

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 417*
Public Utilities Committee Substitute Adopted 4/22/91

Short Title: Transmission Line Siting Juris.

(Public)

Sponsors:

Referred to:

April 1, 1991

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

The General Assembly of North Carolina enacts:

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

ARTICLE 5A.

SITING OF TRANSMISSION LINES.

62-100. Definitions.

As used in this Article:

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

- 1 (4) The word 'lines' means distribution lines and transmission lines
2 collectively;
- 3 (5) The word 'municipality' means any incorporated community, whether
4 designated as a city, town, or village and any area over which it
5 exercises any of the powers granted by Article 19 of Chapter 160A of
6 the General Statutes;
- 7 (6) The term 'public utility' means a person, whether organized under the
8 laws of this State or under the laws of any other State or country,
9 engaged in producing, generating, transmitting, delivering, or
10 furnishing electricity for private or public use, including counties,
11 municipalities, joint municipal power agencies, electric membership
12 corporations, and public and private corporations; and
- 13 (7) The term 'transmission line' means an electric line designed with a
14 capacity of at least 161 kilovolts.

15 **"§ 62-101. Certificate to construct transmission line.**

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

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

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

- 23 (1) A line designed to carry less than 161 kilovolts;
- 24 (2) The replacement or expansion of an existing line with a similar line in
25 substantially the same location, or the rebuilding, upgrading,
26 modifying, modernizing, or reconstructing of an existing line for the
27 purpose of increasing capacity or widening an existing right-of-way;
- 28 (3) A transmission line over which the Federal Energy Regulatory
29 Commission has licensing jurisdiction, if the Commission determines
30 that agency has conducted a proceeding substantially equivalent to the
31 proceeding required by this Article;
- 32 (4) Any transmission line for which, before March 6, 1989, a public utility
33 or other person has surveyed a proposed route and, based on that route,
34 has acquired rights-of-way for it by voluntary conveyances or has filed
35 condemnation proceedings for acquiring those rights-of-way which,
36 together, involve twenty-five percent (25%) or more of the total length
37 of the proposed route;
- 38 (5) An electric membership corporation owned transmission line for
39 which the construction or upgrading has had a proceeding conducted
40 which the Commission determines is substantially equivalent to the
41 proceeding required by this Article;
- 42 (6) Any line owned by a municipality to be constructed wholly within the
43 corporate limits of that municipality.

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

4 (1) When the Commission finds that the owners of land to be crossed by
5 the proposed transmission line segment do not object to such a waiver
6 and either:

7 a. The transmission line will be less than one mile long; or

8 b. The transmission line is for the purpose of relocating an
9 existing transmission line segment to resolve a highway or other
10 public project conflict; to accommodate a commercial,
11 industrial, or other private development conflict; or to connect
12 an existing transmission line to a substation, to another public
13 utility, or to a public utility customer when any of these is in
14 proximity to the existing transmission line.

15 (2) If the urgency of providing electric service requires the immediate
16 construction of the transmission line, provided that the Commission
17 shall give notice to those parties listed in G.S. 62-102(b) before issuing
18 a certificate or approving an amendment.

19 (e) When justified by the public convenience and necessity and a showing that
20 circumstances require immediate action, the Commission may permit an applicant for a
21 certificate to proceed with initial clearing, excavation, and construction before receiving
22 the certificate required by this section. In so proceeding, however, the applicant acts at
23 its own risk, and by granting such permission, the Commission does not commit to
24 ultimately grant a certificate for the transmission line.

25 (f) Nothing in this section restricts or impairs the Commission's jurisdiction
26 pursuant to G.S. 62-73 to hear or make complaints.

27 **"§ 62-102. Application for certificate.**

28 (a) An applicant for the certificate described in G.S. 62-101 shall file an
29 application with the Commission containing the following information:

30 (1) The reasons the transmission line is needed;

31 (2) A description of the proposed location of the transmission
32 line;

33 (3) A description of the proposed transmission line;

34 (4) An environmental report setting forth:

35 a. The environmental impact of the proposed action;

36 b. Any proposed mitigating measures that may minimize the
37 environmental impact; and

38 c. Alternatives to the proposed action.

39 (5) A list of all necessary approvals that the applicant must
40 obtain before it may begin to construct the transmission line; and

41 (6) Any other information the Commission requires.

42 (b) Within 10 days of filing the application, the applicant shall serve a copy of it
43 on each of the following in the manner provided in G.S. 1A-1, Rule 4:

44 (1) The Public Staff;

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

12 The copy of the application served on each shall be accompanied by a notice

13 specifying the date on which the application was filed.

14 (c) Within 10 days of the filing of the application, the applicant shall give public

15 notice to persons residing in each county and municipality in which the transmission

16 line is to be located by publishing a summary of the application in newspapers of

17 general circulation so as to substantially inform those persons of the filing of the

18 application. This notice shall thereafter be published in those newspapers a minimum of

19 three additional times before the time for parties to intervene has expired. The summary

20 shall also be sent to the North Carolina State Clearinghouse. The summary shall be

21 subject to prior approval of the Commission and shall contain at a minimum the

22 following:

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

28 (d) Inadvertent failure of service on or notice to any municipality, county,

29 governmental agency, or other person described in this section may be cured by an

30 order of the Commission designed to give that person adequate notice to enable

31 effective participation in the proceeding.

32 (e) An application for an amendment of a certificate shall be in a form approved

33 by and shall contain any information required by the Commission. Notice of such an

34 application shall be in the same manner as for a certificate.

35 "**§ 62-103. Parties.**"

36 (a) The following persons shall be parties to a certification proceeding under this

37 Article:

- 38 (1) The applicant;
- 39 (2) The Public Staff.

40 (b) The following persons may intervene in a certification proceeding under this

41 Article if a petition to intervene is filed with the Commission within 100 days of the

42 filing of the application and the petition is subsequently granted:

- 43 (1) Any State department, municipality, or county entitled to notice under
- 44 G.S. 62-102(b);

1 (2) Any person whose land will be crossed by the proposed line;

2 (3) Any other person who can show a substantial interest in the
3 certification proceeding.

4 **"§ 62-104. Hearings.**

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

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

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

15 **"§ 62-105. Burden of proof; decision.**

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

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

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

28 (3) That the costs associated with the proposed transmission line are
29 reasonable;

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

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

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

40 **"§ 62-106. Effect of local ordinances.**

41 Within 30 days after receipt of notice of an application as provided by G.S. 62-102,
42 a municipality or county shall file with the Commission and serve on the applicant the
43 provisions of an ordinance that may affect the construction, operation, or maintenance
44 of the proposed transmission line in the manner provided by the rules of the

1 Commission. If the municipality or county does not serve notice as provided above of
2 any such ordinance provisions, the provisions of such ordinance may not be enforced by
3 the municipality or county. If the applicant proposes not to comply with any part of the
4 ordinance, the applicant may move the Commission for an order preempting that part of
5 the ordinance. Service of the motion on the municipality or county by the applicant
6 shall make the municipality or county a party to the proceeding. If the Commission
7 finds that the greater public interest requires it, the Commission may include in a
8 certificate issued under this Article an order preempting any part of such county or
9 municipal ordinance with respect to the construction, operation or maintenance of the
10 proposed transmission line.

11 **"§ 62-107. Rules.**

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

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

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

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