

A GUIDE TO THE FERC ELECTRIC TRANSMISSION FACILITIES PERMIT PROCESS



This Guide explains the Federal Energy Regulatory Commission's (FERC or Commission) permitting process for electric transmission facilities and addresses some of the basic concerns of interested entities and individuals that may be impacted by a proposed project.

The Commission's Office of Energy Projects is available at 1-202-502-8700 to answer questions concerning the procedures involved. A website has been established for transmission line siting at <http://www.ferc.gov/industries/electric/indus-act/siting.asp> for further information.

Only electric transmission facilities proposed to be located in National Interest Electric Transmission Corridors (National Corridors), as designated by the Department of Energy, are potentially eligible for the FERC permit process.

Facts About FERC's Transmission Siting Process

Eminent domain is seldom used.

The experience of FERC's 50 years of natural gas pipeline certification and construction demonstrates that project sponsors rarely use eminent domain to gain easement rights. For example, the Rockies Express West project comprises over 700 miles of new natural gas pipeline from Wyoming to Missouri and less than 1 percent of the route was subjected to eminent domain proceedings.

There are faster and more cost-effective ways for developers to get the easements and other property rights they need. For example, they may use existing rights of way or negotiate with landowners to obtain the rights they need.

Further, FERC is authorized to protect the public from unscrupulous practices. Unless state law provides otherwise, FERC precludes project developers from exercising eminent domain until after it has approved and certificated the project. Landowners concerned about a developer's tactics may contact FERC directly. FERC will review the complaint, and if appropriate, will investigate.

FERC holds local meetings along the proposed project line.

Over the last year, FERC staff has held public meetings in 43 cities, towns and villages, addressing 18 projects. Every week, 20 percent of FERC's siting staff are somewhere in the country meeting with state or local stakeholders.

FERC staff notifies property owners along a proposed route by mail and encourages the public to participate in the process. For long transmission projects, such meetings will occur at a number of sites along the proposed routes.

These events make a difference. Frequently, public concerns raised in these meetings result in changes reflected in FERC's final orders. These meetings give the public a convenient opportunity to provide information or comments that will be included in the formal record for the proceeding. This is important because the formal record contains the only information FERC may consider in making a decision about a project.

It is important to remember that project developers also conduct public meetings of their own, during which they may reference FERC. Occasionally, a FERC staff member or consultant may attend these meetings. But do not confuse the meetings organized by sponsors with official FERC meetings. Anyone with concerns or questions about public meetings and whether these are official FERC meetings, please contact us.

FERC considers alternatives to proposed routes.

A full range of alternatives are considered by FERC staff. In addition, minor route variations are often evaluated as potential solutions to property owner or environmental concerns. Again, looking to FERC's pipeline siting experience, no proposals for pipeline development projects have been approved without changes to the route.

FERC staff uses a pre-filing process to work with cooperating stakeholders to evaluate routes proposed by project developers and may make suggestions of their own prior to the filing of a formal application. After the application is filed and extensively reviewed, staff makes recommendations to the Commission. The Commissioners then consider the staff recommendations and other aspects of the record before issuing a final decision.

Landowners are fundamental to FERC's siting process.

FERC encourages landowner participation in all aspects of certification. FERC notifies property owners of a proposal, convenes public hearings and provides assistance for landowners seeking to get involved in the pre-filing or filing phases of proposal review. This is done either directly or through the developer.

Landowners are full-fledged participants in the FERC process. They have a seat at the table, with those representing environmental organizations, utilities, states and federal agencies, and others with an interest in the project, during the pre-filing process.

Landowners are heard. FERC has a record of changing routes for projects to avoid problems with individual landowners' homes or businesses. In one gas pipeline case, a company proposed running a pipeline through the front yard of an elderly man's property. The man had felled the trees and built the house himself – it was something special to him. The man, who was ailing, attended a public meeting and laid out his situation. The pipeline offered a route modification to move the pipeline from the front yard to the back yard. Eventually, the pipeline was rerouted around his property.

This policy applies to businesses as well. In one pipeline case, a dairy farmer complained about a project proposed to run near his gestation and lactation facilities. The dairy owner explained the disruption would interfere with his cows' birthing and milk production. FERC staff developed a route variation in response to the landowners concern that avoided impact to his dairy operation.

FERC staff will investigate landowner complaints about developers' tactics and operations before and during construction of electric transmission facilities.

The State and its record of proceedings play a considerable role in FERC's deliberations.

States have the primary role in siting transmission facilities. FERC's role is clearly secondary – that of a backstop -- to state permitting. Should a developer file a proposal with FERC, staff will look closely at whether the state's role has been respected before deciding whether to move ahead with the siting process. FERC staff will do this by contacting the state to get its perspective on the matter.

