

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



August 25, 2006

**VIA E-FILING**

Magalie Roman-Salas, Secretary  
Office of the Secretary  
Docket Room  
Federal Energy Regulatory Commission  
888 First Street, N.E., Room 1A, East  
Washington, D.C. 20002

**Re: Regulations for Filing Applications for Permits to Site Interstate Electric  
Transmission Corridors, FERC Docket No. RM06-12-000**

Dear Ms. Roman-Salas:

Enclosed for e-filing in the above-docketed case, please find an original electronic filing of the attached document entitled **“NOTICE OF INTERVENTION AND COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA.”**

Thank you for your cooperation in this matter.

Sincerely,

/s/ Harvey Y. Morris

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HYM:mpg

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Regulations for Filing Applications for  
Permits to Site Interstate Electric  
Transmission Corridors

Docket No. RM06-12-000

**NOTICE OF INTERVENTION AND COMMENTS OF  
THE PUBLIC UTILITIES COMMISSION OF  
THE STATE OF CALIFORNIA**

Pursuant to Rule 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”) and FERC’s June 16, 2006 Notice of Proposed Rulemaking (“NOPR”), the Public Utilities Commission of the State of California (“CPUC”) hereby gives notice of its intervention and submits the following comments in the above-docketed proceeding. The CPUC is a constitutionally-established agency charged with the responsibility for regulating electrical and natural gas corporations within the State of California. In addition, the CPUC has a statutory mandate to represent the interests of electrical and natural gas consumers throughout California in proceedings before the FERC.

The names and addresses of persons to whom communications should be addressed are:

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## COMMENTS

### I. INTRODUCTION

On August 8, 2005, the federal Energy Policy Act of 2005 (“EPAct”) became law. Section 1221 of EPAct adds a new section 216 to the Federal Power Act (“FPA”), providing for federal siting of electric transmission facilities under certain circumstances. FPA section 216 requires that the Secretary of the Department of Energy (“DOE”) identify transmission constraints and authorizes the DOE to designate a geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a National Interest Electric Transmission Corridor (“National Corridor”).

In discharging these responsibilities, the DOE on August 8, 2006 released its congestion study. One of the two Critical Congestion Areas identified in this report is southern California. The report also identified four Congestion Areas of Concern where more information and analysis are needed to determine the magnitude of and potential solutions to possible large scale congestion problems, and one of these four areas was the San Francisco Bay area in California. DOE requested comments on whether designation of National Corridors would be appropriate in any of the identified areas, how corridor boundaries should be set, and, where a commenter focuses on a specific transmission project, how costs would be allocated.

Once a National Corridor has been designated, FERC has the authority under FPA section 216(b) to issue permits to construct or modify electric transmission facilities in such corridors under certain circumstances. Specifically, FERC has the authority to issue

permits to construct or modify electric transmission facilities if it finds that the State commission or entity with siting authority has withheld approval of the facilities for more than one year after an application is filed or one year after the designation of the relevant National Corridor, whichever is later, or if the State conditions the construction or modification of the facilities in such a manner that the proposal will not significantly reduce transmission congestion in interstate commerce or is not economically feasible.

FPA section 216(c)(2) requires that FERC issue rules specifying the form of, and the information to be contained in, an application for proposed construction or modification of electric transmission facilities in a designated National Corridor, and the manner of service of notice of the permit application on interested persons. Pursuant to this requirement, FERC in its NOPR has proposed to implement new siting procedure regulations, as well as certain modifications to other, existing regulations, including the FERC's regulations implementing the National Environmental Policy Act of 1969 ("NEPA").

Throughout section 1221 of EPAct, there is recognition of the importance of the State's views, including the State commission that has authority to issue certificates of public convenience and necessity and approve the siting of transmission facilities. Thus, not only does the State have a right to present alternatives and recommendations to the DOE concerning the designation of national interest electric transmission corridors (FPA § 216(a)(2)), a State commission with authority to site electric transmission facilities, such as the CPUC, must first be given the opportunity to approve within one year the siting of transmission facilities in a designated national interest electric transmission

corridor, before the FERC's backstop authority can be triggered to process a formal application to site such transmission facilities. *See* FPA § 216(b)(1)(C). If such formal applications are thereafter filed with FERC, it must provide each State in which the transmission facility in question is located a reasonable opportunity to present its views and recommendations. *See* FPA § 216(c). Congress also required the DOE to coordinate to “the maximum extent practicable” with federal agencies and State agencies that are responsible for conducting any separate permitting and environmental reviews. *See* FPA § 216(h)(3). DOE has delegated this statutory duty to FERC.

The CPUC supports efficient and well-planned expansion of the transmission system to maintain reliability, enhance economic efficiency and also to support established energy policies, such as energy diversity and renewable power objectives. The CPUC is currently working with our jurisdictional utilities, the California Independent System Operator, and other stakeholders to implement major transmission expansions over the next 5-10 years in an economically efficient, environmentally sound, and equitably financed manner.

