

*Public Service Commission
Of West Virginia*

201 Brooks Street, P. O. Box 812
Charleston, West Virginia 25323



Phone: (304) 340-0300
FAX: (304) 340-0325

September 9, 2011

Dr. Steven Chu
Secretary of the Department of Energy

Mr. Jon Wellinghoff
Chairman, Federal Energy Regulatory Commission

Re: Proposal for DOE to Delegate Certain Federal Power Act §216 Powers to FERC

The Public Service Commission of West Virginia (PSCWV) respectfully submits its comments regarding the proposal for the Department of Energy (DOE) to delegate certain of its authorities under Section 216 of the Federal Power Act to the Federal Energy Regulatory Commission (FERC). The PSCWV has serious concerns about the proposal and opposes it. It does not appear that the proposal is intended to help DOE to expeditiously, effectively and economically perform congestion studies and designate National Interest Electric Transmission Corridors (NIETCs). Based on the documents prepared by the FERC explaining its intentions and the functions it plans on performing in conjunction with delegated authority from the DOE, we believe that the FERC proposal is an attempt to preemptively exercise certification and siting authority that it does not have under the law and that will undermine the authority of States to certify and site transmission projects within their boundaries.

The PSCWV has explicit authority and responsibility under State law to consider whether to issue a Certificate of Convenience and Necessity (Certificate) and to consider the siting of a transmission line proposed to be constructed in West Virginia by any entity, whether that entity serves end users in West Virginia, or not. The PSCWV is required by State law to consider regional needs which extend beyond West Virginia for purposes of issuing a Certificate.¹ Moreover; there is timely consideration of Certificate Applications in West Virginia. The PSCWV must act within two hundred seventy days on projects costing less than \$50 million and within four hundred days of the filing of an application for a Certificate that involves a project costing in excess of \$50 million.² Although the PSCWV has a statutory requirement to render a

¹ The Commission may approve the application if it finds that the proposed transmission line will economically, adequately and reliably contribute to meeting the present and anticipated requirements for electric power of the customers served by the applicant or is necessary and desirable for present and anticipated reliability of service for electric power for its service area or region. (emphasis added) West Virginia Code §24-2-11a.

² If the projected total cost of a project which is the subject of an application filed pursuant to this section or section eleven-a of this article is greater than \$50 million, the commission shall render its final decision on any such application filed under the provisions of this section or section eleven-a of this article within four hundred days of the filing of the application and within ninety days after final submission of any such application for decision after a hearing. West Virginia Code §24-2-11.

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decision on transmission project costing in excess of \$50 million within four hundred days, it is cognizant of the Federal statutory provision that allows a project to seek FERC authority if the state has not acted within one year "FERC backstop authority," and the PSCWV schedules its cases accordingly.

Efforts to jump start the FERC backstop authority will not be productive and will not lead to efficient and timely consideration of the need and the appropriate siting for transmission lines in West Virginia, or, we suggest, in any other State. Attempts by the FERC to concurrently proceed with Certification and Siting while State proceedings are still ongoing and before the one year period provided for in Federal law has passed, will slow and complicate the process. It will make it more difficult for the States and by splitting the attention of both the transmission applicant and the States between their own proceedings and a preemptive FERC proceeding and will serve no purpose other than to assure that States cannot develop a full and complete record and act within one year.

The PSCWV has reviewed comments filed by other states, NARUC, and other parties. To the extent those comments are in opposition to the FERC proposal and the obvious planned intentions of the FERC to assume a federal approval and siting process before its backstop authority has been legally invoked, we agree with the arguments made in those comments. The PSCWV respectfully recommends that the DOE not facilitate the attempts at preemptive backstop authority proposed by the FERC.



Michael A. Albert, Chairman



Jon W. McKinney, Commissioner



Ryan B. Palmer, Commissioner