Should staff decide to review the proposal, the state will be invited to participate as a coordinating agency. This allows the state to join with other stakeholders in considering the proposal, evaluating alternatives, and recommending alternatives. This is all part of the process of helping mold the recommendation that staff eventually makes to the full Commission.

The state also may submit the record from its proceedings for inclusion in FERC's formal record. If the state declines to authorize a project, FERC will give serious consideration to those reasons in deciding whether the project should proceed.

Purpose

The purpose of this Guide is to:

- ◆ Generally describe the scope of FERC's transmission line siting authority;
- ◆ Generally describe FERC's pre-filing and application processes for an electric transmission construction permit;¹
- ◆ Identify how to obtain accurate and timely information concerning a proposed electric transmission project located in a National Corridor;
- ◆ Explain how to participate; and
- ◆ Provide contact information should additional information be needed.

Introduction

The Commission promotes the development of a strong national energy infrastructure. The permitting of eligible electric transmission facilities helps to stimulate infrastructure development. The permit process allows all interested parties to provide information to the Commission on the need for and impact of any proposed transmission facilities. This information will be considered prior to any Commission action on a permit application.

¹ A detailed explanation may be found at *Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities*, Order No. 689, 71 Fed. Reg. 69440 (November 16, 2006), FERC Stats. & Regs. ¶ 31,234 (2006).

Background

Electric transmission lines provide reliable power to homes, offices and industry. Construction of electric transmission facilities has lagged in recent years and additional electric transmission facilities are required to ensure a reliable source of power.

In August 2005, Congress enacted the Energy Policy Act of 2005 (EPAAct 2005).² EPAAct 2005 required that the Secretary of Energy conduct a study of electric transmission congestion and release the study for public comment. Based on the study issued in August 2006 and public comments, the Secretary of Energy in October 2007 issued a report which designated two geographic areas experiencing constraints and congestion that adversely affect consumers as National Corridors. These national corridors are known as the Mid-Atlantic Area National Interest Electric Transmission Corridor and the Southwest Area National Interest Electric Transmission Corridor.

While most electric transmission projects will continue to be approved by the states in which they are proposed, under EPAAct 2005, if the states either withhold approval for more than one year, do not have the authority to site transmission facilities, or cannot consider interstate project benefits of facilities proposed to be constructed in a National Corridor, or if a transmitting utility does not serve end users in a state, the Commission has the authority to consider an application and to issue a permit to construct the proposed facilities.³

Before an application can be filed at FERC, a potential applicant must participate in a pre-filing process that is designed to encourage participation from all interested entities and individuals during the early planning stages of a proposed electric transmission facility. During this process, information necessary to file an application is compiled. Once the pre-filing process has been successfully completed, the applicant may submit an application for further FERC review.

In determining whether to issue a permit to construct electric transmission facilities in National Corridors, Commission staff will conduct an environmental analysis. The purpose of the analysis is to identify and to inform the public, other permitting agencies, and the FERC Commissioners about the potential environmental impacts of the proposed project and the alternatives as required by the National Environmental Policy Act.

In order to issue a permit, under section 216 of the FPA, the Commission must find that the proposed project:

- ◆ Is eligible for a construction permit issued by the Commission;
- ◆ Is located in a National Corridor designated by the Department of Energy;
- ◆ Will be used in interstate commerce;
- ◆ Is in the public interest;
- ◆ Will significantly reduce transmission congestion and protect and benefit consumers;
- ◆ Is consistent with sound national energy policy and will enhance energy independence; and
- ◆ Will maximize the use of existing towers or structures, to the extent reasonably and economically possible.

² EPAAct 2005 adds section 216 to the Federal Power Act (FPA).

³ The Commission has also interpreted "withholding approval" as including a state's denial of an application for a transmission project.

State Review

If the proposed facilities are located in a state that has authority to approve the siting of the facilities and to consider its interstate benefits, the applicant must file an application with that state. An applicant must be engaged in the state process for one year prior to initiating pre-filing with the Commission. In all other instances, an applicant may request to initiate pre-filing whenever sufficient project-related information is available and has met and consulted with the Commission's Director of the Office of Energy Projects (see "Initial Consultation" below).

Where possible, we encourage potential FERC applicants to complete ongoing state permit review processes. Where successful, this may allow the project to be constructed sooner.

