Interstate Transmission Permitting

A report to the CREPC by the Transmission Permitting Workgroup
January 15, 2004

Overview

The inability to acquire the necessary permits to build new transmission on a timely basis is frequently cited as a reason for not building or not even proposing new transmission. Proponents of federal preemption of state and local authority to issue permits for new transmission argue that states act parochially and do not consider how new lines may benefit parties outside their borders. As a result, states that aren't home to a terminus of a proposed line will be reluctant to issue permits since they stand to gain little from the line's operation. States argue that difficulty in securing financing for new transmission is a major reason new transmission hasn't been built, and that delays in getting permits from federal agencies (e.g., DOE, BLM and the Forest Service) is the major obstacle to permitting transmission. Landowners and environmental groups oppose lines that devalue property and destroy view-sheds, and urge deployment of new transmission technologies to minimize the construction of conventional transmission. Developers say new technologies are too expensive and unproven, while decrying NIMBY opposition to virtually all lines.

Situation Analysis and Coming Challenges

- No Western state has ever denied a permit for an interstate transmission line. A major challenge facing transmission developers is securing permits from federal land management agencies and DOE.
- In 2002, 12 Western governors, including all the major states in the Western Interconnection, and four federal agencies (DOE, DOI, USDA, CEQ) signed the WGA Transmission Permitting Protocol that provides for collaborative permitting agency interstate transmission proposals. The protocol, a more formal approach to regional electricity issues than CREPC, has yet to be exercised.
- The only newly-proposed interstate project in the west is a second Palo Verde to Devers line. Other interstate or international lines are already in the permitting process (e.g., Navajo Transmission Project from Four Corners to Las Vegas, Tucson to Nogales line, and a line from Sumas, Washington to the Frasier Valley in B.C.) Still other proposals, such as an Alberta to Washington line and a Colstrip to Washington line, have not reached the permitting stage yet.
- Western states are playing an active role in ongoing sub-regional (CATS, STEP, RMATS, NTAC) and interconnection-wide (SSG-WI) transmission planning efforts which have already generated new transmission proposals, including lines under construction or in the permitting process.
- BPA has convened a "non-wires alternatives" task force to assist it in evaluating demand-side alternatives to building or upgrading transmission lines.
- U.S. federal energy legislation may move some transmission permitting decisions from states to the federal government.

    - Under the federal energy bill, which almost passed in December 2003, every three years DOE will identify "national interest transmission corridors." Developers of lines within such corridors would first submit a permit application to a state - if the state has authority to grant such a permit. The state would have one year to approve the line. Thereafter, the developer can apply to FERC for the exercise of eminent domain and preemption of state permitting authority. Eminent domain applies only to private land, not federal or state land. If a state doesn't have the authority to permit the line (e.g., no provision in state law for permitting of lines by merchant developers) or to consider the interstate benefits expected to be achieved by the facilities then the developer can go directly to FERC. If the state issues a permit with conditions that impact interstate commerce or make the line uneconomic, the developer can also seek preemption by FERC. However, FERC would not be able to exercise its preemption authority in a state that is a member of an interstate compact among three or more states.
    - The energy bill would give WAPA the power to build lines in national interest corridors within its service territory, which includes all of the U.S. portion of the Western Interconnection except the area served by BPA.
- As shown in recent load-serving entity resource plans and some regional transmission planning efforts, load growth, concerns about the price of natural gas, and interest in diversifying new generation to coal and wind will increase interest in the construction of new long-distance transmission.
- Even though proposals born out of the current collaborative sub-regional planning efforts will likely have a better chance of being built given the enhanced level of cooperation by multiple stakeholders at each step in the process, new transmission may face further citizen opposition as the West continues to urbanize and efforts to preserve open space continue.
- New transmission technologies (e.g., reconductoring, FACTS, undergrounding of wires) are fast making their commercial debuts and opponents of new transmission corridors will demand these technologies be employed instead of building conventional lines.
- Opponents of transmission expansion are calling for accelerated investments in demand-side measures and distributed generation in lieu of new lines.

Alternative Futures and the Value of a More Formal Body

Three options for organizing transmission permitting activities are considered here: (A) coordination of interstate projects through the WGA Transmission Permitting Protocol; (B) an enhanced protocol with new resources to support interstate coordination on permitting; and (C) an interstate compact, or other arrangement between states, under which permitting authorities are transferred from states to a regional body. These organizational models are considered under both the current legal structure and the enactment of an energy bill featuring federal preemption authority. Table 1 below summarizes the options.

