



# Power Siting Board

**John R. Kasich**, Governor  
**Todd A. Snitchler**, Chairman

## Board Members

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*Ohio Environmental Protection Agency*

Christiane Schmenk  
*Ohio Department of Development*

Theodore E. Wymyslo, M.D.  
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*Ohio House of Representatives*

David T. Daniels  
*Ohio Senate*

Tom Sawyer  
*Ohio Senate*

September 9, 2011

The Honorable Steven Chu  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

Dear Mr. Secretary:

As the Chairman of the Public Utilities Commission as well as the Ohio Power Siting Board (OPSB), I submit the following comments regarding the proposed delegation of the U.S. Department of Energy (DOE) authority to the Federal Energy Regulatory Commission (FERC). In representing these dual functions for the State of Ohio, I speak for a State that has the authority and established clear processes to approve the siting of the facilities under section 4906, Ohio Revised Code. The OPSB reviews, evaluates and approves the siting of electric generating plants and electric or natural gas transmission lines (Ohio Revised Code chapter 4906). As such, I appreciate the opportunity to provide comments with regard to the delegation proposal. I respectfully request that you not delegate additional authority to the Federal Energy Regulatory Commission (FERC) as outlined in the proposal to reinterpret Federal Power Act Section 216.

The Energy Policy Act of 2005 (EPACT05), signed into law by President Bush August 8, 2005, amended the Federal Power Act by adding Section 216 to address “siting of interstate electric transmission facilities and the designation of national interest electric transmission corridors” and a requirement that the Secretary of Energy (hereinafter the “Secretary”) report to Congress no later than one year after the enactment of this section. It is in fact this specific direction to perform congestion studies and corridor designation of the Energy Policy Act that DOE is now considering delegating to FERC. Clearly, Congress intended DOE to perform this function. Had Congress meant to assign it to FERC, it would have delineated this in the Act and relegated it to FERC in the first instance.

While I agree with the statement that “an efficient, reliable transmission grid is critical to the economy and security of the United States”, I do not agree that the proposed delegation of additional authority to FERC as outlined in the proposal is necessary to result in transmission



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lines being built. What is clear to me is that the delegation and implementation of this proposal is counter to the congressional intent as well as to the referenced goals of the proposal to get transmission lines built.

The proposal before us has several fatal flaws which make it unacceptable for states. First, the concept of creating a “Federal Transmission Siting Backstop Authority” constitutes an expansion of federal authority without statutory authorization. Nowhere can permission be found in EPACT05 to create such an “Authority”. While there is the backstop provision in the Act, it clearly delineated what authority was given to FERC, depending on, and following, state actions in processing transmission cases. The legislative intent was not to diminish or circumvent state siting authority. This proposal does exactly the opposite. It circumvents state processes.

Specifically, this proposal would create a federal process in parallel with the state proceeding for transmission line application review. This concept has no foundation in EPACT05 and conflicts with the sequential process actually prescribed in EPACT05. Congress authorized a limited back-stop process, AFTER providing the States at least one year to act on any applications before it. During the year that the State would have to consider the siting application before it, the State would be unable to participate in a parallel FERC proceeding considering the same project. One cannot be both judge and litigant. Thus, as a practical matter, states would be precluded from participating in the FERC pre-application process. The clear result is that at the end of the parallel investigations, the federal decision could supersede a state decision. This is in direct conflict with *Piedmont Environmental Counsel vs. FERC*. It is difficult to ascertain how a pre-acceptance of a transmission proposal on the federal level does not influence or negate state siting decision or authority.

The proposal circumvents *California Wilderness Coalition vs. DOE* wherein DOE failed to consult with the States. To now assign congestion study authority to FERC without even consulting with the States, is truly remarkable. States haven’t even been informed of any detail of the implementation of the assignment.

Further, the proposal narrows corridor designations from the DOE responsibilities to a more focused, or specific, line route corridor/project designation. Statutory language permits



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DOE to designate a geographic area as a national interest electric transmission corridor. This proposal does exactly the opposite of the original intent. The corridor definition, as created originally, was for generalized paths. This would provide flexibility to develop routes that maximize system value and deliver the benefits of diverse energy resources and fuel sources and reliability, not only to the end market but to the corridor itself.

Simultaneously this flexibility would minimize or eliminate adverse demographic, economic, and environmental effects.