Initial Consultation

Prior to a company requesting the initiation of the pre-filing process, it is required that company representatives meet with Commission staff to explain the proposal. These meetings provide the opportunity for staff to offer suggestions and comments related to the environmental, engineering and safety features of the proposals of prospective applicants. Based on the input received, the sponsor will be able to further define its proposed project. Once there is sufficient project definition, the sponsor/applicant will submit to the Commission's Director of the Office of Energy Projects (Director) its request to initiate the pre-filing process.

Pre-Filing Review Process

If the Director approves the request, the Commission will issue a notice informing the public of the initiation of the pre-filing process. As part of the pre-filing process, an applicant is required to implement a Project Participation Plan that identifies specific tools and actions to facilitate stakeholder communication and dissemination of public information to those who are interested in the proposed transmission project. During the pre-filing process, Commission staff will review the applicant's proposal and assist the applicant in the preparation of a complete application. Staff activities may include: conducting site visits, facilitating the identification and resolution of issues, and initiating the environmental review of the proposed project. By engaging stakeholders early in the process and resolving relevant issues, the proposed project will become better defined and the benefits and impacts of the proposed project will be better understood. The work performed in the pre-filing process will form the basis for the application that is subsequently filed with the Commission.

Application Process

An application may be filed only after the Director has determined that all necessary information gathering is complete. After the application is filed, Commission staff will conduct a comprehensive project review, including issuing a draft and final environmental document. All comments and recommendations from all affected entities and individuals will be compiled and carefully reviewed. Commission staff may conduct public meetings and technical conferences, as

appropriate, to clarify project-related issues. After the issuance of a final environmental document, the Commission will act on the request for a construction permit. The Commission must act within one year from the date the application is filed with the Commission.

Getting Involved

How will I first hear about a proposed electric transmission facility?

If you live in the vicinity of a proposed project, you may learn of it first through the state process. Once our pre-filing process is initiated, you may learn of it through newspaper notices or a direct mailing from FERC or the applicant. Once the mandatory pre-filing process is implemented for a project, you will learn about it through a variety of sources, such as open-house meetings, newspaper advertisements, notices mailed by FERC, or discussions with friends and neighbors.

How can I obtain more details about the company's application?

FERC's records on a project are publicly accessible and can be obtained from the FERC website. The pre-filing or application material may be viewed or downloaded free of charge through the FERC's website, www.ferc.gov, using the "eLibrary" link and the project's docket number. User assistance is available at 1-866-208-3676 (toll-free). In addition, information may be obtained from the applicant's project-specific website developed and maintained per its Project Participation Plan.

How do I make my views known?

You are encouraged to contact the transmission company directly with your questions, comments, or concerns. You may contact the company through the contact person listed in the notification you receive or from the applicant's project-specific website. There are also two ways to make your views known directly to FERC:

First, if you want FERC to consider your views on the various environmental issues involved in the location of the facility, you can do so by simply writing a letter. FERC affords you the opportunity to comment at various stages of the environmental review process. Details are available from the Commission's Office of External Affairs at 1-866-208-3372 (toll-free). Check the FERC website for details on filing electronically at www.ferc.gov/docs-filing/efiling.asp. By filing comments, your views will be considered and addressed in the environmental documents or a final order.

Second, once an application is filed, you may file to become an intervenor and a party to the proceeding. Instructions on how to do this are available from the Commission's Office of External Affairs and the FERC website at www.ferc.gov/help/other-guide/intervene.asp. Becoming an intervenor is not complicated and gives you certain rights. As an intervenor, you will receive the applicant's filings and other Commission documents related to the case and materials filed by other interested parties. You also will be able to file briefs, appear at hearings and be heard by the courts if you choose to appeal the Commission's final ruling. However, along with these rights come responsibilities. For example, you must serve copies of your filings on all other parties. The Secretary of the Commission maintains a mailing list of all parties to the proceeding. Typically, you must file for

intervenor status within 21 days of FERC's notice of the application in the Federal Register, although the Commission may accept late intervention for good cause. You may also file for intervenor status during the comment period for a draft environmental document.

Requests for intervention are not accepted during the pre-filing process. You must wait until an application is filed with the Commission. Ample opportunity is provided for filing requests for intervention after the application is filed.

Will the Commission consider a state's regulatory record?

A state's regulatory record will be carefully considered by the Commission and to the extent practicable, will be used to expedite the Commission's processing of a permit application.

How may the Commission's evaluation differ from that of a state?

The factors the Commission must consider when deciding whether to issue a construction permit may be different than those considered in a state siting process and may result in a different outcome. This is not an indication that the Commission agrees or disagrees with state action. While the state and Commission's outcomes may vary, both may be consistent with the record and the criteria that each must consider.

