

Statement of Wendell Holland, Chairman
Pennsylvania Public Utility Commission

House Committee on Oversight and Government Reform
Subcommittee on Domestic Policy
"Federal Electric Transmission Corridors"
April 25, 2007

Thank you for this opportunity to offer comments to the Honorable Chairman, Mr. Kucinich, Ranking Member Issa and Members of the Subcommittee on Domestic Policy¹.

My name is Wendell Holland. I am Chairman of the Pennsylvania Public Utility Commission ("PaPUC"), a State utility regulatory commission that has served the Commonwealth of Pennsylvania and its people since 1913. My remarks are presented to you as one member of the PaPUC and do not necessarily reflect the views of the Commission. In addition to regulating the rates and service of utilities and energy providers within the Commonwealth, the PaPUC also determines whether proposed electric transmission facilities that require the exercise of the Commonwealth's eminent domain powers are "necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public", pursuant to 15 Pa.C.S. § 1511 and 66 Pa.C.S. § 1501. We administer rules providing for consideration of issues such as need (including reasonable alternative routes); safety; environmental impact; impact on archeologic, historical and scenic areas; land use; soil and sedimentation; plant and wildlife habitats; terrain; hydrology; and landscape. 52 Pa.Code § 57.71 – 57.77. Pennsylvania's Constitution, Article II, § 27 provides for a right to the preservation of natural, scenic, historic and esthetic values, declares that the Commonwealth is a trustee of such resources and "shall conserve and maintain them for the benefit of all the people".

Thus, the PaPUC's siting jurisdiction is not a mere technical electrical engineering exercise, but a weighing of a number of (sometimes competing) concerns. Much of the interstate transmission grid that makes up the present day Eastern Interconnection was constructed under the jurisdiction of and supervision by State agencies. Their decisions were reviewed by State courts, while regulation of interstate transmission rates, terms and conditions has been regulated since 1935 by the Federal Energy Regulatory Commission and its predecessor, the Federal Power Commission. This division of responsibilities has generally worked to the nation's benefit.

The enactment of Section 1221 of the Energy Policy Act of 2005 marks a sharp departure from the traditional model of Federal – State collaboration. For the first time in our nation's history, Congress thrust two Federal agencies and the Federal District Courts into the transmission siting arena and has provided for federal administrative review of State siting proceedings. Such review, under Section 1221, is not merely for the review of questions regarding interstate need for proposed lines, but also with regard to the merits of the detailed siting and eminent domain issues that have heretofore been the exclusive province of the States.

The PaPUC recognizes that there may be an appropriate Federal role for the review of issues concerning the need for proposed interstate transmission facilities. However, the intrusion of Federal administrative agencies into distinctively local siting issues is a matter of concern. It is one thing to assess issues of interstate need for new transmission facilities. It is another thing--and

¹ This statement does not discuss any proceeding pending before the PaPUC, and should not be construed as commenting on the facts or law that may relate to any such pending proceeding.

requires a greatly different skill set--for a Washington-based Federal agency to do the detailed work involved in siting review, while also doing justice to legitimate and long-established local, regional and State concerns.

I also have a concern that the intent and scope of Section 1221 has been misinterpreted and enlarged by the Federal Energy Regulatory Commission in its *Order 689* rulemaking (*Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities*, 117 FERC ¶ 61,202 (2006)) when it declared that it believed that it had the legal authority under Federal Power Act § 216 (b) (1) (C) to review a state siting determination denying an application under valid state law.

Congress did not intend to create an automatic right of appeal to FERC and the Federal Courts from *all* adverse decisions of State authorities under Section 1221. The intent was to give FERC jurisdiction only over those proceedings not completed within one year, or conditioned to such an extent that the project would no longer relieve interstate congestion or be economically feasible.

The plain language of FPA 216 (b) (1) (C) provides that federal siting applications by transmission project owners may only be filed where:

(C) a State commission or other entity that has authority to approve the siting of the facilities has—

(i) withheld approval for more than 1 year after the filing of an application seeking approval pursuant to applicable law or 1 year after the designation of the relevant national interest electric transmission corridor, whichever is later; or

(ii) conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission congestion in interstate commerce or is not economically feasible;

That language makes it clear to me that Congress intended Section 1221 to serve as a federal backstop only for those cases in which delay or procedural obstacles were preventing a State determination.

I believe that Congress did not intend to provide that *all* adverse state siting determinations might be appealed to FERC and the Federal Courts. Neither the Federal agencies or nor the Federal Courts are currently equipped to serve as appellate bodies from state siting proceedings. EPACT § 1221, if it is to remain in its current form, should be correctly interpreted and applied according to the intent of Congress.

Thank you for allowing me to present my comments to you on this very important issue.