

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Applications for Permits to Site Interstate Electric Transmission Facilities))))	Docket No. RM22-7-000
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COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS

The Public Utility Commission of Texas (“PUCT”) is concerned with certain aspects of the Notice of Proposed Rulemaking (“NOPR”) issued by the Federal Energy Regulatory Commission (“FERC” or the “Commission”) on December 15, 2022.¹ Certain of FERC’s proposed revisions to its regulations governing applications for permits to site electric transmission facilities under section 216 of the Federal Power Act (“FPA”)² would undermine the PUCT’s process for approving and siting transmission facilities, and should be rejected or revised.

The PUCT urges the Commission to: (1) maintain the one-year waiting period before an applicant may commence the pre-application process for FERC’s limited backstop authority, at least with respect to Texas and other states that have robust laws and processes for considering such applications; (2) require an applicant under FPA section 216(b)(1)(C)(iii) to include the state’s order denying an application as part of a federal application seeking approval under FERC’s limited backstop authority; and, (3) require collaboration with the state through joint federal-state development of conditions and a final routing solution in cases in which the FERC exercises its limited backstop authority to override a state’s denial of an application.

¹ *Applications for Permits to Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (2022) (hereinafter “NOPR”).

² 16 U.S.C. § 824p.

I. INTRODUCTION

The states traditionally possessed sole jurisdiction to review permits for the siting of transmission facilities within their state boundaries.³ The Energy Policy Act of 2005⁴ amended the Federal Power Act (“FPA”) to carve out a “limited” role for FERC in transmission siting.⁵ As initially enacted, section 216(b) authorized the Commission to issue permits for the construction of transmission facilities in a national interest electric transmission corridor if the Commission found that (1) the state in which the transmission facilities were to be constructed did not have the authority to approve the siting of the facilities or consider the interstate or interregional benefits of the facilities; (2) the applicant was a transmitting utility but did not qualify to apply for a permit or siting approval in a state because the applicant did not serve end-use customers in the state; or (3) the state commission had not made a determination on the application within one year after the later of the date on which the application was filed or on which the national interest electric transmission corridor was designated, or the state commission conditioned its approval so that the proposed construction would not significantly reduce transmission capacity constraints or congestion in interstate commerce or was no longer economically feasible.

No facilities have been sited pursuant to FPA section 216.⁶ However, recent amendments to FPA section 216(b)(1) now confer upon the FERC the additional authority to site facilities when

³ *Piedmont Env’t Council v. FERC*, 558 F.3d 304, 310 (4th Cir. 2009) (“The states have traditionally assumed all jurisdiction to approve or deny permits for the siting and construction of electric transmission facilities.”); NOPR at P 2.

⁴ Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594 (2005) (“EPAAct 2005”). The statute expressly provides that Section 216 does not extend into the area within the Electric Reliability Council of Texas (“ERCOT”). 16 U.S.C. § 824p(k).

⁵ NOPR at P 2 (wherein FERC recognizes that EPAAct 2005 “established a *limited* Federal role in electric transmission siting by adding section 216 to the FPA.”) (emphasis added).

⁶ NOPR at P 13.

a state has denied an application for a Certificate of Convenience and Necessity (“CCN”) for transmission facilities located in a national interest electric transmission corridor.⁷

The NOPR would amend FERC regulations (18 C.F.R. part 50) to, among other things, implement the FERC’s new authority to exercise its limited backstop authority in instances in which a State has denied an application.⁸ The NOPR also proposes to waive the one-year waiting period following the initiation of a state proceeding before an applicant may begin the pre-application process at FERC.⁹ As explained herein, the PUCT is concerned by these aspects of the NOPR. The PUCT has the primary authority and jurisdiction to site transmission facilities within the State of Texas and the exercise of that authority should not be undercut by premature initiation of federal actions that in many cases will likely prove to be unnecessary.

