

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 523*

Short Title: Transmission Line Siting Juris.

(Public)

Sponsors: Representatives Colton, Kerr (Cosponsor); and Bowman.

Referred to: Public Utilities.

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A UNIFORM PROCEDURE FOR THE SITING OF
3 ELECTRIC TRANSMISSION LINES AS RECOMMENDED BY THE UTILITIES
4 COMMISSION.

5 The General Assembly of North Carolina enacts:

6 Section 1. A new Article is added to the General Statutes to read:

7 **"ARTICLE 5A.**

8 **"SITING OF TRANSMISSION LINES.**

9 **"§ 62-100. Definitions.**

10 As used in this Article:

- 11 (1) The term 'begin to construct' includes any clearing of land, excavation,
12 or other action that would adversely affect the natural environment of
13 the route of a transmission line; but that term does not include land
14 surveys, boring to ascertain geological conditions, or similar
15 preliminary work undertaken to determine the suitability of proposed
16 routes for a transmission line that results in temporary changes to the
17 land;
18 (2) The word 'county' means any one of the counties listed in G.S. 153A-
19 10;
20 (3) The word 'land' means any real estate or any estate or interest in real
21 estate, including water and riparian rights, regardless of the use to
22 which it is devoted;
23 (4) The word 'lines' means distribution lines and transmission lines
24 collectively;

1 (5) The word 'municipality' means any incorporated community, whether
2 designated as a city, town, or village and any area over which it
3 exercises any of the powers granted by Article 19 of Chapter 160A of
4 the General Statutes;

5 (6) The term 'public utility' means a person, whether organized under the
6 laws of this State or under the laws of any other State or country,
7 engaged in producing, generating, transmitting, delivering, or
8 furnishing electricity for private or public use, including counties,
9 municipalities, joint municipal power agencies, electric membership
10 corporations, and public and private corporations; and

11 (7) The term 'transmission line' means an electric line designed with a
12 capacity of at least 161 kilovolts.

13 **"§ 62-101. Certificate to construct transmission line.**

14 (a) No public utility or any other person may begin to construct a new
15 transmission line without first obtaining from the Commission a certificate of
16 environmental compatibility and public convenience and necessity.

17 (b) A transmission line for which a certificate is required shall be constructed,
18 operated, and maintained in conformity with the certificate. A certificate may be
19 amended or transferred with the approval of the Commission.

20 (c) A certificate is not required for construction of the following lines:

21 (1) A line designed to carry less than 161 kilovolts;

22 (2) The replacement or expansion of an existing line with a similar line in
23 substantially the same location, or the rebuilding, upgrading,
24 modifying, modernizing, or reconstructing of an existing line for the
25 purpose of increasing capacity or widening an existing right-of-way;

26 (3) A transmission line over which the Federal Energy Regulatory
27 Commission has licensing jurisdiction, if the Commission determines
28 that agency has conducted a proceeding substantially equivalent to the
29 proceeding required by this Article;

30 (4) Any transmission line for which, before March 6, 1989, a public utility
31 or other person has surveyed a proposed route and, based on that route,
32 has acquired rights-of-way for it by voluntary conveyances or has filed
33 condemnation proceedings for acquiring those rights-of-way which,
34 together, involve twenty-five percent (25%) or more of the total length
35 of the proposed route;

36 (5) An electric membership corporation owned transmission line for
37 which the construction or up-grading has had a proceeding conducted
38 which the Commission determines is substantially equivalent to the
39 proceeding required by this Article;

40 (6) Any line owned by a municipality to be constructed wholly within the
41 corporate limits of that municipality.

