

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

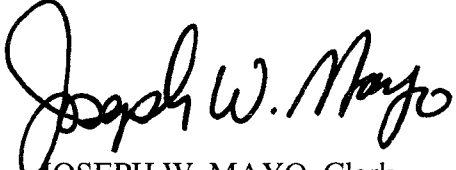
No. 471

H.P. 355

House of Representatives, January 14, 1999

**An Act to Repeal the Public Utilities Commission's Authority to Issue
Certificates of Public Convenience and Necessity for Electric
Transmission.**

Reference to the Committee on Utilities and Energy suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative GLYNN of South Portland.

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

2
4 Sec. 1. 35-A MRSA §3132, as amended by PL 1997, c. 710, §6,
is further amended to read:

6 **§3132. Construction of generating facilities prohibited without**
8 **prior order of the commission**

10 An electric utility may not construct any generating
12 facility ~~ex-transmission-line-covered-by-subsection-1,-1-A-or-2~~
14 ~~ex-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.

16 1. **Construction of generating facility.** Whenever any
18 electric utility or utilities ~~prepases~~ propose to erect within
20 this State a permanently installed generating facility of more
22 than 1,000 kilowatts ~~ex--any--transmission--line--capable--of~~
~~operating-at-100-kilovolts-or-more,-the-construction-of-which-is~~
~~required--to--carry--the--capacity--or--energy--produced--by--the~~
generating-facility, the following provisions apply.

24 A. The utility or utilities shall file with the commission,
26 no less than 3 months in advance of submitting its petition
for approval of the proposed facility ~~ex-lines~~, a notice of
its intent to file the petition.

28 The notice of intent to file shall must inform the
30 commission of the location, size, type of facility,
32 estimated cost and proposed construction schedule of the
generating facility ~~ex-lines~~, together with such other facts
34 and details concerning the proposed facility or lines as the
commission by rule prescribes.

36 B. The petition for approval of the proposed generating
38 facility ~~ex-lines~~ shall must contain such information as the
commission by rule prescribes.

40 C. The petition for approval shall must be set down for
public hearing.

42 D. The commission shall issue its order within 15 months
44 after the petition is filed with the commission unless the
46 period is either extended by agreement of all the parties or
by the commission upon its determination that the party
48 seeking the extension would, because of circumstances beyond
that party's control for which it has no reasonable
substitute, be unreasonably disadvantaged unless the

2 extension were granted, provided that the party to that time
had prosecuted its case in good faith and with due diligence.

4 ~~E. The utility or utilities shall send the municipalities in
6 which any part of the proposed transmission line is to be
located a copy of the application, including a copy of the
8 proposed corridor or corridors. Any municipality through
10 which any part of the proposed transmission line is to be
located that requests to be an intervenor becomes an
intervenor to the proceeding.~~

12 **1-A. Purchase of capacity or energy.** Whenever any electric
14 utility or utilities propose to purchase any generating capacity,
16 ~~transmission capacity or energy as defined in section 3131 and
erect any transmission line capable of operating at 100 kilovolts
18 or more, the construction of which is required to carry the
capacity or energy purchased, the following provisions shall
apply provision applies.~~

20 A. The purchase of the generating capacity, ~~transmission
22 capacity or energy shall be~~ is subject to section 3133.

24 ~~B. The construction of the resulting transmission line
shall be subject to this section, except that the notice of
26 intent must be filed no less than 2 months in advance of
submitting the petition for approval and the commission
28 shall issue its order within 12 months after the petition is
filed.~~

30 ~~**2. Line not resulting from construction or purchase.**
32 Except as otherwise provided in subsection 3-A, whenever any
electric utility or utilities propose to erect within this State
34 a transmission line capable of operating at 100 kilovolts, or
more, and the transmission line does not result from the
36 construction of a generating facility pursuant to this section or
the purchase of generating capacity, transmission capacity or
38 energy, the utility or utilities shall file a petition for the
approval of the proposed line. The petition is subject to the
40 requirements of subsection 1, paragraphs B and C. The commission
shall issue its order within 6 months after the petition is filed
42 unless this period is extended as provided in subsection 1,
paragraph D.~~

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

48 ~~**3. Transmission line rebuilding or relocation projects.**
50 Each electric utility shall file annually with the commission a~~

2 schedule of transmission line rebuilding or relocation projects
which it intends to carry out during the next 5 years concerning
4 transmission lines that will become, or will remain at, voltages
of 100 kilovolts or more. The schedule shall describe each
6 project, showing the length, location and estimated cost.

