

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

Applications for Permits to Site	)	Docket No. RM22-7-000
Interstate Electric Transmission Facilities	)	
	)	
	)	

**MOTION FOR ACCEPTANCE OF LATE-FILED COMMENTS
AND LATE-FILED COMMENTS OF
THE ORGANIZATION OF MISO STATES, INC.**

On December 15, 2022, the Federal Energy Regulatory Commission (“FERC” or “Commission”) issued its Notice of Proposed Rulemaking (“NOPR”) on Applications for Permits to Site Interstate Electric Transmission Facilities.¹ This NOPR seeks to revise the Commission’s existing regulations governing applications for permits to site electric transmission facilities under section 216 of the Federal Power Act, as amended by the Infrastructure Investment and Jobs Act of 2021 (“IIJA”).² In response to the Commission’s NOPR, the Organization of MISO States, Inc. (“OMS”) files this Motion for Acceptance of Late-Filed Comments and subsequent Late-Filed Comments.

OMS is a non-profit, self-governing organization comprised of representatives from the seventeen regulatory bodies with jurisdiction over entities participating in the Midcontinent Independent System Operator (“MISO”) and serves as the regional state committee for the MISO region. The purpose of OMS is to coordinate regulatory oversight among its members, to make recommendations to MISO, the MISO Board of Directors, the Commission, and other relevant

¹ *Applications for Permits to Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (Dec. 15, 2022).

² Infrastructure Investment and Jobs Act of 2021, Pub. L. No. 117-58, § 40105 (2021).

government entities and state commissions as appropriate, and to intervene in proceedings before the Commission to express the positions of OMS member agencies.

Service of pleadings, documents, and communications in this proceeding should be made on the following:

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I. MOTION FOR ACCEPTANCE OF LATE-FILED COMMENTS

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure,³ OMS submits this motion requesting that the Commission accept the following late-filed comments in the above-captioned docket. Comments on the NOPR were due May 17, 2023. OMS members reviewed the NOPR's proposals and discussed their potential interactions with OMS member state and local statutes and regulations. Given the need for OMS members to conduct their own internal reviews and the challenges in coordinating among multiple state and local commissions' schedules within the comment period, the following comments were not ready to be filed by the comment deadline.

The Commission may allow an untimely response when there is no showing of undue prejudice or delay. Through these brief comments, OMS does not seek to disrupt or delay the proceeding or to offer substantive, policy positions. Rather, OMS intends to identify potential procedural and implementation issues posed by this NOPR. OMS believes these comments will aid the Commission in its deliberations and improve overall understanding and efficient implementation of any final rule arising from this NOPR. Therefore, OMS asserts that good cause exists to grant this Motion for Acceptance of Late-Filed Comments. Accordingly, OMS

³ 18 C.F.R. §§ 385.212.

respectfully requests that the Commission determine that OMS's late filing constitutes harmless error and consider OMS's comments as if they were timely filed in this docket.

II. LATE-FILED COMMENTS

A. Introduction

These comments do not address or take a position on the substantive policy issues of the proposed rulemaking, including the overall merits of conducting a concurrent and simultaneous timeline of state/local and federal review processes. However, as a representative of many state and local regulators within MISO with transmission-siting obligations, OMS requests that any final rule resulting from this proceeding clarify certain procedural and implementation issues and recognize that most delays in transmission siting proceedings are outside retail regulator control. It is important to note that OMS members work closely with MISO and other stakeholders in a robust, long-range transmission expansion planning process and that retail regulators' siting or approval decisions have not historically hindered or delayed the development of beneficial transmission projects. To that end, state and local regulators must be able to continue meeting their existing transmission-siting authority obligations through their respective statutes and regulations. Specifically, as detailed below, we request that any final rule explain: 1.) how the NOPR's proposed timeline will align with state and local requirements; and 2.) what criteria the Commission will use to determine when its permitting authority is triggered.