Table 1

Alternative Legal Structure	Organization Model		
	A. WGA Protocol	B. Enhanced protocol with regional resources to coordinate state & provincial permitting activities	C. Interstate compact, or other arrangement between states, under which a regional body has final decision authority
No legislation			
Legislation enacted with FERC preemption, DOE designation of "national interest corridors", and WAPA construction			

Observations

The most important factor in considering the value of regional actions beyond the WGA Transmission Permitting Protocol is the fate of Congressional efforts to: preempt existing state and local transmission permitting processes; direct DOE to identify "national interest corridors"; and empower WAPA to build transmission that DOE deems necessary in much of the West. The coordination of permitting functions is less dependent on the future organization of the industry. However, the formation of RTOs with regional planning and backstop transmission construction authority could be helpful in generating information that would be valuable to permitting review processes.

The following are observations about different organizational models contemplated in the chart above under the two legal structure scenarios.

<u>No Legislation</u>

- Implementation of the WGA Transmission Permitting Protocol, including participation by federal land management agencies, may be sufficient to allow for the expeditious review of proposed interstate transmission lines and could spur more coordinated state/federal agency permitting action on proposed intrastate lines. With the WGA Protocol, the West already has in place a more formal structure for transmission permitting than for most other regional electricity issues.

- There may be improvements that could be made to the Protocol. Experience with the Protocol over the next few months (e.g., potential permit applications for a second Palo Verde – Devers line) could generate suggested improvements. There may be value in securing resources to contract for a project management coordinator, rather than relying on one of the affected permitting agencies to take on that role, or establishing new coordination procedures with federal agencies, etc.
- There is no compelling need for an interstate compact in this alternative future.
- Open transmission planning processes can generate information that is useful in permitting actions pursuant to the WGA Protocol or an enhanced protocol.
    - At present, there is a flurry of pro-active transmission planning underway in the Western Interconnection. Several companies (e.g., PacifiCorp, California ISO, SRP) have invested heavily in interconnection-wide and sub-regional transmission planning. The results of such pro-active transmission planning are helping to inform existing permitting processes.
    - Many of these existing pro-active voluntary transmission planning processes are dependent on the commitment of few companies and can dissolve if these companies stop investing in these efforts.
    - Formation of RTOs would institutionalize regional planning efforts. The major impact of RTO planning processes would be to screen potential projects and provide information on the impact of such projects on the region, or the interconnection as a whole if seams issues among RTOs are addressed. RTO planning could provide a better analytic underpinning for determining the need for new transmission, thus facilitating the permitting process.

Legislation Enacted

- If a bill along the lines of the 2003 energy bill is enacted[1], there would be a more compelling need for a more formal process than the WGA Protocol to:
    - Coordinate permitting processes to enable collaborative state action within the one-year deadline before federal preemption is allowed. If states are to exercise influence over the location of new transmission in "national interest corridors" they will need to be able to act quickly and in concert in order to have any possibility of meeting the one-year deadline. A formal regional body may also be better able to pressure federal permitting agencies (e.g., DOE, BLM, Forest Service) to complete their work in a timely manner and ensure their work is of sufficient quality to withstand legal challenges. At a minimum, a multi-state body could point out where federal inaction has prevented timely permitting decisions by states or held up projects.
    - Provide regional input into DOE's designation of "national interest corridors" in the West.[2] Under the energy bill as it currently stands, states would be able

[1] With legislation as discussed above, developers will generally have an incentive to move controversial projects to FERC as quickly as possible in order to preempt states. One possible countervailing incentive for developers to keep decisions at state level is that the process of exercising eminent domain at the state level may be substantially faster than at the federal level.

to merely comment on the designation report, while the study would be conducted "in consultation with" any FERC-approved Electric Reliability Organization. The tool DOE used to identify areas of congestion in its National Grid Study is crude and will not provide the quality of analysis needed to prevent Western transmission users from having to pay for unnecessary lines. A more formal Western Interconnection process could spur the development of more appropriate analytic tools in the West.