II. COMMENTS

A. FERC Should Continue to Respect State Authority, Consistent with the Principle of Comity.

FERC’s limited backstop siting authority under section 216 of the FPA expressly does not apply within the Electric Reliability Council of Texas (“ERCOT”) region.¹⁰ ERCOT covers much but not all of Texas, but the PUCT’s authority to site transmission is state-wide. The concerns and recommendations expressed herein seek to protect the integrity of the PUCT’s process when FERC may be considering applications for transmission facilities to be sited in non-ERCOT areas of Texas.

⁷ 16 U.S.C. § 824p(b)(1)(C)(iii).

⁸ NOPR at P 18.

⁹ *Id.* P 21.

¹⁰ 16 U.S.C. § 824p(k); 16 U.S.C. § 824k(k)(2)(A).

1. State jurisdiction is no less deserving of respect now than it was when FERC first received backstop siting authority in 2006.

In promulgating its regulations when Congress first gave backstop siting authority to FERC, the Commission expressly determined in Order No. 689 that its implementation of this authority should be limited to avoid interference with state proceedings. Even though it interpreted section 216 as permitting parallel application proceedings, FERC determined that it would minimize overlap of the federal pre-filing process with the state application process. FERC accordingly adopted “an approach that is more fully respectful of State jurisdiction,”¹¹ requiring a federal applicant to wait until one year following the initiation of a state proceeding before it would allow the federal pre-application process to be initiated.¹²

FERC stated in Order No. 689 that it would revisit the one-year waiting period if it determined that “the lack of a Commission pre-filing process prior to the end of the one year is delaying projects or otherwise not in the public interest....”¹³ FERC is now proposing to reverse its policy to allow “simultaneous processing of State applications and Commission pre-filing proceedings.”¹⁴ The NOPR claims this proposed modification is an effort to promote efficiency to enable applicants to receive “as timely a decision as possible from the Commission.”¹⁵

Nevertheless, the NOPR identifies no circumstance in which the current one-year waiting period has delayed projects or otherwise did not serve the public interest. As Commissioner Christie astutely observed on the one-year delay policy:

¹¹ *Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities*, 117 FERC ¶ 61, 202, P 20 (2006) (hereinafter “Order No. 689”).

¹² Order No. 689 at P 21.

¹³ *Id.*

¹⁴ NOPR at P 21.

¹⁵ *Id.*

This was sound policy in 2006, and I am not convinced that the intervening years have taught us that “the lack of a Commission pre-filing process prior to the end of the one year is delaying projects or otherwise not in the public interest.” Nor did Congress, in the IIJA, do anything to suggest that commencement of the Commission’s pre-filing process should be accelerated — although of course it could have.¹⁶

There is no reason FERC should be any less respectful of the states’ jurisdiction or the principle of comity today than it was when FERC issued Order No. 689. While FERC has discretion to modify its policies, it is required to provide a reasoned explanation for such changes.¹⁷ Presuming facts that do not exist does not constitute a reasoned explanation for this proposed change in policy.

2. Allowing the federal pre-filing process to run in parallel with the state’s process is inconsistent with the Commission’s policy of comity.

FERC should continue to respect state jurisdiction and siting processes under the principle of comity. While comity “is not a rule of law...[i]t is something more than mere courtesy...since it has a substantial value in securing uniformity of decision[.]”¹⁸ Comity “demands of no one that he shall abdicate his individual judgment, but only that deference shall be paid to the judgments of other co-ordinate tribunals.”¹⁹

In the past, the Commission has applied the principle of comity and allowed state proceedings to conclude (or advance uninterrupted) before beginning a FERC proceeding. In addition to the Commission’s sound declaration of respect for state jurisdiction in Order No. 689, in *Southern Maryland Electric Cooperative, Inc.*, FERC denied a Petition for Declaratory Order requesting that the Commission review regulations promulgated by the Maryland Public Service

¹⁶ NOPR, Comm’r Christie, concurring, at P 9 (referencing the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021)(the “IIJA”) (internal citations omitted).