B. Mechanics of Concurrent Reviews

On clarifying the proposed timeline, we note that prior to IIJA passage, section 216 of the Federal Power Act provided that the Commission may issue a permit "one year after the State siting process has begun,"⁴ and in the Commission's Order No. 689, the Commission called for

⁴ Order No. 689 Final Rule, 117 FERC ¶ 61,202 at P 19.

the pre-filing process to “not commence until one year after the relevant State applications have been filed.”⁵ In this rulemaking, the Commission is proposing a change to this policy by allowing the pre-filing process to occur concurrently with a state or local proceeding.⁶ Broadly, OMS members are concerned about how the Commission will interpret when a “relevant State application” begins. For instance, some state and local regulators’ “clocks” for processing an application do not begin until – after an extensive information-gathering effort – the state or local regulator determines the application to be complete. This “completeness determination” process may take weeks or months from when an application is originally submitted to the state or local regulator, and it is important to ensure state- and local-level information is accurate for further review. Furthermore, some OMS members may also be required to conduct a simultaneous “need” analysis, to consider approval of a certificate of public convenience and necessity, as well as a “siting” process for the actual project route. Given that a transmission owner seeking to construct a project in a national interest electric transmission corridor would need to file petitions in multiple state and local venues with various regulatory frameworks, we request that any final rule explain when the Commission would deem such a project “ready” to commence the pre-filing process. We encourage the Commission to be clear about how completeness determinations, multiple required reviews, or procedural delays outside regulator control will be factored into the timeline arranged for Commission review under this rulemaking and in the pre-filing process, and to be clear in giving deference to these state and local processes before the start of the Commission’s review clock.

OMS also requests that any final rule provide additional information regarding the logistics of concurrent review processes. In practice, the change to a concurrent pre-filing process means

⁵ *Id.* at P 21.

⁶ NOPR at P 21.

that state- or local-level and federal-level review would be happening at the same time, and thus, state/local and federal staff would both be conducting their analysis at the same time concerning need, environmental review issues, etc., with applicants and experts needing to respond to both. While the Commission suggests this could create efficiencies by submitting information at the same time, the potential asymmetry in requests could delay state- or local-level review in favor of a federal review. Some further guidance may be necessary to ensure applicants are responding to state and local requests in good faith and not interfering with any state- or local-level review processes for project siting. For example, the Commission siting process refers to a “route,” but it does not specify if multiple routes would need to be considered. Some state and local regulators require multiple, viable routes to be submitted for review as part of a complete application and it is unclear how the rulemaking would address multiple routes. Through Resource Report 9, the Commission’s siting process indicates that “alternatives” should be provided, but it is unclear how the Commission defines alternatives and if multiple routes would be considered in this portion of the application. Lastly, we echo questions raised by the Kentucky Public Service Commission in their comments about how a retail regulatory authority could participate during the pre-filing or complete process if the project is still being reviewed at the state or local level given potential fair adjudication or “ex parte” concerns.⁷

C. Criteria Initiating Permitting Authority

We also request that any final rule clarify the criteria the Commission will use to determine when its permitting authority is triggered. For instance, in the criteria for an applicant to submit its rationale for Commission review, the second option states the applicant is required to submit evidence demonstrating that a state or local regulator has “conditioned its approval in such a

⁷ Comments of the Kentucky Public Service Commission, Docket No. RM22-7-000 (filed May 17, 2023) at 2.

manner that the proposed facilities would not significantly reduce transmission capacity constraints or congestion in interstate commerce or is not economically feasible.”⁸ In another instance, the rulemaking discusses how FPA section 216(b)(4) “requires the Commission to find the proposed construction or modification of transmission facilities will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers.”⁹ OMS requests that the Commission clarify what data would be required and how the Commission would determine that a project meets the applicable criteria. This would be helpful for state and local regulatory staff and applicants to build a record that aligns with a potential Commission-level review and would help ensure that analysis is comparable between the state or local review process and the Commission’s review (state and local statute or requirements, notwithstanding).

III. CONCLUSION

OMS submits this Motion for Acceptance of Late-Filed Comments and Late-Filed Comments because a majority of OMS members support this filing. However, these Comments should not be construed to mean that all OMS members agree with all the Comments. In recognition of such, the following members generally support this filing:

The Arkansas Public Service Commission
The Illinois Commerce Commission
Indiana Utility Regulatory Commission
Iowa Utilities Board
Kentucky Public Service Commission
Michigan Public Service Commission
Missouri Public Service Commission
The Council of the City of New Orleans
North Dakota Public Service Commission

⁸ *Id.* at P 18.

⁹ *Id.* at P 41.

South Dakota Public Utilities Commission
The Public Service Commission of Wisconsin

The Minnesota Public Service Commission and the Mississippi Public Service Commission abstained from the vote on this filing. The Louisiana Public Service Commission and the Public Utility Commission of Texas voted in opposition to this filing. The Montana Public Service Commission and the Manitoba Public Utilities Board did not participate in the vote on this filing.

Respectfully submitted,

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