- Exert political influence to seek to block unwarranted designations of "national interest" corridors and FERC preemption for specific projects in such corridors. This function will be critical to ensuring that FERC bases its decisions on thorough analysis. Historically, FERC has made major policy decisions based on questionable analysis. Under the legislation, the locus of political lobbying for new transmission projects will shift from the local and state level to Washington, D.C. Project-specific considerations are more likely to be subsumed in the pursuit of other agendas in D.C. than in the states. A formal regional body would blunt criticism that state comments on a proposed line are parochial and strengthen state intervention at FERC.
- Monitor DOE and FERC behavior and advise Western governors and Western Congressional delegations of needed changes in statutes or agency budgets.
- Provide guidance to federal agencies on how high-level transmission modeling should be translated into the "nuts and bolts" of specific projects. DOE's modeling of "national interest corridors" is likely to identify needed increases in transmission capacity from point A to point B. For example, even in the SSG-WI modeling effort, which is more sophisticated than DOE's work in the National Grid Study, the models identified transmission "needs" at a high level (e.g., increase transfer capacity from the Powder River Basin in Wyoming/Montana to Southern California). This level of modeling could lead to the designation of "national interest corridors" covering most of the West (e.g., a corridor from Montana to Washington to California or Wyoming to Utah to Nevada to California) A regional body of states/provinces could provide guidance on how needs identified by models can be translated into workable projects.
- Closely monitor how WAPA exercises its transmission construction authority. Under the legislation, WAPA could be given the role of transmission developer in the West (outside the BPA region). The exercise of this authority would need to be carefully monitored by states to protect consumers served by all types of utilities (including IOUs) and avoid forcing consumers to pay for unneeded lines.

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[2] "In determining whether to designate a national interest electric transmission corridor the Secretary may consider whether (A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity; (B)(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and (ii) a diversification of supply is warranted; (C) the energy independence of the United States would be served by the designation; (D) the designation would be in the interest of national energy policy; (E) the designation would enhance national defense and homeland security." H.R. 6, 108th Cong. § 1221 (2003).

- There are at least two options for a more formal Western transmission permitting process in the event legislation is enacted – an enhanced WGA Protocol and an interstate compact.
    - Enhanced WGA Protocol
        - Establishing a formal body of all states/provinces in the interconnection that would offer collective advice to DOE in the designation of "national interest corridors" and to FERC on exercising eminent domain.
        - The body could collect funds to contract for expert analysis for the purpose of influencing DOE and FERC.
    - An interstate compact could also meet the needs identified above, but, under the legislation, would have the added benefit of blocking FERC from exercising eminent domain.[3] However, an interstate compact covering only a sub-region of the Western Interconnection would still allow FERC the power of eminent domain over major new lines outside the compact region and within the region, if the states that are party to the compact disagree.
- Having RTOs in place with formal planning processes would presumably influence DOE's designation of "national interest corridors."

Conclusion

Given that no western state has ever denied a permit for an interstate transmission project and that western states and four federal agencies signed onto the WGA Transmission protocol aimed at facilitating coordination among permitting agencies, there is currently little need for a more formal regional permitting body. However, uncertainty as to whether a future federal energy bill will grant FERC preemption authority over state permitting decisions, direct DOE to designate "national interest transmission corridors" and authorize WAPA to undertake projects within these corridors warrants an examination of a more formal region-wide permitting body in the West. Such a body could take the form of an enhanced WGA permitting protocol with contracting resources or an interstate compact that could block FERC's exercise of eminent domain but also preempt state siting processes.

Appendices

- WGA Transmission Permitting Protocol
- Excerpt of HR 6

[3] The legislation provides: "INTERSTATE COMPACTS.—The consent of Congress is hereby given for 3 or more contiguous States to enter into an interstate compact, subject to approval by Congress, establishing regional transmission siting agencies to facilitate siting of future electric energy transmission facilities within such States and to carry out the electric energy transmission siting responsibilities of such States. The Secretary of Energy may provide technical assistance to regional transmission siting agencies established under this subsection. Such regional transmission siting agencies shall have the authority to review, certify, and permit siting of transmission facilities, including facilities in national interest electric transmission corridors (other than facilities on property owned by the United States). The Commission shall have no authority to issue a permit for the construction or modification of electric transmission facilities within a State that is a party to a compact, unless the members of a compact are in disagreement and the Secretary makes, after notice and an opportunity for a hearing, the finding described in section (b)(1)(C)."

Appendix I: WGA Transmission Permitting Protocol

Protocol Among the Members of the Western Governors Association, The U.S. Department of the Interior, The U.S. Department of Agriculture, The U.S. Department of Energy, and The Council on Environmental Quality Governing the Siting and Permitting of Interstate Electric Transmission Lines in the Western United States

A. BACKGROUND

1. Open transmission access has accelerated the regionalization of electric power markets in the West. Existing electric transmission systems that were generally designed to move power within local utility systems, bring power from generation sites to regulated utility customers, and interconnect neighboring utilities to improve reliability with some coordination transactions are now increasingly being used to enable power sales across large geographic areas.

2. The transmission system in the continental United States is organized into three separate electric interconnections. The Western Interconnection, which covers all or parts of 14 Western states, two Canadian provinces and northwest Mexico, has a different transmission topology than the other interconnections because of highly variable seasonal demand within the interconnection and the long distances between where the power is generated and where it is consumed. In the West, power sales have taken place across large geographic areas and between regions for decades.

