

# **A Guide to the FERC Electric Transmission Facilities Permit Process**

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This Guide explains the Federal Energy Regulatory Commission's (FERC or Commission) permitting process 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 at 1-202-502-8700 can also answer questions concerning the procedures involved.

## **Purpose**

The purpose of this Guide is to:

- Generally describe FERC's pre-filing and application processes for an electric transmission construction permit;<sup>1</sup>
- Identify how to obtain accurate and timely information concerning a proposed electric transmission project located in a national interest electric transmission corridor (Corridor) as designated by the Department of Energy;
- 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.

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<sup>1</sup> 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 (EPAct 2005).<sup>2</sup> EPAct 2005 requires that the Secretary Energy conduct a study of electric transmission congestion and subsequently, issue a report which may designate any geographic area that is experiencing constraints and congestion that adversely affect consumers, as a Corridor.

While most electric transmission projects will continue to be approved by the states in which they are proposed, under EPAct 2005, if the states either fail to approve, do not have the authority, or cannot consider interstate project benefits of facilities proposed to be constructed in a Corridor, the Commission has the authority to consider an application and to issue a permit to construct the proposed facilities.

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 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;
- will be used in interstate commerce;
- is in the public interest;
- will significantly reduce transmission congestion and protect and benefit consumers;

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<sup>2</sup> EPAct 2005 adds section 216 to the Federal Power Act (FPA).

- is consistent with sound national energy policy and will enhance energy independence; and
- will maximize the use of existing facilities, to the extent reasonably and economically possible.

## **Getting Started**

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 wait for one year from the date an application is filed with the state 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.

Where possible, we encourage 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 filing an application, it is recommended that company representatives meet individually or in some combination with Commission staff, federal, state, Tribal and local agencies and entities, property owners and interested individuals to explain the proposal and to request input. These meetings provide the opportunity 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 meet with the Commission's Director of Energy Projects (Director) to request initiation of 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, applicants are required to implement a Public 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 participate by reviewing the applicant's proposal and assisting 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 issues relevant to the particular project, 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 filing date.

## **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 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 also be viewed or downloaded free of charge through the FERC's website, [www.ferc.gov](http://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 most cases you will not be able to view or print copies of detailed maps or similar locational information from the FERC website. However, the website will provide instructions for obtaining the material.

### **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. 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. By filing comments, your views will be considered and addressed in the environmental documents or a final order.

Secondly, 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/how-to/intervene.asp](http://www.ferc.gov/help/how-to/intervene.asp). Becoming an intervenor is not complicated and gives you 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. As detailed above, ample opportunity is provided for filing requests for intervention after the application is filed.

## **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 parties to better define the route. During this process, the applicant must study alternative routes or locations to reduce project-related impacts. The Commission staff, intervenors, or any commenter, may also 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 compensation under state law.

**Who pays taxes on the right-of-way?**

The landowner 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. However, any easement acquired under eminent domain shall be used by the transmission company exclusively for the construction and modification of electric transmission facilities.

**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](mailto: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 have been 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.

### **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. Also, a company must conduct environmental studies during the pre-filing process. For these studies to be complete as soon as possible, the company will try to obtain access to all 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 company restore vegetation to disturbed areas?**

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

### **What authorization allows the company to use eminent domain?**

If the Commission authorizes the 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 could receive compensation as determined by the courts.

## **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?**

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 some major projects, the NOI may 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 the 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 addressed in the Final EIS or the final order granting or denying the application.

## 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](http://www.ferc.gov)  
[customer@ferc.gov](mailto:customer@ferc.gov)  
Toll Free: 1-888-889-8030  
Enforcement Hotline: 202-502-8390

For assistance with [ferc.gov](http://ferc.gov) or eFiling, please contact:

FERC Online Technical Support  
Local: 202-502-6652  
Toll Free: 1-866-208-3676  
[ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov)

For materials and copying assistance, please contact:

Public Reference Room  
Toll Free: 1-866-208-3676  
Local: 202-502-8371  
TTY: 202-502-3372  
[public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov)

Guidance Manual for Environmental Report Preparation  
Guidelines for Reporting On Cultural Resources Investigations  
Handbook for Using Third-party Contractors to Prepare Environmental Assessments & Environmental Impact Statements (EIS)  
Interim Guideline for Applicant-prepared Draft Environmental Assessments  
Upland Erosion Control, Revegetation and Maintenance Plan  
Wetland and Waterbody Construction and Mitigation Procedures

The following document can be found at:

<http://www.ferc.gov/for-citizens/citizen-guides.asp>:

Your Guide to Electronic Information at FERC