



## **Montana Eminent Domain Bill Passage May Keep Transmission Project on Track**

**By:** [Amy Mowry](#)

House Bill 198, a measure that gives utility companies the power of eminent domain over private lands in Montana, returned to the Senate floor for a final vote on April 20 after a weeks-long deadlock in the Senate Energy and Telecommunications Committee. The bill, plagued by controversy, passed the Senate by a vote of 28-22 and was enrolled. Fears that the bill's failure would interrupt or even end ongoing construction of the Montana Alberta Tie Line, or MATL, an ambitious electric transmission project between Montana and Canada, may ease with the Senate vote.

The 214-mile, 230-Kilovolt transmission line plans to connect the Alberta grid at a substation to be constructed just northeast of Lethbridge to NorthWestern Energy's Great Falls substation in Montana. A third planned substation, to be constructed between Lethbridge and Great Falls near Cut Bank, Montana, would provide both a mid-point disconnect as well as an interconnection point for nearby wind farms. Construction will utilize both steel mono-poles and wood H frames, with dimensions ranging from 459 feet apart in irrigated areas to 787 feet apart in non-irrigated areas. The transmission conduit is aluminum conductor, steel reinforced (ACSR) measuring 1.5 inches in diameter, comprised of 54 high-grade aluminum strands interwoven with 19 stainless steel strands to form one cable. If successful, MATL will be the first cross-border power transmission line in North America.

MATL promoters suggest that the intertie connecting the electrical control areas of Alberta and Montana, while maintaining the reliability of each control area, will offer more diversified power generation, increased supply options and decreased price volatility, along with millions of dollars of economic

benefits for local communities near construction sites as well as increased tax revenues for county governments. Moreover, backers say MATL would buoy development of sustainable energy like wind in Alberta and Montana, both areas of significant wind potential.

MATL backers, by and large the major proponents of HB 198, were disappointed by a Montana District Court ruling last fall against MATL, LLP, one of two entities constructing the line. Montana Alberta Tie Ltd., the other entity, is a wholly owned subsidiary of Tonbridge Power Inc., a Canadian corporation headquartered in Toronto. Although MATL, LLP was able to secure the required permits from both Canadian and US regulatory agencies as well as the necessary siting permits from Montana's Department of Environmental Quality, project construction hit a snag when MDEQ refused to alter its permits to allow the route to skirt lands whose owners were unwilling to grant rights-of-way. MATL LLP's subsequent action to condemn the lands was extinguished by a Glacier County District Court judge, who determined that the company did not qualify as a public agent of the state and therefore could not avail itself of any statutory right to exercise eminent domain. Although the decision was appealed to the Montana Supreme Court, MATL backers hoped HB 198 would speed the proverbial plow in allowing construction on the line to progress from Canada through private lands along the Montana border.

Montana's current statutory condemnation scheme, M.S. §§ 70-3-101 through 332, defines eminent domain as "the right of the state to take private property for public use." Section 70-30-111 requires that the condemnor show "by a preponderance of the evidence that the public interest requires the taking," supported by findings that the use for which the property is condemned qualifies as a "public use" under § 70-30-102. Additionally, the taking must be necessary to the public use, and an effort to purchase or otherwise pay for the use of the property must have been made in writing and rejected. Finally, the owner or owners of any condemned property must be afforded appropriate, or "just" compensation and be given due process of law.

HB 198 would alter the current scheme by granting a "public utility as defined in 69-3-101," in addition to the state or its agent, eminent domain power. Section 69-3-101 defines "public utility" as "every corporation, both public and private, company, individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private

or municipal” myriad services, including but not limited to heat, street, railway, light, any form of power, telecommunications and, with limitations, water and sewer. If signed into law, the bill will apply retroactively, to certificates issued after September 30, 2008.

Other legislative measures backed by MATL, LLP this session include HB 240 and HB 466, intended to broaden landowners’ control over negotiations for compensation and to increase public involvement in Major Facilities Siting Act (MFSa) processes, both of which failed. Another failed measure, SB 381 would have allowed landowners to share in project revenue through royalty payments over the project’s life. Successful measures include SB 206, a bill to increase flexibility in transmission line siting, and SB 320, providing exemptions from MFSa review for voluntary upgrades of facilities within existing corridors. Both bills have been enrolled, with SB 320 awaiting Governor Schweitzer’s signature.

The planned mid-year service date for the Tie Line may still be attainable with the passage of HB-198, although local news sources suggest that Governor Schweitzer will amend the bill by veto to ensure it remains in effect only until October 2013, in the hope that any forthcoming revision will contain provision more favorable to landowners.

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