

62-9-3. Location control; limitations.

A. The legislature finds that it is in the public interest to consider any adverse effect upon the environment and upon the quality of life of the people of the state that may occur due to plants, facilities and transmission lines needed to supply present and future electrical services. It is recognized that such plants, lines and facilities will be needed to meet growing demands for electric services and cannot be built without in some way affecting the physical environment where these plants, facilities and transmission lines are located. The legislature therefore declares that it is the purpose of this section to provide for the supervision and control by the commission of the location within this state of new plants, facilities and transmission lines for the generation and transmission of electricity for sale to the public.

B. No person, including any municipality, shall begin the construction of any plant designed for or capable of operation at a capacity of three hundred thousand kilowatts or more for the generation of electricity for sale to the public within or without this state, whether or not owned or operated by a person that is a public utility subject to regulation by the commission, or of transmission lines in connection with such a plant, on a location within this state unless the location has been approved by the commission. For the purposes of this section, "transmission line" means any electric transmission line and associated facilities designed for or capable of operations at a nominal voltage of two hundred thirty kilovolts or more, to be constructed in connection with and to transmit electricity from a new plant for which approval is required.

C. Application for approval shall contain all information required by the commission to make its determination, be made in writing setting forth the facts involved and be filed with the commission. The commission shall, after a public hearing and upon notice as the commission may prescribe, act upon the application. The commission may condition its approval upon a demonstration by the applicant that it has received all necessary air and water quality permits. A public utility regulated by the commission may submit an application pursuant to Section [62-9-1 NMSA 1978](#) for a certificate of public convenience and necessity prior to filing an application for location approval pursuant to this section in order to determine the need for the generating plant or transmission line prior to determination of the appropriate location.

D. No approval shall be required for additions to or modifications of an existing plant or transmission line.

E. The commission shall approve the application for the location of the generating plant unless the commission finds that the operations of the facilities for which approval is sought will not be in compliance with all applicable air and water pollution control standards and regulations existing. The commission shall not require compliance with performance standards other than those established by the agency of this state having jurisdiction over a particular pollution source.

F. The commission shall approve the application for the location of the transmission lines unless the commission finds that the location will unduly impair important environmental values.

G. No application shall be approved pursuant to this section that violates an existing state, county or municipal land use statutory or administrative regulation unless the commission finds that the regulation is unreasonably restrictive and compliance with the regulation is not in the interest of the public convenience and necessity, in which event and to the extent found by the commission the regulation shall be inapplicable and void as to the siting. When it becomes apparent to the commission that an issue exists with respect to whether a regulation is unreasonably restrictive and compliance with the regulation is not in the interest of public

convenience and necessity, it shall promptly serve notice of that fact by certified mail upon the agency, board or commission having jurisdiction for land use of the area affected and shall make the agency, board or commission a party to the proceedings upon its request and shall give it an opportunity to respond to the issue. The judgment of the commission shall be conclusive on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting.

H. A public utility subject to the jurisdiction of the commission may elect to file an application pursuant to this section with the commission for location approval of an electric transmission line or associated facilities designed for or capable of operation at a nominal voltage of one hundred fifteen kilovolts or more but less than two hundred thirty kilovolts if:

(1) the public utility files an application for construction, extension, rebuilding or improvement of the electric transmission line or associated equipment under any applicable county or municipal land use statute, ordinance or administrative regulation; and

(2) the agency, board or commission of the county or municipality disapproves the application. For purposes of this subsection, "disapprove" means the failure of the county or municipal agency, board or commission to issue a final order approving the application within two hundred forty days of the public utility's filing of a complete application with the agency, board or commission. An application shall be deemed complete if within fifteen working days of the public utility's filing of the application, or a supplement or amendment thereto, the agency, board or commission fails to send written notice to the public utility enumerating the specific requirements under the applicable county or municipal land use statute, ordinance or administrative regulation that the application fails to satisfy.

I. Upon consideration of the application and the standards set forth in Subsection G of this section, the commission may authorize construction, extension, rebuilding or improvement of the transmission line or facilities notwithstanding the prior disapproval of the county or municipal agency, board or commission. The judgment of the commission shall be conclusive on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting.

J. Nothing in this section shall be deemed to confer upon the commission power or jurisdiction to regulate or supervise any person, including a municipality, that is not otherwise a public utility regulated and supervised by the commission, with respect to its rates and service and with respect to its securities, nor shall any other provision of the Public Utility Act [Chapter 62, Articles 1 through 6 and 8 through 13 NMSA 1978] be applicable with respect to such a person, including a municipality.

K. The commission may approve an application filed pursuant to this section without a formal hearing if no protest is filed within sixty days of the date that notice is given that the application has been filed. The commission shall issue its order granting or denying the application within six months from the date the application is filed with the commission; provided, however, that:

(1) if a public utility simultaneously files an application for approval of location of a transmission line pursuant to this section and an application for a certificate of public convenience and necessity pursuant to Subsection B of Section [62-9-1](#) NMSA 1978, the commission shall issue its order granting or denying the applications within nine months from the date the applications are filed with the commission; provided, however, that the commission may extend the time for granting approval an additional six months for good cause shown;

(2) if a public utility files an application for approval of location of a transmission line pursuant to this section after its application for a certificate of public convenience and necessity

has been approved pursuant to Subsection B of Section [62-9-1](#) NMSA 1978, the commission shall issue its order granting or denying the application for approval of location of a transmission line within ninety days from the date the application is filed with the commission; and

(3) if a public utility files an application for approval of location of a transmission line pursuant to this section while its application for a certificate of public convenience and necessity is pending pursuant to Subsection B of Section [62-9-1](#) NMSA 1978, and the application for a certificate is subsequently approved, the commission shall issue its order granting or denying the application for approval of location of a transmission line within ninety days from the date the application for certificate of public convenience and necessity is approved.

L. Failure to issue its order approving or denying an application filed pursuant to this section within the time periods set forth in Subsection J of this section is deemed to be approval of the application; provided, however, that the commission may extend the time for granting approval for a transmission line that is subject to this section for an additional nine months upon finding that the additional time is necessary to determine if the proposed location of the line will unduly impair important environmental values.

M. In determining if the proposed location of the transmission line will unduly impair important environmental values, the commission may consider the following factors;

(1) existing plans of the state, local government and private entities for other developments at or in the vicinity of the proposed location;

(2) fish, wildlife and plant life;

(3) noise emission levels and interference with communication signals;

(4) the proposed availability of the location to the public for recreational purposes, consistent with safety considerations and regulations;

(5) existing scenic areas, historic, cultural or religious sites and structures or archaeological sites at or in the vicinity of the proposed location; and

(6) additional factors that require consideration under applicable federal and state laws pertaining to the location.

History: 1953 Comp., § 68-7-1.2, enacted by Laws 1971, ch. 248, § 1; 2001, ch. 303, § 1; 2005, ch. 339, § 6; 2005, ch. 340, § 2.