

Chapter 886: ENERGY INFRASTRUCTURE CORRIDORS

SUMMARY: This Chapter establishes standards and procedures that govern the designation and use of energy infrastructure corridors.

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§ 1 PURPOSE

The purpose of this Chapter is to establish standards and procedures to govern the designation and use of energy infrastructure corridors.

§ 2 DEFINITIONS

- A. **Commission.** "Commission" means the Public Utilities Commission.
- B. **Department.** "Department" means the Department of Environmental Protection.
- C. **Energy Infrastructure.** "Energy infrastructure" includes electric transmission and distribution facilities, natural gas transmission lines, carbon dioxide pipelines and other energy transport pipelines or conduits. "Energy infrastructure" does not include generation interconnection transmission facilities or energy generation facilities.
- D. **Energy Infrastructure Corridor.** "Energy infrastructure corridor" means a geographic area within the State designated by the Commission in accordance with this Chapter for the purposes of siting energy infrastructure.
- E. **Generation interconnection transmission facility.** "Generation interconnection transmission facility" has the same meaning as in Title 35-A, section 3132, subsection 1-B.
- F. **Interested Person.** "Interested person" means a person that can demonstrate to the Commission the financial and technical capability to engage in the development and construction of energy infrastructure.
- G. **Person.** "Person" has the same meaning as in Title 35-A, section 102, subsection 11.
- H. **Project.** "Project" means the development or construction of energy infrastructure within an energy infrastructure corridor.
- I. **Tribe.** "Tribe" includes the Penobscot Nation, as defined in Title 30, section 6203, subsection 10; the Passamaquoddy Tribe, as defined in Title 30, section 6203, subsection 7; the Houlton Band of Maliseet Indians, as defined in Title 30, section 6203, subsection 2 and the Aroostook Band of Micmacs, as defined in Title 30, section 7202, subsection 1.

§ 3 DESIGNATION OF ENERGY INFRASTRUCTURE CORRIDORS

A. Rulemaking

1. Major Substantive Rule

The Commission may designate an energy infrastructure corridor only by major substantive rule as defined in Title 5, chapter 375, subchapter 2-A.

2. **Process**

- a. **Public Hearing.** The rulemaking proceeding to designate an energy infrastructure corridor must include a public hearing in which any person may submit oral or written testimony or comments. The oral or written testimony or comments must be incorporated into the rulemaking record in accordance with Title 5, section 8052, subsection 1. The Commission shall provide an opportunity for examination of the petitioner for an energy infrastructure corridor designation at the public hearing.
- b. **Comments.** The Commission shall allow for written comments by any person up to 7 days prior to the hearing and allow a second round of written comments to be filed within 10 days of the hearing or within such longer time as the Commission may direct. The Commission shall address all written comments, including those submitted pursuant to subsection F, and state its rationale for adopting or rejecting any proposals or recommendations contained in those written comments.
- c. **Substantial Evidence.** A designation of an energy infrastructure corridor must be based on substantial evidence in the record of the rulemaking proceeding.

B. **Petition for Corridor Designation**

The Commission may commence a rulemaking proceeding to designate an energy infrastructure corridor only upon the filing of a petition for corridor designation by the Office of the Public Advocate, the Executive Department, Governor's Office of Energy Independence and Security or an interested person.

C. **Contents of Petition**

A petition for designation of an energy infrastructure corridor must include:

1. the name and address of the petitioner;
2. if the petition for designation of an energy infrastructure corridor is filed by an interested person, a demonstration that the petitioner has the financial and technical capability to engage in the development and construction of energy infrastructure;
3. a map of sufficient scale, which shows the location of the proposed corridor; the location of existing incorporated communities; the principal topographic features of the proposed location; public or private recreational areas, parks, forests, hunting or fishing areas, or similar facilities; historical or scenic areas or places; rivers, lakes, streams, reservoirs and similar bodies of water, located within five miles of either side of the center line of the proposed corridor;
4. a statement describing the purpose of the designation as an energy infrastructure corridor, including the type energy infrastructure development that is contemplated;

5. a demonstration that the geographical area of the proposed corridor is no greater than necessary to achieve the stated purpose; and
6. a demonstration that the designation of the energy infrastructure corridor would satisfy the standards for designation as specified in subsection G; and
7. a description of alternative corridors that were considered.