3. Generally, authority to site transmission lines and grant the power of eminent domain for the construction of new transmission facilities has been exercised by the states.

4. Although Western states have a sterling record in permitting interstate transmission lines, expanding regional wholesale electricity markets and the preponderance of federally-administered lands in the West necessitate closer cooperation among states, local governments, federal agencies and tribal governments to ensure an efficient permitting and siting of new interstate transmission facilities.

5. This Protocol is a step in implementing the *Memorandum of Understanding Among the U.S. Department of Energy, U.S. Department of the Interior, U.S. Department of Agriculture, U.S. Environmental Protection Agency, Council on Environmental Quality, and the Members of the Western Governors' Association Regarding Energy Development and Conservation in the Western United States*, signed in 2001.

B. POLICY POSITION

1. The purpose of this Protocol is to establish a framework that will enable affected states, local governments, federal agencies and tribal governments to participate in a systematic, coordinated, joint review process for siting and permitting of interstate transmission lines in the Western Interconnection.

2. The Protocol is intended to increase the efficiency of the siting process by including all affected governmental entities with authority for siting and permitting interstate transmission facilities. It is the intent of Western Governors to work with the appropriate local governments, federal land management agencies, and tribal governments and solicit their participation on Project Teams established under this Protocol.

3. The Western Governors believe that a coordinated joint review process involving states, local governments, federal agencies, and tribes can expedite the siting and construction of needed transmission facilities to better ensure adequate, affordable and reliable electricity supply to Western consumers.

4. When linked with a pro-active regional transmission planning and implementation process that considers transmission and non-transmission alternatives and appropriate systems for financing new transmission and alternatives, a coordinated, interstate joint review of proposed interstate transmission facilities will enable identification and consideration of interstate needs, facilitate the construction of needed transmission, and ensure that the public interest is protected.

C. OBJECTIVES IN DEVELOPING A COORDINATED JOINT REVIEW PROCESS

1. Create an efficient environmental review process that results in documents that can be shared and used by all entities with jurisdiction in the siting and permitting process.

2. Establish and periodically review joint time lines for the conduct and timely completion of review and regulatory decision-making.

3. Establish a common understanding of the informational needs, regulatory requirements, and public interest issues prior to the environmental review proceeding.

4. Eliminate duplication of agency pre-application, scoping, and permit review meetings among affected state, local, federal and tribal authorities.

5. Create a transparent streamlined review process that is structured, user friendly and predictable.

6. Facilitate early notification and sharing of information among affected states, local governments, federal agencies, tribal governments and the project sponsors.

7. Preserve and protect authority of each affected state, local government, tribal government, and federal agency.

D. IMPLEMENTATION

1. To implement this process, the parties to this agreement will adopt the following elements as part of the coordinated joint review of specific proposed interstate transmission projects:

   a. Designation of a Project Team – The governors of states affected by a proposed transmission line shall convene a team of appropriate representatives from each state to coordinate the review of a proposed project and to ensure the timely notification, consultation, and joint sharing of information and solicitation of recommendations among states, local jurisdictions, and other affected parties. Representatives of federal agencies (and federal agency teams) and tribal governments with permitting or land management responsibilities shall be invited to join the Project Team. Participation on the Project Team shall in no way diminish the responsibilities or authority of any member.

   b. Determination of Need – The Project Team shall evaluate assessments of the need for the project developed through regional transmission planning processes and other processes and shall provide the assessments and their evaluation, as necessary, to any agency. The Project Team's evaluation shall in no way bind determinations and decisions made by the appropriate state, federal, tribal, and local authorities.

   c. Federal Agencies' Responsibilities – The appropriate federal land management agency(ies) will participate on the Project Team, as necessary, to expedite the siting review process and improve efficiencies of the application process consistent with Executive Order 13212. The Fish and Wildlife Service will commit to consult and cooperate by participating early and, as appropriate and as resources are available, throughout the review process to assist the Project Team members in meeting their Endangered Species Act and Migratory Bird Treaty Act compliance requirements. The Bureau of Land Management, Forest Service and Fish and Wildlife Service will follow the process described in the August 30, 2000, *Memorandum of Agreement – Endangered Species Act Section 7 Programmatic Consultations and Coordination among the Bureau of Land Management, Forest Service, National Marine Fisheries Service and Fish and Wildlife Service*.