When evaluating an application to site electric transmission facilities, Congress directed the Commission to consider the criteria in section 1221(b) of EAct 2005. The Commission may issue a permit if it finds that the facilities:

- ◆ Are eligible for a construction permit issued by the Commission;
- ◆ Are located in a National Corridor designated by the Department of Energy;
- ◆ Will be used in interstate commerce;
- ◆ Are in the public interest;
- ◆ Are designed to significantly reduce transmission congestion and protect and benefit consumers;
- ◆ Are consistent with sound national energy policy and will enhance energy independence; and
- ◆ Will maximize the use of existing towers or structures, to the extent reasonably and economically possible.

Each state has its own evaluation criteria for electric transmission facilities. A hypothetical example may help to illustrate these regulatory processes. Consider transmission facilities that are proposed to originate in state A, pass through state B, to deliver power to state C. The project proponent may receive authorization from states A and C yet state B may determine that the transmission system benefits to state B do not justify issuing a state siting permit. Based on the criteria specified in state law, state B denies the application to site the proposed facilities in state B. Following state B's denial, the proponent applies to the Commission for a construction permit. The Commission, after consideration of the state's regulatory record and other pertinent information, may determine that the EAct 2005 criteria are met and issue a construction permit for state B. In this example, the state and Commission applied their respective consideration criteria resulting in different outcomes.

Project Location

How is the transmission line route selected?

The company identifies the project purpose and an initial proposed route or routes to achieve that purpose. During the pre-filing process, the Commission staff works with the company and all other interested entities to better define the route. During this process, the prospective applicant must study alternative routes or locations to reduce project-related impacts. The Commission staff, the company, or other entities, may suggest alternatives and modifications to reduce project impacts.

How does the applicant obtain a right-of-way?

The company negotiates a right-of-way easement and compensation for the easement with each landowner. Landowners may be paid for loss of certain uses of the land during and after construction, loss of any other resources, and any damage to property. If the Commission approves the project and no agreement with the landowner is reached through negotiation, the company may acquire the easement under eminent domain (a right given to the company by statute to take private land for Commission-authorized use) with a court determining just compensation under state law.

What authorization allows the company to use eminent domain?

If the Commission issues a construction permit for a project and the necessary easements cannot be negotiated, an applicant is granted the right of eminent domain (section 216(e) of the FPA and the procedures set forth under the Federal Rules of Civil Procedure (Rule 71A)). Under these conditions, the landowner would receive just compensation as determined by the courts. This right of eminent domain does not apply to federal or state land.

Who pays taxes on the right-of-way?

The landowner typically still owns the land and pays taxes on the right-of-way unless a local taxing authority grants relief. The applicant simply has an easement across a portion of the land.

How large is the right-of-way and how is it maintained?

A right-of-way is required for the safe construction and operation of the transmission line. The width of the right-of-way depends on the type and voltage of the transmission line. Right-of-way widths of 100 to 200 feet would be typical for the types of projects we expect to seek construction permits. The transmission company must adhere to the vegetative management plan required by the state or the Electric Reliability Organization.

Must the company obey local, county and state laws and zoning ordinances?

Generally, yes. If there is a conflict, however, between these ordinances and what the Commission requires; the Commission requirement prevails.

In general, will I still be able to use the right-of-way?

The easement agreement will specify restricted uses on or across the right-of-way and any types of uses for which the company's permission must be sought. An easement acquired under eminent domain shall be used by the transmission company exclusively for the construction and modification of electric transmission facilities, and will also specify restricted uses.

What if I have problems with erosion or other issues during restoration and/or maintenance of the right-of-way?

The landowner should first contact the company to address and resolve the issue. If the landowner is not satisfied that the problem has been adequately addressed, he or she can contact the Commission's Enforcement Hotline at 1-888-889-8030 (toll free) or send an email to hotline@ferc.gov.

Transmission Company Responsibilities

Must companies post bonds to guarantee performance?

No, but the Commission inspects the right-of-way during and after construction prior to the facilities being placed in service to ensure that the terms of its permit are met.

Can the applicant come on the proposed route without landowner permission?

State or local trespass laws prevail. Some states have laws that allow a company to get access to property for survey purposes. Procedures vary by state. Once a permit is issued or an easement/survey agreement or court order is obtained, the company may come onto your land. Usually the company will notify the landowner in advance.

When can construction begin?

Construction cannot commence until the Commission issues a permit, the applicant accepts it, and the applicant receives all other necessary permits and authorizations. Once a permit is issued, construction may start within a few weeks of the company having complied with any preconditions set by the Commission. Authorization to commence construction will be issued when the applicant demonstrates compliance with the terms and conditions of the permit.

Why would the company approach a landowner before the project is approved?

