



**Federal Energy Regulatory Commission
June 15, 2006
Open Commission Meeting
Statement of
Chairman Joseph T. Kelliher**

C-1: Regulations for Filing Applications for Permits to Site Transmission Facilities (RM06-12-000)

"The Energy Policy Act of 2005 had certain clear policy goals in the area of federal electricity policy. One was promoting competition in wholesale power markets. A second was strengthening the Commission's regulatory authority, so that we are better able to prevent market manipulation and market power abuse. A third is reinforcing our energy infrastructure, particularly the interstate transmission grid.

Today, we act to strengthen our energy infrastructure, by issuing proposed rules to implement the transmission siting provisions of the Energy Policy Act of 2005. These rules will govern the issuance of construction permits by the Commission for projects that meet the statutory criteria.

Congress determined that some federal transmission siting authority was needed to lower barriers to development of major transmission projects. Congress enacted the transmission siting provisions of the Energy Policy Act of 2005 because it recognized that a robust transmission grid is important to both assure reliability and support competitive markets. Congress also determined that the previous siting regime was not adequate, and needed to be supplemented.

The federal transmission siting provisions enacted last year do not provide for exclusive federal siting. Sixty years ago, Congress took an entirely different approach with respect to natural gas pipeline siting. Then, like last year, Congress concluded that there were problems with state siting of these interstate facilities. Sixty years ago, however, the approach Congress took was to completely preempt the states, providing for exclusive and preemptive federal siting of gas pipelines. The transmission siting provisions enacted last year do not preempt the states. Instead, a federal siting process supplements a state siting process. The federal process supplements, it does not supplant.

That is how the law is intended to operate, and that is how we propose to implement it.

In fact, I would expect that most transmission projects would continue to be sited by states under state law. The vast majority of planned transmission projects are less than ten miles in length. I would expect that few if any of these projects would be designated national interest transmission corridors, and would be sited under state law.

The transmission siting provisions of the Energy Policy Act of 2005 are certainly complicated, much more complicated than the gas pipeline model. In my view, they represent an improvement over the previous siting process.

There are some significant limitations on the Commission's ability to issue construction permits for transmission projects under the Energy Policy Act of 2005. We recognize those limitations, and the proposed siting rules respect those limits. The Commission can only issue authorizations for projects sited in national interest corridors. The Department is working on its congestion study, which is expected to



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be issued by August 9. At some point after August, the Department may begin designating national interest transmission corridors.

I want to praise the Department for how it has proceeded with respect to the congestion study, and want to express my confidence in the ability of the Department to designate transmission corridors in a timely manner, consistent with the statute. The Commission and the Department have been working closely and productively. In particular, I want to commend the Department for the recent delegation order, which delegated to the Commission lead agency status once a permit application is filed.

My intent is to have the Commission's final transmission siting rules in place by the time the Department may begin designating transmission corridors.

There are other limitations as well. Under the Energy Policy Act of 2005 there are three basic ways an applicant can seek a construction permit from the Commission. First, if state law does not provide for siting or does not consider interstate benefits. Second, if an applicant is not eligible for siting under state law. For example, a project developer may not be considered a utility under state law. Third, if a state rejects a proposed transmission project, does not act within a year, or conditions a project to the point where it is no longer economically viable. We respect those limits.

Under the statute, where the Commission does have authority to act, the Commission cannot take final action and issue a construction permit until a year has passed, in the face of inaction by the state or action that makes the project not economically feasible." We respect that limit.

Prefiling has proved to be an important component in the siting of other energy infrastructure projects, namely natural gas pipelines, liquefied natural gas import projects, and hydropower projects. Prefiling fosters early identification and resolution of issues. We believe prefiling can play the same important role on transmission siting. To assist practitioners and the general public in understanding this proposed process we have posted a flow chart of this process on the Commission's.

The role the Commission is assigned on transmission siting is a very familiar one. It is familiar in nature to our role in gas pipeline siting, something we have performed for decades. In the past five years alone, we have sited more than 8,000 miles of pipelines. I have no doubt the Commission will be able to site transmission projects as efficiently as we site natural gas pipelines.

I support the proposed rule."