

SB361
Chaptered Law 220, Laws of 2012

An act establishing a commission to study the feasibility of establishing energy infrastructure corridors within existing transportation rights of way and repealing a commission.

DRAFT FINAL REPORT

In adopting SB361, the legislature found that the state would be well served by determining whether it is feasible to use existing transportation rights of way to serve as locations for utility infrastructure, including underground installations.

SB361 established this commission (the "Commission") to conduct a feasibility study, and, if warranted, to recommend a process by which appropriate energy infrastructure corridors on existing state transportation rights of way should be identified for specific utility facilities and a process by which bidding for these corridors and revenue for the annual use of the corridors would be established.

SB361 established that the Commission has no regulatory or supervisory authority over the planning, siting, construction, or operation of any past, present, or future power transmission or energy infrastructure project.

This is the Final Report of the Commission. This report summarizes the Commission's process in discharging its duties under SB361. The report then sets forth the Commission's findings and recommendations.

THE COMMISSION'S PROCESS

Under SB 361, the Commission's assessment of feasibility shall consider, but shall not be limited to the following issues:

- (a) Whether such corridor or corridors materially enhance the delivery of electricity or other utilities, or both, to New Hampshire consumers and increase the reliability and security of the electricity distribution system in the state.
- (b) The identification of the corridors.

- (c) The identification of available technologies.
- (d) The identification of the costs of available technologies.
- (e) Whether there would be long-term economic benefits for the state, including, but not limited to, direct financial benefits from leasing rights of ways; employment opportunities; and private sector economic development.
- (f) What the effects of such corridor or corridors are on the retail price of electricity or other utilities, or both, to businesses and residential ratepayers.
- (g) A process design to assure the efficient development of such corridor or corridors by energy distribution companies serving the state.
- (h) What actions need to be taken to assure that conflict with the public purposes for which such rights of way are already owned is minimized.
- (i) Circumstances where eminent domain might be used to complete an otherwise incomplete energy infrastructure corridor.

The Commission met on [insert dates of Commission meetings] and also held public sessions in Concord on [date] and Plymouth on [date]. A summary of public session input is attached. The Commission invited a broad range of testimony from government, industry, engineering and policy perspectives. The parties providing formal testimony to the Commission included [insert list of parties who testified in person or in written form]. Approximately [insert number] members of the public spoke at the Commission's two public sessions. The minutes of the Commission meetings and other documents relating to the Commission's proceedings are available at [insert link to website].

The members of the Commission are sincerely appreciative for the testimony and public comments provided to the Commission.

FINDINGS

The Commission was able to gather a substantial body of information relative to feasibility of using existing state transportation rights of way for energy infrastructure corridors. However, important gaps remain in the Commission's fact-finding efforts.

The Commission's findings are as follows:

1. A multitude of energy projects are planned for New Hampshire, with little or no policy input from the state. Some current transmission proposals would use New Hampshire essentially as a "through-path" to link generation capacity located outside New Hampshire with demand load centers also located outside New Hampshire. These projects raise substantial questions as to the relative benefits and burdens for the state. While the Commission understands and appreciates the important regional elements of energy policy, planning and infrastructure, the Commission believes it is incumbent upon the state of New Hampshire to take charge and formulate a state policy regarding new energy infrastructure that strikes the right balance between the benefits and burdens to New Hampshire. Specifically, New Hampshire policy should address and manage how and where energy comes through our state in a way that is most beneficial to our state, first, and then the region.
2. The NH Department of Transportation ("DOT") has initially identified four highway corridors as viable energy infrastructure corridors. These corridors include I-89 (between the intersection of I-93 and the Vermont border); I-93 (between the Massachusetts border and the Vermont border); I-95 (between the Massachusetts border and the Maine border); and NH Route 101 (between the intersection of I-93 and the intersection of I-95). These state-owned transportation rights of way, and potentially others, could be used to locate underground energy transmission corridors including electric transmission lines.
3. Underground transmission technology is being used extensively throughout the U.S. and internationally.
4. Questions of technical and financial feasibility of underground transmission technology are typically site and project-specific to a

significant extent. However, testimony suggests that underground transmission facilities on appropriate state transportation rights of way (ie, those that are accessible, graded, softened, sufficient in size and located in the necessary areas) may be technically and financially competitive with other transmission designs and locations.

5. At least two pending interstate electric transmission projects in the New England/New York region have been designed with underground transmission lines located on state-owned transportation rights of way, indicating this approach can be technically and financially viable.
6. At least one New England state has developed a general framework for making state-owned transportation rights of way available to transmission developers, including provisions for the nature and amount of compensation to be paid to the state.
7. Testimony suggests that underground corridors may increase the reliability and security of the electric transmission system.
8. Given the pace of industry proposals and the progress of other states, New Hampshire may find itself at a competitive disadvantage if it does not keep pace with other states in the region by developing proactive policies to make state-owned transmission rights of way available for transmission infrastructure development.
9. New Hampshire's current Site Evaluation Committee ("SEC") framework was designed before the relatively recent regulatory changes that provide the potential for multiple, competing and overlapping private transmission proposals subject to only limited regulatory review and essentially no regional planning. While the SEC framework appears to work well for transmission projects subject to the full regional planning process and determined to be necessary by ISO-New England ("ISO-NE"), the SEC process, as applied to optional, private transmission projects, is not a substitute for a more robust state policy.

