
Environment Committee

HB 1030

Brief Description: Adopting the electric transmission line siting compact.

Sponsors: Representatives Morris, Fitzgibbon, Morrell and Fey.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Enacts a compact for the siting of electric transmission lines that cross multiple states.
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Hearing Date: 1/23/13

Staff: Scott Richards (786-7156).

Background:

National Energy Policy Act of 2005.

The National Energy Policy Act of 2005 (Act) gave the federal government authority to order construction of high-voltage transmission lines, if states don't approve them. Additionally, the Act authorized the U.S. Department of Energy (Department) to conduct a study within one year of passage, and triennially thereafter, of electric transmission congestion. The Department was directed to determine and designate National Interest Electric Transmission Corridors (NIETC). The designation of a NIETC serves to spotlight the congestion or constraint problems adversely affecting consumers in the area and under certain circumstances could provide the Federal Energy Regulatory Commission (FERC) with electric transmission siting authority.

In determining whether to designate a particular area as a NIETC, the Department may consider the following:

- whether 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;
- whether economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy, and a diversification of supply is warranted;

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- whether the energy independence of the United States would be served by the designation;
- whether the designation would be in the interest of national energy policy; and
- whether the designation would enhance national defense and homeland security.

First National Electric Transmission Congestion Study.

In August 2006, the Secretary of the U.S. Department of Energy issued the first National Electric Transmission Congestion Study (Study) which designated geographic areas experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers. While the Study did not designate the area as a NIETC, the Study identified the corridor from Seattle to Portland as a "Congestion Area of Concern." Congestion Areas of Concern are areas where a large-scale congestion problem exists or may be emerging, but more information and analysis appear to be needed to determine the magnitude of the problem.

Federal Energy Regulatory Commission's Backstop Authority.

The Act specifies that the FERC is responsible for issuing NIETC construction or modification permits. The FERC may issue permits if:

- a state does not have siting authority;
- a state does not consider interstate benefits;
- a state has withheld approval for more than one year after the filing of an application or one year after the designation as a national interest electric transmission corridor; or
- a state has conditioned its approval in such a manner that there will be no significant reduction of transmission congestion.

Interstate Compact.

Section 1221 of the Act prohibits the FERC from exerting backstop authority if three or more contiguous states enter into an interstate compact establishing a regional transmission siting agency. The creation of an interstate compact is subject to approval by the U.S. Congress.

Energy Facility Site Evaluation Council (EFSEC).

In 2006, the EFSEC was designated through legislation as the state authority for purposes of siting transmission facilities under the Act and any accompanying regulations that may be adopted by the Department.

Summary of Bill:

Compact.

An electric transmission siting compact (Compact) becomes effective and binding upon legislative enactment of the Compact into law by no less than three states. The stated purpose of the Compact is to create a national structure under which states may cooperate on a regional basis, to facilitate siting of interstate electric transmission lines. Any state is eligible to become a member state.

Organizational Structure.

The Compact creates three levels of organization:

- a state project review panel (SPRP) within each member state, consisting of three or more members, to coordinate the views of different agencies and interests within the state;

- a combined multi-state siting authority (CMSSA), consisting of the states affected by a particular project proposal, authorized to make siting decisions for that project; and
- an Interstate Compact Commission (Interstate Commission), which provides administrative support and rulemaking capability.

While each member state may individually determine which agencies should be part of the SPRP, the SPRP must include the following three representatives: one appointed respectively by the Governor, the Legislature, and the state agency with siting authority. One of these representatives must be designated as chair. Affected federal agencies and tribes must be notified and the CMSSA must include one advisory representative for federal agencies (if federal land is involved) and one representative for all federally recognized tribes (if tribal land is involved) who serves in an ex-officio capacity.

Application and Review Process.

An electric transmission line project (Project) sponsor may choose to use the procedures of the Compact or to apply to each affected state under the applicable state procedures. In member states of the Compact, federal backstop permitting under the Federal Power Act may not be requested.

A request for siting authority under the Compact is initiated by filing an application in any one of the states in which the Project would be sited. That state will convene a CMSSA, composed of each interested state's SPRP. The CMSSA will make an early determination to accept or reject the application. It will set a procedural schedule for a hearing on the merits of the project.

The applicant is responsible for all reasonable costs associated with the review of the application by the involved member states, ensuring that costs are covered independent of state funds.

Review of Sufficiency of Application.

The initial application review process must be completed within 90 days of filing. During that period, the convening state will assemble the CMSSA comprised of the SPRP members of each involved member state to meet and review the application. The SPRP will review the application for completeness and accept or reject the application before proceeding with the formal hearing and approval process.

Proposal Review and Timeline.

The first CMSSA hearing must occur within 90 days of the initial filing and is intended to assess the completeness of the application. A second CMSSA meeting must occur no more than 30 days after the initial decision. The second meeting will assess the merits of the application, including, but not limited to the proposed route, regional and national energy needs, and costs. The CMSSA must hold at least one public comment hearing in each of the involved member states. These public comment hearings must be completed within 120 days after the initial application filing.

Approval Process.

The CMSSA must conduct an evidentiary hearing on the proposed project. The CMSSA must issue conditional or final approval based on the record within 270 days of the filing of the application unless the applicant and the CMSSA agree to a different timeline. The CMSSA must outline the required actions in instances where conditional approval is granted. All decisions of

the CMSSA will be based on majority vote, with each involved state having one vote. A state, based upon the rules of the involved states, may alter the route for the transmission line within its boundaries by assuming incremental costs.