The CPUC agrees with the goal of Congress, FERC, DOE and other federal agencies to expedite the development of such transmission projects, especially through coordination and streamlining of reviews by federal and state agencies as called for under the EAct and as addressed for in FERC's NOPR. This is an area in which the federal agencies and state agencies can and should work together. However, the CPUC has concerns that FERC's NOPR leaves an unclear and potentially precipitous process for determining that FERC shall take over siting authority from states, and also does not

provide for coordination and sequencing of the state and federal processes in a manner that is efficient overall, or that can be expected with some confidence to be fair or manageable for stakeholders.

The CPUC's Comments cover the following points relating to FERC's NOPR:

- The State's one-year "clock" for processing an application before backstop siting is initiated should not be started until the state application is complete.
- FERC should provide the same urgency and priority in coordinating and expediting federal agency approvals of siting applications at the state level as it proposes to provide for any projects subsequently brought before FERC, and in particular should not deem the one-year clock for a state's processing of an application to have run out if the state process is being delayed by federal approvals.
- The NOPR provides for both pre-filing and filing processes at FERC, yet does not clarify how the FERC processes will be sequenced and coordinated with state siting processes in a manner that is efficient and that limits potential confusion and burdens for stakeholders.
- Regulations implementing NEPA should clarify that consideration of project alternatives in FERC's backstop siting process is in no way limited to or biased in favor of alternatives located in National Corridors, and should fully include information and findings regarding alternatives as developed within state siting processes.
- The proposed regulations should more fully address how the project proponent proposes and expects to initially finance the project and ultimately recover its costs.

**A. The State's One-Year "Clock" for Processing an Application Should Not be Deemed to Have Started Until the State Application is Complete**

As provided for in § 50.5(e)(8) of proposed new Section 50, Code of Federal Regulations, Applications for Permits to Site Interstate Electric Transmission Facilities, FERC may terminate the pre-filing process if the applicant makes inadequate progress in

providing information, including updates on the status of state applications for permits or other authorizations, while § 50.5 (f) states that FERC will determine when the pre-filing process is complete such that an applicant may file an application.

In order to expeditiously process the application, FERC needs the applicant to provide all the information required for an application upfront, not only in the pre-filing process in proposed §50.5, but also in the extensive requirements of the formal application in proposed §§ 50.6 and 50.7. Therefore, in proposed §50.8 FERC can reject an application if it patently fails to comply with applicable statutory requirements or FERC rules, regulations or orders.

FERC should recognize that in order to expeditiously fulfill their siting roles, States require a similar opportunity to conduct their permitting processes, including determining when an applicant has met all of the substantive, State requirements such that an application can be deemed complete and can be filed. Only at this point should the “clock” be started for the one year’s time in which a State may act on an application before triggering FERC backstop authority.

State agencies, such as the CPUC, have no reason to delay necessary transmission projects and realize the substantial benefits that would occur from the elimination of transmission capacity constraints and congestion. Just as FERC needs the applicant to provide all the information required for an application upfront in order to expeditiously process the application, so, too, do the State agencies need complete information in applications filed with them. Therefore, FERC should clarify in its proposed § 50.8, when FERC states that it may terminate the pre-filing process “[i]f the applicant fails to

respond to any request for additional information, fails to provide sufficient information, or is not making sufficient progress towards completing the pre-filing process,” that would include the failure of the applicant to completely comply with the State commission’s application filing requirements or the applicant’s recalcitrance in the State commission proceeding. Therefore, if applications filed with the States do not comply with the States’ filing requirements, FERC should clarify it would not start the clock for the one-year time frame required to invoke FERC's backstop authority. Such support from the FERC would facilitate the States’ ability to expeditiously and meaningfully process the applications within one year and make the actual utilization of FERC backstop processes unnecessary.

The ultimate objective of Section 1221 of the EPAct is efficient solution of transmission congestion problems, not necessarily encouraging federal backstop siting of transmission. Where State siting processes are enhanced by expedited federal agency approvals, plus FERC support for State processes and an elevated sense of urgency to avoid the necessity of federal backstop siting, then the ultimate objective will have been met. In fact, it will have been met with greater efficiency and expedition than if FERC’s backstop siting authority is utilized and an entirely new, additional and duplicative administrative process must first commence after the one-year State process has taken place. The FERC process should only be, and with this clarification may only have to be, invoked as a last resort.