The Commission was unable to secure necessary testimony and information to provide a definitive answer to the following:

- ⌚ The identification of the costs of available technologies. (The Commission notes that testimony suggests that the use of state transportation rights of way for underground transmission infrastructure may be cost-competitive with other designs and locations in specific circumstances, but the Commission wishes to provide more firm numbers on this point.)
- ⌚ Whether there would be long-term economic benefits for the state, including, but not limited to, direct financial benefits from leasing

rights of ways; employment opportunities; and private sector economic development. (The Commission notes that the grant by the state to transmission developers, for compensation, of permission to use state transportation rights of way for transmission development would by definition provide economic and financial benefits to the state and the construction of such transmission infrastructure would by definition create employment opportunities and private sector economic development. However, the Commission wishes to provide more firm numbers on this point.)

- ⌚ What the effects of such corridor or corridors are on the retail price of electricity or other utilities, or both, to businesses and residential ratepayers. (The Commission notes that, by definition, the availability of another market-priced option for transmission development – state transportation rights of way at a fair level of compensation to the state – will, all else held equal, increase the supply of transmission infrastructure which would tend to reduce competitive transmission costs and thus retail prices. However, the Commission wishes to provide more firm numbers on this point.)
- ⌚ A process design to assure the efficient development of such corridor or corridors by energy distribution companies serving the state. (The Commission notes that it has obtained information regarding the design of the comparable process in Maine, but the Commission needs more time to develop a New Hampshire-specific framework.)
- ⌚ What actions need to be taken to assure that conflict with the public purposes for which such rights of way are already owned is minimized. (The Commission notes that the DOT has identified at least four state-owned transportation rights of way as viable for transmission infrastructure development, but a further level of design review will be needed to determine the details of co-location.)
- ⌚ Circumstances where eminent domain might be used to complete an otherwise incomplete energy infrastructure corridor. (The Commission notes that has not yet addressed this topic pending completion of the basic feasibility analysis.)

The Commission has not yet had the opportunity to investigate and assess other matters that relate to the “opportunity cost” of *failure* of the state to make state-owned transportation rights of way available for transmission infrastructure development. These are important factors that the Commission believes should be weighed in determining the state’s policy. *Without* state action to make state rights of way available, the result may be the scattered, unplanned, uncoordinated development of a multitude of

competing elective, private transmission projects throughout the state, with a substantial portion of this development involving projects that use New Hampshire principally as a “through-path” with few benefits to the state but substantial burdens. Some portion of this development may involve above-ground transmission infrastructure located in sensitive or relatively undeveloped areas of the state or in areas that may impact homes or businesses. Accordingly, the Commission believes that it is necessary to evaluate the impacts of such development on, among other things:

- ⌚ Property values
- ⌚ Residential and business construction
- ⌚ Tourism, hospitality and related businesses based on the natural landscape
- ⌚ Jobs
- ⌚ Tax base and tax collections

RECOMMENDATIONS

As a result of its work to date, the Commission makes five specific recommendations for legislation:

1. **Extend the life of the Commission for one additional year in order to complete its mandate.** In the absence of detailed input from some key market participants, transmission developers and other experts, the Commission will need additional time to complete its research, analysis and assessment, including a review of best practices and innovations being implemented in other states dealing with issues similar to those facing New Hampshire.
2. **Major new transmission siting determinations should be put on a temporary one-year hold pending the final report of the Commission on the extended timeframe and the opportunity for the legislature to craft legislative responses.** The potential use of state-owned rights-of-way may be highly important to the siting of future transmission lines in New Hampshire. To conserve regulatory resources and maintain a level playing field for all transmission developers, major new transmission line siting determinations should be put on a temporary one-year hold pending the final report of the Commission and the opportunity to craft legislation to respond to the Commission’s recommendations. “Major new transmission lines” can be defined in any

number of ways to exclude minor transmission line projects of limited length that will not adversely impact large regions of the state.

3. **Major new optional, elective transmission lines must be placed underground.** Optional, elective transmission lines are private, for-profit developments. They do not respond to any regulatory determination of “need.” At the same time, in some cases private development of new transmission capacity can provide incidental public benefits such as increased electricity supply, diversification of sources, etc. Undergrounding strikes the best balance by enabling these projects to proceed while protecting the state’s aesthetics, sense of place, property values and tourism-driven businesses. Care will have to be taken in defining “major new optional, elective transmission lines.” At a minimum, the definition should include any transmission line that is not eligible for use of eminent domain in New Hampshire.
4. **Designate “pilot” state energy corridors along selected state-owned rights-of-way.** While the Commission’s work is not yet complete, the Commission has identified various corridors along state-owned rights-of-way that are appropriate for co-location of major new transmission lines. These corridors should be made available for underground transmission developments as “pilot” projects. This legislation would set all necessary terms, conditions, and processes (including the determination of compensation to be paid to the state and any incentives to encourage use of state transmission rights of way) for transmission developers to use these initial corridors for underground transmission projects.
5. **Update RSA 162-H (the SEC statute) to protect state interests by incorporating a specific, pre-application proceeding before a new transmission energy facility review board.** The review board would include DOT, the Office of Energy and Planning, the Public Utilities Commission (“PUC”), the Department of Resources and Economic Development, and the PUC Consumer Advocate. It would be empowered to (a) review and certify that each new or improved large transmission proposal has adequately studied the cost and feasibility of underground siting in state-owned transportation corridors, (b) review the need for the project as determined by ISO-NE’s ten year plan, and (c) determine that

the facility is needed to meet state and/or regional energy needs. All large transmission projects proposed would need a determination that all three of these issues have been fully addressed and that the review board—having considered these issues—recommends the project to the SEC for siting review.