

**Commission to Study Energy Infrastructure**  
**November 18, 2009**

Contents of Commission Materials Packet

1. Meeting Agenda (yellow)
2. Proposed Draft Legislation (blue)
3. Treat/Tilberg recommendations (blue)
4. Cashman proposal regarding Maine Turnpike (gold)
5. Turnpike Authority proposal (white)
6. Van Scotter Proposal (salmon)
7. Draft Final Report: Sections I, II, III (green)
8. Background information: current law on restrictions on providing service within a public utility's service territory [referred to in 35-A §122 sub§8] (white)

# **Commission to Study Energy Infrastructure**

**Meeting 6 – Wednesday, November 18, 2009  
Cross Office Building, Room 211, 10am to 4pm**

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**10:00am**      **Welcome and Introductions**

**10:15am**      **Work Session**

- Review of drafts and decisions on final report of the Commission

**12:00pm**      **Lunch**

**1:00pm**      **Work Session**

- Review of drafts and decisions on final report of the Commission

**4:00pm**      **Adjourn**

1 **PART A – Amendments to 35-A MRSA §122 “Energy infrastructure corridors”**

2  
3 **§122. Energy infrastructure corridors**

4  
5 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
6 following terms have the following meanings.

7  
8 A. "Department" means the Department of Environmental Protection.

9  
10 B. "Energy infrastructure" includes electric transmission and distribution facilities,  
11 generation interconnection transmission facilities, natural gas transmission lines, carbon  
12 dioxide pipelines and other energy transport pipelines or conduits. "Energy  
13 infrastructure" does not include ~~generation interconnection transmission facilities or~~  
14 energy generation facilities.

15  
16 C. "Energy infrastructure corridor" or "corridor" means a geographic area within the  
17 State designated ~~by the commission in accordance with this section~~ for the purposes of  
18 siting energy infrastructure. Energy infrastructure corridors include statutory corridors  
19 and petitioned corridors.

20  
21 D. "Generation interconnection transmission facility" has the same meaning as in section  
22 3132, subsection 1-B.

23  
24 E. ~~"Interested person~~ Potential developer" means a person that can demonstrate to the  
25 commission the financial and technical capability to engage in the development and  
26 construction of energy infrastructure.

27  
28 E-1. "Petitioned corridor" means an energy infrastructure corridor designated by the  
29 commission in accordance with subsection 2.

30  
31 F. "Project" means the development or construction of energy infrastructure within an  
32 energy infrastructure corridor.

33  
34 F-1. "Proprietary information" means information that is a trade secret or production,  
35 commercial or financial information the disclosure of which would impair the  
36 competitive position of the person who submitted the information and would make  
37 available information not otherwise publicly available.

38  
39 F-2. "Statutory corridor" means an energy infrastructure corridor designated under  
40 subsection 1-A, paragraph A.

41  
42 G. "Tribe" includes the Penobscot Nation, as defined in Title 30, section 6203,  
43 subsection 10; the Passamaquoddy Tribe, as defined in Title 30, section 6203,  
44 subsection 7; the Houlton Band of Maliseet Indians, as defined in Title 30, section 6203,  
45 subsection 2 and the Aroostook Band of Micmacs, as defined in Title 30, section 7202,  
46 subsection 1.

1  
2 **1-A. Statutory corridors established.** The following areas are designated as statutory  
3 corridors:

4  
5 A. The Interstate 95 corridor; \*See also proposals re:Maine Turnpike

6  
7 B. The Interstate 295 corridor;

8  
9 ~~C. State-owned or controlled abandoned railroad corridors; and~~  
10 ~~[Treat/Tilberg; see language in subsection 2]~~

11  
12 D. Loring to Searsport corridor. \*Decision needed

13  
14 **1-B. Use of statutory corridors; interagency review panel.** The interagency review  
15 panel, as defined in paragraph A, shall oversee the use of statutory corridors in accordance with  
16 this section.

17  
18 A. As used in this subsection, unless the context otherwise indicates, “interagency review  
19 panel” includes:

- 20  
21 (1) The director of the Governor’s Office of Energy Independence and Security or  
22 the director’s designee;  
23 (2) The commissioner of the state agency responsible for administrative and  
24 financial services or the commissioner’s designee;  
25 (3) The commissioner of the state agency responsible for economic development  
26 or the commissioner’s designee; and  
27 (4) The commissioner of each state agency that owns or controls land or assets  
28 within the statutory corridor or the commissioner’s designee;

29  
30 B. The interagency review panel shall identify an initial range of value for the use of  
31 state-owned land or assets within a statutory corridor. The initial range of value must be  
32 determined by a professional appraiser who meets the qualifications of paragraph G.

33  
34 C. The interagency review panel shall establish and implement a regular process for  
35 soliciting, accepting and evaluating proposals for use of a statutory corridor. As part of  
36 this process, the panel shall provide public notice of the availability of the corridor for  
37 energy infrastructure development, a description of the type of development anticipated  
38 in the corridor and the opportunity for interested persons to submit proposals for use of  
39 the corridor.

40  
41 D. The interagency review panel shall evaluate any proposal for use of the corridor on the  
42 basis of the long-term public interest of the State in accordance with this paragraph. If the  
43 panel finds that the proposal is in the long-term public interest of the State, the panel may  
44 accept the proposal. In determining whether the proposal is in the long-term public  
45 interest, the panel shall, at a minimum consider:

1 (1) Maximizing long-term public and economic benefits for the State, including  
2 but not limited to direct financial benefits, employment opportunities and  
3 economic development;

4  
5 (2) Ensuring efficient utilization of the corridor through collocation of energy  
6 infrastructure, collaboration between energy infrastructure developers and the  
7 preservation of options for future uses;

8  
9 (3) Providing access to energy infrastructure for renewable energy generation  
10 within the State;

11  
12 (4) Minimizing conflict with the public purposes for which the land or asset is  
13 owned and any management plans for the land within the corridor, and, where  
14 necessary, mitigating any unavoidable impacts;

15  
16 (5) Limiting and mitigating impacts of energy infrastructure on the landscape,  
17 including but not limited to utilizing underground installation, where  
18 economically and technically feasible;

19  
20 (6) Stabilizing and reducing, when possible, electricity rates and energy costs;

21  
22 (7) Increasing energy reliability, security, and independence of the State; and

23  
24 ***(8) Reducing the release of greenhouse gases; (Treat/Tilberg)***

25  
26 E. If a proposal is accepted on the basis of the evaluation under paragraph D, the  
27 interagency review panel may enter into negotiations with the person or persons who  
28 submitted the proposal regarding a long-term occupancy agreement with the State for the  
29 use of the corridor.

30  
31 (1) For any selected proposal, the interagency review panel shall negotiate the  
32 terms of the occupancy agreement including, but not limited to, ***honoring existing***  
33 ***legal commitments and investment-backed expectations where applicable,***  
34 ***considering relevant prior state investments (Treat/Tilberg),*** the length of the  
35 agreement and compensation to the State for use of the corridor and;

36  
37 (2) Compensation to the State may be in the form of payments made on an annual  
38 basis or the functional or financial equivalent; discounted price for energy  
39 products or services; partial ownership by the State in the energy infrastructure on  
40 the basis of the value of the corridor in proportion to the energy infrastructure  
41 project as a whole; or other appropriate form. The terms of compensation may  
42 include provisions for periodic adjustment of the compensation to the State over  
43 time and reimbursement of costs to the state agency or agencies that own or  
44 control the corridor.

1           (3) Negotiation of compensation to the State must be based on at least one  
2           independent appraisal performed by certified appraiser in accordance with  
3           paragraph F. An independent appraisal performed under this subparagraph must,  
4           at a minimum, consider the costs that will be avoided by the interested person,  
5           including but not limited to, the costs of acquisition, lease or rental of private  
6           land, the costs of property taxes on private land, the costs of surveying, appraisal,  
7           environmental, engineering and other work necessary for use of private land, the  
8           costs of time and potential conflict regarding the use of private land, the unique  
9           and limited nature of public assets, the revenues estimated to be generated by the  
10           use of the public asset, and other relevant factors;

11  
12           F. The interagency review panel shall contract for the services of a professional appraiser  
13           or appraisers to assist the panel in its duties under this subsection. The professional  
14           appraiser contracted under this paragraph must:

15  
16                   (1) Have demonstrated experience in the valuation and evaluation of utility  
17                   corridors or transportation corridors;

18  
19                   (2) Hold a professional designation from a nationally recognized organization of  
20                   appraisers; and

21  
22                   (3) Be licensed by the State of Maine as a certified general real property  
23                   appraiser, in accordance with Title 32, section 14035, or hold a comparable  
24                   license from another state.

25  
26           The cost of the services of a certified appraiser who provides services in accordance with  
27           this paragraph must be paid by interested persons submitting proposals for use of the  
28           corridor under this subsection in proportion to the amount of time spent by the appraiser  
29           on that person's proposal.

30  
31           G. The following proprietary information, as it pertains to the sale, lease or use of state-  
32           owned land or assets under the provisions of this subsection or activities in preparation  
33           for such sale, lease or use is confidential within the meaning of Title 1, section 403,  
34           subsection 3, paragraph A, is not a public record within the meaning of Title 1, section  
35           403, subsection 3 and may not be released by the interagency review panel or applicable  
36           state agency:

37  
38                   (1) Proprietary information in the possession of the applicable state agency; and

39  
40                   (2) Proprietary information in the possession of the interagency review panel or a  
41                   professional appraiser assisting the panel.

42  
43           H. No later than February 1st of each year, the interagency review panel shall provide a  
44           written report to the joint standing committee of the Legislature having jurisdiction over  
45           utilities and energy matters that documents activities of and actions taken by the panel  
46           under this subsection during the previous calendar year.

1  
2       **2. Designation of ~~energy infrastructure~~ petitioned corridors.** The commission may,  
3 upon petition, designate energy infrastructure corridors in accordance with this subsection.  
4

5       A. The commission may designate ~~an energy infrastructure~~ a petitioned corridor only by  
6 rule. Rules adopted pursuant to this subsection are major substantive rules as defined in  
7 Title 5, chapter 375, subchapter 2-A.  
8

9           (1) The rulemaking to designate ~~an energy infrastructure~~ a petitioned corridor  
10 must include a public hearing in which any member of the public may submit oral  
11 or written testimony or comments, which must be incorporated into the rule-  
12 making record in accordance with Title 5, section 8052, subsection 1. The  
13 commission shall provide an opportunity for examination of the petitioner at a  
14 rule-making hearing. The commission shall allow for written comments by any  
15 member of the public up to 7 days prior to the hearing. The commission shall  
16 allow a second round of written comments to be filed within 10 days of the  
17 hearing or within such longer time as the commission may direct.  
18

19           (2) In any rulemaking regarding the designation of ~~an energy infrastructure~~ a  
20 petitioned corridor, the commission shall address all written comments, including  
21 those submitted pursuant to subsection 3, and state its rationale for adopting or  
22 rejecting any proposals or recommendations contained in those written comments.  
23

24           (3) A designation of ~~an energy infrastructure~~ petitioned corridor must be based on  
25 substantial evidence in the record of the rule-making hearing.  
26

27       B. The commission may commence a proceeding to designate ~~an energy infrastructure~~  
28 petitioned corridor only upon the filing of a petition for the designation of a an energy  
29 infrastructure corridor by the Office of the Public Advocate, the Executive Department,  
30 Governor's Office of Energy Independence and Security or ~~an interested person~~ a  
31 potential developer.  
32

33       C. The commission shall dismiss a petition for the designation of an energy  
34 infrastructure corridor filed under this subsection if, after preliminary review, the  
35 commission determines that the petition:  
36

37           (1) Does not contain sufficient information to support the designation of an  
38 energy infrastructure corridor; or  
39

40           (2) Was filed by a person other than ~~the Office of the Public Advocate, Executive~~  
41 ~~Department, Governor's Office of Energy Independence and Security or an~~  
42 ~~interested person as defined by subsection 1, paragraph E~~ a person listed in  
43 paragraph B.  
44

45       D. The commission may designate ~~an energy infrastructure~~ a petitioned corridor only if  
46 the commission finds that a statutory corridor, a previously designated petitioned

1 corridor or an abandoned railroad corridor owned or controlled by the Department of  
2 Transportation cannot meet the needs of the proposed energy infrastructure and  
3 [Treat/Tilberg] that the future development of energy infrastructure within the corridor is  
4 reasonably likely to be:

- 5  
6 (1) In the public interest, including, but not limited to, consideration of:  
7 (a) Encouraging colocation of energy infrastructure;  
8 (b) Enhancing the efficient utilization of existing energy infrastructure; and  
9 (c) Limiting impacts on the landscape; and

10  
11 (2) Consistent with environmental and land use laws and rules of the State. A  
12 finding that the future development of energy infrastructure within the corridor is  
13 reasonably likely to be consistent with environmental and land use laws and rules of  
14 the State under this paragraph has no evidentiary value in a subsequent consolidated  
15 environmental permit proceeding undertaken by the department pursuant to  
16 subsection 6.

