

TITLE 61
PUBLIC UTILITY REGULATION

CHAPTER 17
SITING OF CERTAIN ELECTRICAL TRANSMISSION FACILITIES

61-1701. LEGISLATIVE PURPOSES AND FINDINGS. (1) The provisions of this chapter apply to the construction or modification of transmission facilities located in a national interest electric transmission corridor designated by the secretary of the United States department of energy under section 1221 of the energy policy act of 2005. The purpose of this chapter is to provide for the efficient and timely review of applications for the siting of electric transmission facilities in federally designated national interest electric transmission corridors. The review is intended to facilitate participation from all interested entities and individuals and to avoid federal preemption.

(2) The legislature finds that the efficient and safe transmission of electricity is critical to the well-being of the citizens and the economy of this state, the region and the nation. The legislature further finds that enactment of this chapter is necessary for the protection of the public welfare and public interest.

(3) After the secretary has designated national interest electric transmission corridors in Idaho, no construction or modification of transmission facilities may be undertaken in a national interest electric transmission corridor without first obtaining a route certificate from the commission.

[61-1701, added 2007, ch. 186, sec. 1, p. 535.]

61-1702. DEFINITIONS. (1) "Affected landowner" includes owners of property interests, as reflected in the most recent county or city tax records as receiving the tax notice, whose property:

(a) Is directly affected, either crossed or used, by the proposed transmission line, including all facility sites, rights-of-way, access roads and temporary work spaces; and

(b) Abuts either side of an existing right-of-way or facility site owned in fee by any utility company, or abuts the edge of a proposed transmission line or right-of-way which runs along a property line in the area in which the transmission line would be constructed, or contains a residence within fifty (50) feet of the proposed transmission line.

(2) "Application" means any request by a transmitting utility for a route certificate for the construction and operation of new transmission facilities or the modification of existing transmission facilities located in a national interest electric transmission corridor in Idaho.

(3) "Commission" means the Idaho public utilities commission.

(4) "Local government" means a city or county.

(5) "National interest electric transmission corridor" is any geographic area designated by the secretary of energy as experiencing electric energy transmission capacity constraints or congestion pursuant to section 1221 of the energy policy act of 2005.

(6) "Secretary" means the secretary of the United States department of energy.

(7) "Transmission facility" means:

(a) Newly constructed high voltage transmission lines with an operating level capacity of one hundred fifteen thousand (115,000) volts or more;

(b) Rebuilt and upgraded existing high voltage transmission lines with an operating level capacity of at least fifty-seven thousand (57,000) volts to one hundred fifteen thousand (115,000) volts or more along the same right-of-way; or

(c) Electric facilities associated with high voltage transmission lines such as substations, switchyards or temporary contractor work yards.

(8) "Transmitting utility" is an entity that owns, operates or controls facilities used for the transmission of electric energy in interstate commerce.

[61-1702, added 2007, ch. 186, sec. 1, p. 535; am. 2016, ch. 47, sec. 40, p. 125.]

61-1703. COMMISSION AUTHORITY -- PREEMPTION -- RULES. (1) In the event that the secretary designates a national interest electric transmission corridor within Idaho, the public utilities commission is authorized to review the siting of all electric transmission facilities within such federally designated corridor. After notice and an opportunity for hearing, the commission shall review and deny, approve, or approve with conditions an application seeking a route certificate to construct transmission facilities within a designated national interest electric transmission corridor.

(2) In reviewing an application for a route certificate, the commission shall base its findings on the following standards:

(a) The regional or national benefits expected to be achieved by the proposed construction or modification of transmission facilities;

(b) The proposed construction or modification will significantly reduce transmission congestion in interstate commerce and benefit electric consumers;

(c) The proposed construction or modification is consistent with sound national energy policy and will enhance energy independence;

(d) The proposed construction or modification is consistent with the public interest;

(e) The proposed route minimizes adverse impacts on the important environmental features of the state and localities to the extent reasonable and economical;

(f) The transmission utility has the financial ability and experience to undertake the construction of transmission facilities; and

(g) The proposed modification will maximize, to the extent reasonable and economical, and consistent with reliability planning, the transmission capabilities of existing towers or structures.

(3) The commission is vested with the authority to preempt local government land use decisions pertaining to the construction of transmission facilities in national interest electric transmission corridors in the following instances:

(a) If a local government has denied or not authorized a transmitting utility to construct transmission facilities in a designated national interest electric transmission corridor by sixty (60) days after an application for a route certificate has been filed with the commission; or

(b) If the transmitting utility claims that a local land use condition imposed by a local government is unreasonable or not economical, then

the commission may preempt the local government's denial, lack of decision or conditioned decision after giving the affected local government an opportunity to appear before the commission.

