

# Federal Siting Authority for Interstate Electric Transmission Lines: Transmission Capacity Cannot Grow If New Lines Cannot Be Built

*Congress should establish federal siting authority for interstate electricity transmission lines in a manner akin to authority held by the Federal Energy Regulatory Commission for interstate natural gas pipelines.*

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The Bush administration's National Energy Policy calls for legislation granting federal siting authority for electricity transmission lines. Specifically, the National Energy Policy Report issued on May 17, 2001, by the National Energy Policy Development Group chaired by Vice President Dick Cheney recommends that the president direct the secretary of energy, in consultation with appropriate federal agencies and state and local officials, to develop

legislation to grant federal siting authority for electricity transmission lines to contribute toward creation of a reliable national transmission grid.<sup>1</sup> Presumably, such federal siting authority would be vested in the Federal Energy Regulatory Commission (FERC), which administers the Federal Power Act and which, under the Natural Gas Act (NGA), already exercises federal siting authority for interstate natural gas pipelines.

Currently, the electricity trans-

mission system in this country is characterized by regionally integrated grids plagued by constraints at many key interconnection points and hampered by a regulatory framework ill suited to remedying the structural impediments limiting badly needed expansion of transmission capability. An increase in the transfer capability of the national transmission grid is precisely what is needed to allow for the movement of power from areas of excess supply to areas of unfulfilled demand. This fluidity of movement of electricity is critical to the development of efficient and reliable electric power markets in the United States, and it cannot be achieved without the construction of new transmission lines.

The National Energy Policy Report states that there are 157,810 miles of transmission lines in the United States, but only 7,000 miles of new transmission lines are currently expected over the next 10 years. This growth of only approximately 4 percent stands in stark contrast to expected increase in electric power demand over the next 10 years of 25 percent, according to the report.<sup>2</sup> New generation can only meet that demand if the newly generated power can be transmitted to markets where it is needed.

**B**ut why is federal siting authority for electric transmission lines necessary to meet this need for new electric transmission line infrastructure? Simply put, federal authority is needed because transmission line siting is a process in which a broad public interest is

likely to outweigh certain affected localized interests. To use a twist on a popular phrase, transmission line siting is best conducted by those in a position to see *both* the forest and the trees. Today, without federal siting authority, powerful local interests and local politicians influenced by such powerful local interests can too easily block or delay projects that are necessary, but that may not favor certain local interests along the route of the

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transmission line. Under the historic and current, localized siting process, it is unlikely that the transmission lines needed to create a reliable national transmission grid can be constructed in a timely, cost-effective manner. The current process is a maze fraught with too many opportunities for good, fundamentally necessary projects to be delayed or blocked by those whose perspective may reflect parochial interests rather than those of the greater national or even regional good. As the report acknowledges, the electric industry has evolved from a localized industry with generation, transmission, and distribu-

tion of a local nature to one of regional and national breadth. This change in the industry merits a fresh look at how regional or national (that is, interstate) transmission lines are sited.

**U**nder a system of federal regulatory oversight, an expansion or addition to the interstate transmission system that would increase reliability or meet new demand could be found by FERC to be in the public convenience and necessity. Such approval could carry with it authority to site the line, including the power of eminent domain, because the line had been found to be in the public interest. In contrast, the localized process forces those seeking to construct new interstate transmission lines to try to comply with varying, and potentially inconsistent, requirements of several jurisdictions and allows local concerns to block a project that is in the broader public interest. And, construction of only localized generation that cannot be transmitted to other markets will create inefficiencies as resources are misallocated in response to the inaccurate market signals resulting from these structural bottlenecks in the transmission grid. A federal system could help overcome the limitations of the localized system by freeing the decision-making process from the singular pressures of local politics and interests.

As an example of adverse impacts the localized siting process can have on interstate projects, the report alludes to a transmission line needed to serve

Long Island, New York, that was blocked in Connecticut. It should come as no surprise that Connecticut interests did not value the transmission line aimed at serving Long Island's needs. This is one example of why federal siting authority is necessary to overcome the natural inclination of local interests to block projects that do not directly benefit them. By their very nature, interstate projects may provide greater and more direct benefits to certain locales than to others through which the project must traverse. The federal siting authority proposed in the National Energy Plan would be better able to assess the overall public convenience and necessity than would a series of separate and distinct state public utility commissions or state/local siting boards.