17  
18 E. In ~~designated~~ designating a geographic area as an ~~energy infrastructure~~ petitioned  
19 corridor, the commission shall limit the geographic area of the petitioned corridor to an  
20 area no greater in breadth and scope than is necessary to achieve the purposes of this  
21 section.

22  
23 F. The commission may not designate an ~~energy infrastructure~~ petitioned corridor that  
24 is located on any of the following lands:

- 25 (1) Houlton Band Trust Land, as defined in Title 30, section 6203, subsection 2-A;  
26 (2) Passamaquoddy Indian territory, as defined in Title 30, section 6203, subsection  
27 6;  
28 (3) Penobscot Indian territory, as defined in Title 30, section 6203, subsection 9;  
29 (4) Aroostook Band Trust Land, as defined in Title 30, section 7202, subsection 2;  
30 (5) Lands that constitute a park as defined in Title 12, section 1801, subsection 7  
31 and Baxter State Park; and  
32 (6) Federally owned land.

33  
34 **3. Consultation and notification required; comments** **Petitioned corridors; notification**  
35 **and consultation prior to designation.** Prior to designating an energy infrastructure corridor  
36 under subsection 2, the commission shall, at a minimum, notify, consult with and accept  
37 comments from:

38 A. The department;

39  
40 A-1. Any state agency or agencies that own or control land within the corridor;

41  
42 B. Appropriate state and federal energy and natural resources protection agencies, as  
43 specified by rules adopted pursuant to subsection 9;

44  
45 C. The municipalities in which the corridor would be located;  
46

1  
2 D. The Maine Land Use Regulation Commission and the counties in which the corridor  
3 would be located, if the proposed energy infrastructure corridor, or any portion of the  
4 corridor, is located within unorganized or deorganized territories of the State; and  
5

6 E. A tribe, if the proposed energy infrastructure corridor, or any portion of the corridor,  
7 is located on land of a tribe other than those lands specified in subsection 2, paragraph F.  
8

9  
10 ~~4. Use of corridors; certificate and permit required. This subsection is repealed.~~  
11

12 *Note: Content is addressed in new subsection 4-A.*  
13

14 **4-A. Use of energy infrastructure corridors; requirements.** Development or  
15 construction of energy infrastructure within an energy infrastructure corridor is governed by this  
16 subsection.  
17

18 A. A person may not engage in development or construction of energy infrastructure  
19 within a statutory corridor, unless:  
20

21 (1) The person has entered an occupancy agreement with the State in accordance  
22 with subsection 1-A, in compliance with applicable state and federal regulations  
23 and laws consistent with this section;  
24

25 (2) The department has issued a consolidated environmental permit approving the  
26 project in accordance with subsection 6; and  
27

28 (3) If the project is a transmission line that requires a certificate of public  
29 convenience and necessity under section 3132, the commission has issued a  
30 certificate of public convenience and necessity approving the transmission line.  
31

32 B. A person may not engage in development or construction of energy infrastructure  
33 within a petitioned corridor, unless:  
34

35 (1) The department has issued a consolidated environmental permit approving the  
36 project in accordance with subsection 6; and  
37

38 (2) *The commission has issued a corridor use certificate approving the project in*  
39 *accordance with subsection 5; and*  
40 *[Treat/Tilberg; require corridor use certificate for all projects rather than just the*  
41 *non-transmission projects]*  
42

43 (3) If the project is a transmission line that requires a certificate of public  
44 convenience and necessity under section 3132, the commission has issued a  
45 certificate of public convenience and necessity approving the transmission line.  
46

1           **5. Corridor use certificate.** Whenever a person proposes to develop or construct energy  
2 infrastructure within an ~~energy infrastructure~~ a petitioned corridor, ~~except for a transmission~~  
3 ~~and distribution utility that proposes a transmission line subject to the requirements of section~~  
4 ~~3132 [Treat/Tilberg]~~ that person shall file with the commission a petition for a corridor use  
5 certificate. The petition for the corridor use certificate must contain such information as the  
6 commission by rule requires. The commission shall process a petition for a corridor use  
7 certificate in an adjudicatory proceeding. The commission ~~shall~~ may issue a corridor use  
8 certificate upon a finding that the project is in the long-term public interest of the State. In  
9 determining whether the project is in the long-term public interest, the commission shall, at a  
10 minimum consider: [Treat/Tilberg]

11  
12           A. ~~In the public interest; and~~

13  
14           B. ~~Reasonably likely to:~~

- 15                   (1) ~~Minimize utility rates or increase the reliability of utility service;~~  
16                   (2) ~~Have the net effect of reducing the release of greenhouse gases; or~~  
17                   (3) ~~Enhance economic development within the State.~~

18  
19           A. Maximizing long-term public and economic benefits for the State, including but not  
20 limited to direct financial benefits, employment opportunities and economic  
21 development;

22  
23           B. Ensuring efficient utilization of the corridor through collocation of energy  
24 infrastructure, collaboration between energy infrastructure developers and the  
25 preservation of options for future uses;

26  
27           C. Providing access to energy infrastructure for renewable energy generation within  
28 the State;

29  
30           D. Minimizing conflict with the public purposes for which the land or asset is owned  
31 and any management plans for the land within the corridor, and, where necessary,  
32 mitigating any unavoidable impacts;

33  
34           E. Limiting and mitigating impacts of energy infrastructure on the landscape,  
35 including but not limited to utilizing underground installation, where economically and  
36 technically feasible;

37  
38           F. Stabilizing and reducing, when possible, electricity rates and energy costs;

39  
40           G. Increasing energy reliability, security, and independence of the State; and

41  
42           H. Reducing the release of greenhouse gases;

43  
44           The commission shall by rule establish procedures to minimize duplicative filing and review  
45 requirements for the corridor use certificate for a project that is a transmission line that  
46 requires a certificate of public convenience and necessity under section 3132.

1 *[Treat/Tilberg]*  
2

3 **6. Environmental review; consolidated environmental permit.** Whenever a person  
4 proposes to develop or construct energy infrastructure within an energy infrastructure corridor,  
5 that person shall file with the department an application for a consolidated environmental permit.  
6 The department shall adopt by rule pursuant to subsection 9 a process for the review of  
7 applications and the issuance of the consolidated environmental permit in accordance with this  
8 subsection. The department may request comments from and consult with other agencies and  
9 programs that are required by law to issue separate approvals for some or all projects.

10  
11 A. A consolidated environmental permit issued by the department takes the place of any  
12 other permits or licenses that the department would otherwise require for the proposed  
13 project.

14 B. The application for a consolidated environmental permit must contain such  
15 information as the department requires, including, but not limited to, all studies and  
16 documentation necessary to determine whether the proposed project is in compliance  
17 with the environmental laws of the State administered by the department.

18 C. The applicant for a consolidated environmental permit shall pay a fee specified by  
19 rule and reimburse the department for any additional costs of regulatory review,  
20 including expenses for outside peer review or other consultants or experts assisting the  
21 department in its review. Outside review of applications under this subsection is  
22 governed by Title 38, section 344-A, except that the Commissioner of Environmental  
23 Protection is not required to obtain the consent of the applicant to enter into an agreement  
24 with an outside reviewer or require that the costs of the outside review be reimbursed by  
25 the applicant.

26 D. The department shall issue its decision on an application for a consolidated  
27 environmental permit within a timeframe specified by department rule or guideline. The  
28 decision may specify approval, denial or approval in part and denial in part. A proposed  
29 project may not be undertaken if it is denied in whole or in part by the department.

30 E. Upon issuance of a consolidated environmental permit, the department shall certify to  
31 the commission that the permit has been issued and whether the proposed project  
32 complies, in part or in whole, with the environmental laws of the State administered by  
33 the department and whether other agencies and programs that are required by law to issue  
34 separate approvals for some or all aspects of the project have taken final agency action on  
35 those matters requiring their separate approval.

36 F. The department shall enforce the terms of the consolidated environmental permit.

37 G. The terms of the consolidated environmental permit may require additional  
38 submissions by the permit holder, studies and approvals with conditions.

39  
40 If the department receives an application for a permit to develop or construct energy  
41 infrastructure within an energy infrastructure corridor prior to adopting a rule to implement this  
42 subsection, the department shall process the application in accordance with the department's  
43 existing review and permitting procedures.

44  
45 **6-A. Revenues.** Except as otherwise provided by law or the Constitution of Maine,  
46 revenues generated from the use of state-owned land and assets within energy infrastructure

1 corridors must be deposited in the Energy Infrastructure Benefits Fund established in Title 5,  
2 section 282, subsection 9.

3  
4 **7. Eminent domain.** This subsection grants and limits certain rights of eminent domain  
5 with respect to energy infrastructure corridors.

6  
7 A. The eminent domain authority of a transmission and distribution utility within an  
8 energy infrastructure corridor is governed by section 3136.

9  
10 B. Subject to approval by the commission, a person that is not a transmission and  
11 distribution utility that receives a certificate of public convenience and necessity under  
12 section 3132 or a corridor use certificate under subsection 5 to develop energy  
13 infrastructure, other than generation interconnection transmission facilities, within an  
14 energy infrastructure corridor may take and hold by right of eminent domain lands and  
15 easements within that corridor necessary for the proper location of the energy  
16 infrastructure covered by the certificate of public convenience and necessity or the  
17 corridor use certificate in the same manner and under the same conditions as set forth in  
18 chapter 65. The right of eminent domain granted in this paragraph does not apply to:

- 19  
20 (1) Lands or easements located within 300 feet of an inhabited dwelling;  
21 (2) Lands or easements on or adjacent to any developed or undeveloped water  
22 power;  
23 (3) Lands or easements so closely paralleling existing wire lines of other utilities  
24 that the proposed energy infrastructure would substantially interfere with service  
25 rendered over the existing lines, except with the consent of the owners;  
26 (4) Lands or easements owned or used by railroad corporations, except as authorized  
27 pursuant to section 2311;  
28 (5) Lands or easements owned by the State; and  
29 (6) Transmission and distribution plant that is owned, controlled, operated or  
30 managed by a transmission and distribution utility on the effective date of this  
31 section.

32  
33 C. The commission may take and hold by right of eminent domain lands and easements  
34 within an energy infrastructure corridor in accordance with this paragraph,  
35 notwithstanding any transmission and distribution utility ownership of the lands or  
36 easements.

- 37  
38 (1) The commission may exercise the authority under this paragraph only in an  
39 adjudicatory proceeding upon a petition by the Office of the Public Advocate or the  
40 Executive Department, Governor's Office of Energy Independence and Security  
41 demonstrating that such action is urgently needed to avoid substantial harm to  
42 electricity consumers regarding anticipated activity associated with an energy  
43 infrastructure corridor. A determination by the commission that the exercise of  
44 eminent domain under this paragraph is urgently needed to avoid substantial harm to  
45 electricity consumers regarding anticipated activity associated with an energy  
46 infrastructure corridor constitutes reviewable final agency action.