8 If the commission determines that an investigation of any
transmission line rebuilding or relocation project is warranted,
10 it shall notify the electric utility within 60 days of the annual
filing and the electric utility shall then be required to comply
12 with the provisions of this section with respect to that
project. The absence of commission notification requiring the
14 utility to file a petition does not preclude such notification in
subsequent years.

16 **3-A. Minor transmission line construction projects.** Each
domestic electric utility shall file annually with the commission
18 a schedule of minor transmission line construction projects that
it intends to carry out during the next 5 years concerning
20 transmission lines that will be capable of operating at 100
kilovolts or more. A minor transmission line construction
22 project is a transmission line construction project, the cost of
which does not exceed 25% of the utility's current annual
24 transmission property depreciation charge. The schedule must
describe each project, showing the length, location and estimated
26 cost.

28 If the commission determines that an investigation of any minor
transmission line construction project is warranted, it shall
30 notify the electric utility within 60 days of the annual filing
and the electric utility must then comply with the provisions of
32 this section with respect to that project. The absence of
commission notification requiring the utility to file a petition
34 does not preclude such notification in subsequent years.

36 For purposes of this subsection only, the term "domestic electric
utility" does not include an entity that is not an electric
38 utility as a result of the application of section 102, subsection
6-A.

40 **4. Corridor of proposed transmission line.** The electric
42 utility or utilities shall submit a map to the commission with
its application. The map must:

44 A. Be available to the public at the offices of the
46 commission and at the local town office where any portion of
the proposed transmission line is to be located;

2 ~~B.---Indicate---the---proposed---corridor---or---corridors---of---the~~
~~transmission-line-and-a-description-of-any-planned-equipment~~
4 ~~and-facilities-to-be-placed-there,-and~~

6 ~~C.---Be-prepared-in-cooperation-with-the-appropriate-natural~~
~~resource-protection-agencies-and-the-affected-municipalities.~~

8 ~~5.---Commission-approval-of-a-proposed-line.---The-commission~~
10 ~~may---approve---or---disapprove---all---or---portions---of---a---proposed~~
12 ~~transmission---line---and---shall---make---such---orders---regarding---its~~
~~character,-size,-installation-and-maintenance-as-are-necessary,~~
~~having-regard-for-any-increased-costs-caused-by-the-orders.~~

14 **6. Commission order; certificate of public convenience.** In
16 its order, the commission shall make specific findings with
18 regard to the need for the proposed facilities. If the
20 commission finds that a need exists, it shall issue a certificate
22 of public convenience and necessity for the facilities. If the
24 commission orders or allows the erection of the facilities, the
26 order is subject to all other provisions of law and the right of
28 any other agency to approve the facilities. ~~The electric utility~~
~~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
30 issuance of a certificate of public convenience and necessity
32 establishes that, as of the date of issuance of the certificate,
34 the decision by the utility to erect or construct was prudent.
36 ~~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~~
40 ~~transmission-line.~~

42 **7. Environmental protection agency modification.** If the
44 commission has issued a certificate of public convenience and
46 necessity for proposed ~~transmission-or~~ generating facilities and
48 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 facilities, the company shall:

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

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

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

- 16 A. Reopen its original decision concerning the facilities;
- 18 B. Make specific findings with regard to the need for the
facilities to the same extent and with the same authority as
20 if the company's petition for approval were before it; and
- 22 C. Except as modified in this section, retain all authority
granted to it under section 1321.

24 **9. Filing fee; waiver of fee.** When a petition is filed
under this section, the electric utility or utilities involved
26 shall pay to the commission an amount equal to $2/100$ of 1% of the
estimated cost to erect, rebuild or relocate the facility
28 ~~provided that in the case of a petition filed under subsection 2,~~
~~the fee shall be $4/100$ of 1%.~~ The utility may, at the time of
30 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~~
32 ~~filing of the petition,~~ request the commission to waive all or a
portion of the filing fee. The commission shall rule on the
34 request for waiver within 30 days.

