

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

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August 25, 2006

Sent via electronic filing

Honorable Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Room 1-A209
Washington, D.C. 20426

Re: Docket No. RM06-12-000 - Regulations for Filing
Applications for Permits To Site Interstate
Electric Transmission Corridors

Dear Secretary Salas:

For filing, please find the Notice of Intervention and Comments of the New York State Public Service Commission in the above-entitled proceeding. Should you have any questions, please feel free to contact me at (518) 473-8178.

Very truly yours,

David G. Drexler
Assistant Counsel

Attachment

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Regulations for Filing Applications)
for Permits To Site Interstate) Docket No. RM06-12-000
Electric Transmission Corridors)

NOTICE OF INTERVENTION AND COMMENTS
OF THE NEW YORK STATE PUBLIC SERVICE COMMISSION

BACKGROUND

The Energy Policy Act of 2005 (EPAAct) provides the Federal Energy Regulatory Commission (FERC or Commission) with authority to site transmission facilities within designated "national interest electric transmission corridors" (NIETC), as a "backstop" to state siting under certain conditions.¹ These conditions include situations where a state lacks authority to site facilities or consider the associated interstate benefits, a state does not allow an applicant that does not serve end-use consumers to seek a permit, or a state has siting authority, but fails to approve an application within an applicable one year period or approves an application in such a manner that the facility will not significantly reduce transmission congestion or will not be economically feasible. This one year period is

¹ Pub. L. 109-58, 119 Stat. 594, EPAAct §1221 et seq. (adding a new section 216 to the Federal Power Act (FPA)).

computed from the time an application is filed, or from when a relevant NIETC is designated, whichever is later.²

On June 16, 2006, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing regulations to implement its EAct siting authority. These regulations contain filing requirements and procedures for entities seeking to construct transmission facilities within a NIETC.

NOTICE OF INTERVENTION

The New York Public Service Commission (NYPSC) hereby submits its Notice of Intervention and Comments pursuant to Rule 214 of the Commission's Rules of Practice and Procedure and the notice published in the Federal Register on June 26, 2006.

Copies of all correspondence and pleadings should be addressed to:

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SUMMARY

The EAct allows FERC to preempt state commissions with siting authority, such as the NYPSC, in certain circumstances. These comments aim to improve the efficiency of the Commission's

² FPA §216(b)(1).

process in those circumstances where states with siting authority may be preempted.

In particular, FERC should require applicants to establish the basis and supporting reasons for why state siting authority may be preempted. The EPAct requires the Commission to make a finding that a state may be preempted after "notice and an opportunity for hearing."³ Specifically, the Commission must find that the state has withheld approval for more than the applicable one year period, or has conditioned its approval such that the facility will not significantly reduce transmission congestion or is not economically feasible. Requiring applicants to establish the basis upon which the Commission may preempt state siting authority will ensure parties have adequate notice and an opportunity for hearing regarding this necessary EPAct finding.

We further recommend that FERC hold its pre-filing process in abeyance until applicants have established the basis for the Commission to preempt state siting authority. Such an approach would be more efficient and effective by ensuring the Commission does not unnecessarily waste its resources, applicants can commit their time and efforts to the state process, and the

³ FPA §216(b).

public may actively participate in both the state and federal proceedings.

DISCUSSION

I. The Commission Should Require Applicants To Establish The Basis For Why State Siting Authority May Be Preempted

Before the Commission may invoke its jurisdiction to site transmission facilities, various findings must be made after "notice and an opportunity for hearing."⁴ Where state Commissions have siting authority, such as the NYPSC does, FERC must find that: 1) the state has not granted approval within one year after the filing of an application or the designation of a NIETC, whichever is later; or, 2) the state has conditioned its approval such that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible.⁵ However, the NOPR does not specifically address the Commission's process for preempting state siting authority.⁶

In order to afford adequate notice and an opportunity for interested parties to raise issues, the Commission should

⁴ FPA §216(b).

⁵ FPA §216(b)(1)(C). We expect that the one year time period will run from the time an application containing all the requisite information is filed, in order to discourage an applicant from filing insufficient information with the state so that the clock will start.

⁶ 71 Fed. Reg. 36,270 (June 26, 2006) (to be codified at 18 C.F.R. pt. 50.11(h)).

require applicants to establish the basis and supporting rationale for preempting state siting authority and invoking FERC's jurisdiction. This information will ensure a complete record and enable the Commission to determine that the necessary EAct findings for preempting state siting authority have been met.

II. The Commission Should Not Institute The Pre-Filing Phase Until Applicants Have Established The Basis For Preempting State Siting Authority

The NOPR identifies comprehensive procedures and requirements for an applicant to follow prior to filing a formal application. However, it is not clear from the NOPR when this pre-filing phase would take place in relation to a states' review process. For a number of reasons, we urge the Commission to hold such pre-filing activities in abeyance until the criteria by which the Commission may invoke its siting jurisdiction have been satisfied.

Providing an opportunity for states to complete their review before FERC initiates its pre-filing process would be more efficient and effective. On one hand, the Commission would not have to commit its resources to a process that would be rendered moot by a states' approval within one year.⁷ On the

⁷ In the event that state siting authority is ultimately preempted, the Commission could use the state record as a foundation for going forward with its pre-filing process.

other hand, applicants would be able to focus their efforts and resources on providing the type of quality work product needed at the state level, without being divided between two separate proceedings. Moreover, having separate and distinct processes at the state and then federal levels would be less confusing and difficult for interested public citizens to follow and comment upon.

CONCLUSION

For the above reasons, the Commission should require applicants to establish the basis for preempting state siting authority and invoking federal jurisdiction. Further, the Commission should not undertake the pre-filing process until such a basis exists.

Respectfully submitted,



Dawn Jablonski Ryman
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Public Service Commission
of the State of New York

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Dated: August 25, 2006
Albany, New York

CERTIFICATE OF SERVICE

I, Leann Ayer, do hereby certify that I will serve on August 25, 2006, the foregoing Notice of Intervention and Comments of the New York State Public Service Commission upon each of the parties of record, indicated on the official service list compiled by the Secretary in this proceeding.

Date: August 25, 2006
Albany, New York


Leann Ayer