¹⁷ *West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 20 (D.C. Cir. 2014) (“It is textbook administrative law that an agency must ‘provide[] a reasoned explanation for departing from precedent or treating similar situations differently[.]’”) (quoting *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 901 (D.C.Cir.1995) (internal citations omitted)).

¹⁸ *Mast, Foos & Co. v. Stover Mfg. Co.*, 177 U.S. 485, 488 (1900).

¹⁹ *Id.* at 489.

Commission pertaining to community solar energy generation systems.²⁰ The Commission reasoned that the petition could “inappropriately interfere with the efforts of the Maryland Commission to address...concerns regarding the...program.”²¹ On rehearing, the Commission upheld its determination, explaining that “as a matter of comity, we continue to believe that it is appropriate for [the petitioners] to conclude pertinent state proceedings before seeking relief from this Commission.”²²

With respect to the NOPR, retaining the one-year waiting period before beginning the federal pre-filing process is consistent with the Commission’s prior recognition of the states’ jurisdiction and the principle of comity. Commencement of a federal proceeding before a state’s application process has been afforded a reasonable opportunity to be completed without federal intrusion is inconsistent with FERC precedent on comity. This is especially true here, where FERC is not the primary regulatory authority over transmission siting applications.

B. Some States, Like Texas, Have Robust and Efficient Transmission Siting Review Processes.

By proposing to allow the federal application process to run concurrently with the state application process under the claim that doing so promotes efficiency, the NOPR implies that FERC’s backstop transmission siting authority will be the norm rather than the exception, and that states will be more likely to deny than to approve transmission projects located in national interest electric transmission corridors. Yet, there is nothing in the NOPR that supports this presumption or demonstrates that this has been a problem.

²⁰ *Southern Maryland Elec. Coop.*, 157 FERC ¶ 61,118 (2016).

²¹ *Southern Maryland Elec. Coop.*, 162 FERC ¶ 61,048, P 5 (2018).

²² *Id.* P 16.

Insofar as timing and efficiency are concerned, the PUCT is required by statute to decide applications within one year of filing.²³ In fact, the Texas legislature is currently considering legislation to reduce that statutory deadline from one year to 180 days.²⁴

The PUCT recognizes that FERC's backstop siting authority is premised on an anticipation that regional transmission projects may experience difficulty clearing individual state siting processes.²⁵ However, the PUCT understands regional markets; it regulates electric utilities that operate and engage in local, regional and interregional transmission planning in ERCOT, the Southwest Power Pool, Inc., the Midcontinent Independent System Operator, Inc., and the Western Electricity Coordinating Council. The PUCT has the necessary regulatory framework and experience to ensure that transmission facilities are efficiently and cost-effectively built throughout the State of Texas, whether the proposed transmission line is derived from local, regional, or interregional transmission planning processes.

Transmission siting decisions are inherently complex. Although the benefits of transmission build-out may be widespread, the adverse effects are local in nature. The PUCT is required by law to consider on a nondiscriminatory basis a wide variety of factors, such as the adequacy of existing service, the need for additional service, and the effect of granting the certificate on the recipient and nearby utilities.²⁶ The PUCT also considers community values, recreational and park areas, historical and aesthetic values, and environmental integrity.²⁷ In

²³ TEX. UTIL. CODE § 37.057.

²⁴ See 2023 TX H.B. 2848; 2023 TX S.B. 1076.

²⁵ See e.g., *Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities*, 115 FERC ¶ 61,334, P 1 (2006); see also *Considerations for Transmission Congestion Study and Designation of National Interest Electric Transmission Corridors*, 71 Fed. Reg. 5,660, at 5,660 (Feb. 2, 2006) (“the system generally was not constructed with a primary emphasis on moving large amounts of power across multi-state regions...”).