If you are a potential right-of-way landowner, the company may try to obtain easement agreements in advance of project approval. A company must conduct environmental studies during the pre-filing process. For these studies to be completed as soon as possible, the company will try to obtain access from the individual landowners along the entire length of the proposed right-of-way. If Commission approval is ultimately denied, or the route changes, the initial easement agreement with the landowner is usually void (depending on the wording of the right-of-way or access contract). Further, disputes over the wording of an easement agreement are subject to state law.

Can the company place other facilities not authorized by the permit on a landowner's property? Can the facilities and the easement be used for anything other than transmitting electricity?

The permit issued by the Commission states that eminent domain may only be used for the proposed facilities in the location described. If the company wishes to install additional facilities under Commission jurisdiction, it must obtain additional approval from the Commission. Other utilities may wish to use an adjacent or overlapping easement, but they would have to obtain approval from the landowner or from another permitting authority which can grant eminent domain (usually the state). Of course, the landowner may agree to other uses.

Can a landowner receive service from the facilities?

Not directly. The operation of interstate transmission facilities is incompatible with direct residential use, which is provided by local electric providers.

How soon after construction will the transmission company restore vegetation to disturbed areas?

Commission rules require the land be restored as soon as weather permits.

Safety Issues

Who is responsible for safety?

Standards of construction and operation are governed by the American National Standards Institute, Inc., the National Electric Safety Code, and as appropriate the Energy Reliability Organization, the FERC, or municipal regulators within their jurisdiction. While the Commission has oversight in ensuring that the facilities are safely constructed, once the facility is operational, the transmission company is responsible for the safety of its facilities.

Environmental Issues

What if endangered species, wetlands, or archeological sites are identified along the proposed route?

The transmission company is required to consult with the appropriate federal, state, and local agencies (i.e., U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and State Historic Preservation Offices) in regard to endangered species, wetlands, and archeological sites and to follow all applicable laws and regulations to avoid or to minimize impacts to these resources.

What environmental reports will be prepared?

The transmission company is required to prepare environmental reports, which address water resources, fish, wildlife, vegetation, cultural resources, socio-economics, geological resources, soils, land use, recreation, aesthetics, alternatives, reliability and safety, and design and engineering. The minimum filing requirements for these reports are described in section 380.16 of our regulations.

What environmental documents will be prepared by FERC?

Every project is different. FERC's environmental review will build on any previous environmental review processes. The following provides some general guidance. A Notice of Intent (NOI) to prepare an environmental assessment (EA) or an environmental impact statement (EIS) is issued for most major proposals. It is sent to federal, state and local agencies, local media and libraries, environmental groups, and, where the Commission is able to identify them, the affected owners of any land that would be crossed. For most major projects, the NOI will announce a schedule of public meetings along the proposed route. The NOI seeks comments from interested parties on the scope of the environmental document, and any comments must be submitted to the Commission, normally within 30 days. After the comment period, the Commission staff will begin to prepare an EA or a Draft EIS outlining its findings and recommendations. For major proposals, further comments are sought and public meetings may be conducted during 45 days allotted for review of a Draft EIS or 30 days in the case of an EA. These comments are considered and addressed in the Final EIS or the final order granting or denying the permit.

Additional Information

For additional information, contact: Federal Energy Regulatory Commission
888 First Street NE, Washington, DC 20426 www.ferc.gov

Office of External Affairs
Toll Free: 1-866-208-3372
TTY: 202-502-3372
customer@ferc.gov

Office of Enforcement
Toll Free: 1-888-889-8030
Local: 202-502-8390
hotline@ferc.gov

For assistance with ferc.gov or eFiling, please contact:
FERC Online Technical Support
Toll Free: 1-866-208-3676
Local: 202-502-6652
ferconlinesupport@ferc.gov

For materials and copying assistance, please contact
Public Reference Room
Toll Free: 1-866-208-3676
Local: 202-502-8371
TTY: 202-502-8659
public.reference@ferc.gov

Handbook for Using Third-Party Contractors to Prepare Environmental Documents
<http://www.ferc.gov/industries/electric/indus-act/siting/third-party-handbook.pdf>

Guidance Manual for Environmental Report Preparation
Guidelines for Reporting On Cultural Resources Investigations
Interim Guidelines for Applicant-Prepared Draft Environmental Assessments
Upland Erosion Control, Revegetation and Maintenance Plan
Wetland and Waterbody Construction and Mitigation Procedures
<http://www.ferc.gov/industries/gas/enviro/guidelines.asp>

Guide to Electronic Information at FERC
<http://www.ferc.gov/for-citizens/citizen-guides.asp>