

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 189
SENATE BILL 417

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

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

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

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

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

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

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

- (1) When the Commission finds that the owners of land to be crossed by the proposed transmission line segment do not object to such a waiver and either:
 - a. The transmission line will be less than one mile long; or
 - b. The transmission line is for the purpose of relocating an existing transmission line segment to resolve a highway or other public project conflict; to accommodate a commercial, industrial, or other private development conflict; or to connect an existing transmission line to a substation, to another public utility, or to a public utility customer when any of these is in proximity to the existing transmission line.

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

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

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

"§ 62-102. Application for certificate.

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

- (1) The reasons the transmission line is needed;
- (2) A description of the proposed location of the transmission line;
- (3) A description of the proposed transmission line;
- (4) An environmental report setting forth:
 - a. The environmental impact of the proposed action;
 - b. Any proposed mitigating measures that may minimize the environmental impact; and
 - c. Alternatives to the proposed action.
- (5) A list of all necessary approvals that the applicant must obtain before it may begin to construct the transmission line; and
- (6) Any other information the Commission requires.

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

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

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

(c) Within 10 days of the filing of the application, the applicant shall give public notice to persons residing in each county and municipality in which the transmission

line is to be located by publishing a summary of the application in newspapers of general circulation so as to substantially inform those persons of the filing of the application. This notice shall thereafter be published in those newspapers a minimum of three additional times before the time for parties to intervene has expired. The summary shall also be sent to the North Carolina State Clearinghouse. The summary shall be subject to prior approval of the Commission and shall contain at a minimum the following:

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

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

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

"§ 62-103. Parties.

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

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

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

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

"§ 62-104. Hearings.

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

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

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

"§ 62-105. Burden of proof; decision.

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

- (1) That the proposed transmission line is necessary to satisfy the reasonable needs of the public for an adequate and reliable supply of electric energy;
- (2) That, when compared with reasonable alternative courses of action, construction of the transmission line in the proposed location is reasonable, preferred, and in the public interest;
- (3) That the costs associated with the proposed transmission line are reasonable;
- (4) That the impact the proposed transmission line will have on the environment is justified considering the state of available technology, the nature and economics of the various alternatives, and other material considerations; and
- (5) That the environmental compatibility, public convenience, and necessity require the transmission line.

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

"§ 62-106. Effect of local ordinances.

Within 30 days after receipt of notice of an application as provided by G.S. 62-102, a municipality or county shall file with the Commission and serve on the applicant the provisions of an ordinance that may affect the construction, operation, or maintenance of the proposed transmission line in the manner provided by the rules of the Commission. If the municipality or county does not serve notice as provided above of any such ordinance provisions, the provisions of such ordinance may not be enforced by the municipality or county. If the applicant proposes not to comply with any part of the ordinance, the applicant may move the Commission for an order preempting that part of the ordinance. Service of the motion on the municipality or county by the applicant shall make the municipality or county a party to the proceeding. If the Commission finds that the greater public interest requires it, the Commission may include in a certificate issued under this Article an order preempting any part of such county or municipal ordinance with respect to the construction, operation or maintenance of the proposed transmission line.

"§ 62-107. Rules.

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

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

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

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

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives