

108TH CONGRESS
1ST SESSION

H. R. 1338

To amend the Federal Power Act to provide for Federal and State coordination of permitting for electric transmission facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 2003

Mr. SHADEGG (for himself and Mr. ISSA) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Federal Power Act to provide for Federal and State coordination of permitting for electric transmission facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 The Congress finds that:

5 (1) Protection of the environmental and ecologi-
6 cal qualities of Federal lands are important concerns
7 for all people.

8 (2) Reviewing the environmental impact of pro-
9 posed transmission facilities is a vital task which

1 must be conducted in a thorough and comprehensive
2 manner.

3 (3) A thorough and comprehensive review of
4 these effects can be conducted in a timely manner
5 without sacrificing the quality of the review.

6 (4) There is currently no requirement that Fed-
7 eral agencies complete environmental reviews for
8 proposed transmission facilities in a timely manner.

9 (5) The length of time for completion of these
10 reviews varies widely, with agencies taking as long
11 as ten years to complete these reviews.

12 (6) There are cases of Federal agencies con-
13 ducting environmental reviews in a subsequent, rath-
14 er than concurrent, manner and failing to coordinate
15 their reviews with State authorities and other Fed-
16 eral agencies.

17 (7) The electricity transmission grid must be
18 expanded to ensure reliable supplies of electricity.

19 (8) The Federal Government currently owns ap-
20 proximately 29 percent of the land area of the
21 United States including 90 percent of Nevada, 70
22 percent of Arizona, and similarly large percentages
23 of other Western States.

1 (9) Because of the large Federal land holdings
2 in the West, transmission facilities must often be
3 built on Federal lands.

4 (10) Appointment of a lead agency to coordi-
5 nate the environmental reviews of Federal agencies
6 will lead to more thorough, comprehensive and time-
7 ly reviews.

8 **SEC. 2. CONSTITUTIONAL AUTHORITY.**

9 The Constitutional authority on which this act rests
10 are the powers of Congress to make all needful rules and
11 regulations respecting the territory or other property be-
12 longing to the United States as enumerated in article IV,
13 section 3 and to make all laws which shall be necessary
14 and proper as enumerated in article I, section 8 of the
15 United States Constitution.

16 **SEC. 3. FEDERAL AND STATE COORDINATION OF PERMIT-**
17 **TING FOR TRANSMISSION FACILITIES.**

18 (a) LEAD AGENCY.—If an applicant, or prospective
19 applicant, for Federal authorization related to an elec-
20 tricity transmission or distribution facility so requests, the
21 Department of Energy (DOE) shall act as the lead agency
22 for purposes of coordinating all applicable Federal author-
23 ization and related environmental review of the facility.
24 The term “Federal authorization” shall mean any author-
25 ization required under Federal law in order to site a trans-

1 mission or distribution facility, including but not limited
2 to such permits, special use authorizations, certifications,
3 opinions, or other approvals as may be required, whether
4 issued by a Federal or a State agency. To the maximum
5 extent practicable, the Secretary of Energy shall coordi-
6 nate this Federal authorization and review process with
7 any Indian tribes, multi-State entities, and State agencies
8 that are responsible for conducting any separate permit-
9 ting and environmental reviews of the facility, to ensure
10 timely and efficient review and permit decisions.

11 (b) AUTHORITY TO SET DEADLINES.—As lead agen-
12 cy, the Department of Energy, in consultation with other
13 Federal and, as appropriate, with Indian tribes, multi-
14 State entities, and State agencies that are willing to co-
15 ordinate their own separate permitting and environmental
16 reviews with the Federal authorization and environmental
17 reviews, shall establish prompt and binding intermediate
18 milestones and ultimate deadlines for the review of and
19 Federal authorization decisions relating to the proposed
20 facility. Notwithstanding any other provision of law, the
21 Secretary of Energy shall ensure that once an application
22 has been submitted with such data as the Secretary deems
23 necessary, all permit decisions and related environmental
24 reviews under all applicable Federal laws shall be com-
25 pleted within 1 year. The Secretary of Energy also shall

1 provide a speedy pre-application mechanism for prospec-
2 tive applicants to confer with the agencies involved to have
3 each such agency determine and communicate to the pro-
4 spective applicant within 60 days of when the prospective
5 applicant submits a request for such information con-
6 cerning—

7 (1) the likelihood of approval for a potential fa-
8 cility; and

9 (2) key issues of concern to the agencies and
10 public.

11 (c) CONSOLIDATED ENVIRONMENTAL REVIEW AND
12 RECORD OF DECISION.—The Secretary of Energy shall
13 prepare a single environmental review document, which
14 shall be used as the basis for all decisions on the proposed
15 project under Federal law. The document may be an envi-
16 ronmental assessment or environmental impact statement
17 under the National Environmental Policy Act if war-
18 ranted, or such other form of analysis as may be war-
19 ranted. DOE and other agencies shall streamline the re-
20 view and permitting of transmission and distribution fa-
21 cilities within corridors designated under section 503 of
22 the Federal Land Policy and Management Act (43 U.S.C.
23 section 1763) by fully taking into account prior analyses
24 and decisions as to the corridors.

1 (d) APPEALS.—In the event that any agency has de-
2 nied a Federal authorization required for a transmission
3 or distribution facility, or has failed to act by the deadline
4 established by the Secretary pursuant to this section for
5 deciding whether to issue the authorization, the applicant
6 or any State in which the facility would be located may
7 file an appeal with the Secretary of Energy, which shall
8 review the denial or take action on the pending applica-
9 tion. Based on the overall record and in consultation with
10 the affected agency, the Secretary may then either issue
11 the necessary authorization with or without appropriate
12 conditions, or may deny the application. The Secretary
13 shall issue its decision within 90 days of the filing of the
14 appeal.

15 (e) CONFORMING REGULATIONS AND MEMORANDA
16 OF AGREEMENT.—Not later than 18 months after the
17 date of enactment of this section, the Secretary of Energy
18 shall issue any regulations necessary to implement the
19 foregoing provisions. Not later than 1 year after the date
20 of enactment of this section, the Secretary and the heads
21 of all relevant Federal departments and non-departmental
22 agencies shall, and interested Indian tribes, multi-State
23 entities, and State agencies may, enter into Memoranda
24 of Agreement to ensure the timely and coordinated review
25 and permitting of electricity transmission and distribution

1 facilities. The head of each Federal department or non-
2 departmental agency with approval authority shall des-
3 ignate a senior responsible official and dedicate sufficient
4 other staff and resources to ensure that the DOE regula-
5 tions and any Memoranda are fully implemented.

6 (f) MISCELLANEOUS.—Each Federal authorization
7 for an electricity transmission or distribution facility shall
8 be issued for a duration, as determined by the Secretary
9 of Energy, commensurate with the anticipated use of the
10 facility and with appropriate authority to manage the
11 right-of-way for reliability and environmental protection.
12 Further, when such authorizations expire, they shall be
13 reviewed for renewal taking fully into account reliance on
14 such electricity infrastructure, recognizing its importance
15 for public health, safety and economic welfare and as a
16 legitimate use of Federal lands.

17 (g) MAINTAINING AND ENHANCING THE TRANS-
18 MISSION INFRASTRUCTURE.—In exercising the respon-
19 sibilities under this section, the Secretary of Energy shall
20 consult regularly with the Federal Energy Regulatory
21 Commission (FERC) and FERC-approved Regional
22 Transmission Organizations and Independent System Op-
23 erators on changes to the national grid that will improve

- 1 reliability, relieve congestion, and enhance the capability
- 2 of the grid to deliver electricity.