   d. Decisions, Activities, and Records – The Project Team shall establish procedures to encourage joint activities, records, and decisions regarding planning, evaluating, and monitoring of a proposed transmission line or facility. The specific activities which the Project Teams and other interested parties agree to perform jointly, the manner of execution, including level of detail, methodology, management and staff interaction, dollar value, and such other items as the parties deem necessary and appropriate shall be negotiated and clearly set forth in work plans and/or subsequent agreements covering individual energy projects. Any decision issued by a state, federal or local authority which is appealed or protested is not binding on the decisions that may be issued by other agencies who are members of the Project Team.

e. Consolidated Environmental Review – The activities which the parties hereby agree to undertake jointly may include, but are not limited to: preparation of environmental assessments and environmental impact statements, as appropriate; the evaluation of baseline conditions of the natural, social, and economic environment; evaluation of potential impacts of a project and alternatives; public involvement efforts; monitoring impacts of project construction and operation; and all other activities that are required to determine compliance with federal, state, local, and tribal laws and regulations. The Project Team shall jointly develop procedures for a consolidated environmental review of a proposed project.

f. Timelines –The Project Team shall establish and periodically review common, mutually agreeable deadlines for activities, reviews, and decisions. The Project Team will identify where joint decisions are to be made, and by whom. Timelines will include and account for the time that may be needed to address and dispose of disputes or administrative appeals of decisions made by all jurisdictional authorities, should such disputes or appeals of decisions be filed.

g. Information Requests – The Project Team shall serve as a clearinghouse for agency requests for information from developers of the proposed project and provide information to the developer about necessary permits, licenses, approvals, processes, and information requirements.

h. The Project Team shall provide that all non-proprietary or non-privileged information on the project and the work of the Team is available to the public, to the extent allowed by law. Among other methods, the Project Team will develop and maintain an internet-based information system that links to the permitting processes and activities of state, federal, tribal, and local agencies. Such transparent information will help to develop a common understanding of the project among permitting agencies and with the public.

i. Project-specific agreements will be developed and may be modified or amended by written mutual agreement among the parties, and terminated by mutual agreement or after 30 days' written notice by any party.

j. Each Project Team shall establish procedures that can be used to address disagreements on subjects, including, but limited to, scheduling, data requirements, data adequacy and jurisdictional issues raised by the participating entities.

2. Western governors will work with grid organizations in the West, including the Western Electricity Coordinating Council, the Mid-Continent Area Power Pool, the Western Utility Group and any Regional Transmission Organizations that form in the West, and others to facilitate the exchange of information needed by appropriate federal, state, tribal, and local agencies for planning, siting, and reviewing permit applications.

3. The Federal Power Marketing Administrations (PMA) support efforts to streamline and expedite the transmission facility siting process. Each PMA shall review their siting process for federal interstate transmission lines in order to ensure the provision of timely notification and joint sharing of information, and to explore the possibility of consolidating required reviews.

4. Nothing in this Protocol shall be construed to limit, repeal, or in any manner modify the existing legal rights, privileges, and duties of the signatories to this protocol as provided by agreement, statute or any other law or applicable court decision. Nothing in this Protocol shall commit federal agencies to enter into any contract or other binding obligation.

5. Nothing in this Protocol may be construed to obligate the United States to any current or future expenditure of resources in advance of the availability of appropriations from Congress.

E. AUTHORITIES

The National Environmental Policy Act of 1969, 42 U.S.C. 4321, 4331(b) provides the authority for the Federal Government's participation in this Protocol. Additional authority is provided to the Bureau of Land Management under the Federal Land Policy and Management Act, 43 U.S.C. 1701, 1737 (b), to the Fish and Wildlife Service under the Fish and Wildlife Coordination Act, 16 U.S.C. 661, and to the Bureau of Indian Affairs under the Synder Act, 35 U.S.C. 2, 13, and 25 U.S.C. 324.

F. ADMINISTRATIVE PROVISIONS

1. The Governors intend that all states in the Western Interconnection sign the Protocol and will seek to secure the same from the appropriate federal agencies, tribal governments and Canadian provinces.

2. Each signatory to this Protocol will provide the Western Governors' Association with the name of a point of contact within the appropriate governmental agency for the implementation of this Protocol, including the necessary notifications herein.

3. Governors will give copies of this Protocol to state agencies with responsibilities for the review of transmission proposals.

4. Any party to the Protocol can unilaterally withdraw its participation in the agreement.

6. The Protocol can be amended or modified if all parties agree.

7. Upon signature, the protocol immediately will be effective and the Governors intend that executive orders or other administrative action to implement this Protocol be completed within 120 days of the signing.

8. The Western Governors' Association, through its affiliate, the Western Interstate Energy Board, will provide a report on the implementation of this Protocol at each annual meeting of the Association, and may provide interim reports as warranted.

