

Power Line Company Strikes Back

Lawsuit Takes Aim at Eminent Domain Law

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When former Gov. George Pataki came to Marcy last autumn to sign an eminent domain bill aimed at blocking the New York Regional Interconnection power line, he said the project was finished.

"You will no longer have to worry about this power line tearing this community apart," he told those assembled at SUNYIT to see him put pen to paper.

Maybe not.

New York Regional Interconnect Thursday filed suit against the state to overturn the law.

Success would allow the company to build its 1,200-megawatt line through South Utica, New Hartford and Sauquoit Valley communities, taking private property as it needs to complete the project.

"The law seeks to punish NYRI for proposing a project that is intended to meet a public need," power line project manager William May said Thursday.

New York Regional Interconnect cites eight constitutional grounds on which the lawsuit would fight the law, including the rights of equal protection and due process.

"It's unconstitutional for the legislature to pass a law that targets one person or company, or singles them out for different treatment," May said.

New York Regional Interconnect wants to run a power line from Marcy to Orange County downstate. The 190-mile line would run along the New York Susquehanna and Western railroad tracks through numerous local communities, including New York Mills, South Utica, Washington Mills, Chadwicks, Sauquoit, Clayville, Cassville and Waterville.

Community opposition from Utica to the Delaware River valley sprouted up within weeks last spring. As signs sprouted in neighbors' yards, state legislators passed the eminent domain law in response to such sentiment.

At the time the law was passed, state legislators said the law was written specifically in order to apply to proposals such as the New York Regional Interconnect plan.

"We tried to narrowly craft it so it deals with people who have set up a specific transmission corporation for building one line," then-state Sen. Ray Meier, R-Western, said. Meier was one of the bill's sponsors.

Meier could not be reached Thursday, but state Sen. James Seward, R-Milford, who is named in the lawsuit, said he didn't think the law's wording would matter. There could be other corporations that might come to the state with the same objectives, Seward said.

"NYRI is not mentioned in the legislation," he said. "I don't think that on its face invalidates the bill."

Seward said lawmakers consulted closely with lawyers when they created the bill, and he believes it is sound.

He and state Sen. Joseph A. Griffo, R-Rome, said if the bill were overturned, new legislation could be developed that took the judge's ruling into consideration.

"I think it will withstand the court's review," Griffo said. "If it does not, we have the option to appeal and will, and we can look at new legislation that could do the same thing."

Syracuse University Law Professor Terry Turnipseed, who specializes in eminent domain law, said the New York Regional Interconnect proposal was unusual because the company is privately owned. Ordinarily, he said, power lines are constructed by public utilities, and they have historically been able to use eminent domain powers with relative ease.

"This is a quite unusual case and it will be interesting to see how it plays out," he said. He declined to comment on the constitutional issues raised by the company, saying constitutional law was not his specialty.

The power company's May said the company hoped to become a public utility at a later date. The company would not be able to use eminent domain until the power line was approved by the state's Public Service Commission. Last year, the commission asked the power-line company for an improved application. That has not yet been filed.

John Klucsik, the attorney representing a group formed by the governments of the eight counties the line would pass through, said he hoped the law was solid, but that is "for the judge to decide."

Mike Steiger of the citizens' group Upstate NY Citizens Alliance said New York Regional Interconnect's move is not a surprise.

"It was kind of expected that they would do that," he said. "We'll just have to see where it goes."

The office of Gov. Eliot Spitzer did not return calls asking whether the new governor would back the law.