- 1 (2) The amount of any lands or easements taken by the commission pursuant to this  
2 subsection may be no greater than is required to avoid the harm to electricity  
3 consumers identified under subparagraph (1).  
4 (3) The right of eminent domain granted in this paragraph does not apply to personal  
5 property, fixtures or improvements that constitute transmission and distribution  
6 plant.  
7 (4) The commission may exercise the right of eminent domain for the purposes of  
8 this paragraph in the same manner and under the same conditions as set forth in  
9 chapter 65. For the purposes of the exercise of eminent domain authorized by this  
10 paragraph, the commission is both a person and the State.  
11 (5) The commission is authorized to assess transmission and distribution utilities to  
12 the extent necessary to obtain sufficient funds to pay for lands and easements taken  
13 pursuant to this subsection.  
14 (6) The commission, in an adjudicatory proceeding upon petition by the Office of  
15 the Public Advocate or the Executive Department, Governor's Office of Energy  
16 Independence and Security, may transfer or convey to any person or state agency  
17 lands and easements once acquired, except that a transmission and distribution  
18 utility whose lands or easements were taken pursuant to this paragraph must be  
19 given the first opportunity to acquire the lands or easements to the extent necessary  
20 or useful in the performance of its duties as a transmission and distribution utility.  
21 (7) The commission shall report on the circumstances of any taking by eminent  
22 domain to the joint standing committee of the Legislature having jurisdiction over  
23 utilities and energy matters during the next regular session of the Legislature  
24 following the acquisition of lands or easements by eminent domain.  
25

26 **8. Utility service territory.** Nothing in this section modifies existing restrictions on  
27 entities providing service within a public utility's service territory provided under chapter 21.

28 **Jack Cashman requested information on this reference to chapter 21; see handout.**

29  
30 **9. Rules.** The commission and the department, as appropriate, shall adopt by rule  
31 standards and procedures to implement this section. Rules adopted pursuant to this subsection are  
32 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules  
33 adopted by the commission for the designation of an energy infrastructure petitioned corridor,  
34 pursuant to subsection 2, paragraph A, are major substantive rules.  
35

36 **10. Repeal.** This section is repealed July 30, ~~2014~~ 2015.  
37

## 38 **PART B – Use of state revenues generated by energy infrastructure corridors**

39  
40 **9. Energy independence infrastructure benefits fund; revenues from occupancy of**  
41 **state assets.** To establish an energy independence infrastructure benefits fund for, referred to in  
42 this section as “the fund.” Except as otherwise provided by law or the Constitution of Maine, the  
43 fund consists of any revenues derived from the use of state-owned land and assets for energy  
44 transmission systems infrastructure development. Each fiscal year, the first \$50,000,000 in all  
45 revenues collected from such use in the fund must be transferred by the Treasurer of State to the  
46 Efficiency Maine Trust for deposit by the trust in program funds pursuant to Title 35-A, section

1 10103, subsection 4 and use by the trust in accordance with Title 35-A, section 10103,  
2 subsection 4-A. For the purposes of this subsection "energy infrastructure" has the same  
3 meaning as in Title 35-A, section 122. After the initial transfer each fiscal year, the Treasurer  
4 shall deposit additional revenues received into an energy independence fund, which must be used  
5 for the following purposes:-

6  
7 A. ~~To ensure the methodical transition to energy independence and security for the~~  
8 ~~people, communities, economy and environment of the State;~~

9  
10 B. ~~To invest in and transform the ways homes and businesses are heated, energy is used~~  
11 ~~and people and cargo are transported;~~

12  
13 C. ~~To gain independence from foreign oil and to maximize energy efficiency, to enhance~~  
14 ~~renewable energy sources and to invest in an economic development strategy to ensure a~~  
15 ~~vibrant, environmentally sound and prosperous future; and~~

16  
17 D. ~~To reduce energy costs statewide.~~

18  
19 **35-A MRSA §10103, sub§4 is amended to read: (Efficiency Maine Trust)**

20  
21 **4. Program funding.** The board may apply for and receive grants from state, federal  
22 and private sources for deposit into appropriate program funds. The board may deposit in  
23 appropriate program funds the proceeds of any bonds issued for the purposes of programs  
24 administered by the trust. The board may receive and shall deposit in appropriate program funds  
25 revenue resulting from any forward capacity market or other capacity payments from the  
26 regional transmission organization that may be attributable to projects funded those by funds.  
27 The board shall deposit into appropriate program funds revenue from transferred to the trust from  
28 the energy infrastructure benefits fund pursuant to Title 5, section 282, subsection 9, for use in  
29 accordance with subsection 4-A. The board may also deposit any grants or other funds received  
30 by or from any entity with which the trust has an agreement or contract pursuant to this chapter if  
31 the board determines that receipt of those funds is consistent with the purposes of this chapter.

32  
33 **35-A MRSA §10103, sub§4-A is enacted to read:**

34 **4-A. Use of energy infrastructure benefits funds.** Revenues transferred to the trust  
35 from the energy infrastructure benefits fund pursuant to Title 5, section 282, subsection 10, must  
36 be used by the trust *on a competitive basis to ensure the steady transition to energy*  
37 *independence and security for the people, communities, economy and environment of the*  
38 *State. In the expenditure of energy infrastructure benefits funds the board shall give*  
39 *preference to proposals in the following areas:*

40 **A. Grants and loans to manufacturing entities for energy efficiency initiatives;**

41 **B. Grants and loans to assist in transforming the way homes and businesses are**  
42 **heated, energy is used and people and cargo are transported; and**

1 C. Initiatives to achieve energy independence by providing economic incentives for the  
2 development of renewable energy resources.

3 *[Cashman/Hinck/Fletcher/Tilberg; note: the proposed language in the 1<sup>st</sup> sentence and*  
4 *in paragraphs B and C are carried forward from language that was in 2 MRSA §9 (see*  
5 *previous page)]*  
6

7 The director shall provide a report to the joint standing committee of the Legislature having  
8 jurisdiction over utilities and energy matters annually by January 15th regarding the use of  
9 energy infrastructure benefits funds. The report must document the revenues transferred from the  
10 energy infrastructure benefits fund to the trust during the most recently completed fiscal year and  
11 the current fiscal year and amounts and uses of money expended by the trust in accordance with  
12 this subsection during the most recently completed and the current fiscal year.  
13  
14

15 **PART C – Other Provisions**  
16

17 **Sec. C-1. 2 MRSA §9 sub§3 paragraph C is amended to read: (State energy plan)**  
18

19 C. In consultation with the Efficiency Maine Trust Board, established in Title 5, section  
20 12004-G, subsection 10-C, prepare and submit a comprehensive state energy plan the  
21 Governor and the Legislature by January 15, 2009 and submit an updated plan every 2  
22 years thereafter. Within the comprehensive state energy plan, the director shall identify  
23 transmission capacity and infrastructure needs and recommend appropriate actions to  
24 facilitate the development and integration of new renewable energy generation within the  
25 State and support the State's renewable resource portfolio requirements specified in Title  
26 35-A section 3210 and wind energy development goals specified in Title 35-A, section  
27 3404;  
28  
29

30 **Sec. C-2. 2 MRSA §9, subsection 4 is enacted to read: (Advice to agencies)**  
31

32 **4. Advice to state agencies.** The director shall advise state agencies regarding energy-  
33 related policy principles for agencies to consider, in conjunction with the laws and policies  
34 governing those agencies, in conjunction with the sale, lease or other allowance for use of state-  
35 owned land or assets for the purpose of energy infrastructure, as defined by Title 35-A, section  
36 122. At a minimum, the director shall consider the following principles in advising state  
37 agencies under this subsection:  
38

39 A. Maximizing long-term public and economic benefits for the State, including but not  
40 limited to direct financial benefits, employment opportunities and economic  
41 development;  
42

1 B. Ensuring efficient utilization of the corridor through collocation of energy  
2 infrastructure, collaboration between energy infrastructure developers and the  
3 preservation of options for future uses;

4  
5 C. Providing access to energy infrastructure for renewable energy generation within the  
6 State;

7  
8 D. Minimizing conflict with the public purposes for which the land or asset is owned and  
9 any management plans for the land within the corridor, and, where necessary, mitigating  
10 any unavoidable impacts;

11  
12 E. Limiting and mitigating impacts of energy infrastructure on the landscape, including  
13 but not limited to utilizing underground installation, where economically and technically  
14 feasible;

15  
16 F. Stabilizing and reducing, when possible, electricity rates and energy costs;

17  
18 G. Increasing energy reliability, security, and independence of the State;

19  
20 *H. Reducing the release of greenhouse gases; [Treat/Tilberg]*

21  
22 I. Avoiding wherever possible the use of lands subject to the provisions of Article IX,  
23 section 23 of the Maine Constitution; and

24  
25 J. Maximizing the benefit realized from Maine's strategic location within New England  
26 and northeastern region;

27  
28  
29 **Sec. C-3. 35-A MRS §3132, sub-§13, is amended to read: (CPCN)**

30  
31 **13. Public lands.** The State, any agency of the State or any political subdivision of the  
32 State may not sell, lease or otherwise convey any interest in public land, other than a future  
33 interest or option to purchase an interest in land that is conditioned on satisfaction of the terms of  
34 this subsection, to any person for the purpose of constructing a transmission line subject to this  
35 section, unless the person has received a certificate of public convenience and necessity from the  
36 commission pursuant to this section.

37  
38 A person who has bought, leased or otherwise been conveyed any interest in public land for the  
39 purpose of constructing a transmission line may not undertake construction of that line except  
40 under the terms of the certificate of public convenience and necessity as originally issued for that  
41 transmission line by the commission or as modified by order of the Department of  
42 Environmental Protection under subsection 7; or under the terms of an amended certificate of  
43 public convenience and necessity issued by the commission or deemed to have been issued by  
44 the commission under subsection 11-A.

1 As used in this subsection, "public land" means land that is owned or controlled by the State, by  
2 an instrumentality of the State or by a political subdivision of the State.

3 As used in this subsection, "future interest or option to purchase an interest in land" includes an  
4 option, purchase and sale agreement or other equivalent legal instrument that conveys the intent  
5 to pursue a future sale, lease or other conveyance of land.

6  
7 **Sec. C-4. Legislative review; implementation.** The joint standing committee of the  
8 Legislature having jurisdiction over utilities and energy matters shall review the implementation  
9 of this Act during the first regular session of the 125<sup>th</sup> Legislature. Based on its review, the joint  
10 standing committee may report out legislation relating to this Act.  
11

12 **Sec. C-5. Department of Transportation report.** *By January 15, 2011 the*  
13 *Department of Transportation shall report to the joint standing committee having jurisdiction*  
14 *over utilities and energy matters regarding current and potential uses of abandoned railroad*  
15 *corridors owned or controlled by the department for energy infrastructure development.*  
16 *[Treat/Tilberg]*

## ENERGY INFRASTRUCTURE COMMISSION

Tilberg/Treat Recommendations – Friday 11/13/09

1. **“Petitioned energy infrastructure corridors”**: Require petitioners seeking to designate new energy corridors to show first, that statute-designated corridors and any existing petition-initiated corridors cannot meet their needs and second, that a DOT-owned or controlled abandoned railway corridor cannot meet their expressed need. Only then may the Commission consider the criteria in ¶D-F on page 6 of the 11/4 draft bill.

Note this policy channels energy infrastructure toward existing corridors and thereby (1) reduces the environmental and social footprint of energy corridors; and (2) provides for revenues through the occupancy/leasing of state-owned property.