42 (d) The Commission may waive the notice and hearing requirements of this
43 Article and issue a certificate or amend an existing certificate under either of the
44 following circumstances:

- 1 (1) When the Commission finds that the owners of land to be crossed by
2 the proposed transmission line segment do not object to such a waiver
3 and either:
4 a. The transmission line will be less than one mile long; or
5 b. The transmission line is for the purpose of relocating an
6 existing transmission line segment to resolve a highway or other
7 public project conflict; to accommodate a commercial,
8 industrial, or other private development conflict; or to connect
9 an existing transmission line to a substation, to another public
10 utility, or to a public utility customer when any of these is in
11 proximity to the existing transmission line.
- 12 (2) If the urgency of providing electric service requires the immediate
13 construction of the transmission line, provided that the Commission
14 shall give notice to those parties listed in G.S. 62-102(b) before issuing
15 a certificate or approving an amendment.
- 16 (e) When justified by the public convenience and necessity and a showing that
17 circumstances require immediate action, the Commission may permit an applicant for a
18 certificate to proceed with initial clearing, excavation, and construction before receiving
19 the certificate required by this section. In so proceeding, however, the applicant acts at
20 its own risk, and by granting such permission, the Commission does not commit to
21 ultimately grant a certificate for the transmission line.
- 22 (f) Nothing in this section restricts or impairs the Commission's jurisdiction
23 pursuant to G.S. 62-73 to hear or make complaints.
- 24 **"§ 62-102. Application for certificate.**
- 25 (a) An applicant for the certificate described in G.S. 62-101 shall file an
26 application with the Commission containing the following information:
27 (1) The reasons the transmission line is needed;
28 (2) A description of the proposed location of the transmission
29 line;
30 (3) A description of the proposed transmission line;
31 (4) An environmental report setting forth:
32 a. The environmental impact of the proposed action;
33 b. Any proposed mitigating measures that may minimize the
34 environmental impact; and
35 c. Alternatives to the proposed action.
36 (5) A list of all necessary approvals that the applicant must
37 obtain before it may begin to construct the transmission line; and
38 (6) Any other information the Commission requires.
- 39 (b) Within 10 days of filing the application, the applicant shall serve a copy of it
40 on each of the following in the manner provided in G.S. 1A-1, Rule 4:
41 (1) The Public Staff;
42 (2) The Attorney General;
43 (3) The Department of Environment, Health, and Natural Resources;
44 (4) The Department of Economic and Community Development;

- 1 (5) The Department of Transportation;
- 2 (6) The Department of Agriculture;
- 3 (7) The Department of Cultural Resources;
- 4 (8) Each county through which the applicant proposes to construct the
5 transmission line;
- 6 (9) Each municipality through whose jurisdiction the applicant proposes to
7 construct the transmission line; and
- 8 (10) Any other party that the Commission orders the applicant to serve.

9 The copy of the application served on each shall be accompanied by a notice
10 specifying the date on which the application was filed.

11 (c) Within 10 days of the filing of the application, the applicant shall give public
12 notice to persons residing in each county and municipality in which the transmission
13 line is to be located by publishing a summary of the application in newspapers of
14 general circulation so as to substantially inform those persons of the filing of the
15 application. This notice shall thereafter be published in those newspapers a minimum of
16 three additional times before the time for parties to intervene has expired. The summary
17 shall also be sent to the North Carolina State Clearinghouse. The summary shall be
18 subject to prior approval of the Commission and shall contain at a minimum the
19 following:

- 20 (1) A summary of the proposed action;
- 21 (2) A description of the location of the proposed transmission line written
22 in a readable style;
- 23 (3) The date on which the application was filed; and
- 24 (4) The date by which an interested person must intervene.

25 (d) Inadvertent failure of service on or notice to any municipality, county,
26 governmental agency, or other person described in this section may be cured by an
27 order of the Commission designed to give that person adequate notice to enable
28 effective participation in the proceeding.

29 (e) An application for an amendment of a certificate shall be in a form approved
30 by and shall contain any information required by the Commission. Notice of such an
31 application shall be in the same manner as for a certificate.

32 **"§ 62-103. Parties.**

33 (a) The following persons shall be parties to a certification proceeding under this
34 Article:

- 35 (1) The applicant;
- 36 (2) The Public Staff.