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

42 **10. Exemption from filing fees.** Notwithstanding any other
44 requirement in this section, the commission may, by rule, exempt
from filing fees applications concerning ~~transmission lines not~~
46 ~~associated with a major new generating facility or~~ construction
of small generating facilities, the review of which does not
48 place an unusual burden on the commission's budget.

2 **11-A. Amendments, extensions and renewals of contracts**
3 **originally subject to commission approval.** This section applies
4 to any amendment, extension or renewal of any contract between
5 the utility and other parties with an ownership interest,
6 governing the terms of their participation in the construction of
7 a generation ~~or-transmission-facility~~ subject to this section, if
8 the original contract was subject to approval by the commission.
9 The commission may waive the approval requirements of this
10 section with respect to a particular amendment, extension or
11 renewal or a group of amendments, extensions or renewals upon
12 request under subsection 1. If the commission does not respond
13 to a request for waiver within 30 days, the request is deemed to
14 have been granted. The commission shall prescribe by rule the
15 content of a request for waiver and procedures for the
16 expeditious processing of requests in certain circumstances.

17 **11-B. Amendments, extensions and renewals of contracts not**
18 **originally subject to commission approval.** For any amendment,
19 extension or renewal of any contract otherwise subject to this
20 section, but when the original contract was not subject to
21 approval by the commission, the utility shall file a copy of the
22 proposed amendment, extension or renewal with the commission
23 within 7 days of the day when the utility receives notice of the
24 proposal, but approval under this section is not required.

25 **12. Waiver of notice.** The commission may waive any of the
26 notice requirements in this section in advance of filing.

27 **Sec. 2. 35-A MRSA §3133,** as amended by PL 1995, c. 357, §§3
28 to 5, is further amended by repealing and replacing the headnote
29 to read:

30 **§3133. Purchase of generating capacity, energy or fuel**
31 **conversion of generating facilities prohibited**
32 **without prior order of the commission**

33 **Sec. 3. 35-A MRSA §3133, sub-§1,** as amended by PL 1995, c.
34 357, §3, is further amended to read:

35 **1. Commission approval required for purchases and**
36 **conversions.** An electric utility may not purchase any generating
37 capacity, ~~transmission-capacity~~ or energy or carry out a fuel
38 conversion as defined in section 3131, unless the commission has
39 issued a certificate of public convenience and necessity
40 approving the purchase or conversion or has waived the approval
41 requirements pursuant to subsection 11.

42 **Sec. 4. 35-A MRSA §3133-A,** as amended by PL 1995, c. 357,
43 §§6 to 9, is further amended by repealing and replacing the
44 headnote to read:

2 **§3133-A. Significant agreements and contracts relating to**
3 **generating capacity or energy capacity prohibited**
4 **without prior order of the commission**

6 Sec. 5. 35-A MRSA §3133-A, sub-§2, as amended by PL 1995, c.
7 357, §7, is further amended to read:

8
9 2. Definitions. As used in this section, unless the
10 context indicates otherwise, the following terms have the
11 following meanings.

12 A. "Significant agreement or contract" means a contract or
13 other agreement enforceable as a contract that binds the
14 utility to a future course of action with respect to
15 supplying, purchasing, dispatching or exchanging generating
16 capacity, ~~or energy or transmission capacity~~ or any renewal,
17 amendment or extension of any contract or agreement that is
18 for a period of longer than 3 years and involves one of the
19 following, whichever is less:

20
21 (1) More than 5,000 kilowatts of electrical generating
22 capacity, or 50,000,000 kilowatt hours or more of
23 energy per year, flowing over a transmission line with
24 a capacity greater than 100 kilovolts;

25
26 (2) More than 10% of the generating capacity,
27 ~~transmission capacity~~ or energy generation of the
28 utility; or

29
30 (3) More than 1.0% of the total annual kilowatt hour
31 sales of the utility.

32
33
34
35
36

SUMMARY

37 This bill repeals requirements that electric utilities
38 obtain certificates of public convenience and necessity from the
39 Public Utilities Commission before constructing or modifying
40 transmission lines or contracting for transmission line capacity.