2. Do not designate DOT-owned or controlled abandoned railway corridors as “statutorily designated” energy infrastructure corridors at this time. However, as discussed above, these properties should be preferred for petition-initiated corridors and should be the first properties considered for additional future statute-designated corridors.
3. Add to the criteria for use of a statutory corridor (Column 2 of the orange 11/4 matrix and new criteria under 1-A(c) page 3 of the 11/4 draft bill) “Reducing greenhouse gases.”
4. All applicants **including transmission lines** seeking to locate in a petitioned energy infrastructure corridor must obtain a Corridor Use Certificate (CUC). This is a change from the 11/4 draft which excludes transmission (see p. 8, ¶15).
5. The criteria considered for approval of a CUC (use of a petitioned corridor) should be the same as the criteria listed in Column 2 of the orange 11/4 matrix (Use of Statutory Corridor), which now includes “Reducing greenhouse gases,” to the extent that these criteria are not addressed already in the Certificate of Public Convenience & Necessity (CPCN). In other words, issuing a CPCN does not in of itself grant the use of a petitioned corridor; however, this process should be designed to avoid duplicative requirements and submissions.
6. Note that we need to find out what potential entities and uses of an energy corridor **do not currently require a CPCN**, and whether it is appropriate policy to either (1) add the three criteria covered by the CPCN which are not included in the CUC (see fifth column on orange matrix) to the CUC process for these entities or (2) not apply these criteria at all to these entities.

7. Use of statute-designated corridors will be determined by the interagency panel based on the criteria already enumerated in the 11/4 draft as discussed.
8. In determining how to allocate compensation from occupancy agreements for additional future uses of an existing corridor (for example, the Turnpike, Loring corridor or a future private applicant-petitioned corridor), reasonable investment backed expectations of existing users should be considered, as well as the previous state investment in a given corridor.

**Proposed Language Regarding the Maine Turnpike  
Presented by Jack Cashman, 11/18/09**

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**(1) Include the Maine Turnpike as part of the I-95 statutory corridor**

**35-A MRSA §122, sub§1-A, paragraph A (statutory corridors) would read:**

A. The Interstate 95 corridor, including that portion of Interstate 95 designated as the Maine Turnpike in accordance with the provisions of subsection 1-X.

**(2) Require the Turnpike Authority to grant an easement to DOT to allow its use as part of the I-95 statutory corridor; require that revenues generated from use of the easement go into the Energy Infrastructure Benefits Fund.**

**35-A MRSA §122, sub§1-X would be added, immediately after sub§1-A, and would read:**

**1-X. Maine Turnpike Authority grant an easement to DOT; Interstate 95 corridor.**

The Maine Turnpike Authority shall grant an easement to the Department of Transportation along that portion of Interstate 95 designated as the Maine Turnpike to allow its use as part of the Interstate 95 statutory corridor.

The Maine Turnpike Authority and the Department of Transportation shall negotiate the terms, size and location of the easement and consideration, which may be no greater than the administrative costs associated with the transfer of this easement.

Notwithstanding Title 23, Chapter 24, any revenues generated from the use of the easement as part of the Interstate 95 statutory corridor, including use under an occupancy agreement pursuant to subsection 1-B, must be deposited in Energy Infrastructure Benefits Fund.

*(Drafting note: may also need amendment to language in subsection "6-A. Revenues")*

**Maine Turnpike Authority Proposal – 11/17/09**  
**DRAFT LANGUAGE REGARDING MAINE TURNPIKE**

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**Summary**

- ▶ Exclude the Maine Turnpike from statutory corridors
- ▶ Exclude the Maine Turnpike from petitioned corridors
- ▶ Require DOT and the Maine Turnpike Authority to negotiate an MOA regarding use of the Maine Turnpike in conjunction with use of the I-95 and I-295 statutory corridors; for any proposal to use the I-95 or I-295 statutory corridor in conjunction with using the Maine Turnpike: (1) the interagency review panel would include the director of the MTA as an additional member, (2) the entire project, including the portion on the Turnpike, would be eligible for a consolidated environmental permit.

**Proposal**

- ▶ Exclude the Maine Turnpike from statutory corridors

**35-A MRSA §122, sub§ 1-A would read:**

**1-A. Statutory corridors established.** The following areas are designated as statutory corridors:

- A. The Interstate 95 corridor, *except that portion of Interstate 95 designated as the Maine Turnpike;*
- B. The Interstate 295 corridor;
- C. State-owned or controlled abandoned railroad corridors; and
- D. Loring to Searsport corridor;

- ▶ Exclude the Maine Turnpike from petitioned corridors

**35-A MRSA §122, sub§2 would read:**

**2. Designation of energy infrastructure petitioned corridors.** The commission may, upon petition, designate energy infrastructure corridors in accordance with this subsection.

F. 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; and
- (7) *The Maine Turnpike.*

**Maine Turnpike Authority Proposal – 11/17/09**  
**DRAFT LANGUAGE REGARDING MAINE TURNPIKE**

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► Require DOT and the Maine Turnpike Authority to negotiate an MOA regarding use of the Maine Turnpike in conjunction with use of the I-95 and I-295 statutory corridors; for any proposal to use the I-95 or I-295 statutory corridor in conjunction with using the Maine Turnpike: (1) the interagency review panel would include the director of the MTA as an additional member and (2) the entire project, including the portion on the Turnpike, would be eligible for a consolidated environmental permit.

**35-A MRSA §122, sub§ 1-B (statutory corridors), paragraph H would be *added* and would read:**

H. The Department of Transportation and the Maine Turnpike Authority shall negotiate a memorandum of agreement regarding the use of the Interstate 95 corridor or the Interstate 295 corridor as a statutory corridor under this section in conjunction with use of the Maine Turnpike. For any proposal to use of the Interstate 95 corridor or the Interstate 295 corridor as a statutory corridor in conjunction with use of the Maine Turnpike:

(1) The interagency review panel must include, as an additional member, the director of the Maine Turnpike Authority;

(2) The entire proposal, including that portion using the Maine Turnpike, is eligible for a consolidated environmental permit under subsection 6; and

(3) Notwithstanding the provisions of subparagraphs 1 and 2, the Maine Turnpike may not be considered a statutory corridor.

## **I. Introduction**

The Commission to Study Energy Infrastructure was created pursuant to Public Law 2009, chapter 372 (LD 1485), An Act Regarding Maine's Energy Future. This law was enacted as a result of the work of the Joint Select Committee on Maine's Energy Future to address a broad range of energy issues, including energy independence, energy efficiency and conservation, renewable energy resources, weatherization, energy-based workforce development and energy infrastructure development. The provisions regarding energy infrastructure development, contained in Part F of the law, include the creation of the Commission, time-limited prohibitions on state permitting of large-scale energy infrastructure and on the sale, lease or use of state-owned or assets for energy infrastructure and the establishment of a fund for state revenues derived from the use of state assets for energy transmission systems. A copy of the enabling legislation is provided in Appendix A.

Public Law 2009, chapter 372, Section F-4 establishes the Commission to Study Energy Infrastructure to examine and make recommendations regarding energy infrastructure development, with particular attention to agreements for the lease or use of state-owned land and assets for such development. Specifically the Commission was charged with the following duties:

1. Examining the feasibility and effects of the State entering agreements for leasing or otherwise allowing the use of state-owned land or assets for energy infrastructure, including submerged lands, the rights-of-way of the state highway system, the federal interstate highway system, state-owned or state-controlled rail corridors or other state transportation corridors, for the installation of lines, cables, pipelines or other structures for the transmission of energy resources, communication transmission systems or related facilities.
2. Developing a plan governing agreements for the lease or use of state-owned lands or assets for energy infrastructure that addresses at least the following:
  - a. Valuation, pricing and allocation methodologies to maximize the long-term public value through the most efficient and effective use of the state-owned lands and assets;
  - b. The potential effect of such agreements on renewable energy development in the State, the development of other energy projects in the State, including but not limited to liquefied natural gas terminals, energy consumers and ratepayers and natural resources and the environment.
3. Examining the policy issues relating to the construction or installation in this State of energy facilities greater than 75 miles in length.
4. Evaluating the need for changes in methods of taxation to ensure protection of the public health, safety and welfare.

In carrying out the above duties, the commission was charged with reviewing and analyzing

relevant reports and information and monitoring proposed federal energy legislation that may significantly affect energy policy in this State. The enabling legislation also authorized the Commission to consider ways in which the development of electric transmission systems or natural gas systems can help the State achieve its energy goals.

This report fulfills the commission's requirement to submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 124<sup>th</sup> Legislature. Following receipt and review of the report, the Joint Standing Committee on Utilities and Energy is authorized to submit a bill to the Second Regular Session of the 124<sup>th</sup> Legislature.

## **II. Commission proceedings**

The members of the Commission to Study Energy Infrastructure were appointed during the summer of 2009. The 13-member commission included 3 members of the Senate appointed by the President of the Senate, 5 members of the House of Representatives appointed by the Speaker of the House of Representatives and 5 members appointed by the Governor. A list of commission members is attached as Appendix B.

The commission convened its first meeting on September 9, 2009, and held five additional meetings during September, October and November, with a final meeting on November 18, 2009. The agenda for each meeting is included in Appendix C.

The first meeting of the commission focused on providing background information to prepare the commission for its work. The meeting included a discussion of the commission's duties and a review of recent legislation. The meeting also included a series of presentations regarding the state and regional policy context and the current landscape with regard to energy infrastructure development. Presentations regarding the state policy and regulatory landscape, including agency roles, policies and perspectives, were provided by:

- Beth Nagusky of the Department of Environmental Protection,
- Marcia Spencer-Famous of the Department of Conservation, Maine Land Use Regulation Commission,
- Mitchell Tannenbaum of the Public Utilities Commission,
- Bruce Van Note of the Department of Transportation and
- John Kerry of the Governor's Office of Energy Independence and Security.

The commission also received presentations regarding regional energy planning and analysis, including the development of the 2009 New England Governors' Renewable Energy Blueprint, the ISO New England Economic Study and the ISO New England Regional System Plan. Finally, commission members heard from representatives of 9 different energy infrastructure projects, who introduced their specific projects and answered questions from commission (the meeting agenda, found in Appendix C, lists the individual projects that presented).

The second meeting of the commission was held on September 21, 2009. At this meeting, the committee received follow-up information and presentations regarding several of the regulatory and policy issues introduced at the first meeting. John Kerry of the Governor's Office of Energy Independence and Security presented the final 2009 New England Governors' Renewable Energy Blueprint to the commission and discussed the 33<sup>rd</sup> Conference of New England Governors and Eastern Canadian Premiers, which had been held on September 14-15, 2009. The commission also heard from:

- The Department of Environmental Protection regarding environmental permitting of energy infrastructure including permitting of ocean energy developments, liquefied natural gas and pipelines, energy transmission and wind energy projects, with presentations by Beth Nagusky, James Dusch and James Cassida.
- The Department of Conservation, Bureau of Parks and Lands regarding state submerged lands leasing, with presentations by Dan Prichard and Will Harris; and
- The Maine Turnpike Authority regarding the Maine Turnpike and transportation corridor use, with a presentation by Conrad Welzel.

To supplement to the information on state submerged lands, commission staff provided a brief overview of federal regulation of renewable energy development on federal offshore lands. Following the presentations, commission members discussed the scope and direction of their remaining work and plans for subsequent meetings.

The third meeting of the commission was held on September 28, 2009. Like the second meeting, this meeting included presentations from state agencies to provide additional information regarding regulatory and policy issues that had been introduced earlier. At the third meeting, the commission heard from:

- The Department of Conservation, Maine Land Use Regulation Commission regarding the update of the Comprehensive Land Use Plan and the measurement of tangible benefits from energy development, with a presentation by Marcia Spencer-Famous;
- The Department of Transportation regarding transportation corridor valuation and pricing, including a draft valuation report, and access to and allocation of uses in a transportation corridor, with a presentation by Bruce Van Note; and
- The Department of Environmental Protection regarding that department's involvement with the regulation of energy infrastructure development and large scale energy infrastructure projects pending before or recently permitted by the department, with a presentation by Commissioner David Littell.