**I**t should become increasingly apparent to those who recognize the need for new energy infrastructure to meet growing demand that an efficient federal siting process is critical to a reliable transmission grid in this country. After the report was issued, William McCormick, chairman, CEO, and president of CMS Energy, said the eminent domain proposal in President Bush's National Energy Policy was the linchpin to improving the national grid, telling *The Energy Daily* "that is the most important thing to do to facilitate transmission. That is going to help in a lot of areas of the country."<sup>3</sup>

It is important for those exercising the need for federal siting authority to recognize that federal siting authority does not mean

reduced environmental scrutiny of projects. Rather, it means comprehensive environmental review by one lead agency rather than a series of agencies with different objectives or agendas. There already is a framework in place as a result of FERC's siting authority for interstate natural gas pipelines. Because of this framework, federal siting authority for electric transmission should parallel FERC's natural gas pipeline siting author-

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ity under the NGA, which is by no means a free ride for project sponsors. Pipeline projects regulated by FERC are subject to a rigorous environmental review that scrutinizes the complete range of affected resources—including soils (including agricultural issues), geology, threatened and endangered species, wetlands and water bodies, air and noise, among others—as well as impacts on affected landowners and communities. In most cases where an interstate gas pipeline project is approved, FERC imposes a number of substantive environmental mitigation measures that are con-

ditions of project approval and that, as experience has shown, have meaningful, positive impacts. This environmental review is in addition to a non-environmental review of project economics and markets.

**T**here are substantial, positive reasons for why federalizing review of interstate electricity transmission line projects would facilitate the construction of new electricity transmission lines. One reason is the benefits of one-stop shopping. Under federally designed regulations, the sponsors of an interstate project could follow, for the most part, a uniform set of standards. In contrast, a project subject to siting requirements in multiple states faces varying, and possibly inconsistent, routing, environmental, or other standards. It is inefficient, time consuming, and costly to be whipsawed between these differing requirements, while at the same time trying to design and engineer an efficient, reliable line. Federal transmission line siting authority will provide project sponsors with a much-needed stable, uniform regulatory environment in which to design and engineer a project. Assuming federal authority is exercised similar to FERC's siting authority over interstate natural gas pipelines, state and local interests will be fully considered and balanced as part of the federal siting authority. Under FERC's process for siting interstate natural gas pipelines, project sponsors generally are required to comply with state and local requirements to the extent that

those requirements do not conflict with the federal requirements and that compliance with them will not unduly delay or block a project found by FERC to be in the public interest.

Finally, timing is another factor weighing in favor of enacting federal siting authority for interstate transmission lines. A critical issue for the success of any project is timely regulatory review. Under the current regulatory framework, projects are often simply delayed to death. Indeed, sophisticated local opposition groups have learned that they need not “win” on the merits so long as they can drag on the process indefinitely. While criticizing FERC’s pace of project review is often in vogue, FERC has demonstrated that,

when applicants provide full and complete environmental and non-environmental information, respond to inquiries in a timely and complete fashion, and work proactively to address issues that do arise, FERC is able to act in a timely fashion. FERC’s recent approvals of the Guardian Pipeline project and the Gulfstream Pipeline project are examples of timely FERC processing of major interstate facilities.<sup>4</sup> There is no reason to believe that FERC processing of well-prepared and complete electricity transmission line project applications would not be similar.

In sum, adoption of the report’s recommendation that Congress establish federal siting authority for interstate electricity transmission lines, in a manner akin to that

authority held by FERC as to interstate natural gas pipelines, likely would make a major contribution to the creation of a much-needed, expanded and reliable national electric transmission grid. ■

#### Endnotes:

1. Available at <http://www.whitehouse.gov/energy/text> (accessed August 28, 2001), Ch. 7, at 17.

2. *Id.*, at 8.

3. *Bush’s Eminent Domain Proposal Eminently Controversial for GOP*, ENERGY DAILY, May 18, 2001, at 4.

4. The Guardian route runs from an area in Illinois, south of Chicago, to an area in Wisconsin, west of Milwaukee. The Gulfstream route starts in Alabama/Mississippi, crosses the Gulf of Mexico to make landfall in Florida near St. Petersburg/Tampa, then traverses the state to end in Palm Beach County.



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