D. Dismissal of Petition

The Commission shall dismiss a petition for the designation of an energy infrastructure corridor filed under this section if, after preliminary review, the Commission determines that the petition:

1. does not contain sufficient information to support the designation of an energy infrastructure corridor; or
2. was filed by a person other than the Office of the Public Advocate, Executive Department, Governor's Office of Energy Independence and Security or an interested person.

E. Designation Prohibition

The Commission may not designate an energy infrastructure corridor that is located on any of the following lands:

1. Houlton Band Trust Land, as defined in Title 30, section 6203, subsection 2-A;
2. Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection 6;
3. Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9;
4. Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2;
5. Lands that constitute a park as defined in Title 12, section 1801, subsection 7 and Baxter State Park; and
6. Federally owned land.

F. Consultation and Notification

Prior to designating an energy infrastructure corridor under this section, the Commission shall, at a minimum, notify, consult with and accept comments from:

1. the Department;
2. State and federal energy and natural resources protection agencies that include, but are not limited to;
 - a. Maine Department of Conservation;

- b. Maine Bureau of Parks and Lands;
 - c. Maine State Planning Office;
 - d. Maine Department of Inland Fisheries and Wildlife;
 - e. Maine Department of Agriculture;
 - f. Maine Department of Marine Resources if the proposed energy infrastructure corridor is located along the coast;
 - g. Army Corp of Engineers;
 - h. United States Fish and Wildlife Service
 - i. United States Environmental Protection Agency; and
 - j. National Marine Fisheries Service, if the proposed energy infrastructure corridor is located along the coast;
3. the municipalities in which the proposed corridor would be located;
 4. the Maine Land Use Regulation Commission, if the proposed energy infrastructure corridor, or any portion of the corridor, is located within unorganized or deorganized territories of the State;
 5. a tribe, if the proposed energy infrastructure corridor, or any portion of the corridor, is located on land of a tribe other than those lands specified in subsection E; and
 6. the transmission and distribution utilities in whose service territory a proposed energy infrastructure, or any portion of the corridor, would be located.

G. Designation Standards

The Commission may designate an energy infrastructure corridor only if it makes the findings specified in this subsection.

1. **Public Interest.** The future development of energy infrastructure within the corridor is reasonably likely to be in the public interest. In making this determination, the Commission shall consider, among other relevant factors, whether the designation of an energy infrastructure corridor will:
 - a. encourage collocation of energy infrastructure;
 - b. enhance the efficient utilization of existing energy infrastructure; and
 - c. limit impacts of the development of energy infrastructure on the landscape.

2. **Environmental Laws.** The future development of energy infrastructure within the corridor is reasonably likely to be consistent with environmental and land use laws and rules of the State and United States.
3. **Geographic Area.** The geographic area of the corridor is no greater in breadth and scope than is necessary to achieve the purposes of the designation.

§ 4 USE OF DESIGNATED CORRIDORS

A. Transmission and Distribution Utilities

1. Transmission Lines

A transmission and distribution utility may not engage in development or construction of a transmission line covered by Title 35-A, section 3132 within an energy infrastructure corridor, unless:

- a. the Commission has issued a certificate of public convenience and necessity approving the transmission line in accordance with section 3132; and
- b. the Department has issued a consolidated environmental permit approving the project in accordance with Title 35-A, section 122(6).

2. Other Energy Infrastructure

A transmission and distribution utility may not engage in development or construction of energy infrastructure other than a transmission line covered by section 3132 within an energy infrastructure corridor, unless:

- a. the Commission has issued a corridor use certificate approving the project in accordance with Title 35-A, section 122(5) and section 4(C) of this Chapter; and
- b. the Department has issued a consolidated environmental permit approving the project in accordance with Title 35-A, section 122(6).

B. Energy Infrastructure Developers

A person that is not a transmission and distribution utility may not engage in development or construction of energy infrastructure within an energy infrastructure corridor, unless:

1. the Commission has issued a corridor use certificate approving the project in accordance with Title 35-A, section 122(5) and section 4(C) of this Chapter; and
2. the Department has issued a consolidated environmental permit approving the project in accordance with Title 35-A, section 122(6).

C. Corridor Use Certificate**1. Petition**

Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure corridor, except for a transmission and distribution utility that proposes a transmission line subject to the requirements of Title 35-A, section 3132, that person shall file with the Commission a petition for a corridor use certificate.