²⁶ TEX. UTIL. CODE § 37.056(c).

²⁷ TEX. UTIL. CODE § 37.056(c). The State of Texas Certificate of Convenience and Necessity process covers many of the areas the Commission requires environmental reports on pursuant to 18 C.F.R. § 380.16. For instance, the Texas Parks and Wildlife Department (“TPWD”) has authority under Texas Parks and Wildlife Code § 12.0011 to provide

considering this statutory criteria, “the line must be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise.”²⁸

The PUCT has been processing transmission line CCN applications since the PUCT’s inception in 1976. The Public Utility Regulatory Act (“PURA”) of Texas provides that if the PUCT does not approve or deny a CCN application within one year of filing, the affected utility may seek a writ of mandamus in state court compelling the PUCT to issue its decision on the application.²⁹ There is no record of a utility invoking this available remedy to compel the PUCT to rule on a transmission line CCN application, demonstrating the efficiency of the PUCT process for licensing transmission lines in Texas for almost 50 years without the need for either state court or federal agency intervention.

The PUCT has overseen significant growth in transmission investment in Texas since 2005. Texas’s average Load-Weighted Circuit-Miles is the highest of all regions in the United States and more than twice the regional average.³⁰ Following the passage of PURA § 39.904(g) in 2005,³¹ the PUCT experienced a buildout of significant transmission infrastructure in the state (known as the Competitive Renewable Energy Zone (“CREZ”) project). The buildout consisted of approximately 3,600 miles of new 345 kV transmission lines at a cost of \$6.9 billion. The CREZ transmission lines are open access and were designed to serve approximately 18.5 GW of wind generation.³²

recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct development projects. TPWD regularly exercises this authority in CCN cases before the PUCT for the construction of transmission lines.

²⁸ 16 TEX. ADMIN. CODE § 25.101(b)(3)(B).

²⁹ TEX. UTIL. CODE § 37.057.

³⁰ See ERCOT Comments to Transmission Needs Study (available at <https://www.energy.gov/gdo/national-transmission-needs-study>).

³¹ TEX. UTIL. CODE § 39.904(g).

³² See https://www.energy.gov/sites/prod/files/2014/08/f18/c_lasher_qer_santafe_presentation.pdf

Texas Senate Bill 1281, which was passed by the Texas Legislature in 2021, amended PURA § 37.056(d) to provide additional tools for the PUCT to review economic transmission projects to help move low-cost generation to high-cost population centers in the state.³³ Moreover, on October 14, 2021, the PUCT ordered the construction of transmission facilities, using its statutory authority under PURA, to ensure safe and reliable electric service in the Lower Rio Grande Valley.³⁴

In short, there is no need for the FERC to allow for a parallel process that would effectively interfere with the PUCT's already efficient and effective processing of transmission siting applications. At least with regard to the State of Texas and other states with robust siting laws and procedures, FERC should retain its current policy of affording state jurisdictions one year to process transmission siting applications without federal interference of any form.

C. The Accelerated Pre-Filing Process Impugns the Integrity of State Proceedings and Should not Begin Until the Earlier of One Year After the State Application or the Final State Order Denying the Application.

1. The Commission's proposal to eliminate the one-year waiting period would result in inefficient, wasteful, and potentially prejudicial overlapping proceedings.

Initiating the federal pre-filing process while a state is processing a transmission siting application would strain PUCT and stakeholder resources, prejudice the state application processes, and would be redundant and inefficient. The Commission asserts that "[t]he purpose of the pre-filing process is to facilitate maximum participation from all stakeholders to provide them with an opportunity to present their views and recommendations with respect to the environmental impacts of the facilities early in the planning stages of the proposed facilities[.]"³⁵ However, to the

³³ 2021 TX S.B. 1281.

³⁴ *Project for Commission Ordered Transmission Facilities*, Project No. 52682 (Oct. 14, 2021) (available at https://interchange.puc.texas.gov/Documents/52682_13_1159617.PDF).

