select
37 a chair from among its members. The committee shall establish a
38 procedure for the conduct of the meeting.

39 3. Powers and duties. A committee established under this
40 section:

41 A. Shall appoint one member of the committee to serve as a
42 voting member on the council for the resolution of the
43 pending application;

2 B. Shall review the pending application and other documents
4 relating to location, construction and operation of the
 proposed facility;

6 C. May hold periodic public meetings to solicit the
8 opinions of residents concerning the proposed facility;

10 D. May provide the council within 30 days from the date
12 that the committee was established with any alternative
 locations for the proposed facility; and

14 E. May serve as a liaison between the community and the
16 council to facilitate communications during the resolution
 of the pending application and to provide residents with
 updated information about the project.

18 §3204. Facility siting certificate

20 1. Facility siting certificate. An electric utility that
22 proposes to construct and operate facilities in the State may
24 apply to the council for a facility siting certificate with
26 respect to that facility. The council may consider the
 application only after the electric utility has obtained a
 certificate of public convenience and necessity pursuant to
 section 3132.

28 2. Construction. Any facility, with respect to which a
30 certificate is issued by the council, must be constructed,
32 maintained and operated in conformity with the certificate and
 any terms and conditions contained in the certificate.

34 3. Issuance of certificate. A certificate may be issued
36 only in accordance with the provisions of this section and
38 sections 3205 to 3208. Notwithstanding the provisions of any
40 other law, once the council issued a certificate to a facility, a
42 state agency or local government may not require any approval,
44 consent, permit, certificate or condition for the construction,
46 operation or maintenance of that facility. A state agency or
48 local government may not impose or enforce any law, ordinance,
50 bylaw, rule or regulation, or take or refuse to take any action
52 that would delay or prevent the construction, operation or
 maintenance of that facility; except the council may not issue a
 certificate the effect of which would be to grant or modify a
 permit, approval or authorization that, if granted or modified by
 the appropriate state or local agency, would be invalid because
 of a conflict with applicable federal water or air standards or
 requirements. A certificate, if issued, must be in the form of a
 composite of all individual permits, approvals or authorizations
 that would otherwise be necessary for the construction and
 operation of the facility and that portion of the certificate
 that relates to subject matters within the jurisdiction of a
 state or local agency must be enforced by that agency under the

2 other applicable laws of the State as if it had been directly
3 granted by that agency.

4 4. Transferral of certificate. A certificate may be
5 transferred to any other public utility by the holder of the
6 certificate subject to the terms and conditions contained in the
7 certificate.

8
9 5. Amending certificate. The council may amend the terms
10 and conditions of a certificate in accordance with the
11 requirements of section 3205, subsection 4.

12 §3205. Application for certificate; amending applications

13
14 1. Application for a certificate. An applicant for a
15 certificate must file with the council an application in the form
16 prescribed by the council containing the following information:

17
18 A. A description of the location where the facility is to
19 be constructed or operated;

20
21 B. A summary of the studies that the applicant has made of
22 the environmental impact of the facility, and a statement of
23 the reasons for its choice of the location;

24
25 C. A copy of the certificate of public convenience and
26 Necessity issued under section 3132, as proof of the need
27 for the facility to meet the energy requirements of the
28 applicant's market area, taking into account wholesale bulk
29 power or other cooperative arrangements with other utilities
30 and energy policies as adopted by the State; except this
31 requirement may be waived by the council for emergency or
32 unforeseen conditions that jeopardize the health and safety
33 of the public; and

34
35 D. Any additional information that the council by rule
36 requires.

37
38 A copy or copies of this information, studies and other pertinent
39 information must be filed and made available for public
40 inspection and copying, except that the council may not permit
41 disclosure, other than to another government agency concerned
42 with the same matter, of any information, other than data
43 pertaining to the nature or constituents of any water or air
44 discharge, obtained by or submitted to the council pursuant to
45 the provisions of this subchapter, upon a showing, satisfactory
46 to a majority of the council, that such information if made
47 public would divulge methods or processes entitled to protection
48 as trade secrets of any person.

50

2 2. Affidavit of service and notice. Each application must
3 be accompanied by an affidavit of the applicant, certifying that:

4 A. A copy of the application and a notice as to the date on
5 which the application is to be filed has been served on the
6 mayor, town manager, county commissioners or assessors of
7 plantations, the city council or the municipal officers of
8 each municipality in which any part of the proposed facility
9 is to be located; and

10 B. Public notice containing a summary of the application
11 and the date on which notice is to be filed was given by
12 publication in the manner that the council by rule requires.

13 3. Failure to give service or notice. Failure to give
14 service or notice may be cured by an order of the council
15 subsequent to the filing of the application. The council may
16 order additional service and notice on such other persons as it
17 considers appropriate.

18 4. Amending the application. An application may be amended
19 by the applicant at any time, subject to reasonable requirements
20 of notice imposed by the council. An application for an
21 amendment of a certificate must be in the form required by the
22 council and subject to the requirements of notice and hearings
23 that the council requires, consistent with the nature and extent
24 of the proposed amendment.

25 §3206. Public hearings on applications

26 Upon receipt of an application for a certificate in
27 compliance with the provisions of section 3205, the council shall
28 fix a time and place for a public hearing on a date not less than
29 60 days nor more than 90 days from the date specified in the
30 notice and publication under section 3205 as the date for filing,
31 or the actual date of filing, whichever is later. Public notice
32 of such hearings must be given in the manner provided by Title 5,
33 section 8053.