**B. FERC's Role in Coordinating Federal Agency Approvals Should Extend to the State Permitting Process, and Delay of Such Approvals Should Not Be A Valid Reason for Initiating Backstop Siting**

FERC's NOPR notes that the Secretary has delegated to FERC the EPACT-mandated lead role in coordinating all applicable Federal authorizations and related environmental review. Concerning this role, FPA Section 216(h)(4)(A), as well as FERC's NOPR, provide for establishment of "prompt and binding intermediate milestones and ultimate deadlines" regarding federal agency review and authorizations. To further the ultimate objective of efficient transmission siting, and to avoid the perverse outcome of a state siting process being preempted by federal siting due to delayed action by other federal agencies, FERC should exercise the same coordinating role and urgency in expediting any applicable federal agency review of applications during the time an application is filed at the state level, as it requires for applications to FERC.

By expediting state siting processes, this can support overall efficient transmission siting in a faster and less contentious manner than by first coordinating the other federal agencies only when FERC's backstop authority is invoked. For fairness and to encourage efficient action on applications at the state level, FERC's rules should make it explicitly clear that the one-year state siting clock should not be deemed to have run out when a year has passed since a completed application was filed, if the state process is being held up by federal agency approvals, or delays related to "another provision of Federal law" which FPA Section 216 (h)(4)(B) provides as a basis for extending FERC's own application process beyond its prescribed one year.

**C. FERC Rules Need to Provide for Efficient Sequencing and Coordination with State Siting Processes**

The NOPR provides for both pre-filing and filing processes at FERC, and yet does not clarify how the FERC processes will be sequenced and coordinated with state siting processes. FERC can rationalize the overall transmission siting process and minimize the drawbacks of parallel processes if it establishes clear criteria and procedures for how to incorporate information from state siting processes. FPA Section 216(h)(5)(B) provides that “the Secretary [now delegated to FERC] and the heads of other agencies shall streamline the review and permitting of transmission within corridors...by fully taking into account prior analyses and decisions...” In the event FERC's backstop authority is invoked with a formal application, FERC's rules should therefore provide for full use by any FERC backstop siting process of information, analyses, findings, decisions, and stakeholder notification and participation that have already been established in a state siting process.

In addition to the law, it makes practical sense for the federal backstop siting process to incorporate information and findings from state siting processes, not only for sheer efficiency, but additionally to minimize confusion, burden and contention among stakeholders facing multiple processes.

**D. Regulations Implementing NEPA Should Clarify that Alternatives are in No Way Limited to Alternatives Located in National Corridors, and Should Include Information and Findings on Alternatives Developed in State Siting Processes**

The purpose of the backstop siting process required by EPAct is to expedite, where necessary, the solution of congestion problems in identified problem areas. This does not mean there should be a bias in favor of a proposed transmission project in a National Corridor, or alternatives that are also located in such a corridor. An efficient and open siting process requires that the full range of applicable alternatives be fairly considered, just as would be done for applications not falling within FERC's backstop siting authority. This should be recognized where alternatives are addressed in the proposed pre-filing process via § 50.5(e)(5) and in new rules implementing NEPA via §380.16 (k). Furthermore, when the FERC process coordinates with and makes full use of information from the state siting process as the CPUC recommends above, this should explicitly be required to include all information and findings on alternatives developed in the state siting process, as a starting point for considering alternatives in the federal process.

**E. Proposed Regulations Do Not Adequately Address Applicants' Proposed Financing and Cost Recovery**

In proposed §50.6 (g) FERC would require an applicant to provide "a general description of project financing" and under § 50.7(i) an applicant would be required to provide estimates of construction costs and of the estimated capital and annual operations and maintenance costs for each proposed environmental measure. The above information

requirements should be expanded to include any other costs for which the applicant intends to seek recovery, such as costs for studies and permitting.

Furthermore, if an application for a proposed transmission project is filed with FERC to invoke its backstop siting process, then presumably the project has encountered obstacles with siting processes and/or stakeholders in the state or region where the project is located. To provide adequate transparency regarding the financial impact of the project on that state or region, and also to adequately inform affected stakeholders, the description of project financing required in an application to FERC should identify the specific mechanism(s) by which the applicant will seek cost recovery over what period of time, what categories of ratepayers costs would be recovered from (such as interconnecting generators versus load-serving entities in certain locations), and what rate or other incentives the applicant proposes to seek, including those pursuant to FERC's recent decision in RM06-4-000.

## **II. CONCLUSION**

Under section 1221 of EPAct, there should be coordinated efforts between the state and federal agencies in review of transmission projects in the National Corridors. The CPUC respectfully submits that FERC should clarify its rules consistent with the

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discussion, above, in order to make the overall siting process, and solutions to congestion problems, as efficient, meaningful and expeditious as possible.

Dated: August 25, 2006

Respectfully submitted,

RANDOLPH L. WU  
HARVEY Y. MORRIS  
LAURENCE G. CHASET

By: *Laurence G. Chaset*

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Laurence G. Chaset

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon all known parties in this proceeding by e-mail upon each party identified in the official service list compiled by the Secretary in this proceeding.

Dated at San Francisco, California, this 25th day of August, 2006.

/s/ Harvey Y. Morris

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Harvey Y. Morris

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