³⁵ NOPR at P 21.

contrary, the federal pre-filing application process could impair the PUCT's ability to meaningfully engage in the Commission's federal pre-filing application process, since the PUCT would be working with the applicant and affected stakeholders in the state-level process on an already aggressive schedule. Having to simultaneously dedicate its limited resources and time to a parallel federal pre-application process would draw attention and resources away from the state proceeding.

The federal pre-filing application process is extensive.³⁶ Yet, where a state timely issues a CCN, the federal pre-filing application process would be unnecessary and costly to the state and stakeholders that have a vested interest in participating in both proceedings. As discussed above, the PUCT is committed to transmission infrastructure expansion and the PUCT is required, under state law, to decide transmission siting applications within a year of filing.³⁷ FERC should not expose the state and stakeholders to the strain and expense of overlapping state and federal proceedings, especially when the federal application proceeding may prove to be completely unnecessary.

The PUCT anticipates that Texas utilities would seek authorization to recover costs that they incur when an overlapping federal process is initiated. Those costs, which could be substantial, would also prove to be unnecessary when the PUCT approves a proposed transmission project and thereby negates any need for FERC action. In such circumstances, ratepayers will have received no benefit from the applicant's FERC pre-filing process because the PUCT (or other state commission) will have already evaluated and approved the proposed transmission facility, making

³⁶ See 18 C.F.R. § 50.5.

³⁷ As noted earlier, the PUCT is required by statute to "approve or deny an application for a certificate for a new transmission facility not later than the first anniversary of the date the application is filed." TEX. UTIL. CODE § 37.057. The Texas legislature is currently considering legislation to reduce that statutory deadline from one year to 180 days. See 2023 TX H.B. 2848; 2023 TX S.B. 1076.

any ratepayer benefit from the new transmission facilities attributable to the state siting process rather than the FERC pre-filing process. FERC's prior policy of waiting one year after the state process commenced before beginning the pre-filing process mitigated the burden to ratepayers of duplicative and wasteful pre-application costs. The PUCT has little appetite for requiring customers to pay for costs that provide no benefit to them.

The PUCT also is concerned that landowners and local stakeholders would be uniquely burdened by this aspect of the NOPR. Allowing for concurrent state application and federal pre-application processes is wasteful and counterintuitive, and it has the potential for causing confusion with landowners and local stakeholders. There is no substantive reason or benefit to force landowners and stakeholders to engage in two separate regulatory processes simultaneously at the state and federal level. Even relatively sophisticated landowners and stakeholders may not understand the need to participate in both proceedings at the same time, irrespective of any notice required by the Commission. Additionally, landowners and local stakeholders may lack the ability to meaningfully engage in the federal application process due to limited resources, including but not limited to internet access³⁸ or sufficient financial resources to meaningfully participate in both. Those landowners and stakeholders that do engage in the federal application proceeding may not devote as much attention to a federal parallel proceeding when there is an ongoing state application proceeding with opportunities to be seen and heard in-person. As a result, a federal pre-application proceeding that runs concurrently with a state application proceeding may prejudice the rights of landowners and local stakeholders, and it may inadequately represent or consider the interests of affected landowners and local stakeholders.

³⁸ Applications for permits for electric transmission facilities are subject to paper hearings instead of live hearings (18 C.F.R. § 50.3(e)). The Commission's paper hearing format is more meaningful to those who have digital or internet access versus those who do not have internet access.

FERC is seemingly presuming that state processes are inadequate or that states will improperly deny or condition approval of transmission siting applications in corridors of national interest. Texas has more miles of transmission lines than any state in the country and has implemented the CREZ build-out by approving 3,543 miles of new lines from 2005-2014. The PUCT's certification processes and its experience in reviewing and approving transmission lines demonstrate the PUCT's commitment to building transmission infrastructure. With this background, parallel or concurrent proceedings should not be initiated, and the associated burdens should not be imposed on states and stakeholders. FERC is a permitting authority of last resort and it should avoid supplanting the state authority.

