

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

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

**PETITION FOR LIMITED REHEARING OF  
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Under Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission or FERC) and section 313 of the Federal Power Act (FPA), the Pennsylvania Public Utility Commission (PAPUC) files this petition for limited rehearing of the Commission’s Order 1977<sup>1</sup> issued May 13, 2024.

The PAPUC appreciates the change FERC made between the Proposed Rule<sup>2</sup> and the Final Rule to avoid simultaneous commencement of the FERC pre-filing process and state proceedings as requested by the PAPUC, the overwhelming majority of commenting state commissions, and other stakeholders.<sup>3</sup> As the PAPUC highlighted in its comments to the Proposed Rule, many projects in a National Interest Electric Transmission Corridor may never see FERC action because often the projects will be approved by states. As a result, FERC’s choice to retain the existing separation between state timelines and federal timelines will save resources of both state siting authorities with limited staff and transmission developers who will never have to engage in the pre-filing process.

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<sup>1</sup> Applications for Permits to Site Interstate Electric Transmission Facilities, 187 FERC ¶ 61,069 (Issued May 13, 2024) (Order 1977).

<sup>2</sup> Applications for Permits to Site Interstate Electric Transmission Facilities, 181 FERC ¶ 61,205 (Issued December 15, 2022) (Proposed Rule).

<sup>3</sup> Order 1977, ¶¶46, 53.

That being said, the Final Rule continues to exercise a controlling hand during initial interactions between the transmission developers and property owners in a manner that will harm property owners and state permitting processes. Thus, the PAPUC is forced to seek rehearing.

## **I. STATEMENT OF ISSUE AND SPECIFICATION OF ERROR**

In accordance with Rule 713(c) of the Commission's Rules of Practice and Procedure, the PAPUC submits the following statement of issue and specification of error:

1. The Commission was arbitrary and capricious and abused its discretion and failed to engage in reasoned decision making by failing to engage with the record before it and in so doing retaining a Landowner Bill of Rights which will sow confusion between Federal and state processes. 5 U.S.C. § 706; *Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

2. The Commission was arbitrary and capricious and abused its discretion and failed to engage in reasoned decision making by failing to address PAPUC comments that the Commission could endorse a state-designed Landowner Bill of Rights instead of the FERC-designed and mandated Landowner Bill of Rights as proposed. 5 U.S.C. § 706; *Nat'l Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006).

## **II. REQUEST FOR REHEARING**

In the Proposed Rule, the Commission proposed to add a requirement that pre-filing notices mailed to affected landowners must include a copy of a proposed Commission document called the “Landowner Bill of Rights in Federal Energy Regulatory Commission Electric Transmission Proceedings” (Landowner Bill of Rights).<sup>4</sup> According to the Commission, the Landowner Bill of Rights “would help ensure that affected landowners are informed of their rights in dealings with the applicant, in Commission proceedings, and in eminent domain proceedings.”<sup>5</sup> Likewise, the Commission rightly recognized that FERC’s process is separate from state siting proceedings.<sup>6</sup> The PAPUC agrees that notifying landowners of their rights in dealing with transmission developers is an unalloyed good. In fact, the PAPUC requires a similar notice to be sent to property owners at least 15 days prior to commencing negotiations related to the acquisition of a transmission line right-of-way.<sup>7</sup>

However, FERC abused its discretion in waving away the comments of the PAPUC that the Landowner Bill of Rights adopted by the Commission will cause confusion.<sup>8</sup>

In the Final Rule, FERC requires, around the time of first contact with a property owner, that a transmission developer provide to that property owner a copy of a FERC-

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<sup>4</sup> Proposed Rule, ¶38.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 52 Pa. Code § 57.91.