In addition to hearing from these state agencies, the commission provided the opportunity for interested parties and stakeholders to speak to the commission about their interests as well as potential opportunities for collaboration in the development of energy infrastructure corridors. Finally, the commission held a work session, during which members discussed priorities for the commission's remaining work and offered some initial ideas for recommendations of the commission in the areas of: (1) guiding principles for energy infrastructure development; (2) regulatory requirements, processes and approval of energy infrastructure projects; and (3)

methods of valuation and compensation for the use of state-owned land and assets for energy infrastructure.

The fourth meeting of the commission was held on October 19, 2009. At this meeting, the commission completed the information gathering phase of its work with the following presentations:

- Beth Nagusky and Dan Prichard of the Ocean Energy Task Force, Regulatory Subcommittee presented information regarding their work on options and recommendations for leasing of public submerged lands within state waters for offshore energy development, including wind, wave and tidal energy.
- Steven Rourke of ISO-New England briefed the commission on regional transmission planning issues, including a review of the highlights of the 2009 Regional System Plan and the Economic Study for the New England Governors, Renewable Development Scenario Analyses; and
- John Kerry of the Governor's Office of Energy Independence and Security briefed the commission on major federal energy legislation pending in the United States Congress, with a focus on those provisions related to energy transmission.

The commission spent the balance of the fourth meeting discussing possible recommendations of the commission. As background for that discussion, commission staff provided an overview of current state law governing (1) regulatory approvals for energy infrastructure projects and (2) use of state-owned land and assets (a copy of this information is provided in Appendix D). The commission reviewed and discussed a draft proposal offered for discussion by commission member Karin Tilberg. This proposal included a statement of guiding principles for energy infrastructure development and draft legislation to designate several state-owned energy infrastructure corridors in law and establish a process for the State to enter into agreements for the development of energy infrastructure within those corridors. At the close of the meeting, commission members agreed to submit comments, suggestions and proposed alternatives to the draft proposal in advance of the fifth meeting.

The fifth meeting of the commission was held on November 4, 2009. This meeting was devoted to further consideration of the draft proposal that had been presented on October 19 and consideration of the comments and proposed revisions to that draft submitted by commission members between the fourth and fifth meetings. The commission reviewed and discussed the revised draft proposal and made a number of decisions and further refinements to it. The commission then invited stakeholders to provide comments on the draft proposal and heard from representatives of the Maine Turnpike Authority, the Department of Conservation, Bureau of Parks and Lands, the Department of Transportation and Loring Bioenergy, LLC. The commission also requested and received information from the Department of Administrative and Financial Services, Bureau of General Services regarding procurement policies that might apply to the sale or lease of state-owned land or assets to energy infrastructure. By the close of the meeting, the commission had identified a handful of outstanding issues requiring additional review and revision in preparation for the final meeting.

The sixth and final meeting of the commission was held on November 18, 2009. At this meeting, the commission *[insert information based on 11/18 meeting]*.

### **III. Recommendations**

#### **A. Policy Framework for Energy Infrastructure Development**

The commission recommends that policies and decisions regarding energy infrastructure development in the State be guided by the following principles:

- Maximizing long-term public and economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;
- Ensuring efficient utilization of state-owned land or assets through collocation of energy infrastructure, collaboration between energy infrastructure developers and the preservation of options for future uses;
- Providing access to energy infrastructure for renewable energy generation within the State;
- When state-owned land or assets are used for energy infrastructure, minimizing conflict with the public purposes for which the land or asset is owned and any management plans for the land, and, where necessary, mitigating any unavoidable impacts;
- Limiting and mitigating impacts of energy infrastructure on the landscape, including but not limited to utilizing underground installation, where economically and technically feasible;
- Stabilizing and reducing, when possible, electricity rates and energy costs;
- Increasing energy reliability, security, and independence of the State;
- Reducing the release of greenhouse gases;
- Avoiding wherever possible the use of lands subject to the provisions of Article IX, section 23 of the Maine Constitution;
- Maximizing the benefit realized from Maine's strategic location within New England and northeastern region; and
- When leasing state-owned land or assets, utilizing written agreements, public-private partnerships, long-term contracts, and power purchase agreements that provide compensation to the State on an annual, or other appropriate, basis based on a rigorous appraisal of the property.

These principles provide the basis for the commission's specific policy recommendations and proposed legislation detailed in Section III.B and Section IV of this report.

## **B. Specific Policy Recommendations and Summary of Proposed Legislation**

The commission recommends amending the law governing energy infrastructure corridors by enacting new provisions to designate, in law, several state-owned energy infrastructure corridors as "statutory corridors" and establish a process for the State to use when entering into occupancy agreements for construction and development of energy infrastructure within those statutory corridors. The commission also recommends several changes to existing law governing energy infrastructure corridors designated by the Public Utilities Commission upon petition, or "petitioned corridors." A detailed summary of the recommendations is provided below. Proposed legislation to implement these recommendations is presented in Part IV of the report.

**1. Energy infrastructure corridors established in law.** The commission recommends designating, in law, the following areas as statutory corridors:

- The Interstate 95 corridor
- The Interstate 295 corridor
- [railroads - TBD]
- [Loring to Searsport - TBD]

**2. Interagency review panel and process for use of statutorily established corridors.** The commission recommends establishing an interagency review panel, or review panel, to overseeing the use of statutory corridors.

- **Composition of the interagency review panel:** The review panel would consist of a director of the Governor's Office of Energy Independence and Security and commissioners or their designees from state agencies having responsibility for administrative and financial services, transportation, and economic development and the commissioner of the state agency that owns or controls the state land or asset.
- **Interagency review panel process:** The review panel would establish a regular process for soliciting accepting and evaluating proposals for use of a statutory corridor. As part of this process the review panel would provide public notice of the availability of the corridor for energy infrastructure development and would provide a description of the type of development anticipated in the corridor and an opportunity for interested persons to submit proposals for use. The review panel would review submitted proposals based on a set of specific criteria to ensure that the project is in the long-term public interest of the State. The review panel would then select one or more proposals and negotiate a long-term occupancy agreement for use of the corridor with the person or persons who submitted the selected proposal.
- **Occupancy agreement and compensation:** The review panel would negotiate a long-term occupancy agreement that would provide compensation to the State, based

on at least one independent appraisal by a professional appraiser. This compensation could be in the form of annual payments or the functional or financial equivalent, partial ownership in the energy infrastructure, or another appropriate form of compensation. In addition this compensation could include provisions for periodic adjustment of compensation over time and reimbursement of costs to the state agency or agencies that own or control the corridor.

- **Professional appraiser assistance and costs:** The review panel would contract with a professional appraiser with specific qualifications and certifications to assist the panel with its duties. The cost of the services of any appraisal would be paid by interested persons who submitted proposals, in proportion to the amount of time spent on that person's proposal.

**3. Corridors designated upon petition.** With respect to current law governing the designation of energy infrastructure corridors by the Public Utilities Commission upon petition, the commission recommends the following changes.

- **Additional findings required.** In addition to the findings required under current law prior to designation of a petitioned corridor, the Public Utilities Commission would be authorized to designate a petitioned corridor only if it finds that a statutory corridor, a previously designated petitioned corridor or an abandoned railroad corridor owned or controlled by the Department of Transportation cannot needs of the proposed energy infrastructure.
- **Additional consultation required.** In addition to the consultations required under current law, the Public Utilities Commission would, prior to designation of a petitioned corridor, be required to consult with: (1) any state agency or agencies that own or control land within the corridor and, (2) if the proposed corridor or a portion of it is in the unorganized or deorganized areas of the state, the counties in which the corridors would be located.

**4. Requirements for use of energy infrastructure corridors.** The commission recommends that, prior to construction or development within a statutory corridor, a developer of energy infrastructure be required to obtain a long-term occupancy agreement with the State, a consolidated environmental permit from the Department of Environmental Protection and, if the project is a transmission line, a certificate of public convenience and necessity from the Public Utilities Commission.

The commission recommends amending current law regarding the requirements for use of a petitioned corridor so that all projects would be required to obtain a corridor use certificate from the Public Utilities Commission (under current law transmission projects are not subject to this requirement) and to align the criteria used by the Public Utilities Commission in determining whether to issue a corridor use certificate in a petitioned corridor with the criteria used by the interagency review panel in evaluating proposals for use of a statutory corridor.

**5. Revenues generated from use of state-owned land or assets within corridors.** The commission recommends that, except when prohibited by law or the state Constitution, all revenues generated from the use of state-owned land and assets within energy infrastructure corridors be deposited in an Energy Infrastructure Benefits Fund and that all money collected in the fund be transferred to the Efficiency Maine Trust and used on a competitive basis to ensure the steady transition to energy independence and security. In the expenditure of these funds, the Efficiency Maine Trust would be required to give preference to proposals for:

- Grants and loans to manufacturing entities for energy efficiency;
- Grants and loans to assist in transforming the ways homes and businesses are heated, energy is used and people and cargo are transported; and
- Initiatives to achieve energy independence by providing economic incentives for the development of renewable energy resources.

**6. Sunset.** The commission recommends that the “sunset” on the energy infrastructure corridor law, as amended by the commission’s recommendations, be extended by 4 years from July 30, 2011 to July 30, 2015.

**7. Legislative oversight.** The commission recommends that the interagency review panel be required to provide an annual report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters regarding the activities of the panel in overseeing use of the statutory corridors and that the Efficiency Maine Trust be required to provide an annual report to the committee regarding expenditure of funds from the Energy Infrastructure Benefits Fund. The commission also recommends that, during the 125<sup>th</sup> Legislature, the joint standing committee of the Legislature having jurisdiction over utilities and energy matters be required to review the implementation of any legislation resulting from the recommendations contained this report.

#### **IV. Recommended Legislation**

(see separate handout)

#### **List of Appendices**

- A. Authorizing Legislation**
- B. Membership List**
- C. Meeting Agendas**
- D. Current Law Regarding Regulatory Approvals and Use of State-owned Lands**

**PART A – Amendments to 35-A MRSA §122 “Energy infrastructure corridors”**

**§122. Energy infrastructure corridors**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Department" means the Department of Environmental Protection.

B. "Energy infrastructure" includes electric transmission and distribution facilities, ~~generation interconnection transmission 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~~ generation interconnection transmission facilities or energy generation facilities.

C. "Energy infrastructure corridor" or "corridor" means a geographic area within the State designated or used by the commission in accordance with this section for the purposes of siting new energy infrastructure more than 75 miles in length. Energy infrastructure corridors include statutory corridors, and petitioned corridors and any other corridors used for new energy infrastructure.

D. "Generation interconnection transmission facility" has the same meaning as in section 3132, subsection 1-B.

E. "~~Interested person~~ Potential developer" means a person that can demonstrate to the commission the financial and technical capability to engage in the development and construction of energy infrastructure.

E-1. "Petitioned corridor" means an energy infrastructure corridor designated by the commission in accordance with subsection 2.

F. "Project" means the development or construction of energy infrastructure within an energy infrastructure corridor.

F-1. "Proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the person who submitted the information and would make available information not otherwise publicly available.

F-2. "Statutory corridor" means an energy infrastructure corridor designated under subsection 1-A, paragraph A.

G. "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.

1-A. Statutory corridors established. The following areas are designated as statutory corridors:

A. The Interstate 95 corridor;

*See also Maine Turnpike Proposal*

B. The Interstate 295 corridor;

~~C. State-owned or controlled abandoned railroad corridors; and  
[Treat/Tilberg; see language in subsection 2]~~

*Decision needed*

D. Loring to Searsport corridor

1-B. Use of statutory corridors; interagency review panel. The interagency review panel, as defined in paragraph A, shall oversee the use of statutory corridors in accordance with this section.