9. The signatories will review the Protocol and its implementation on an annual basis.

Appendix II: Excerpt from energy bill

Subtitle B—Transmission Infrastructure Modernization 4

SEC. 1221. SITING OF INTERSTATE ELECTRIC TRANS- 5 MISSION FACILITIES. 6

(a) AMENDMENT OF FEDERAL POWER ACT.—Part II of 7 the Federal Power Act is amended by adding at the end the 8 following: 9

''SEC. 216. SITING OF INTERSTATE ELECTRIC TRANS- 10 **MISSION FACILITIES.** 11

''(a) DESIGNATION OF NATIONAL INTEREST ELECTRIC 12 TRANSMISSION CORRIDORS.— 13

''(1) TRANSMISSION CONGESTION STUDY.—Within 1 14 year after the enactment of this section, and every 3 years 15 thereafter, the Secretary of Energy, in consultation with af- 16 fected States, shall conduct a study of electric transmission 17 congestion. After considering alternatives and recommenda- 18 tions from interested parties, including an opportunity for 19 comment from affected States, the Secretary shall issue a 20 report, based on such study, which may designate any geo- 21 graphic area experiencing electric energy transmission ca- 22 pacity constraints or congestion that adversely affects con- 23 sumers as a national interest electric transmission corridor. 24 The Secretary shall conduct the study and issue the report 25 in consultation with any appropriate regional entity ref- 26 erenced in section 215 of this Act. 27

''(2) CONSIDERATIONS.—In determining whether to 28 designate a national interest electric transmission corridor 29 referred to in paragraph (1) under this section, the Sec- 30 retary may consider whether— 31

''(A) the economic vitality and development of the 32 corridor, or the end markets served by the corridor, 33 may be constrained by lack of adequate or reasonably 34 priced electricity; 35

''(B)(i) economic growth in the corridor, or the 1 end markets served by the corridor, may be jeopardized 2 by reliance on limited sources of energy; and 3

''(ii) a diversification of supply is warranted; 4

''(C) the energy independence of the United States 5 would be served by the designation; 6

''(D) the designation would be in the interest of 7 national energy policy; and 8

''(E) the designation would enhance national de- 9 fense and homeland security. 10

''(b) CONSTRUCTION PERMIT.—Except as provided in sub- 11
section (i), the Commission is authorized, after notice and an 12
opportunity for hearing, to issue a permit or permits for the 13
construction or modification of electric transmission facilities in 14
a national interest electric transmission corridor designated by 15
the Secretary under subsection (a) if the Commission finds 16
that— 17
''(1)(A) a State in which the transmission facilities are 18
to be constructed or modified is without authority to— 19
''(i) approve the siting of the facilities; or 20
''(ii) consider the interstate benefits expected to be 21
achieved by the proposed construction or modification 22
of transmission facilities in the State; 23
''(B) the applicant for a permit is a transmitting util- 24
ity under this Act but does not qualify to apply for a per- 25
mit or siting approval for the proposed project in a State 26
because the applicant does not serve end-use customers in 27
the State; or 28
''(C) a State commission or other entity that has au- 29
thority to approve the siting of the facilities has— 30
''(i) withheld approval for more than 1 year after 31
the filing of an application pursuant to applicable law 32
seeking approval or 1 year after the designation of the 33
relevant national interest electric transmission corridor, 34
whichever is later; or 35
''(ii) conditioned its approval in such a manner 1
that the proposed construction or modification will not 2
significantly reduce transmission congestion in inter- 3
state commerce or is not economically feasible; 4
''(2) the facilities to be authorized by the permit will 5
be used for the transmission of electric energy in interstate 6
commerce; 7
''(3) the proposed construction or modification is con- 8
sistent with the public interest; 9
''(4) the proposed construction or modification will sig- 10
nificantly reduce transmission congestion in interstate com- 11
merce and protects or benefits consumers; and 12
''(5) the proposed construction or modification is con- 13
sistent with sound national energy policy and will enhance 14
energy independence. 15
''(c) PERMIT APPLICATIONS.—Permit applications under 16
subsection (b) shall be made in writing to the Commission. The 17
Commission shall issue rules setting forth the form of the ap- 18
plication, the information to be contained in the application, 19
and the manner of service of notice of the permit application 20
upon interested persons. 21

