

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

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;

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

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1 (c) an indication of the approved environmental management and
2 construction standards and practices that will be followed in an effort
3 to minimize or avoid adverse environmental impacts to the maximum extent
4 practicable.

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

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

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

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

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.

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

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

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

55 6. Upon receipt of a notice with respect to a fuel gas transmission
56 line that complies with subdivision two of this section, the commission

1 shall, within thirty days or less, determine whether there is a substan-
2 tial public interest requiring that the facility be reviewed in accord-
3 ance with the provisions of subdivision seven of this section. If the
4 commission determines that such review is not required it shall issue a
5 certificate authorizing such construction. Failure to act within such
6 thirty day period shall constitute a certificate for the purpose of this
7 article. If the commission determines that such review is required, the
8 commission shall serve a copy of the notice which shall constitute the
9 application, on such person or entities as the commission may deem
10 appropriate and which shall be deemed compliance with the applicable
11 provisions of section one hundred twenty-two of this article. The appli-
12 cant and such persons or entities shall constitute the parties, the
13 provisions of section one hundred twenty-four OF THIS ARTICLE notwith-
14 standing.

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

31 S 3. Subdivision 2 of section 122 of the public service law, as added
32 by chapter 272 of the laws of 1970, paragraph (a) as amended by chapter
33 464 of the laws of 1975, subparagraph ii of paragraph (a) as amended and
34 subparagraph v of paragraph (a) as relettered by chapter 362 of the laws
35 of 1987, and subparagraph iv of paragraph (a) as amended by chapter 72
36 of the laws of 2004, is amended to read as follows:

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

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

44 ii. the commissioner of environmental conservation, the commissioner
45 of [commerce] ECONOMIC DEVELOPMENT, the secretary of state, the commis-
46 sioner of agriculture and markets and the commissioner of parks, recre-
47 ation and historic preservation;

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

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

1 THE DATE GIVEN IN THE PUBLISHED NOTICE AS THE DATE FOR FILING OF THE
2 APPLICATION;

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

5 [v.] VI. in the event such facility or any portion thereof is located
6 within the Adirondack park, as defined in subdivision one of section
7 [9--0101] 9-0101 of the environmental conservation law, the Adirondack
8 park agency.

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

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

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

34 S 5. This act shall take effect immediately.