A. As used in this subsection, unless the context otherwise indicates, “interagency review panel” includes:

- (1) The director of the Governor’s Office of Energy Independence and Security or the director’s designee;
- (2) The commissioner of the state agency responsible for administrative and financial services or the commissioner’s designee;
- (3) The commissioner of the state agency responsible for economic development or the commissioner’s designee; and
- (4) The commissioner of each state agency that owns or controls land or assets within the statutory corridor or the commissioner’s designee;

B. The interagency review panel shall identify an initial range of value for the use of state-owned land or assets within a statutory corridor. The initial range of value must be determined by a professional appraiser who meets the qualifications of paragraph G.

C. The interagency review panel shall establish and implement a regular process for soliciting, accepting and evaluating proposals for use of a statutory corridor. As part of this process, the panel shall provide public notice of the availability of the corridor for energy infrastructure development, a description of the type of development anticipated in the corridor and the opportunity for interested persons to submit proposals for use of the corridor.

D. The interagency review panel shall evaluate any proposal for use of the corridor on the basis of the long-term public interest of the State in accordance with this paragraph. If the panel finds that the proposal is in the long-term public interest of the State, the panel may accept the proposal. In determining whether the proposal is in the long-term public interest, the panel shall, at a minimum consider:

- (1) Maximizing long-term public and economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;
- (2) Ensuring efficient utilization of the corridor through collocation of energy infrastructure, collaboration between energy infrastructure developers and the preservation of options for future uses;
- (3) Providing access to energy infrastructure for renewable energy generation within the State;
- (4) Minimizing conflict with the public purposes for which the land or asset is owned and any management plans for the land within the corridor, and, where necessary, mitigating any unavoidable impacts;
- (5) Limiting and mitigating impacts of energy infrastructure on the landscape, including but not limited to utilizing underground installation, where economically and technically feasible;
- (6) Stabilizing and reducing, when possible, electricity rates and energy costs;
- (7) Increasing energy reliability, security, and independence of the State; and
- (8) Reducing the release of greenhouse gases; (Treat/Tilberg)**

E. If a proposal is accepted on the basis of the evaluation under paragraph D, the interagency review panel may enter into negotiations with the person or persons who submitted the proposal regarding a long-term occupancy agreement with the State for the use of the corridor.

- (1) For any selected proposal, the interagency review panel shall negotiate the terms of the occupancy agreement including, but not limited to, ***honoring existing legal commitments and investment-backed expectations where applicable (Treat/Tilberg)***, the length of the agreement and compensation to the State for use of the corridor and;
- (2) Compensation to the State may be in the form of payments made on an annual basis or the functional or financial equivalent; discounted price for energy products or services; partial ownership by the State in the energy infrastructure on the basis of the value of the corridor in proportion to the energy infrastructure project as a whole; or other appropriate form. The terms of compensation may include provisions for periodic adjustment of the compensation to the State over time and reimbursement of costs to the state agency or agencies that own or control the corridor.

(3) Negotiation of compensation to the State must be based on at least one independent appraisal performed by certified appraiser in accordance with paragraph F. An independent appraisal performed under this subparagraph must, at a minimum, consider the costs that will be avoided by the interested person, including but not limited to, the costs of acquisition, lease or rental of private land, the costs of property taxes on private land, the costs of surveying, appraisal, environmental, engineering and other work necessary for use of private land, the costs of time and potential conflict regarding the use of private land, the unique and limited nature of public assets, the revenues estimated to be generated by the use of the public asset, and other relevant factors;

F. The interagency review panel shall contract for the services of a professional appraiser or appraisers to assist the panel in its duties under this subsection. The professional appraiser contracted under this paragraph must:

(1) Have demonstrated experience in the valuation and evaluation of utility corridors or transportation corridors;

(2) Hold a professional designation from a nationally recognized organization of appraisers; and

(3) Be licensed by the State of Maine as a certified general real property appraiser, in accordance with Title 32, section 14035, or hold a comparable license from another state.

The cost of the services of a certified appraiser who provides services in accordance with this paragraph must be paid by interested persons submitting proposals for use of the corridor under this subsection in proportion to the amount of time spent by the appraiser on that person's proposal.

G. The following proprietary information, as it pertains to the sale, lease or use of state-owned land or assets under the provisions of this subsection or activities in preparation for such sale, lease or use is confidential within the meaning of Title 1, section 403, subsection 3, paragraph A, is not a public record within the meaning of Title 1, section 403, subsection 3 and may not be released by the interagency review panel or applicable state agency:

(1) Proprietary information in the possession of the applicable state agency; and

(2) Proprietary information in the possession of the interagency review panel or a professional appraiser assisting the panel.

H. No later than February 1st of each year, the interagency review panel shall provide a written report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters that documents activities of and actions taken by the panel under this subsection during the previous calendar year.

1-C. Corridors on State lands. In addition to all other applicable provisions, corridors that include any State lands are governed by the following additional provisions:

a. Definitions.

i. "Public land" means land that is owned or controlled by the State, by an instrumentality of the State or by a political subdivision of the State.

ii. "State authority" includes but is not limited to the Governor, the Department of Transportation, the Maine Turnpike Authority or any other state entity, agency or authority.

b. Occupancy agreement required. No corridor may cross or occupy public land including roads without first entering into an occupancy agreement for such public land with the appropriate State authority. An occupancy agreement is required in addition to the approval required under subsection 1 of this section.

c. Occupancy agreement procedure. The appropriate State authority shall negotiate an occupancy agreement with the developer of the corridor. Such an occupancy agreement must state in writing:

i. A complete description of the public lands to be crossed or occupied;

ii. The term of the occupancy agreement, being not more than years;

iii. A statement of the value of such public lands prior to the corridor development or use;

iv. An assessment of the value of such public lands following the corridor development or use, including lost opportunity value, based on methodology approved by the State Economist;

v. Compensation to be paid by the developer to the State; and

vi. Such other information as the State authority shall require.

d. Interagency review panel negotiations. The requirements of this subsection (1-C) may be satisfied through negotiations by the interagency review panel.

2. ~~Designation of energy infrastructure~~ petitioned corridors. The commission may, upon petition, designate energy infrastructure corridors in accordance with this subsection.

A. The commission may designate ~~an energy infrastructure~~ a petitioned corridor only by rule. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

(1) The rulemaking to designate ~~an energy infrastructure~~ a petitioned corridor must include a public hearing in which any member of the public may submit oral or written testimony or comments, which must be incorporated into the rule-making record in accordance with Title 5, section 8052, subsection 1. The commission shall provide an opportunity for examination of the petitioner at a rule-making hearing. The commission shall allow for written comments by any member of the public up to 7 days prior to the hearing. The commission shall 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.

(2) In any rulemaking regarding the designation of ~~an energy infrastructure~~ a petitioned corridor, the commission shall address all written comments, including those submitted pursuant to subsection 3, and state its rationale for adopting or rejecting any proposals or recommendations contained in those written comments.

(3) A designation of ~~an energy infrastructure~~ petitioned corridor must be based on substantial evidence in the record of the rule-making hearing.

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

C. The commission shall dismiss a petition for the designation of an energy infrastructure corridor filed under this subsection 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 as defined by subsection 1, paragraph E~~ a person listed in paragraph B.

D. The commission may designate ~~an energy infrastructure~~ a petitioned corridor only if the commission finds *that a statutory corridor, a previously designated petitioned corridor or an abandoned railroad corridor owned or controlled by the Department of Transportation cannot meet the needs of the proposed energy infrastructure and*

*[Treat/Tilberg]* that the future development of energy infrastructure within the corridor is reasonably likely to be:

- (1) In the public interest, including, but not limited to, consideration of:
  - (a) Encouraging colocation of energy infrastructure;
  - (b) Enhancing the efficient utilization of existing energy infrastructure; and
  - (c) Limiting impacts on the landscape; and

- (2) Consistent with environmental and land use laws and rules of the State. A finding that 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 under this paragraph has no evidentiary value in a subsequent consolidated environmental permit proceeding undertaken by the department pursuant to subsection 6.

E. In designated designating a geographic area as an energy infrastructure petitioned corridor, the commission shall limit the geographic area of the petitioned corridor to an area no greater in breadth and scope than is necessary to achieve the purposes of this section.

F. The commission may not designate ~~an energy infrastructure~~ a petitioned 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.

**3. Consultation and notification required; comments-Petitioned corridors; notification and consultation prior to designation.** Prior to designating an energy infrastructure corridor under subsection 2, the commission shall, at a minimum, notify, consult with and accept comments from:

A. The department;

A-1. Any state agency or agencies that own or control land within the corridor;

B. Appropriate state and federal energy and natural resources protection agencies, as specified by rules adopted pursuant to subsection 9;

C. The municipalities in which the corridor would be located;

D. The Maine Land Use Regulation Commission and the counties in which the corridor would be located, if the proposed energy infrastructure corridor, or any portion of the corridor, is located within unorganized or deorganized territories of the State; and

E. 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 2, paragraph F.

**4. Use of corridors; certificate and permit required. This subsection is repealed.**

*Note: Content is addressed in new subsection 4-A.*

**4-A. Use of energy infrastructure corridors; requirements. Development or construction of energy infrastructure within an energy infrastructure corridor is governed by this subsection.**

**A. No person shall construct or operate new energy infrastructure in an energy infrastructure corridor, unless the commission has issued a corridor use certificate approving the project in accordance with subsection 5.**

**B. In the case of a petition for a corridor use certificate for an electric transmission line, the applicant must also satisfy all requirements of 35-A M.R.S.A. § 3132 and all other applicable requirements administered by the commission.**

**AC** A person may not engage in development or construction of energy infrastructure within a statutory corridor, unless:

(1) The person has entered an occupancy agreement with the State in accordance with subsection 1-A, in compliance with applicable state and federal regulations and laws consistent with this section;

(2) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6; and

(3) If the project is a transmission line that requires a certificate of public convenience and necessity under section 3132, the commission has issued a certificate of public convenience and necessity approving the transmission line.

**BD** A person may not engage in development or construction of energy infrastructure within a petitioned corridor, unless:

(1) The department has issued a consolidated environmental permit approving the project in accordance with subsection 6; and

**(2) The commission has issued a corridor use certificate approving the project in accordance with subsection 5; and**

*[Treat/Tilberg; require corridor use certificate for all projects rather than just the non-transmission projects]*

(3) If the project is a transmission line that requires a certificate of public convenience and necessity under section 3132, the commission has issued a certificate of public convenience and necessity approving the transmission line.

**5. Corridor use certificate.** Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure-a petitioned corridor, ~~except for a transmission and distribution utility that proposes a transmission line subject to the requirements of section 3132 [Treat/Tilberg]~~ that person shall file with the commission a petition for a corridor use certificate. The petition for the corridor use certificate must contain such information as the commission by rule requires. The commission shall process a petition for a corridor use certificate in an adjudicatory proceeding. ~~The commission shall may issue a corridor use certificate upon a finding that the project is in the long-term public interest of the State. In determining whether the project is in the long-term public interest, the commission shall, at a minimum consider: [Treat/Tilberg]~~ No certificate shall issue for an energy infrastructure corridor unless the commission determines all of the following:

- A. That construction and operation of the energy infrastructure corridor will result in material and quantifiable long-term economic benefits to the State of Maine, determined by reference to the economic forecasting models employed by the State of Maine or similar models;
- B. That construction and operation of the energy infrastructure corridor will not impair or inhibit new energy development, including renewable energy development, in Maine or discriminate against such development or projects;
- C. That construction and operation of the energy infrastructure corridor materially lowers energy costs for Maine consumers below the level those costs would reach if the infrastructure were not built;

A. In the public interest; and

B. Reasonably likely to:

- (1) Minimize utility rates or increase the reliability of utility service;
- (2) Have the net effect of reducing the release of greenhouse gases; or
- (3) Enhance economic development within the State.