‘‘(d) COMMENTS.—In any proceeding before the Commis- 22
sion under subsection (b), the Commission shall afford each 23
State in which a transmission facility covered by the permit is 24
or will be located, each affected Federal agency and Indian 25
tribe, private property owners, and other interested persons, a 26
reasonable opportunity to present their views and recommenda- 27
tions with respect to the need for and impact of a facility cov- 28
ered by the permit. 29
‘‘(e) RIGHTS-OF-WAY.—In the case of a permit under sub- 30
section (b) for electric transmission facilities to be located on 31
property other than property owned by the United States or a 32
State, if the permit holder cannot acquire by contract, or is un- 33
able to agree with the owner of the property to the compensa- 34
tion to be paid for, the necessary right-of-way to construct or 35
modify such transmission facilities, the permit holder may ac- 36
quire the right-of-way by the exercise of the right of eminent 1
domain in the district court of the United States for the dis- 2
trict in which the property concerned is located, or in the ap- 3
propriate court of the State in which the property is located. 4
The practice and procedure in any action or proceeding for that 5
purpose in the district court of the United States shall conform 6
as nearly as may be with the practice and procedure in similar 7
action or proceeding in the courts of the State where the prop- 8
erty is situated. 9
‘‘(f) STATE LAW.—Nothing in this section shall preclude 10
any person from constructing or modifying any transmission 11
facility pursuant to State law. 12
‘‘(g) COMPENSATION.—Any exercise of eminent domain 13
authority pursuant to this section shall be considered a taking 14
of private property for which just compensation is due. Just 15
compensation shall be an amount equal to the full fair market 16
value of the property taken on the date of the exercise of emi- 17
nent domain authority, except that the compensation shall ex- 18
ceed fair market value if necessary to make the landowner 19
whole for decreases in the value of any portion of the land not 20
subject to eminent domain. Any parcel of land acquired by emi- 21
nent domain under this subsection shall be transferred back to 22
the owner from whom it was acquired (or his heirs or assigns) 23
if the land is not used for the construction or modification of 24
electric transmission facilities within a reasonable period of 25
time after the acquisition. Other than construction, modifica- 26
tion, operation, or maintenance of electric transmission facili- 27
ties and related facilities, property acquired under subsection 28
(e) may not be used for any purpose (including use for any her- 29
itage area, recreational trail, or park) without the consent of 30
the owner of the parcel from whom the property was acquired 31

(or the owner's heirs or assigns).
''(h) COORDINATION OF FEDERAL AUTHORIZATIONS FOR TRANSMISSION AND DISTRIBUTION FACILITIES.—
''(1) LEAD AGENCY.—If an applicant, or prospective applicant, for a Federal authorization related to an electric transmission or distribution facility so requests, the Department of Energy (DOE) shall act as the lead agency for purposes of coordinating all applicable Federal authorizations and related environmental reviews of the facility. For purposes of this subsection, the term 'Federal authorization' means any authorization required under Federal law in order to site a transmission or distribution facility, including but not limited to such permits, special use authorizations, certifications, opinions, or other approvals as may be required, whether issued by a Federal or a State agency. To the maximum extent practicable under applicable Federal law, the Secretary of Energy shall coordinate this Federal authorization and review process with any Indian tribes, multi-State entities, and State agencies that are responsible for conducting any separate permitting and environmental reviews of the facility, to ensure timely and efficient review and permit decisions.
''(2) AUTHORITY TO SET DEADLINES.—As lead agency, the Department of Energy, in consultation with agencies responsible for Federal authorizations and, as appropriate, with Indian tribes, multi-State entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews with the Federal authorization and environmental reviews, shall establish prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facility. The Secretary of Energy shall ensure that once an application has been submitted with such data as the Secretary considers necessary, all permit decisions and related environmental reviews under all applicable Federal laws shall be completed within 1 year or, if a requirement of another provision of Federal law makes this impossible, as soon thereafter as is practicable. The Secretary of Energy also shall provide an expeditious pre-application mechanism for prospective applicants to confer with the agencies involved to have each such agency determine and communicate to the prospective applicant within 60 days of when the prospective applicant submits a request for such information concerning—
''(A) the likelihood of approval for a potential facility; and

