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I N   S E N A T E

May 15, 2014

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Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to fuel gas transmission lines

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 120 of the public service law is amended by adding  
2 a new subdivision 5 to read as follows:

3     5. "LANDOWNER" MEANS THE HOLDER OF ANY RIGHT, TITLE, INTEREST, LIEN,  
4 CHARGE OR ENCUMBRANCE IN REAL PROPERTY SUBJECT TO A PROPOSED SITE OR  
5 RIGHT OF WAY.

6     S 2. Section 121-a of the public service law, as added by chapter 538  
7 of the laws of 1981, is amended to read as follows:

8     S 121-a. Procedures with respect to certain fuel gas transmission  
9 lines. 1. All persons who intend to construct fuel gas transmission  
10 lines as described in this section shall file with the commission for  
11 its approval the standards and practices which will be applied to envi-  
12 ronmental management and construction of all such lines or shall file a  
13 certified statement agreeing to construct such lines in accordance with  
14 standards and practices on file and approved by the commission.

15     2. A notice of intention to construct a fuel gas transmission line as  
16 described in subdivision two of section one hundred twenty OF THIS ARTI-  
17 CLE, which extends a distance of less than five miles and which is six  
18 inches or less in nominal diameter, shall be filed with the commission  
19 and shall contain:

20     (a) the date on or about which the applicant intends to begin  
21 construction of the line;

22     (b) a brief statement describing and locating the line;

23     (c) an indication of the approved environmental management and  
24 construction standards and practices that will be followed in an effort  
25 to minimize or avoid adverse environmental impacts to the maximum extent  
26 practicable.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 A copy of such notice shall be served on each municipality AND TO THE  
2 GREATEST EXTENT PRACTICABLE EACH LANDOWNER in which any portion of such  
3 line is to be located and proof of service shall accompany the notice  
4 filed with the commission. NOTICE TO EACH LANDOWNER SHALL BE SERVED BY  
5 CERTIFIED MAIL AND SHALL ALSO INCLUDE A CLEAR EXPLANATION OF HOW TO FILE  
6 WITH THE COMMISSION A NOTICE OF INTENT TO BE A PARTY TO THE CERTIF-  
7 ICATION PROCEEDINGS AND A STATEMENT THAT THIS NOTICE SHALL BE FILED  
8 WITHIN THIRTY DAYS AFTER THE DATE GIVEN IN THE PUBLISHED NOTICE AS THE  
9 DATE FOR FILING OF THE APPLICATION.

10 3. An application to construct a fuel gas transmission line as  
11 described in subdivision two of section one hundred twenty OF THIS ARTI-  
12 CLE, which extends a distance of less than ten miles, other than a line  
13 described in subdivision two of this section, shall be filed with the  
14 commission and shall contain:

15 (a) the information required by paragraphs (a), (b), (d) and (f) of  
16 subdivision one of section one hundred twenty-two OF THIS ARTICLE;

17 (b) the description of the ecosystem, land use, visual and cultural  
18 resources which would be affected by the line; and

19 (c) an indication of the approved environmental management and  
20 construction standards and practices that will be followed in an effort  
21 to minimize or avoid adverse environmental impacts to the maximum extent  
22 practicable.

23 A copy of such application shall be served on: (i) the department of  
24 environmental conservation; (ii) the department of agriculture and  
25 markets; [and] (iii) each municipality in which any portion of such line  
26 is to be located; AND (IV) EACH LANDOWNER, TO THE GREATEST EXTENT PRAC-  
27 TICABLE, IN WHICH ANY PORTION OF SUCH LINE IS TO BE LOCATED; and proof  
28 of service shall accompany the application filed with the commission.  
29 NOTICE TO EACH LANDOWNER SHALL BE SERVED BY CERTIFIED MAIL AND SHALL  
30 ALSO INCLUDE A CLEAR EXPLANATION OF HOW TO FILE WITH THE COMMISSION A  
31 NOTICE OF INTENT TO BE A PARTY TO THE CERTIFICATION PROCEEDINGS AND A  
32 STATEMENT THAT THIS NOTICE SHALL BE FILED WITHIN THIRTY DAYS AFTER THE  
33 DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF THE APPLI-  
34 CATION. The commission shall serve a copy of such application on such  
35 other person or entities as the commission may deem appropriate. Such  
36 action shall be deemed compliance with the applicable provisions of  
37 section one hundred twenty-two of this article. The applicant, the  
38 commission and those served shall constitute the parties notwithstanding  
39 the provisions of section one hundred twenty-four OF THIS ARTICLE.

40 4. If the notice or the application filed pursuant to subdivisions two  
41 or three of this section respectively does not comply with the require-  
42 ments of such subdivision, the commission or its designee shall, prompt-  
43 ly, but in no event more than fourteen days from the date on which it  
44 receives the notice or application, advise the person in writing of  
45 noncompliance and how to comply.

46 5. Any person may file comments on an application with the commission.  
47 The record of the certification proceeding under subdivision seven OF  
48 THIS SECTION may be limited to the application, any comments filed by  
49 the parties and any report prepared by the staff of the department of  
50 public service, whether or not it acts as a party.

51 6. Upon receipt of a notice with respect to a fuel gas transmission  
52 line that complies with subdivision two of this section, the commission  
53 shall, within thirty days or less, determine whether there is a substan-  
54 tial public interest requiring that the facility be reviewed in accord-  
55 ance with the provisions of subdivision seven of this section. If the  
56 commission determines that such review is not required it shall issue a

1 certificate authorizing such construction. Failure to act within such  
2 thirty day period shall constitute a certificate for the purpose of this  
3 article. If the commission determines that such review is required, the  
4 commission shall serve a copy of the notice which shall constitute the  
5 application, on such person or entities as the commission may deem  
6 appropriate and which shall be deemed compliance with the applicable  
7 provisions of section one hundred twenty-two of this article. The appli-  
8 cant and such persons or entities shall constitute the parties, the  
9 provisions of section one hundred twenty-four OF THIS ARTICLE notwith-  
10 standing.

