

CHAPTER 101

PUBLIC UTILITIES

HOUSE BILL 12-1312

BY REPRESENTATIVE(S) Sonnenberg, Levy, Brown, Priola, Vigil, Wilson;
also SENATOR(S) Brophy and Johnston, White.

AN ACT

CONCERNING THE EXCLUSION OF LAND USE ISSUES ADDRESSED BY LOCAL GOVERNING BODIES FROM THE PUBLIC UTILITIES COMMISSION'S PROPER SCOPE OF REVIEW WITH RESPECT TO APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR TRANSMISSION LINES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. The general assembly declares that the construction of new electric transmission lines and associated facilities is necessary to promote the development of electric generation resources, Colorado's energy security, and the state's long-term economic growth. Various state and local government processes control the approval, siting, and permitting of electric transmission lines, including the requirement that a public utility obtain a certificate of public convenience and necessity from the public utilities commission for lines and facilities not constructed in the ordinary course of business. To ensure the efficient and timely application of such processes, individual, state, and local interests should be heard and considered in the appropriate forum. It is, therefore, in the state's interest to clarify the proper scope of review by the public utilities commission in connection with applications for certificates of public convenience and necessity for new construction or extension of electric transmission lines and associated facilities.

SECTION 2. In Colorado Revised Statutes, **amend** 40-5-101 as follows:

40-5-101. New construction - extension - compliance with local zoning rules.

(1) (a) ~~NO~~ A public utility shall NOT begin the construction of a new facility, plant, or system or ~~of any~~ THE extension of its facility, plant, or system without first ~~having obtained~~ OBTAINING from the commission a certificate that the present or future public convenience and necessity require, or will require, ~~such~~ THE construction OR EXTENSION. FOR PURPOSES OF THIS SUBSECTION (1), THE PRESENT OR FUTURE PUBLIC

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

CONVENIENCE AND NECESSITY DOES NOT INCLUDE THE CONSIDERATION OF LAND USE RIGHTS OR SITING ISSUES RELATED TO THE LOCATION OR ALIGNMENT OF THE PROPOSED ELECTRIC TRANSMISSION LINES OR ASSOCIATED FACILITIES, WHICH ISSUES ARE UNDER THE JURISDICTION OF A LOCAL GOVERNMENT'S LAND USE REGULATION. Sections 40-5-101 to 40-5-104 ~~shall not be construed to~~ DO NOT require ~~any~~ A corporation to secure ~~such~~ A certificate for THE FOLLOWING:

- (I) An extension within any city and county, ~~or~~ city, or town within which it has ~~theretofore~~ ALREADY lawfully commenced operations; ~~or for~~
- (II) An extension into territory, either within or ~~without~~ OUTSIDE OF a city and county, ~~or~~ city, or town, contiguous to its facility, line, plant, or system and not ~~theretofore~~ ALREADY served by a public utility providing the same commodity or service; ~~or for~~
- (III) An extension within or to territory already served by ~~it~~ THE CORPORATION, AS IS necessary in the ordinary course of its business.

(b) If ~~any~~ A public utility, in constructing or extending its line, plant, or system, interferes, or is about to interfere, with the operation of the line, plant, or system of any other public utility already constructed, the commission, ~~or~~ UPON complaint of the public utility claiming to be injuriously affected, after hearing, may ~~make such order prohibiting such~~ PROHIBIT THE construction or ~~extensions~~ EXTENSION, or ~~prescribing such~~ PRESCRIBE JUST AND REASONABLE terms and conditions for the location of the lines, plants, or systems affected. ~~as to it may seem just and reasonable.~~

(2) Whenever the commission, after a hearing upon its own motion or upon complaint, finds that there is or will be a duplication of service by public utilities in any area, the commission ~~shall, in its discretion,~~ MAY issue a certificate of public convenience and necessity assigning specific territories to one or to each of said utilities, or, by certificate of public convenience and necessity, ~~to~~ otherwise define the conditions of rendering service and constructing extensions within ~~said~~ THOSE territories and ~~shall, in its discretion,~~ MAY order the elimination of ~~said~~ THE duplication upon such terms as are just and reasonable, having due regard to due process of law and to all the rights of the respective parties and to public convenience and necessity.

(3) Except as otherwise provided in section 29-20-108, C.R.S., ~~on or after August 8, 2005,~~ ~~no~~ A public utility shall NOT construct or install ~~any~~ A new facility, plant, or system within the territorial boundaries of ~~any~~ A local government unless the construction or installation complies with the LOCAL GOVERNMENT'S zoning rules, resolutions, or ordinances. ~~of the local government applicable to the property on which the facility, plant, or system is to be constructed or installed.~~ Nothing in this subsection (3) ~~shall be construed to prohibit~~ PROHIBITS a local government from granting a variance from its zoning rules, resolutions, or ordinances for such uses of the property. Nothing in this subsection (3) ~~shall be construed to grant~~ GRANTS the commission any additional authority to restrict a siting application. For purposes of this ~~subsection (3)~~ SECTION, "local government" ~~shall mean~~ MEANS a county, home rule or statutory city, town, territorial charter city, or city and county. NOTHING IN THIS SUBSECTION (3) RESTRICTS THE RIGHT OF A PUBLIC UTILITY OR

POWER AUTHORITY TO APPEAL TO THE PUBLIC UTILITIES COMMISSION A LOCAL GOVERNMENT ACTION UNDER SECTION 29-20-108, C.R.S.

(4) (a) A public utility ~~shall be~~ IS entitled to recover, through a separate rate adjustment clause, the costs that it prudently incurs in planning, developing, and completing the construction or expansion of transmission facilities for which the utility has been granted a certificate of public convenience and necessity, or for which the commission has determined that no certificate of public convenience and necessity is required. The transmission rate adjustment clause ~~shall be~~ IS subject to annual changes, which ~~shall be~~ ARE effective on January 1 of each year.

(b) To provide additional encouragement to utilities to pursue the construction and expansion of transmission facilities, the commission shall approve current recovery by the utility through the annual rate adjustment clause of the utility's weighted average cost of capital, including its most recently authorized rate of return on equity, on the total balance of construction work in progress related to such transmission facilities as of the end of the immediately preceding year. The rate adjustment clause shall be reduced to the extent that the prudently incurred costs being recovered through the adjustment clause have been included in the public utility's base rates as a result of the commission's final order in a rate case.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 12, 2012