‘‘(B) key issues of concern to the agencies and 6
public. 7
‘‘(3) CONSOLIDATED ENVIRONMENTAL REVIEW AND 8
RECORD OF DECISION.—As lead agency head, the Secretary 9
of Energy, in consultation with the affected agencies, shall 10
prepare a single environmental review document, which 11
shall be used as the basis for all decisions on the proposed 12
project under Federal law. The document may be an envi- 13
ronmental assessment or environmental impact statement 14
under the National Environmental Policy Act of 1969 if 15
warranted, or such other form of analysis as may be war- 16
ranted. The Secretary of Energy and the heads of other 17
agencies shall streamline the review and permitting of 18
transmission and distribution facilities within corridors des- 19
ignated under section 503 of the Federal Land Policy and 20
Management Act (43 U.S.C. 1763) by fully taking into ac- 21
count prior analyses and decisions relating to the corridors. 22
Such document shall include consideration by the relevant 23
agencies of any applicable criteria or other matters as re- 24
quired under applicable laws. 25
‘‘(4) APPEALS.—In the event that any agency has de- 26
nied a Federal authorization required for a transmission or 27
distribution facility, or has failed to act by the deadline es- 28
tablished by the Secretary pursuant to this section for de- 29
ciding whether to issue the authorization, the applicant or 30
any State in which the facility would be located may file 31
an appeal with the Secretary, who shall, in consultation 32
with the affected agency, review the denial or take action 33
on the pending application. Based on the overall record and 34
in consultation with the affected agency, the Secretary may 35
then either issue the necessary authorization with any ap- 36
propriate conditions, or deny the application. The Secretary 1
shall issue a decision within 90 days of the filing of the ap- 2
peal. In making a decision under this paragraph, the Sec- 3
retary shall comply with applicable requirements of Federal 4
law, including any requirements of the Endangered Species 5
Act, the Clean Water Act, the National Forest Manage- 6
ment Act, the National Environmental Policy Act of 1969, 7
and the Federal Land Policy and Management Act. 8
‘‘(5) CONFORMING REGULATIONS AND MEMORANDA OF 9
UNDERSTANDING.—Not later than 18 months after the 10
date of enactment of this section, the Secretary of Energy 11
shall issue any regulations necessary to implement this sub- 12
section. Not later than 1 year after the date of enactment 13
of this section, the Secretary and the heads of all Federal 14
agencies with authority to issue Federal authorizations 15

shall enter into Memoranda of Understanding to ensure the 16
timely and coordinated review and permitting of electricity 17
transmission and distribution facilities. The head of each 18
Federal agency with authority to issue a Federal authoriza- 19
tion shall designate a senior official responsible for, and 20
dedicate sufficient other staff and resources to ensure, full 21
implementation of the DOE regulations and any Memo- 22
randa. Interested Indian tribes, multi-State entities, and 23
State agencies may enter such Memoranda of Under- 24
standing. 25
''(6) DURATION AND RENEWAL.—Each Federal land 26
use authorization for an electricity transmission or distribu- 27
tion facility shall be issued— 28
''(A) for a duration, as determined by the Sec- 29
retary of Energy, commensurate with the anticipated 30
use of the facility, and 31
''(B) with appropriate authority to manage the 32
right-of-way for reliability and environmental protec- 33
tion. 34
Upon the expiration of any such authorization (including 35
an authorization issued prior to enactment of this section), 36
the authorization shall be reviewed for renewal taking fully 1
into account reliance on such electricity infrastructure, rec- 2
ognizing its importance for public health, safety and eco- 3
nomic welfare and as a legitimate use of Federal lands. 4
''(7) MAINTAINING AND ENHANCING THE TRANS- 5
MISSION INFRASTRUCTURE.—In exercising the responsibil- 6
ities under this section, the Secretary of Energy shall con- 7
sult regularly with the Federal Energy Regulatory Commis- 8
sion (FERC), FERC-approved electric reliability organiza- 9
tions (including related regional entities), and FERC-ap- 10
proved Regional Transmission Organizations and Inde- 11
pendent System Operators. 12
''(i) INTERSTATE COMPACTS.—The consent of Congress is 13
hereby given for 3 or more contiguous States to enter into an 14
interstate compact, subject to approval by Congress, estab- 15
lishing regional transmission siting agencies to facilitate siting 16
of future electric energy transmission facilities within such 17
States and to carry out the electric energy transmission siting 18
responsibilities of such States. The Secretary of Energy may 19
provide technical assistance to regional transmission siting 20
agencies established under this subsection. Such regional trans- 21
mission siting agencies shall have the authority to review, cer- 22
tify, and permit siting of transmission facilities, including facili- 23
ties in national interest electric transmission corridors (other 24
than facilities on property owned by the United States). The 25

Commission shall have no authority to issue a permit for the 26
construction or modification of electric transmission facilities 27
within a State that is a party to a compact, unless the mem- 28
bers of a compact are in disagreement and the Secretary 29
makes, after notice and an opportunity for a hearing, the find- 30
ing described in section (b)(1)(C). 31
‘‘(j) SAVINGS CLAUSE.—Nothing in this section shall be 32
construed to affect any requirement of the environmental laws 33
of the United States, including, but not limited to, the National 34
Environmental Policy Act of 1969. Subsection (h)(4) of this 35
section shall not apply to any Congressionally-designated com- 36
ponents of the National Wilderness Preservation System, the 1
National Wild and Scenic Rivers System, or the National Park 2
system (including National Monuments therein). 3