Administrative and Judicial Review.

Any person aggrieved by any action taken by the CMSSA is entitled to a hearing before the Interstate Commission. After exhaustion of administrative remedies provided by the Interstate Commission and within 90 days of a final action, any aggrieved person has the right to judicial review of a final action before a three judge panel of the U.S. District Court for the District of Columbia or the District Court in which the Interstate Commission maintains offices.

The Interstate Commission may initiate actions in the appropriate federal court to compel compliance with the provisions of the Compact, and the bylaws and rules. The remedies available to any such court include, but are not limited to, equitable relief and civil penalties. Each involved state may issue orders within its respective jurisdiction and may initiate actions to compel compliance with the provisions of its respective statutes and regulations adopted to implement the authorities contemplated by the Compact.

Any aggrieved person, involved state or the Interstate Commission may commence a civil action in the relevant courts and administrative systems to compel any person or involved state to comply with the Compact should any such person, or involved state without approval having been given, undertake a siting of multi-state electric transmission lines which is prohibited by or subject to approval under the Compact.

Each of the involved states may adopt provisions providing additional enforcement mechanisms and remedies including equitable relief and civil penalties applicable within its jurisdiction to assist in the implementation of the Compact.

Interstate Commission on Electric Transmission Line Siting (Interstate Commission).

The Interstate Commission is created for the purpose of the administration of the Compact. The Interstate Commission is a joint agency of the member states. The Interstate Commission consists of one voting representative from each member state, who serves as a Compact commissioner and is appointed by gubernatorial appointment. The Interstate Commission may include ex-officio, non-voting representatives who are members of interested organizations including, but not be limited to, tribes, regional transmission organizations, and federal agencies.

After eight states join the Compact, an executive committee may be established, whose members include the officers of the Interstate Commission and other members of the Interstate Commission as determined by the bylaws. Members of the executive committee serve a one year term. Members of the executive committee are entitled to one vote each.

Powers and Duties.

The Interstate Commission powers include, but are not limited to, the following:

- to provide for dispute resolution among member states;
- to promulgate rules;
- to issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the Compact, its bylaws, rules and actions;

- to enforce compliance with the Compact, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;
- to establish a budget and make expenditures; and
- to report annually to the Legislatures and Governors of the member states concerning the activities of the Interstate Commission during the preceding year.

Bylaws.

The Interstate Commission must, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to carry out the purposes of the Compact.

Rulemaking Authority.

The Interstate Commission is responsible for promulgating rules pertaining to the administration of the Compact. Rules established by the Interstate Commission must conform with the federal Administrative Procedure Act. Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review.

Oversight, Enforcement and Dispute Resolution.

The executive, legislative and judicial branches of state government in each member state are required to enforce the Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent including enforcement of any orders. All courts must take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a member state pertaining to the Compact.

If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities the Interstate Commission must:

- provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission; and
- provide remedial training and specific technical assistance regarding the default.

Additionally, in the case of a default, the Interstate Commission, may, by a majority vote of the members, assess fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission.

The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination. The Interstate Commission must not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the Compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state. The defaulting state may appeal the action of the Interstate Commission in the appropriate federal court. The prevailing party must be awarded all costs of such litigation including reasonable attorney's fees.

If a state defaults as a result of a filing by a transmission operator or the decision by the CMSSA, the CMSAA must intervene as a Friend of the Court on behalf of a transmission applicant who follows the Compact rules.

Dispute Resolution.

The Interstate Commission must attempt, upon the request of a member state or a SPRP, to resolve disputes which are subject to the Compact. The Interstate Commission must promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

Enforcement.

The Interstate Commission must enforce the provisions and rules of the Compact. The Interstate Commission upon the request of a member state may by majority vote of the members, initiate legal action to enforce compliance with the provisions of the Compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party must be awarded all costs of litigation.

Finance and Administration.

Day-to-day management and administration of the Interstate Commission is delegated to employees, contractors or donated staff. To fund the cost of initial operations, the Interstate Commission may accept contributions and other forms of funding from federal agencies, compacting states and other sources. The Interstate Commission must collect a filing fee from applicants to cover the cost of operations and activities of the Interstate Commission and its staff. The Interstate Commission must adopt an annual budget sufficient to provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities, which must be fully funded by the member states. The Interstate Commission is exempt from all taxation in and by the member states.

Amendments to the Compact.

The Interstate Commission may propose amendments to the Compact for enactment by the member states. An amendment is not effective and binding upon the Interstate Commission and the member states until it is enacted into law by unanimous consent of the member states.

Withdrawal and Dissolution.

A member state may withdraw from the Compact by specifically repealing the statute, which enacted the Compact into law. Withdrawal from the Compact may not take effect until the later of either the final determination of a pending application involving that state or one year after the effective date of such statute. A state may be reinstated if the withdrawing state reenacts the Compact. The Compact may be dissolved effective upon the date of the withdrawal or default of the member state which reduces the membership in the Compact to one member state.

Binding Effect of Compact and Other Laws.

All member states' laws conflicting with the Compact are superseded to the extent of the conflict. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.