



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

September 9, 2011

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

Re: DOE/FERC Reimplementation Proposal

Dear Secretary Chu:

These comments are being submitted on behalf of the Pennsylvania Public Utility Commission (PAPUC) in response to a request for comments on the DOE/FERC Reimplementation Narrative Proposal (DOE/FERC Proposal) that was first communicated to us on August 24, 2011. The PAPUC appreciates the opportunity to comment on this important proposal that will, if implemented, significantly alter the process for transmission siting in the Mid-Atlantic region including Pennsylvania.

As background, the PAPUC was an intervenor on behalf of the Petitioners in the *Piedmont Environmental* litigation in the United States Court of Appeals for the Fourth Circuit and was also a lead Petitioner in the *California Wilderness* litigation in the Ninth Circuit.

We believe the DOE/FERC Proposal is legally unsound and does not address the underlying problems in the siting of regional transmission projects. More specifically, the proposed delegation of functions from DOE to FERC, related rule-makings to develop procedures for corridor designations and overall procedural framework for addressing multi-state regional transmission projects reflects an unsupported and incorrect assumption that states are not fulfilling their responsibilities in siting transmission projects deemed necessary for regional reliability. For the reasons which follow, the PAPUC strongly opposes the DOE/FERC Proposal as presently structured and urges both agencies to open a dialog with affected states to develop a more balanced approach to comply with the requirements of both the *Piedmont Environmental* and *California Wilderness* decisions.

The PAPUC is delegated by statute with the authority to review and rule upon applications for intra-state transmission projects. The PAPUC has consistently processed transmission siting applications in an efficient and timely manner. The two most recent

examples of multistate regional reliability transmission projects are the Trans-Allegheny Interstate Line Company (TrAILCo) Project and the Susquehanna- Roseland (S-R) Project.

The TrAILCo Project is a 500 kv backbone transmission line extending from Southwest Pennsylvania through West Virginia to Northern Virginia. The TrAILCo Project is a joint venture between Allegheny Power and Dominion Energy. The PAPUC approved a settlement between the parties on the Pennsylvania portion of the TrAILCo line, as proposed by Allegheny Power, on a timeline that paralleled the approvals of other portions of the TrAILCo Line by both the West Virginia Public Service Commission and the Virginia State Corporation Commission. All of the necessary siting approvals from these three state agencies were received within a reasonable timetable and were consistent with the planning needs of both PJM, the regional RTO and the sponsoring electric utilities. The TrAILCo line was energized in May 2011, one month ahead of schedule.

The S-R Project is another 500 kv backbone transmission line extending 130 miles from Berwick in Northeast Pennsylvania to Roseland in Northern New Jersey. The S-R Project is a joint venture between PPL Electric Utilities and Public Service Electric and Gas. The PAPUC and New Jersey Board of Public Utilities timely approved their respective portions of the S-R Transmission Line in early 2010 and mid-2009 respectively. Ironically, the final completion and energizing of the S-R Project has been delayed because of the inability of the project sponsors to obtain the necessary permits from the National Park Service to cross the Delaware Water Gap Recreation Area.

Based on our own experience in siting multi-state transmission projects in concert with similar siting processes of sister states, the PAPUC is not convinced that the DOE/FERC proposal is either necessary or beneficial to promote the timely planning and construction of transmission projects in the Mid-Atlantic Region and indeed may result in legal uncertainty and delay which would be contrary to the national interest.

We also take issue with the unsupported conclusion contained in the DOE/FERC Reimplementation Narrative that the Federal siting provisions, under Section 216 of the Federal Power Act (FPA) (Section 1221 of the Energy Policy Act of 2005), have not proven to be effective. The only evidence presented to support this conclusion is that only one request for federal siting approval has been received since Section 216 of the FPA was enacted. Specifically, that project was the Southern California Edison (SCE) Devers-Palo Verde 500 Kv No. 2 transmission line extending from Southern California to portions of Arizona. Applicant SCE subsequently withdrew this siting request.

The PAPUC submits that the absence of requests for federal siting approval under Section 216 is not evidence of failure of the Section 216 siting process but rather supports the notion that state commissions are reviewing and approving transmission projects in a

timely fashion. As such, DOE and FERC should exercise great caution in seeking to radically alter the current statutory framework for the conduct of congestion studies and the designation of National Interest Electric Transmission Corridors (NIETCs).

We would also highlight these areas of concern:

- The PAPUC is not convinced that DOE possesses the requisite legal authority to delegate critical functions such as the performance of congestion studies and designation of NIETCs where those functions were specifically delegated to DOE by Congress under the Energy Policy Act of 2005.
- The PAPUC takes issue with the position expressed by DOE/FERC that this proposal is not an attempt to expand federal agency authority over transmission siting at the expense of the states. A close reading of this proposal leads us to the conclusion that this is precisely the objective of the Reimplementation Proposal. This conclusion is underscored by the repeated references to FERC's exclusive authority over siting of interstate gas transmission lines as a model on which its proposal is based.
- The process outlined for the: (i) conduct of congestion studies by FERC; (ii) initiating a rulemaking for establishing a corridor designation process; (iii) soliciting requests for NIETC designation from project developers; and (iv) the management of both the pre-filing and application processes appear hastily assembled with limited opportunity for state input. The process does not appear to provide the required consultation with the states as mandated in the *California Wilderness* decision.
- The accelerated timeline for conduct of this process fails to allow for adequate examination of RTO/ISO/planning agency compliance filings in response to the Order 1000 directives addressing regional planning and cost-allocation issues. The DOE/FERC Proposal provides insufficient detail as to how the Order 1000 compliance filings will be utilized by FERC in assuming its new responsibilities for conducting congestion studies and designating transmission corridors.
- The DOE/FERC Proposal posits a parallel federal/state filing process that, on its face, relegates state siting review to little more than an empty formality. Additionally, the pre-filing and application processes appear to encourage project developers to focus their efforts on meeting FERC requirements and standards with nominal attention paid to state siting proceedings. The immediate question that arises is what happens at the end of the process, if FERC approves an application and issues all required permits, and the state commission either does not approve the project in its entirety or imposes significant conditions that contradict FERC's findings?

To conclude, the PAPUC has grave concerns about the legality and practicality of the DOE/FERC Proposal. The PAPUC urges DOE and FERC to reconsider its stance and develop a process that more thoughtfully addresses the requirements of Section 216 of the FPA giving due consideration to the states' historical role over transmission siting. Further, the PAPUC would encourage DOE and FERC to more actively engage in a dialog with the states on this initiative. The PAPUC stands ready to participate in any such dialog.

Respectfully submitted,

/s/ Robert F. Powelson
Robert F. Powelson
Chairman

/s/ John F. Coleman, Jr.
John F. Coleman, Jr.
Vice Chairman

/s/ Wayne E. Gardner
Wayne E. Gardner
Commissioner

/s/ James H. Cawley
James H. Cawley
Commissioner

/s/ Pamela A. Witmer
Pamela A. Witmer
Commissioner

cc: Lauren Azar, DOE
Chairman Jon Wellinohoff, FERC
Commissioner John Norris, FERC
Commissioner Cheryl LaFleur, FERC
Commissioner Marc Spitzer, FERC
Commissioner Philip Moeller, FERC