~~A. Maximizing long-term public and economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;~~

BD. That construction and operation of the energy infrastructure corridor will ensuring ensure efficient utilization of the corridor through collocation of energy infrastructure, collaboration between energy infrastructure developers and the preservation of options for future uses;

~~C. Providing access to energy infrastructure for renewable energy generation within the State;~~

~~DE. That construction and operation of the energy infrastructure corridor will minimize ~~Minimizing~~ conflict with the public purposes for which the land or asset is owned and any management plans for the land within the corridor, and, where necessary, mitigating any unavoidable impacts;~~

~~EF. That construction and operation of the energy infrastructure corridor will limit and mitigate ~~Limiting and mitigating~~ impacts of energy infrastructure on the landscape, including but not limited to utilizing underground installation, where economically and technically feasible;~~

~~F. Stabilizing and reducing, when possible, electricity rates and energy costs;~~

~~HG. That design and construction of the energy infrastructure corridor will minimize ~~Reducing~~ the release of greenhouse gases;~~

~~H. In the case of any energy infrastructure corridor project to be placed on any lands or waters owned by the State of Maine or its subdivisions, a determination that the project will pay compensation for the use of such property rights equal to the value conferred by the use of the rights. This value may not be based on project costs avoided by such use, and shall reflect the proportionate value of the property rights to the total value of the project, taking into account, among other factors, the unique locations and characteristics of the property rights, the market for the energy to be transmitted and the long-term value to State of Maine consumers of assured revenue streams to reduce energy costs. The Commission shall determine the amount of such compensation for use of State lands or waters and shall negotiate and execute necessary implementing legal documents, notwithstanding any other provision of state law;~~

~~GI. That construction and operation of the energy infrastructure corridor will increase ~~Increasing~~ energy reliability, security, and independence of the State; and~~

~~J. That the construction and operation of the energy infrastructure corridor will maximize the strategic position and opportunities of the State of Maine in relation to energy matters; and~~

~~K. That the construction and operation of the energy infrastructure corridor will not directly or indirectly hinder the development of liquefied natural gas reception and storage in Maine.~~

The commission shall by rule establish procedures to minimize duplicative filing and review requirements for the corridor use certificate for a project that is a transmission line that requires a certificate of public convenience and necessity under section 3132.

[Treat/Tilberg]

**6. Environmental review; consolidated environmental permit.** Whenever a person proposes to develop or construct energy infrastructure within an energy infrastructure corridor, that person shall file with the department an application for a consolidated environmental permit. The department shall adopt by rule pursuant to subsection 9 a process for the review of applications and the issuance of the consolidated environmental permit in accordance with this subsection. The department may request comments from and consult with other agencies and programs that are required by law to issue separate approvals for some or all projects.

- A. A consolidated environmental permit issued by the department takes the place of any other permits or licenses that the department would otherwise require for the proposed project.
- B. The application for a consolidated environmental permit must contain such information as the department requires, including, but not limited to, all studies and documentation necessary to determine whether the proposed project is in compliance with the environmental laws of the State administered by the department.
- C. The applicant for a consolidated environmental permit shall pay a fee specified by rule and reimburse the department for any additional costs of regulatory review, including expenses for outside peer review or other consultants or experts assisting the department in its review. Outside review of applications under this subsection is governed by Title 38, section 344-A, except that the Commissioner of Environmental Protection is not required to obtain the consent of the applicant to enter into an agreement with an outside reviewer or require that the costs of the outside review be reimbursed by the applicant.
- D. The department shall issue its decision on an application for a consolidated environmental permit within a timeframe specified by department rule or guideline. The decision may specify approval, denial or approval in part and denial in part. A proposed project may not be undertaken if it is denied in whole or in part by the department.
- E. Upon issuance of a consolidated environmental permit, the department shall certify to the commission that the permit has been issued and whether the proposed project complies, in part or in whole, with the environmental laws of the State administered by the department and whether other agencies and programs that are required by law to issue separate approvals for some or all aspects of the project have taken final agency action on those matters requiring their separate approval.
- F. The department shall enforce the terms of the consolidated environmental permit.
- G. The terms of the consolidated environmental permit may require additional submissions by the permit holder, studies and approvals with conditions.

If the department receives an application for a permit to develop or construct energy infrastructure within an energy infrastructure corridor prior to adopting a rule to implement this subsection, the department shall process the application in accordance with the department's existing review and permitting procedures.

**6-A. Revenues.** Except as otherwise provided by law or the Constitution of Maine, revenues generated from the use of state-owned land and assets within energy infrastructure corridors must be deposited in the Energy Infrastructure Benefits Fund established in Title 5, section 282, subsection 9.

**7. Eminent domain.** This subsection grants and limits certain rights of eminent domain with respect to energy infrastructure corridors.

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

B. Subject to approval by the commission, a person that is not a transmission and distribution utility that receives a certificate of public convenience and necessity under section 3132 or a corridor use certificate under subsection 5 to develop energy infrastructure, other than generation interconnection transmission facilities, 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 certificate of public convenience and necessity or the corridor use certificate in the same manner and under the same conditions as set forth in chapter 65. The right of eminent domain granted in this paragraph 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 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 the effective date of this section.

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

- (1) The commission may exercise the authority under this paragraph only in an adjudicatory proceeding upon a petition by the Office of 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. A determination by the commission that the exercise of eminent domain under this paragraph is urgently needed to avoid substantial harm to electricity consumers regarding anticipated activity associated with an energy infrastructure corridor constitutes reviewable final agency action.
- (2) 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 subparagraph (1).

(3) The right of eminent domain granted in this paragraph does not apply to personal property, fixtures or improvements that constitute transmission and distribution plant.

(4) The commission may exercise the right of eminent domain for the purposes of this paragraph in the same manner and under the same conditions as set forth in chapter 65. For the purposes of the exercise of eminent domain authorized by this paragraph, the commission is both a person and the State.

(5) The commission is authorized to assess transmission and distribution utilities to the extent necessary to obtain sufficient funds to pay for lands and easements taken pursuant to this subsection.

(6) The commission, in an adjudicatory proceeding upon petition by the Office of 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) 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.

**8. Utility service territory.** Nothing in this section modifies existing restrictions on entities providing service within a public utility's service territory provided under chapter 21.

Jack Cashman has requested information on this provision and chapter 21.

**9. Rules.** The commission and the department, as appropriate, shall adopt by rule standards and procedures to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that rules adopted by the commission for the designation of an energy infrastructure petitioned corridor, pursuant to subsection 2, paragraph A, are major substantive rules.

**10. Limitations; exceptions.** Nothing in this section prohibits a state authority from undertaking feasibility studies or exploratory negotiations for a significant occupancy agreement. Nothing in this section prohibits a state authority from entering into a limited agreement to engage in further negotiations regarding a significant occupancy agreement after enactment of any law providing for approval of such corridors and occupancies, provided that any such limited agreement is subject to the express condition that all such further negotiations will occur only if permitted by and only in accordance with all provisions, terms, conditions and limitations of that law and implementing regulations. A state authority shall ensure that any study, negotiation or preliminary agreement is undertaken or entered into with the full awareness of all parties of the provisions of this section. Nothing in this section prohibits a state authority from entering into an agreement allowing occupancy of state transportation corridors by energy facilities for which an application for a certificate of public convenience or necessity was pending before the Public Utilities Commission on April 1, 2009, provided the occupancy agreement

does not involve substantially different terms or conditions from any previous occupancy agreement entered into by a state authority with respect to the type of transportation corridors to be occupied, the manner of occupancy, the physical extent of occupancy or the amount or calculation of any required consideration. Nothing in this section prohibits a state authority from issuing permits for energy facilities for which an application for a certificate of public convenience or necessity was pending before the Public Utilities Commission on April 1, 2009. Nothing in this section is intended to apply to the operation, maintenance or alteration of licensed or permitted existing pipeline facilities or their appurtenances, including but not limited to tanks, piers, pumps and valves, that were installed prior to the effective date of this Act, even if such operation, maintenance or alteration activity requires a permit from a state authority. Nothing in this section prohibits any state authority from entering into a submerged lands lease for any pier and appurtenances related to a licensed marine oil terminal facility, as long as the application for such lease was pending prior to the effective date of this Act. Nothing in this section amends or alters the jurisdiction of any state authority or agency, including but not limited to the Public Utilities Commission and the Board of Environmental Protection, regarding the siting or determination of need for any energy facilities that may be the subject of a significant occupancy agreement or exempts any energy facilities from obtaining approvals required by applicable law. Nothing in this section prohibits a state authority from issuing a permit or license pursuant to authority delegated to the State by federal law. This section does not apply to an energy facility that is an eligible project under Title IV of the federal American Recovery and Reinvestment Act of 2009 if that project has received notification from the United States Department of Energy or its agents that the energy facility has been granted a federal loan guarantee under that Act.

11. Repeal. This section is repealed July 30, 2014 2015.

PART A-1 – P.L. Chapter 372, L.D. 1485 sec. F-5 is hereby amended as follows:

4. Renewable Generation Study and Energy Cost Study. The State Planning Office shall consult with other agencies and interested parties to conduct a study of the possible impacts of likely corridors upon the development of new renewable and natural gas-fired generation in the state. As a separate study, the State Planning Office shall also consult with the State Economist, other agencies and interested parties to conduct a study of the possible impacts of likely corridors upon the long-term economic benefits and costs, including energy costs, in Maine, as determined by reference to the economic forecasting models employed by the State of Maine or similar models. These studies shall identify policy options for energy corridors that encourage new generation and lower energy costs in the state. The Public Utilities Commission will make funds available to the State Planning Office to expend for the purposes of completing the studies, as provided in Section 5 of this legislation. The State Planning Office shall submit the studies to the Legislature, the Commission, and the interagency review panel.
  
- ~~4~~5. Repeal. This section is repealed upon the effective date of a law approving plans in implementing recommendations of the studies conducted in accordance with subsection ~~2~~ 4 that specifically indicates legislative intent to repeal this section or 90 days after the adjournment of the ~~Second~~ First Regular Session of the ~~124th~~ 125th Legislature, whichever is earlier.

## PART B – Use of state revenues generated by energy infrastructure corridors

~~9. Energy independence infrastructure benefits fund; revenues from occupancy of state assets.~~ To establish an energy independence infrastructure benefits fund for, referred to in this section as “the fund.” Except as otherwise provided by law or the Constitution of Maine, the fund consists of any revenues derived from the use of state-owned land and assets for energy transmission systems infrastructure development. Each fiscal year, the first \$50,000,000 in all revenues collected from such use in the fund must be transferred by the Treasurer of State to the Efficiency Maine Trust for deposit by the trust in program funds pursuant to Title 35-A, section 10103, subsection 4 and use by the trust in accordance with Title 35-A, section 10103, subsection 4-A. For the purposes of this subsection “energy infrastructure” has the same meaning as in Title 35-A, section 122. After the initial transfer each fiscal year, the Treasurer shall deposit additional revenues received into an energy independence fund, which must be used for the following purposes:-

- A. To ensure the methodical transition to energy independence and security for the people, communities, economy and environment of the State;
- B. To invest in and transform the ways homes and businesses are heated, energy is used and people and cargo are transported;
- C. To gain independence from foreign oil and to maximize energy efficiency, to enhance renewable energy sources and to invest in an economic development strategy to ensure a vibrant, environmentally sound and prosperous future; and
- D. To reduce energy costs statewide.

### 35-A MRSA §10103, sub§4 is amended to read: (Efficiency Maine Trust)

**4. Program funding.** The board may apply for and receive grants from state, federal and private sources for deposit into appropriate program funds. The board may deposit in appropriate program funds the proceeds of any bonds issued for the purposes of programs administered by the trust. The board may receive and shall deposit in appropriate program funds revenue resulting from any forward capacity market or other capacity payments from the regional transmission organization that may be attributable to projects funded those by funds. The board shall deposit into appropriate program funds revenue from transferred to the trust from the energy infrastructure benefits fund pursuant to Title 5, section 282, subsection 9, for use in accordance with subsection 4-A. The board may also deposit any grants or other funds received by or from any entity with which the trust has an agreement or contract pursuant to this chapter if the board determines that receipt of those funds is consistent with the purposes of this chapter.

