

MARK CURTIS et al.

v.

PUBLIC UTILITIES COMMISSION et al.

Submitted on Briefs January 31, 2013
Decided February 26, 2013

Panel: LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Mark and Wanda Curtis appeal from a decision of the Public Utilities Commission denying their request that Central Maine Power Company (CMP) mitigate projected increases in electromagnetic field levels due to CMP's planned construction of a 345 kV transmission line abutting the Curtises' property.

Contrary to the Curtises' contentions, the Commission did not commit reversible error in concluding that CMP was not required to conduct the requested mitigation efforts. *See* 35-A M.R.S. §§ 101, 301 (2011)¹; *Covanta Me., LLC v. Pub. Util. Comm'n*, 2012 ME 74, ¶ 10, 44 A.3d 960; *Cent. Me. Power Co. & Pub. Serv. of N.H.*, Petition for Finding of Public Convenience & Necessity for the Maine Power Reliability Program Consisting of the Construction of Approximately 350 Miles of 345 kV and 115 kV Transmission Lines, No. 2008-255, Order (Me. P.U.C. June 10, 2010).

¹ After this action commenced, the Legislature amended 35-A M.R.S. § 101 in ways not relevant to this appeal. *See* P.L. 2011, ch. 623, § D-2 (effective Aug. 30, 2012) (codified at 35-A M.R.S. § 101 (2012)).

We need not address the Curtises' argument invoking the Takings Clause of the Fifth Amendment of the United States Constitution, because the Curtises did not adequately raise this issue before the fact-finder and it is not preserved for appellate review. See *Antler's Inn & Rest. v. Dep't of Pub. Safety*, 2012 ME 143, ¶ 9, --- A.3d ---. Further, even if the Curtises had properly preserved this issue, the record reflects that they did not establish that the projected increase in electromagnetic field levels results in an unconstitutional taking of their property without just compensation. See U.S. Const. amend V; *Ark. Game & Fish Comm'n v. United States*, 133 S. Ct. 511, 518 (2012); *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 124-25 (1978); *E. Perry Iron & Metal Co. v. City of Portland*, 2008 ME 10, ¶ 26 n.7, 941 A.2d 457.

The entry is:

Judgment affirmed.

On the briefs:

Mark Curtis and Wanda Curtis, appellants pro se

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appellee Maine Public Utilities Commission

Jared S. des Rosiers, Esq., and Timothy R. Schneider, Esq., Pierce Atwood,
LLP, Portland, for appellee Central Maine Power Company