This proposed approach is not only clearly in conflict with the statutory intention as well as with the states' siting authority in evaluating routes for a proposed transmission line project, but also, under this narrow project designation approach, the proposal provides multiple opportunities for an applicant to obtain a desired outcome. Further, a corridor designation was intended to be derived from a congestion study. It is a major leap to reach a project-specific line designation either by a congestion study or by a regional transmission plan.

The proposal further indicates that non-transmission solutions would be considered. To the extent FERC considered demand response and generation solutions, it exceeds its authority under the Federal Power Act. States clearly have authority in these matters. To even approach the arena of resource adequacy, generation and planning, including demand response and energy efficiency is to exceed the FERC's authority and to interfere with the states freedom of action.

Circumventing State planning decisions could also result in inefficient and uneconomic outcomes. For instance, a State process could determine "generation build" is the most cost effective solution and this process could dictate that transmission must be built, resulting in over-build and inefficiencies. The results of this proposal could also dictate type and location of generating facilities, clearly outside of any delegated authority to FERC.

The proposal relies on an improper reading of the statute. It will undoubtedly lead to litigation and delays in actual transmission development and construction. This appears to be counterproductive to the outcomes desired by state and federal ambitions alike. Transmission line development should remain a function of economics and investment strategies, not a function of federal actions.



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Siting is and should remain a local issue, although transmission use has changed with market implementation. Geological features, climate conditions, lakes, rivers and wetlands, old-growth forests and protected natural preserves, endangered species, and historically and archaeologically important sites all have been an integral part of a State's siting considerations and responsibilities. Affected stakeholders, including landowners and businesses, should be afforded due process. States and local authorities know and understand the siting landscape, ecologically, socially, economically, and politically, and are in the best position to avoid and minimize negative impacts. A federal siting process would not have the same regard for local or state interests and resources. Nor would a federal process provide ample opportunity or accessibility for participation by those most directly impacted by the proposed projects. As previously mentioned, even the states themselves would be precluded from participation. State siting processes do not conflict with regional or national interests. Ohio, for example has statutory timelines under which a transmission application has to be processed, as well as a requirement to do a regional evaluation and impact. States have a very good and well established track record in expeditiously dealing with highly complicated transmission applications. The OPSB, for example, has processed 292 electric transmission line applications of various sizes, totaling about 300 miles and \$376 million of investment. Ohio gets lines built and balances local interests too. We have done so for decades. I am not sure what the alleged problems are that are proposed to be repaired here. Frankly, there appears no need for the implementation of this proposal.

Lastly, I would like to comment on the manner with which this proposal has been presented. There is not formal docket or notice. I only learned of this from the National Association of Regulatory Commissioners following a meeting in Washington between NARUC, DOE and FERC. This proposal represents a fundamental policy change. These issues surround a longstanding and very passionate concern of the states as demonstrated in prior comments filed in many proceedings before the FERC and DOE. It is extremely unjust to not provide some due process or legal recourse to the states in defending their sovereign rights. States should have been involved from the outset in considering such a dramatic policy change. It is, after all, the State's authority, land, and money at issue.



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I do support Federal agencies implementing the Rapid Response Team for Transmission to improved federal agency permitting requirements under Section 1221(h) of the Federal Policy Act of 2005. This is an admirable and much needed goal to aid in transmission siting initiatives.

It is hoped that with any initiative you do choose to pursue, the DOE and FERC will be mindful of the studies and technologies already in place by regional reliability organizations/regional coordination councils, regional transmission organizations, interconnection-wide planning processes and more. This proposed course of action would **duplicate** the experience, knowledge and calculations applied to such efforts creating another level of unnecessary bureaucracy. Careful consideration should be given to efforts underway as well as state authorities. I urge you strongly to be mindful of the impact on states and their landowners and ratepayers. Transparency and due process should be provided to all stakeholders in how this proposal and associated impacts will unfold, including incorporation and implementation of Order 1000, which Chairman Wellinghoff has clearly indicated is a necessary tool in assuming this authority.

In conclusion, I do not support the proposal before us and believe there is absolutely no reason that it should be implemented. This proposal will harm state/federal relationships which we all have so carefully tried to nurture. DOE should delegate no additional authority to FERC.

Very truly yours,

Todd A. Snitchler  
Chairman, Public Utilities Commission of Ohio  
Chairman, Ohio Power Siting Board

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