- 2. In the alternative, in states with less rigorous application processes, FERC could permit applicants to begin the pre-filing process before the one-year period ends provided the applicant can demonstrate that the state process is untimely or inadequate.**

Transmission siting laws and processes differ among states and not all states may have a robust and efficient transmission siting application process. FERC traditionally has recognized regional differences when considering procedures to achieve a broader policy objective.³⁹ In the context of FERC's limited backstop authority, a state like Texas, with an efficient and robust transmission siting process⁴⁰ should not be treated the same as a state that has a lengthy or ineffective transmission siting process that results in a lack of regional or interregional transmission investment. For states like Texas, FERC should maintain the one-year waiting period before a federal applicant may begin the federal pre-application process. If FERC allows an applicant to

³⁹ See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, P 559 (2007) (Allowing regional flexibility in cost allocation); *Essential Reliability Services and the Evolving Bulk-Power System—Primary Frequency Response*, 162 FERC ¶ 61,128, P 234 (2018) (Permitting transmission providers to propose variations to operating requirements based on Regional Entity reliability requirements and variations that are consistent with or superior to the final rule); *Sw. Power Pool, Inc.*, 181 FERC ¶ 61,053, P 25 (2022) (Explaining that the Commission has permitted regional variation among RTOs and ISOs, including in their governance.).

⁴⁰ TEX. UTIL. CODE § 37.057.

begin the pre-application process associated with its backstop authority before a state has acted or a year has run, it should require the applicant to demonstrate that earlier initiation of the FERC process is necessary based on a specifically identified deficiency of state laws or processes. If the applicant cannot make that showing, FERC's limited backstop authority should not be used until the earlier of the issuance of the state decision or one year from the date of the state application or designation as a national interest electric transmission corridor.

D. FERC Should Require an Applicant Under FPA Section 216(b)(1)(C)(iii) to Include the State's Order Denying the CCN.

Another aspect of the NOPR that is concerning to the PUCT is that there is no express requirement that a federal application include a state's final order denying an application. The NOPR proposes only that an applicant seeking approval under FERC's limited backstop authority submit evidence that a state has denied its application⁴¹ without providing any guidance on the type of evidence that must be included in the application submitted to FERC. Because FERC's record would be incomplete otherwise, at a minimum, the state's final order denying the application should be part of a complete application. FERC, therefore, should expressly require that an application filed under section 216(b)(1)(C)(iii) include a copy of the state's final and non-appealable order denying approval of the application.

The PUCT recognizes that the NOPR proposes to provide the state with a ninety-day comment period on the federal pre-filing materials⁴² and that the state will have an opportunity to comment during a paper hearing on the completed application at FERC. However, it should be incumbent upon the applicant to include the state's Order denying the request as part of its

⁴¹ NOPR at P 18.

⁴² NOPR at P 23.

application to FERC. The state's final order denying a transmission project is the purest distillation of the state's bases for denial, including the consideration given to each of the facts, and the balancing of competing interests. It would be inefficient and burdensome to force a state to recapitulate the entirety of its reasoning for denying an application in its comments on the pre-filing materials and the application at the federal level. FERC also should adopt a policy that, upon request of a state commission or the applicant, the record in the FERC proceeding include the record of the state proceeding. The PUCT urges the Commission to revise its regulations to include these recommended measures.

E. If FERC Does Decide to Approve a Transmission Siting Application over the State's Denial, It Should Coordinate with the State on Routing Decisions and Local Mitigation Measures.