2. Contents of Petition

The petition for the corridor use certificate must include:

- a. the name and address of the petitioner;
- b. a detailed description of the proposed energy infrastructure development, including the purpose and benefits of the development;
- c. detailed cost estimates of the proposed energy infrastructure development;
- d. a demonstration that the petitioner has the financial and technical capability to engage in the development and construction of energy infrastructure;
- e. a list of all governmental approvals or permits required to complete the development of the energy infrastructure and the status of the approval or permit process; and
- f. a description of alternatives to the energy infrastructure development that were considered, including, but not limited to, generation, energy efficiency and demand response measures.

3. Adjudicatory Process

The Commission shall process a petition for a corridor use certificate in an adjudicatory proceeding.

4. Findings

The Commission shall issue a corridor use certificate upon a finding that the project is:

- a. in the public interest; and
- b. reasonably likely to:
 - i. minimize utility rates or increase the reliability of utility service;

- ii. have the net effect of reducing the release of greenhouse gases; or
- iii. enhance economic development within the State.

§ 5 EMINENT DOMAIN

A. Transmission and Distribution Utilities

The eminent domain authority of a transmission and distribution utility within an energy infrastructure corridor is governed by Title 35-A, section 3136.

B. Energy Infrastructure Developers

Subject to approval by the Commission, a person that is not a transmission and distribution utility that receives a corridor use certificate under section 3(C) to develop energy infrastructure within an energy infrastructure corridor may take and hold by right of eminent domain lands and easements within that corridor necessary for the proper location of the energy infrastructure covered by the corridor use certificate in the same manner and under the same conditions as set forth in Title 35-A, chapter 65. The right of eminent domain does not apply to:

1. lands or easements located within 300 feet of an inhabited dwelling;
2. lands or easements on or adjacent to any developed or undeveloped water power;
3. lands or easements so closely paralleling existing wire lines of other utilities that the proposed energy infrastructure would substantially interfere with service rendered over the existing lines, except with the consent of the owners;
4. lands or easements owned or used by railroad corporations, except as authorized pursuant to Title 35-A, section 2311;
5. lands or easements owned by the State; and
6. transmission and distribution plant that is owned, controlled, operated or managed by a transmission and distribution utility on or before July 18, 2008.

C. Commission

The Commission may take and hold by right of eminent domain lands and easements within an energy infrastructure corridor in accordance with this subsection, notwithstanding any transmission and distribution utility ownership of the lands or easements.

1. Process

The Commission may exercise the authority under this subsection only through an adjudicatory proceeding upon a petition by the Public Advocate or the

Executive Department, Governor's Office of Energy Independence and Security demonstrating that such action is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor.

2. **Procedure**

The Commission may exercise the right of eminent domain in the same manner and under the same conditions as set forth in Title 35-A, chapter 65. For the purposes of the exercise of eminent domain authorized, the Commission is both a person and the State.

3. **Amount of Land**

The amount of any lands or easements taken by the Commission pursuant to this subsection may be no greater than is required to avoid the harm to electricity consumers identified under section 5(C)(1) of this Chapter.

4. **Personal Property**

The right of eminent domain does not apply to personal property, fixtures or improvements that constitute transmission and distribution plant as defined in Title 35-A, section 102(20-A).

5. **Assessment**

The Commission may assess transmission and distribution utilities to the extent necessary to obtain sufficient funds to pay for lands and easements taken by the Commission.

6. **Transfer of Property**

The Commission, in an adjudicatory proceeding upon petition by the Public Advocate or the Executive Department, Governor's Office of Energy Independence and Security, may transfer or convey to any person or state agency lands and easements once acquired, except that a transmission and distribution utility whose lands or easements were taken pursuant to this paragraph must be given the first opportunity to acquire the lands or easements to the extent necessary or useful in the performance of its duties as a transmission and distribution utility.

7. **Report**

The Commission shall report on the circumstances of any taking by eminent domain to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters during the next regular session of the Legislature following the acquisition of lands or easements by eminent domain.

§ 6 REPEAL

This Chapter is repealed on July 30, 2011, unless the Legislature extends the authority of the Commission to designate energy infrastructure corridors beyond that date.

§ 7 WAIVER OR EXEMPTION

Upon the request of any person subject to this Chapter or upon its own motion, the Commission may, for good cause, waive any requirement of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of Technical Analysis, or the presiding officer assigned to a proceeding related to this Chapter may grant the waiver.

STATUTORY AUTHORITY: 35-A M.R.S.A. §§ 104, 111, 122

EFFECTIVE DATE: This rule was approved as to form and legality by the Attorney General on November 18, 2008. It was filed with the Secretary of State on November 20, 2008 and became effective on November 25, 2008.