



A GUIDE TO THE FERC Electric Transmission Facilities Permit Process



Federal Energy Regulatory Commission

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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.

Purpose

THE PURPOSE OF THIS GUIDE IS TO:

- * Describe the scope of FERC's electric transmission line siting authority;
- * Describe FERC's pre-filing and application filing processes for an electric transmission construction permit; ¹
- * Explain how to obtain accurate and timely information concerning a proposed electric transmission project that is located in a National Interest Electric Transmission Corridor (National Corridor);
- * Explain how to participate in the FERC review process; and
- * Provide contact information should additional information be needed.

¹ A detailed explanation of these processes may be found in 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).

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.

Background

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

In August 2005, Congress enacted the Energy Policy Act of 2005 (EPAcT 2005).² The Act required the Secretary of Energy (Secretary) to conduct a study of electric transmission congestion and release the study for public comment. In August 2006, the Department of Energy published its first National Electric Transmission Congestion Study. In 2007, based on the findings of that study and after considering the comments of stakeholders, the Secretary designated two National Corridors, one in the Mid-Atlantic area and one covering Southern California and part of western Arizona. In April 2010, the Department of Energy published its second National Electric Transmission Congestion Study. The 2009 study identified areas that are transmission-constrained, but did not make recommendations concerning existing or new National Corridor designations.

Most electric transmission projects will continue to be approved by the states in which they are proposed. However, under EPAcT 2005, the Commission has the authority to consider an application and to issue a permit to construct proposed facilities if a state either withholds approval for more than one year, does not have the authority

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

to site transmission facilities, or cannot consider interstate benefits of a proposed project located in a National Corridor.

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

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

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.

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 project sponsor must file an application with that state. A sponsor must be engaged in the state process for at least one year prior to initiating pre-filing with the Commission. In all other instances, a sponsor may request to initiate pre-filing whenever sufficient project-related information is available.

Where possible, FERC encourages potential applicants to complete ongoing state permit review processes. Where successful, this may allow projects to be constructed sooner.

Initial Consultation

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

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, a potential applicant is required to implement a Project Participation Plan. The plan must identify specific tools and actions to facilitate stakeholder communication and the dissemination of public information to those who are interested in the proposed project.

During the pre-filing process, Commission staff will review the company’s proposal and identify information needed for the preparation of a complete application. Staff activities may include: conducting site visits, facilitating the identification and resolution of issues, coordinating with other agencies, 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 an application is filed, Commission staff will conduct a comprehensive project review, including issuing an 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.

Frequently-Asked Questions

GETTING INVOLVED

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

You may first hear about the proposed project from a variety of sources. If you live in the vicinity of a proposed project, you may first learn of it through the state permit process. Once the Commission’s pre-filing process is initiated, you may learn of it

through open-house meetings, newspaper notices, or a direct mailing from FERC or the applicant.

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

FERC's record on a project is publicly accessible and can be obtained from the FERC website at www.ferc.gov. The pre-filing or application material may be viewed or downloaded (free of charge) through FERC's website 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.

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 ways to make your views known directly to FERC. First, if you want FERC to consider your views on various environmental issues associated with the proposed project, you can do so by simply writing a letter. FERC affords you the opportunity to comment at various stages of the environmental review process, including public meetings. 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 final order. Please include the docket number at the top of your letter.

Second, once an application is filed, you may become an intervenor and a party to the FERC 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/how-to/intervene.asp. 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 will also 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. As detailed above, ample opportunity is provided for filing requests to intervene 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. While the Commission will accept any pertinent information developed in the state proceeding or elsewhere into its record, the Commission is required to do an independent review of environmental impacts. The Commission's ultimate determination on whether to issue a permit will be based on the entire record developed in the Commission proceeding. The formal record will be used to determine if the proposed project meets the criteria in section 216 of the FPA.

PROJECT LOCATION

How is the transmission line route selected?

The project sponsor 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 project sponsor 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. In addition, minor

route variations are often evaluated to avoid or minimize certain impacts to property owners or sensitive environmental resources. The Commission staff, the company, or other entities, may suggest alternatives and modifications to reduce project impacts.

Will the Commission consider alternatives other than new transmission lines?

The Commission requires the prospective applicant to address a variety of alternatives, including, where appropriate, alternatives other than new transmission lines. Under NEPA, the Commission is required to analyze all reasonable alternatives, even if the alternative does not fall under the Commission's jurisdiction. Thus, the Commission may be required to look at a wide range of "non-wire" alternatives (e.g., local generation, demand-side management, and energy storage), in addition to transmission line route alternatives, as part of the environmental review process.

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?

When an applicant has an easement across a portion of the land, the landowner typically pays taxes on the right-of-way unless a local taxing authority grants relief.

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

The width of the right-of-way depends on the type and voltage of the transmission line. Right-of-way widths of approximately 100 to 200 feet would be typical for the types of projects we expect to review for construction permits. The transmission company must adhere to the vegetative management standards required by the state and the North American Electric Reliability Corporation (NERC).

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

Yes, but if there is a conflict 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 Dispute Resolution Service Helpline at 1-877-337-2237 (toll free) or send an email to ferc.adr@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 has been 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). 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 would require that eminent domain 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 the vegetation in 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, NERC, FERC, and municipal regulators. 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, socioeconomics, 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?

FERC's environmental review will build on any previous environmental review process. 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, Native American tribes, and affected landowners. 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
Office of External Affairs
888 First Street NE, Washington, DC 20426
Toll Free: 1-866-208-3372
TTY: 202-502-3372
www.ferc.gov or customer@ferc.gov

Dispute Resolution Service Helpline
Toll Free: 1-877-337-2237
Local: 202-502-8702
ferc.adr@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.referenceroom@ferc.gov

Other related FERC documents you may find helpful are listed below. These are available on our website.

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

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

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>

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