34 The council shall provide for a period of 30 days following
35 the date of the public notice during which time interested
36 persons may submit their written views of the contents of the
37 public notice with respect to the application for a certificate.
38 All written comments submitted during the 30-day comment period
39 must be retained by the council and considered in the formulation
40 of its final determinations with respect to the application. The
41 period for comment may be extended at the discretion of a
42 majority of the council.

43 §3207. Parties in interest to proceedings

2 The parties in interest to the proceedings on an application
3 for a certificate include the following:

4 1. Applicant. The applicant;

6 2. Public officers. Each public officer entitled to
7 receive notice of the filing under section 3205, as long as that
8 officer files with the council within 30 days of the date of
9 filing specified in the notice of filing under section 3205, a
10 statement of intention to become a party in interest; and

12 3. Other persons. Any other person that the council by a
13 2/3 vote of its members admits as an intervening party.

14 §3208. Council approval of certificate

16 1. Granting application. As expeditiously as possible but
17 no later than 105 days from the date of filing of the
18 application, the council shall by a majority vote render a
19 decision upon the application either by denying the application,
20 by granting the application or by granting the application
21 subject to such terms and conditions as the council may
22 determine. For the council to grant an application, 2 of the 3
23 commission members must vote in the majority.

26 2. Findings and opinions. The council shall make its
27 decision in writing and include its findings and opinions with
28 respect to the location of the facility taking into consideration
29 whether any proposed alternative locations may lessen the
30 facility's impact on the environment without unreasonably
31 increasing its costs.

32 §3209. Judicial review

34 Any party in interest aggrieved by a decision of the council
35 has a right to judicial review in the manner provided by section
36 1320. The scope of this judicial review is limited to whether
37 the decision:

40 1. Conformity. Is in conformity with the United States
41 Constitution and the Constitution of Maine;

42 2. Procedures; rules. Was made in accordance with the
43 procedures established under this subchapter and with the rules
44 of the council with respect to such provisions;

46 3. Substantial evidence. Was supported by substantial
47 evidence of record in the council's proceedings; and

48 4. Arbitrary; capricious; abuse. Was arbitrary, capricious
49 or an abuse of the council's discretion under this subchapter.

2 §3210. Joint interagency investigations, hearings or orders:
4 interstate compacts and federal agreements authorized

6 The council, in the discharge of its duties under this
8 subchapter, is authorized to make joint investigations, hold
10 joint hearings within or without the State and issue joint or
12 concurrent orders in conjunction or concurrence with any official
14 agency of any state or of the Federal Government. Whether in the
16 holding of such investigations or hearings, or in the making of
18 such orders, the council may function under agreements or
20 compacts between states or under the concurrent power of states
22 to regulate interstate commerce, or as an agency of the Federal
24 Government or otherwise. The council, in the discharge of its
26 duties under this section is further authorized to negotiate and
28 enter into agreements or compacts with agencies of the Federal
30 Government or other states, pursuant to any consent of Congress,
32 for cooperative efforts in certifying the construction, operation
34 and maintenance of energy facilities in accordance with the
36 purposes of this section and for the enforcement of the
38 respective laws of the State or of other states.

2 §3211. Eminent domain

4 When the council has approved a facility's location by
6 issuing a certificate, the electric utility has the power to
8 exercise eminent domain to take that location if the electric
10 utility is unable to reach agreement with the landowners for the
12 acquisition of any necessary estate or interest in land. The
14 electric utility must submit an application to the council that
16 sets forth the facts indicating its inability to reach an
18 agreement with the affected landowners. Eminent domain
20 proceedings must be in accordance with chapter 65. Following a
22 taking under this section, the electric utility may proceed to
24 use that land. If the electric utility fails to use the land
26 within one year after the eminent domain proceedings are
28 complete, the electric utility's rights under the taking cease.

30 This section applies only to those facilities that have been
32 issued a certificate in accordance with section 3208. This
34 section may not be construed as abrogating the commission's
36 jurisdiction described in section 3136 with respect to
38 transmission lines.

44
46 **STATEMENT OF FACT**

48 This bill creates the Electric Facilities Siting Council
50 that shall provide for the necessary energy supply of this State
with a minimum impact on the environment at the lowest reasonable
cost by granting or denying an electric utility's application for

2 a facility siting certificate. If the applicant is issued a
3 facility siting certificate, the certificate must be a composite
4 of all individual permits, approvals or authorizations that would
5 otherwise be necessary for the construction and operation of the
6 facility.

7 The council consists of the Public Utility Commissioners,
8 the Commissioner of Environmental Protection, the Commissioner of
9 Conservation, the Director of the State Planning Office and a
10 representative from a newly created municipal advisory
11 committee. The municipal advisory committee's purpose is to give
12 the municipalities in which any part of the proposed facility is
13 to be located a voice on the council, by having the committee
14 appoint one representative to serve as a council member. Each
15 application will have a different set of committee members.

16 The electric utility must obtain a Public Utilities
17 Commission's certificate of public convenience and necessity
18 before it may submit an application for a facility siting
19 certificate to the council. This bill also clarifies the
20 standard the Public Utilities Commission would use in issuing its
21 certificate of public convenience and necessity. The council
22 shall subsequently hold public hearings on the pending
23 application. After reviewing studies on the proposed facility's
24 environmental impact and on its proposed location together with
25 any alternative locations identified by parties in interest to
26 the application proceedings, the council shall either approve or
27 deny the application. If the electric utility's application is
28 granted, the electric utility shall then construct the facility
29 in conformity with the terms and conditions in the facility
30 siting certificate. The electric utility may then take the
31 property identified in the facility siting certificate by eminent
32 domain.