<sup>8</sup> Order 1977, ¶203.

designed Landowner Bill of Rights.<sup>9</sup> FERC also requires this Landowner Bill of Rights to be included in any pre-filing notification sent to an affected landowner.<sup>10</sup>

In its comments to the proposed rule, the PAPUC highlighted that the many property owners would be receiving multiple notices from both state and federal authorities that would likely cause confusion because of that duplication and conflicting information. The PAPUC recommended that instead of its proposal, FERC would develop a recommended document, and then if that document were deviated from, FERC and state siting authorities would have input on the appropriate combined document. The PAPUC also proposed that FERC could determine that a state-designed Landowner Bill of Rights satisfied federal requirements.

FERC rejected this PAPUC proposal on the grounds that “[a]llowing applicants to develop their own document, as the Pennsylvania Commission suggests, could produce the uncertainty and confusion that the Landowner Bill of Rights seeks to avoid.”<sup>11</sup> FERC entirely failed to explain the confusion that would be caused by having a Landowner Bill of Rights that was more tailored and did not provide conflicting information.

Moreover, FERC completely failed to engage with the PAPUC’s second proposal that it could endorse a state-designed Landowner Bill of Rights for those states who were willing to engage with FERC on the contents of the notice. This failure was arbitrary and capricious, but more importantly, both failures will result in confusing policy for landowners.

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<sup>9</sup> 18 CFR § 50.12(a)(2).

<sup>10</sup> 18 CFR § 50.4(c)(2)(ii)(B).

<sup>11</sup> *Id.*

The Landowner Bill of Rights as published by FERC makes absolutely no mention of state siting jurisdiction, which FERC itself recognizes both comes first, and has primacy.<sup>12</sup> While FERC might believe that labelling the document “*Landowner Bill of Rights in Federal Energy Regulatory Commission Electric Transmission Proceedings*” makes clear that it only applies to FERC proceedings, many reasonable property owners will not be aware of state siting authority proceedings, federal backstop siting proceedings, state and federal eminent domain proceedings, and the differences between them. They may read the phrase “*in Federal Energy Regulatory Commission Electric Transmission Proceedings*” and not realize that there are other types of proceedings.

Without background knowledge, much of the Landowner Bill of Rights is plainly confusing or incomplete. The document states: “The applicant cannot seek to take a property by eminent domain unless and until the [Federal Energy Regulatory] Commission approves the application, unless otherwise provided by State or local law.” If a property owner reads this without background knowledge, they may believe that FERC applications are the only proceedings that matter. Much of the rest of the document does not assist the property owner in allaying that confusion. The document is so focused on FERC proceedings that it misleads the reader into believing these are the only relevant proceedings.

It is critically important that property owners receive a clear and unified voice from their governments about their rights in this area, and FERC’s requirement does not achieve

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<sup>12</sup> Order 1977, ¶53.

that. It would be a substantial improvement to the Final Rule if FERC would work with each state to design a more tailored Landowner Bill of Rights, as the PAPUC has proposed.

### III. CONCLUSION

For these reasons, the PAPUC respectfully requests the Commission grant our petition for rehearing of the May 13, 2024, Order No. 1977. We urge the Commission to make the appropriate determination regarding the Landowner Bill of Rights, adopt our recommendation, and direct implementation.

Respectfully submitted,

/s/ David Alexander

David Alexander, Assistant Counsel  
Elizabeth H. Barnes, Deputy Chief Counsel

Pennsylvania Public Utility Commission

P.O. Box 3265  
Harrisburg, PA 17105-3265  
Telephone: 717-787-5000  
dalexander@pa.gov  
ebarnes@pa.gov  
*Counsel for the Pennsylvania  
Public Utility Commission*

Dated: June 12, 2024

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am on this date serving a copy of the foregoing comments upon each person designated on the official service list compiled by the Federal Energy Regulatory Commission in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Respectfully submitted,

/s/ David Alexander  
David Alexander  
Assistant Counsel  
*Counsel for the Pennsylvania  
Public Utility Commission*

P.O. Box 3265  
Harrisburg, PA 17105-3265  
Tel: (717) 787-5000

Dated: June 12, 2024