### 35-A MRSA §10103, sub§4-A is enacted to read:

4-A. Use of energy infrastructure benefits funds. Revenues transferred to the trust from the energy infrastructure benefits fund pursuant to Title 5, section 282, subsection 10, must

be used by the trust on a competitive basis to ensure the steady transition to energy independence and security for the people, communities, economy and environment of the State. In the expenditure of energy infrastructure benefits funds the board shall give preference to proposals in the following areas:

- A. Grants and loans to manufacturing entities for energy efficiency initiatives;
- B. Grants and loans to assist in transforming the way homes and businesses are heated, energy is used and people and cargo are transported; and
- C. Initiatives to achieve energy independence by providing economic incentives for the development of renewable energy resources.

[Cashman/Hinck/Fletcher/Tilberg]

The director shall provide a report to the joint standing committee of the Legislature having jurisdiction over utilities and energy matters annually by January 15th regarding the use of energy infrastructure benefits funds. The report must document the revenues transferred from the energy infrastructure fund to the trust during the most recently completed fiscal year and the current fiscal year and amounts and uses of money expended by the trust in accordance with this subsection during the most recently completed and the current fiscal year.

## **PART C – Other Provisions**

### **Sec. C-1. 2 MRSA §9 sub§3 paragraph C is amended to read: (State energy plan)**

C. In consultation with the Efficiency Maine Trust Board, established in Title 5, section 12004-G, subsection 10-C, prepare and submit a comprehensive state energy plan the Governor and the Legislature by January 15, 2009 and submit an updated plan every 2 years thereafter. Within the comprehensive state energy plan, the director shall identify transmission capacity and infrastructure needs and recommend appropriate actions to facilitate the development and integration of new renewable energy generation within the State and support the State’s renewable resource portfolio requirements specified in Title 35-A section 3210 and wind energy development goals specified in Title 35-A, section 3404;

### **Sec. C-2. 2 MRSA §9, subsection 4 is enacted to read: (Advice to agencies)**

4. Advice to state agencies. The director shall advise state agencies regarding energy-related policy principles for agencies to consider, in conjunction with the laws and policies governing those agencies, in conjunction with the sale, lease or other allowance for use of state-owned land or assets for the purpose of energy infrastructure, as defined by Title 35-A, section 122. At a minimum, the director shall consider the following principles in advising state agencies under this subsection:

A. Maximizing long-term public and economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;

B. Ensuring efficient utilization of the corridor through collocation of energy infrastructure, collaboration between energy infrastructure developers and the preservation of options for future uses;

C. Providing access to energy infrastructure for renewable energy generation within the State;

D. Minimizing conflict with the public purposes for which the land or asset is owned and any management plans for the land within the corridor, and, where necessary, mitigating any unavoidable impacts;

E. Limiting and mitigating impacts of energy infrastructure on the landscape, including but not limited to utilizing underground installation, where economically and technically feasible;

F. Stabilizing and reducing, when possible, electricity rates and energy costs;

G. Increasing energy reliability, security, and independence of the State;

*H. Reducing the release of greenhouse gases; [Treat/Tilberg]*

I. Avoiding wherever possible the use of lands subject to the provisions of Article IX, section 23 of the Maine Constitution; and

J. Maximizing the benefit realized from Maine's strategic location within New England and northeastern region;

**Sec. C-3. 35-A MRSA §3132, sub-§13, is amended to read: (CPCN)**

**13. Public lands.** The State, any agency of the State or any political subdivision of the State may not sell, lease or otherwise convey any interest in public land, other than a future interest or option to purchase an interest in land that is conditioned on satisfaction of the terms of this subsection, to any person for the purpose of constructing a transmission line subject to this section, unless the person has received a certificate of public convenience and necessity from the commission pursuant to this section.

A person who has bought, leased or otherwise been conveyed any interest in public land for the purpose of constructing a transmission line may not undertake construction of that line except under the terms of the certificate of public convenience and necessity as originally issued for that transmission line by the commission or as modified by order of the Department of

Environmental Protection under subsection 7; or under the terms of an amended certificate of public convenience and necessity issued by the commission or deemed to have been issued by the commission under subsection 11-A.

As used in this subsection, "public land" means land that is owned or controlled by the State, by an instrumentality of the State or by a political subdivision of the State.

As used in this subsection, "future interest or option to purchase an interest in land" includes an option, purchase and sale agreement or other equivalent legal instrument that conveys the intent to pursue a future sale, lease or other conveyance of land.

**Sec. C-4. Legislative review; implementation.** The joint standing committee of the Legislature having jurisdiction over utilities and energy matters shall review the implementation of this Act during the first regular session of the 125<sup>th</sup> Legislature. Based on its review, the joint standing committee may report out legislation relating to this Act.

**Sec. C-5. Department of Transportation report.** *By January 15, 2011 the Department of Transportation shall report to the joint standing committee having jurisdiction over utilities and energy matters regarding current and potential uses of abandoned railroad corridors owned or controlled by the department for energy infrastructure development.*  
[Treat/Tilberg]

**TITLE 35-A, CHAPTER 21**  
**ORGANIZATION, POWERS, SERVICE TERRITORY**

**§2101. Organization of certain public utilities**

A public utility for the operation of telephones and for the purpose of making, selling, distributing and supplying gas or electric transmission and distribution service or for the operation of water utilities, ferries or public heating utilities in any municipality, or 2 or more adjoining municipalities, within the State, may be organized as a legal entity authorized under the laws of the State, including Title 13-C.

**§2102. Approval to furnish service**

The following provisions apply to furnishing service.

**1. Approval required.** Except as provided in subsection 2 and in section 4507, a public utility may not furnish any of the services set out in section 2101 in or to any municipality in or to which another public utility is furnishing or is authorized to furnish a similar service without the approval of the commission. The commission may condition approval upon the submission of a bond or other financial security if the commission determines that such a requirement is necessary to ensure that a public utility has the financial ability to meet its obligations under this Title.

A. The commission may not grant approval to a telephone utility under this subsection unless the telephone utility submits evidence satisfactory to the commission that the telephone utility has at least \$250,000 in fixed assets in this State or the telephone utility purchases and maintains a surety bond satisfactory to the commission in the amount of \$250,000 to ensure the telephone utility has the financial ability to meet its obligations under this Title. This paragraph does not apply to a telephone utility authorized to provide telephone service in this State on the effective date of this paragraph.

**2. Approval not required.** Except as provided in section 2104, the commission's approval is not required for a public utility to furnish service in any municipality in which that public utility is furnishing service on October 8, 1967. Approval is not required for the operation of a radio paging service or mobile telecommunications services. Approval is not required for a transmission and distribution utility to distribute electricity to any other transmission and distribution utility.

**2-A. Northern Maine Transmission Corporation.**

**3. Exemption for certain telephone utilities.** The commission by rule may exempt a specified telephone utility or group of telephone utilities from obtaining the approval required by subsection 1 if the commission finds that the exemption will not result in unjust or unreasonable rates or inadequate service for any telephone utility customers. The commission may limit the exemption to specified geographic areas. For good cause, as provided in the rule establishing the exemption, the commission may revoke an exemption in

whole or in part, including an exemption granted to a single telephone utility. A telephone utility that is exempt from the approval requirement of subsection 1:

- A. Before commencing service, shall notify the commission of its intent to commence the exempted service and provide any other information the commission may require;
- B. Shall obtain the approval of the commission under subsection 1 to provide any service other than the services specified in the exemption granted by the commission under this subsection; and
- C. Remains subject to any other applicable provisions of this Title and commission rules.

Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be submitted to the Joint Standing Committee on Utilities and Energy by January 1, 1999.

**§2103. Transmission and distribution utility and cooperative authorized to serve same area**

After September 1, 1967, where a cooperative organized under chapter 37 and any other transmission and distribution utility are serving or authorized to serve the same municipality, neither the cooperative nor the other utility may bring electrical service to a new location except as provided in this section.

**1. Notice.** The cooperative or utility must notify the other cooperative or utility and the commission, in writing, of the request by the party for electrical service, where bringing the service requires the extension of existing distribution facilities.

**2. Filing objections.** If, after notice, the other cooperative or utility opposes the bringing of electrical service to the new service location, within 7 days of receipt of the notice of proposed service, it shall:

- A. File objections to the bringing of the electrical service with the commission; and
- B. Send a copy of its objections to the utility or cooperative and to the party requesting electrical service.

**3. Decision.** If objections are filed, the commission shall immediately set a hearing date, and shall determine whether the cooperative or the other utility shall serve. If, after notice, either the cooperative or the utility fails to file its objections pursuant to subsection 2, it will be conclusively presumed that the cooperative or the utility, as the case may be, has consented to the furnishing of the service.

**4. Temporary service pending a decision.** Pending the final determination of the right to serve, the commission may order temporary service brought to the prospective new service location without prejudice to the rights of any party.

#### **§2104. Commission approval for gas companies to furnish service**

**1. Approval of commission required; generally.** Except as provided in subsection 2, a gas utility may not furnish its service in or to any municipality within the State without the approval of the commission.

**2. Approval not required; no other utility serving.** Notwithstanding section 2102 or 2105, a gas utility authorized to furnish service and serving customers within the State is not required to obtain the approval of the commission to serve in any municipality in which no other gas utility is furnishing similar service unless the commission, in an order issued pursuant to subsection 3, specifically provides otherwise.

**3. Limited grant of authority.** The commission, in an order granting authorization to a person to operate, manage or control a gas utility in any municipality in this State, may expressly limit the area in which the gas utility may provide service without further approval of the commission only if:

A. The commission finds that the financial and technical capacity of the gas utility is limited in a manner that public convenience and necessity require such limited authorization; or

B. The person seeking authorization requests that the authorization be limited to a particular area.

#### **§2105. Approval only after hearing**

**1. Approval only after hearing.** Except as provided in subsection 2, no approval required by section 2102, 2103 or 2104 and no license, permit or franchise may be granted to any person to operate, manage or control a public utility named in section 2101 in a municipality where there is in operation a public utility engaged in similar service or authorized to provide similar service, until the commission has made a declaration, after public hearing of all parties interested, that public convenience and necessity require a 2nd public utility.

**2. Declaration without hearing.** The commission, may make a declaration without public hearing, if it appears that the utility serving or authorized to serve, the utility seeking approval from the commission to provide service and any customer or customers to receive service agree that the utility seeking approval to serve should provide service.

#### **§2106. Transfer of approval for a radio common carrier**

Consent granted by the commission under section 2102, or under section 2105, held by a radio common carrier may be assigned and transferred with the approval of the commission by holder of the approval. The commission may impose reasonable conditions upon granting its approval.

### **§2107. Approval only to Maine corporations**

No approval required in section 2102, 2103 or 2104 to operate, manage or control a public utility may be granted after October 1, 1975, to a corporation unless it is duly organized under the laws of this State or authorized by those laws to do business in this State.

### **§2108. Corporations may hold real estate**

Corporations organized under section 2101 and former section 2109 may purchase, hold and convey real estate and personal property that are necessary for the purposes for which they are created.

### **§2109. Organization of electric corporations in areas not adequately served (REPEALED)**

### **§2110. Extension of service**

A public utility organized by Private and Special Act of the Legislature may extend its service as follows.

**1. Commission authorization.** The commission may authorize a public utility organized by private and special act of Legislature to furnish or extend its service in, to or through a city or town notwithstanding any territorial limitations, express or implied, in the private and special act of the Legislature by which it was organized or under which it is enfranchised. Within 20 days after the commission's final authorization, the public utility shall file a certificate that shows the authorization with and pay \$20 to the Secretary of State. When the certificate is filed, the public utility's power to extend its service becomes effective.

**2. The commission's powers and limitations.** The commission's powers and limitations, made applicable under this section, are those applicable by law in like cases concerning public utilities organized under Title 13-C or any prior general corporation law.