37 (b) The following persons may intervene in a certification proceeding under this
38 Article if a petition to intervene is filed with the Commission within 100 days of the
39 filing of the application and the petition is subsequently granted:

- 40 (1) Any State department, municipality, or county entitled to notice under
41 G.S. 62-102(b);
- 42 (2) Any person whose land will be crossed by the proposed line;
- 43 (3) Any other person who can show a substantial interest in the
44 certification proceeding.

1 **"§ 62-104. Hearings.**

2 (a) The Commission shall schedule a hearing upon each application filed under
3 this Article not more than 120 days after the filing and shall conclude the proceeding as
4 expeditiously as possible. The Commission may, however, extend this time period for
5 substantial cause.

6 (b) If, after proper notice of the application has been given, no significant
7 protests are filed with the Commission, the Commission may cancel the hearing and
8 decide the case on the basis of the filed record.

9 (c) The Commission shall issue an order on each application filed under this
10 Article within 60 days of the conclusion of the hearing. The Commission may extend
11 this time period for substantial cause.

12 **"§ 62-105. Burden of proof; decision.**

13 (a) The burden of proof is on the applicant in all cases under this Article, except
14 that any party proposing an alternative location for the proposed transmission line shall
15 have the burden of proof in sustaining its position, and except as provided in G.S. 62-
16 106. The Commission may consider any factors that it finds are relevant and material to
17 its decision. The Commission shall grant a certificate for the construction, operation,
18 and maintenance of the proposed transmission line if it finds:

19 (1) That the proposed transmission line is necessary to satisfy the
20 reasonable needs of the public for an adequate and reliable supply of
21 electric energy;

22 (2) That, when compared with all reasonable alternative courses of action,
23 construction of the transmission line in the proposed location is
24 reasonable, preferred, and in the public interest;

25 (3) That the costs associated with the proposed transmission line are
26 reasonable;

27 (4) That the impact the proposed transmission line will have on the
28 environment is justified considering the state of available technology,
29 the nature and economics of the various alternatives, and other
30 material considerations; and

31 (5) That the environmental compatibility, public convenience, and
32 necessity require the transmission line.

33 (b) If the Commission determines that the location of the proposed transmission
34 line should be modified, it may condition its certificate upon modifications it finds
35 necessary to make the findings and determinations set forth in subsection (a) of this
36 section.

37 **"§ 62-106. Effect of local ordinances.**

38 Upon the request of any county or municipality which has intervened in a certificate
39 proceeding pursuant to G.S. 62-103(b), the Commission shall consider and incorporate
40 into its final certificate so much of those concerns addressed in any ordinance of the
41 intervening county or municipality respecting the construction, operation, or
42 maintenance of the proposed transmission line as the Commission deems to be
43 necessary, appropriate, and in the greater public interest. The burden of proving the
44 content of any such ordinance, and that any part of the ordinance should be incorporated

1 into the final certificate, shall be upon the intervening county or municipality.
2 Municipal ordinances shall be pleaded and proved as provided in G.S. 160A-79.
3 County ordinances shall be pleaded and proved as provided in G.S. 153A-50. A
4 certificate issued hereunder by the Commission shall override the effect of any county
5 or municipal ordinance with respect to the construction, operation, or maintenance of
6 the proposed transmission line.

7 **"§ 62-107. Rules.**

8 Pursuant to G.S. 62-31, the Commission may adopt rules to carry out the purposes of
9 this Article. In addition, the Commission shall adopt rules requiring public utilities to
10 file periodic reports stating their short-term and long-term plans for construction of
11 transmission lines in this State."

12 Sec. 2. G.S. 62-300(a) is amended by adding a new subdivision at the end to
13 read:

14 "(13) Two hundred fifty dollars (\$250.00) with each application for a
15 certificate of public convenience and necessity to construct a
16 transmission line."

17 Sec. 3. This act becomes effective December 1, 1991, but shall not apply to
18 any transmission line that the public utility or other person has begun to construct before
19 that date.