



MONTANA PUBLIC SERVICE COMMISSION

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May 7, 2012

Legislative Services Division
Energy and Telecommunications Interim Committee
P.O. Box 201706
Helena, MT 59620-1706

Re: Authority to Issue Certificates under Montana's Major Facility Siting Act

Members of the Energy and Telecommunications Interim Committee:

At the Montana Public Service Commission's May 1, 2012, meeting, Commissioner Bill Gallagher brought a work session in which he proposed to "Discuss whether the MT PSC should promote legislation or policy to the ETIC re: 1) shifting the determination of 'need' MCA §75-20-301(1)(a) that the facility will serve the public interest, convenience, and necessity 'PCN' MCA §75-20-301(1)(f) to the PSC from the DEQ; and 2) tying the power of eminent domain (MCA §75-20-113) to both the DEQ certificate and a PSC certification of PCN."

During the open meeting, the PSC agreed on a 3-2 vote (Commissioners Gallagher, Molnar, and Vincent voting aye; Commissioners Gutsche and Kavulla voting nay) to submit a letter inquiring to the ETIC whether the committee would be interested in having a bill drafted for its consideration on this topic.

Currently, under the Major Facility Siting Act (MFSA), the Department of Environmental Quality makes a determination of public convenience and necessity as well as on all aspects of transmission siting. This Commission's expertise in the area of transmission planning and the process followed by other western states may justify transferring the public need finding from the DEQ to the PSC.

A majority of states rely on their public utility commissions to make findings of public interest, convenience and necessity in the context of transmission siting. Certain others, such as Montana and Washington, do not.

In Montana, the DEQ “shall approve a facility” if it determines, among other things, “the basis of the need for the facility” and “that the facility will serve the public interest, convenience, and necessity.” Mont. Code Ann. § 75-20-301 (2011). To determine whether a facility will serve the public interest, convenience, and necessity, the DEQ must consider the basis of the need for the facility, the nature of the probable environmental impact, the benefits to the applicant and the State, the effects of the economic activity, the effects on public health, welfare, and safety, and any other factors it considers relevant. *Id.*

In order to issue a certificate, the DEQ must specifically find that the value of the proposed facility exceeds “any other reasonable alternative” based on a determination of costs, benefits, need, cumulative environmental impacts, economic activity, and any other relevant factors. Admin. R. Mont. 17.20.1604 (2012). The DEQ may find “need” based on multiple considerations, including reliability and economy. *Id.* at 17.20.920.

As the agency that supervises and regulates the operations of public utilities and certain other regulated industries in Montana, the PSC is required to report “information relating to the impact of the proposed site on [its] area of expertise” to the DEQ. Mont. Code Ann. § 75-20-216(6). The PSC also “may include opinions as to the advisability of granting, denying or modifying a certificate,” and the DEQ must reimburse the PSC “for the costs of compiling information and issuing the required report.” *Id.*

The PSC has staff versed in transmission issues who regularly participate in regional forums dedicated to the issue of transmission planning, grid operations, and resource development, although because there has not been a PSC-jurisdictional transmission line built in Montana since the MFSA was passed, the PSC has not been heavily involved in the DEQ process.

As the supervisory body in the legislative interim over this agency, the PSC respectfully inquires whether the ETIC would find it worthwhile to explore legislation that would shift authority to issue certificates of public interest, convenience and necessity for transmission lines from the DEQ to the PSC. The PSC appreciates and respects whatever guidance you may have in this matter.

Respectfully,

THE MONTANA PUBLIC SERVICE COMMISSION