11 7. The commission shall render a decision upon the record within sixty  
12 days from the date on which it receives an application complying with  
13 subdivision three OF THIS SECTION or within sixty days from the date on  
14 which it receives a notice complying with subdivision two OF THIS  
15 SECTION on which it has made a determination that review under this  
16 subdivision is in the public interest. Where the commission has required  
17 a hearing it may extend the time required to render a decision. In  
18 rendering its decision on a notice filed pursuant to subdivision two OF  
19 THIS SECTION and reviewed under this subdivision, the commission is  
20 required to find and determine only that the construction of a fuel gas  
21 transmission line will minimize or avoid adverse environmental impacts  
22 to the maximum extent practicable. In rendering its decision on an  
23 application filed pursuant to subdivision three OF THIS SECTION, the  
24 commission shall make only the determinations required by paragraphs  
25 (a), (b), (e), (f) and (g) of subdivision one of section one hundred  
26 twenty-six OF THIS ARTICLE.

27 S 3. Subdivision 2 of section 122 of the public service law, as added  
28 by chapter 272 of the laws of 1970, paragraph (a) as amended by chapter  
29 464 of the laws of 1975, subparagraph ii of paragraph (a) as amended and  
30 subparagraph v of paragraph (a) as relettered by chapter 362 of the laws  
31 of 1987, and subparagraph iv of paragraph (a) as amended by chapter 72  
32 of the laws of 2004, is amended to read as follows:

33 2. Each application shall be accompanied by proof of service of: (a) a  
34 copy of such application on:

35 i. each municipality in which any portion of such facility is to be  
36 located, both as primarily proposed and in the alternative locations  
37 listed. Notice to a municipality shall be addressed to the chief execu-  
38 tive officer thereof and shall specify the date on or about which the  
39 application is to be filed;

40 ii. the commissioner of environmental conservation, the commissioner  
41 of [commerce] ECONOMIC DEVELOPMENT, the secretary of state, the commis-  
42 sioner of agriculture and markets and the commissioner of parks, recre-  
43 ation and historic preservation;

44 iii. each member of the legislature through whose district the facili-  
45 ty or any alternate proposed in the application would pass;

46 iv. EACH LANDOWNER IN WHICH ANY PORTION OF SUCH FACILITY IS TO BE  
47 LOCATED, BOTH AS PRIMARILY PROPOSED AND IN THE ALTERNATIVE LOCATIONS  
48 LISTED. NOTICE TO EACH LANDOWNER SHALL BE SERVED BY CERTIFIED MAIL AND  
49 SHALL ALSO INCLUDE A CLEAR EXPLANATION OF HOW TO FILE WITH THE COMMIS-  
50 SION A NOTICE OF INTENT TO BE A PARTY TO THE CERTIFICATION PROCEEDINGS  
51 AND A STATEMENT THAT THIS NOTICE MUST BE FILED WITHIN THIRTY DAYS AFTER  
52 THE DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF THE  
53 APPLICATION;

54 V. in the event such facility or any portion thereof is located within  
55 its jurisdiction, the Tug Hill commission[.];

1 [v.] VI. in the event such facility or any portion thereof is located  
2 within the Adirondack park, as defined in subdivision one of section  
3 9--0101 of the environmental conservation law, the Adirondack park agen-  
4 cy.

5 (b) a notice of such application on persons residing in municipalities  
6 entitled to receive notice under subparagraph i[.] of paragraph a OF  
7 THIS SUBDIVISION. Such notice shall be given by the publication of a  
8 summary of the application and the date on or about which it will be  
9 filed, to be published under regulations to be promulgated by the  
10 commission, in such form and in such newspapers as will serve substan-  
11 tially to inform the public of such application.

12 S 4. Paragraph (c) of subdivision 1 of section 126 of the public  
13 service law, as amended by chapter 406 of the laws of 1987, is amended  
14 to read as follows:

15 (c) that the facility represents the minimum adverse environmental  
16 impact, considering the state of available technology and the nature and  
17 economics of the various alternatives, and other pertinent consider-  
18 ations including but not limited to, the effect on agricultural lands,  
19 wetlands, parklands and river corridors traversed[;]. WHEN DETERMINING  
20 THE EFFECT ON AGRICULTURAL LANDS, THE COMMISSION SHALL CONSIDER THE  
21 FOLLOWING FACTORS: (I) THE VIABILITY OF ACTIVE FARMING WITHIN THE  
22 PROPOSED LOCATION; (II) ANY IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS  
23 OF AGRICULTURAL RESOURCES WHICH WOULD BE INVOLVED IN THE PROPOSED  
24 LOCATION; AND (III) IF THE PROPOSED LOCATION CONTAINS LAND DESIGNATED AS  
25 MINERAL SOIL GROUPS 1A, 1B, OR 2A OR ORGANIC SOIL GROUP A, BASED ON THE  
26 AGRICULTURAL LAND CLASSIFICATION SYSTEM ESTABLISHED AND MAINTAINED BY  
27 THE COMMISSIONER OF AGRICULTURE AND MARKETS UNDER SECTION THREE HUNDRED  
28 FOUR-A OF THE AGRICULTURE AND MARKETS LAW, THE AVAILABILITY OF ALTERNA-  
29 TIVE LOCATIONS NOT CONTAINING LAND DESIGNATED AS SUCH SOIL GROUPS.

30 S 5. This act shall take effect immediately.