The transmitting utility shall have the burden of demonstrating that the local government's final land use decision will not be timely issued, is unreasonable, or is not economical.

(4) The commission may promulgate temporary and proposed rules as may be necessary to implement the timely review of applications for transmission routing certificates in a national interest electric transmission corridor.

[61-1703, added 2007, ch. 186, sec. 1, p. 536.]

61-1704. NOTICE OF INTENT TO FILE -- CONTENT -- PREFILING PROCEDURES. (1) Each transmission utility seeking authority to site electric transmission facilities in a national interest electric transmission corridor, shall submit a notice of intent to file an application for a route certificate. The notice of intent shall be filed with the commission at least one hundred twenty (120) days before the transmission utility intends to file an application for a transmission route certificate. If the application described in the notice of intent is not filed within one hundred eighty (180) days, the notice will be considered withdrawn unless the transmitting utility provides a written statement that it still intends to file an application as originally described in the notice of intent.

(2) The notice of intent shall include, but is not limited to, the following information:

(a) The name and mailing address of the transmitting utility including a contact name, address and telephone number of the contact person for the notice of intent. If the transmitting utility is a corporation, copies of its articles of incorporation and proof of its authorization and/or registration to conduct business in Idaho;

(b) A detailed description of the proposed transmission route, including location maps and plot plans to scale showing all major components including a description of zoning and site availability for any permanent transmission facility;

(c) A description of the proposed right-of-way width for the transmission line, including to what extent a new right-of-way will be required or an existing right-of-way will be widened;

(d) A description of the proposed transmission line structures and their dimensions;

(e) A description of the schedule desired for the project including the expected application filing date, the desired date for commission approval, the beginning date for construction, and the proposed project operation date;

(f) A list of the federal, state, tribal and local government permitting entities including mailing address, contact names, telephone numbers and e-mail addresses. The notice shall disclose how the transmitting utility intends to account for each of the permitting entities and when it proposes to file with these permitting entities for the respective permits or other authorizations prior to the route certificate application in section 61-1705, Idaho Code;

(g) A statement that the transmitting utility has, or will within three (3) days of filing the notice of intent with the commission, provide a copy of such notice to affected landowners, local governments, and tribal, federal and state permitting entities;

(h) A list and description of the website and physical locations where copies of the notice of intent are located in each county traversed by the proposed transmission route; and

(i) An explanation of what rights the affected landowner has at the commission and in proceedings under the Idaho eminent domain laws.

(3) Within three (3) days of filing the notice of intent with the commission, the transmitting utility shall publish notice of its filing. The transmitting utility shall:

(a) Make available copies of the notice of intent in publicly accessible locations in each county or city throughout the project area in either electronic or paper format;

(b) Create and maintain an up-to-date project website devoted solely to dispense information about the proposed transmission project;

(c) Designate a single point of contact and explain how the transmitting utility will respond to requests for information from the public as well as federal, state, local government and tribal permitting entities; and

(d) Cause to be published in a daily or weekly newspaper of general circulation at least once per week for two (2) weeks in each county where the proposed transmission route is located that a notice of intent has been filed with the commission. This public notice shall describe the proposed route including a map of the route, and advise readers how to obtain more information.

(4) The commission shall, within twenty-one (21) days from when the notice of intent is filed, convene a preapplication conference with the transmitting utility, federal, state, local government and tribal permitting entities, for the purpose of reviewing the notice of intent.

[61-1704, added 2007, ch. 186, sec. 1, p. 537.]

61-1705. APPLICATION FOR A ROUTE CERTIFICATE. (1) Each application for a route certificate to construct a transmission facility within a designated national interest electric transmission corridor shall contain the following general information:

(a) The exact legal name of the transmitting utility; its principal place of business; whether the transmitting utility is an individual, partnership, corporation, or otherwise; the state laws under which the transmitting utility is organized or authorized; and the name, title, mailing address and e-mail address of the person or persons to whom communications concerning the application are to be addressed;

(b) A concise description of the transmitting utility's existing operation;

