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Bill No. HB198

## What is Merchant Transmission? (Part 2)



New York tightened up eminent domain laws to block a Canada-based corporation from erecting an aerial HVDC line across upstate New York to NYC.

In March 2006, Canada-based New York Regional Interconnect Inc. (NYRI) sought state approval to erect a 190-mile aerial HVDC transmission line from Marcy, New York to the outskirts of New York City. It was to ship a massive amount of power generated by upstate big hydro sources south to the energy-hungry metropolitan area. Its route would have ripped through thirty seven towns and villages and countless farms and then down through the Catskills and the historic Hudson River valley. The line was to be private, a merchant transmission venture.

In April 2009, NYRI withdrew its application. The earliest and most important reasons for this withdrawal were, first, public opposition and, subsequently, legislative action to tighten New York's eminent domain laws in response to the new player in the utilities industry, merchant ventures.

The opposition formed immediately and organized effectively. The basis of the opposition to NYRI sounds familiar to us in New Hampshire—the havoc that this long distance aerial HVDC line would wreak on people, communities, the environment, the economy, historical and cultural resources, not to mention that big hydro is brown not green power. Rural upstate New York would have borne an additional burden to keep the lights burning all night more cheaply down in the City: its electricity rates would have increased.

Grass roots opposition led to legislative action. Two upstate legislators drafted a bill to amend New York's Transportation Corporations Law to prohibit gas and electric merchant transmission corporations from using eminent domain in New York if the construction increased rates in any part of the state and if the corporation did not receive early designation as a National Interest Electric Transmission Corridor. "No eminent domain for corporations" became the rallying cry for the opposition.

In October 2006, New York Governor Pataki signed the bill into law. It was the death knell for NYRI. Unable to take people's land by eminent domain, NYRI had to compete on its own merits as a private business. It foundered, cost estimates rose, FERC balked, and Canadian investors cooled. Investors delivered the coup de grace at lunch on April 3, 2009, informing NYRI that they were pulling out.

One of the architects of the regional effort to block NYRI, state Senator Joseph A. Griffo, remarked that "NYRI was nothing more than a group of investors trying to make money while ruining our environment and putting the health and safety of thousands of people at risk. They tried to end run the process, they tried to jam this project down our throats." The NYRI project was "the effort of a foreign company to run roughshod over the lives, homes, and communities of Central New York." U.S. Senator Chuck Schumer confirmed that the three-year ordeal was over for the opposition. "Ding Dong the witch is dead," the Senator remarked.

Predictably, New York City Mayor Bloomberg decried Gov. Pataki's tightening of the state's eminent domain law to block NYRI's merchant transmission line. He cited the benefits to the city of the new line and recent power breakdowns in Astoria and Westchester County. Despite Bloomberg's fuming over the death of NYRI, the sky didn't fall in, the lights continued to burn all night in the city.

In fact, another Canadian group soon emerged with another plan to send hydro power down to the city from Quebec, but there is at least one critical difference. This time, the line, 420 miles long, will run underground—under Lake Champlain and the Hudson River and, for 70 miles, under land. It's the Champlain Hudson Power Express (CHPE). Four six-inch diameter cables are to be buried three feet below water in a narrow trench carved out by air jets from a robot. The developers of this project hope to avoid the opposition that led to the tightening of eminent domain laws against merchant ventures and to the death of NYRI.

Environmental groups have not weighed in on the effects of CHPE, and surely impacts exist. But it is fair to say that by modernizing its eminent domain legislation for the era of deregulation, New York warded off a disastrous aerial project and gave itself a chance to attract investors offering a better deal. Theoretically, that is how capitalism is supposed to work. Remove the socialist prop of eminent domain from a private corporation trying to force a bad deal on rural communities and a better deal comes along.

New Hampshire would do well to follow suit.

Bury the Northern Pass, a group of concerned citizens, is a member of the No Northern Pass Coalition. To join the email list, write to [brynorthernpass@gmail.com](mailto:brynorthernpass@gmail.com)

# Montana Code Annotated 2009

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**70-30-106. Eminent domain not to be used for coal mining in certain cases -- policy.** (1) For the reasons contained in this section, the state's power of eminent domain may not be exercised to mine and extract coal owned by the condemnor located beneath the surface of property for which the title to the surface is vested in others.

(2) Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the foreseeable development of other ores, metals, or minerals and affects large areas of land and large numbers of people.

(3) In certain areas of Montana referred to in subsection (2), the title to the surface property is vested in an owner other than the mineral owner and the surface owner is putting that surface property to a productive use, and it is the public policy of the state to encourage and foster that productive use by the surface owner. To permit the mineral owner to condemn the surface owner's property is to deprive the surface owner of the right to use the property in the productive manner that the surface owner determines and is also contrary to public policy set forth in subsection (5).

(4) The magnitude of the potential coal development in eastern Montana will subject landowners to undue harassment by excessive use of eminent domain.

(5) It is the public policy of the state to encourage and foster diversity of land ownership, and the surface mining of coal and control of large areas of land by the surface coal mining industry would not promote public policy and further the public interest.

**History:** En. 93-9902.1 by Sec. 2, Ch. 311, L. 1973; R.C.M. 1947, 93-9902.1; amd. Sec. 56, Ch. 125, L. 2001.