In the event FERC does exercise its limited backstop authority to override a state's denial, it should give great weight to the state's bases for denying an application. If the PUCT denies a CCN for a transmission project, the information that decision is based upon would help guide FERC in its assessment of the federal application, since the PUCT engages in a thorough and robust review of CCN applications. Utilities applying to the PUCT for a CCN for a transmission project must demonstrate the proposed transmission line is necessary for the service, accommodation, convenience, or safety of the public. In its application to the PUCT, the utility may demonstrate the necessity for the proposed transmission line and route by providing information about alternatives that were considered, such as building new generation. The PUCT will then make a determination of need along with a determination on routing, if need is found. If FERC intends to overrule the state's decision, it should attempt to reach a solution in coordination with the state on routing, mitigation, and cost allocation measures to mitigate the concerns of the state, stakeholders, and landowners. That FERC may disagree with a state's denial of an

application does not mean that the bases for the state's denial should not help to inform FERC's decision with regard to ultimate approval and siting.

The Commission has several existing options to facilitate enhanced engagement with the states on their transmission siting decisions. FPA section 209 provides FERC with the authority to extend to the affected state(s) the opportunity to hold a joint hearing with state commissions on the potential exercise of its limited backstop authority. Section 209(b) provides:

The Commission may confer with any State commission regarding the relationship between rate structures, costs, accounts, charges, practices, classifications, and regulations of public utilities subject to the jurisdiction of such State commission and of the Commission; and *the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act.* The Commission is authorized in the administration of this chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission.⁴³

The Commission has adopted regulations in subpart M of its Rules of Practice and Procedure to give effect to section 209. Rule 1301 explains that section 209 of the FPA authorizes “cooperation between [FERC] and the State Commissions of the several States in the administration of said Act[], which include[s] authorization for:...Joint hearings with State commissions in connection with any matter with respect to which the Commission is authorized to act.”⁴⁴ In Rule 1305, the Commission explains that there are two different types of proceedings called “joint hearings.”⁴⁵ “One is that type of proceeding where members of one or more State commissions sit with members of the Commission for information or in an advisory capacity.”⁴⁶ Because of a state's unique local knowledge, a state should be provided with the opportunity to sit in an advisory

⁴³ 16 U.S.C. § 824h(b) (emphasis added).

⁴⁴ 18 C.F.R. § 385.1301(a)(3).

⁴⁵ 18 C.F.R. § 385.1305(b).

⁴⁶ *Id.*

capacity with members of the Commission in a federal transmission siting proceeding under FPA section 216. The Commission has successfully exercised this authority to explore a variety of transmission-related policy issues, most recently through its Joint Federal-State Task Force on Electric Transmission.⁴⁷

To the extent that a state is not interested in a joint hearing, FERC should still offer to hold an informal conference under Rule 1303 so that the state has an opportunity to directly explain its rationale for denying a transmission siting application.⁴⁸ As evidenced by an extensive history of successful transmission infrastructure development in Texas, the PUCT efficiently exercises its statutory authority with due diligence. The PUCT's denial of a transmission siting application is no less a reflection of the due diligence it takes when evaluating an application than when it grants an application. In exercising its limited backstop authority to override a state's denial of a transmission siting application, the Commission should make every effort to solicit the affected state's bases for denying the application beyond affording the state with the opportunity to comment on the federal application.

III. CONCLUSION

For the foregoing reasons, the PUCT respectfully requests that the Commission: (1) maintain the one-year waiting period before an applicant may commence the pre-application process for FERC's limited backstop authority, at least with respect to Texas and other states that have robust laws and processes for considering such applications; (2) require an applicant under FPA section 216(b)(1)(C)(iii) to include the state's order denying an application as part of a federal application seeking approval under FERC's limited backstop authority; and, (3) require

⁴⁷ See *Joint Federal-State Task Force on Electric Transmission*, 175 FERC ¶ 61,224 (2021).

⁴⁸ 18 C.F.R. § 385.1303.

collaboration with the state through joint federal-state development of conditions and a final routing solution in cases in which the FERC exercises its limited backstop authority to override a state's denial of an application.

Respectfully,

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