(c) A concise description of the proposed project sufficient to explain its scope and purpose. The description must, at a minimum: describe the proposed location of the principal project transmission facilities and the planned routing of the transmission line; contain the general characteristics of the transmission line including voltage, types of towers, and origin and termination point of the transmission line; describe the geographic character of areas traversed by the line; and be accompanied by an overview map of sufficient scale to show the entirety of the transmission route on no more than two (2) pages measuring eight and one-half (8.5) inches by eleven (11) inches;

(d) Verification that the proposed route lies within a national interest electric transmission corridor designated by the secretary;

(e) A demonstration that the transmission facility to be authorized by the certificate will be used for the transmission of electric energy in interstate commerce, and that the proposed construction or modification is consistent with the standard set out in subsection (2) of section 61-1703, Idaho Code;

(f) A general description of project financing;

(g) A description of the proposed construction and operation of the facilities, including the proposed date for the beginning and completion of construction and the date for commencement of service;

(h) A list of the local governments that have already approved local land use applications for the transmission project under applicable comprehensive plans and land use ordinances;

(i) A full statement as to whether any other permitting application filed in conjunction with the proposed project is outstanding, and if so, the nature and status of each such permitting application;

(j) A full statement as to whether the transmitting utility is requesting the preemption of local governments that have not yet issued a final decision, have denied, or have conditioned land use applications in an allegedly unreasonable or uneconomical manner; and

(k) A table of contents listing all exhibits and documents by their appropriate titles in alphabetical letter designations. A table of contents will list each exhibit and document.

(2) Each application for a route certificate must be accompanied by exhibits containing the following information in substantially the same format.

(a) Exhibit A - Articles of incorporation and bylaws if the transmitting utility is a corporation. If the transmitting utility is not a corporation, then other similar documents showing the business relationship of the transmitting utility.

(b) Exhibit B - State Authorization. Proof that the transmitting utility is authorized to do business in Idaho, a statement showing the date of such authorization, the scope of the business the transmitting utility is authorized to carry on, and all limitations, if any, including an expiration date and renewal obligations.

(c) Exhibit C - Company Officials. A list of the names and business addresses of the transmitting utility's officers and directors, or similar officials if the transmitting utility is not a corporation.

(d) Exhibit D - Pending Applications and Filings. A list of applications and filings submitted by the transmitting utility that are pending before a federal, state, tribal, or local government permitting entity that affect the proposed transmission project, including explanation of any material effect that the approval or denial of these permits will have on the application for a route certificate.

(e) Exhibit E - Approved or Denied Applications. A list of applications and filings submitted by the transmitting utility to a federal, state, tribal or local government permitting entity that have been granted, conditionally granted, or denied at the time of the application that affect the proposed transmission project, including explanation of any material effect that the approval or denial of these permits will have on the application for a route certificate.

(f) Exhibit F - Local Government Preemption. A list of local government land use applications that are pending, denied or contain approval conditions to which the transmitting utility objects and seeks commission

review. The transmitting utility shall indicate whether it seeks commission preemption of specific local government land use decisions or unfinished transmission route proceedings. The transmitting utility has the burden of demonstrating that the local government land use decisions will not be completed in the next sixty (60) days. If the local government land use application was denied or conditioned, the transmitting utility has the burden of demonstrating that the denial or imposed conditions were unreasonable or not economical.

(g) Exhibit G - Map of the Proposed Route. A general location map to scale showing the location of the proposed transmission route in a scale sufficient to advise the public of the exact location of the proposed route.

(h) Exhibit H - Corridor Selection Assessment. The corridor selection assessment shall explain how the transmitting utility selected the proposed route. This exhibit shall disclose whether the transmitting utility evaluated other corridors, including the specific location of such other corridors and the reasons why those corridors were not utilized. The transmitting utility shall also provide a map in a format no larger than eleven (11) inches by seventeen (17) inches showing the selected proposed route and those route alternatives that were discarded.

(i) Exhibit I - Characteristics of the Proposed Route. The transmitting utility shall prepare an exhibit that discloses:

(i) The length of the proposed transmission line;

(ii) The proposed right-of-way width of the proposed transmission including to what extent a new right-of-way will be required or an existing right-of-way will be widened;

(iii) If the proposed transmission route follows or includes a public right-of-way, a description of where the facilities would be located within the public right-of-way, to the extent known. If the transmitting utility might locate all or part of the transmission facilities adjacent to but not within the public right-of-way, describe the reasons to justify locating the transmission facility outside the public right-of-way. The transmitting utility must include a set of clear and objective criteria and adequately demonstrate that its decision to locate the proposed transmission facility outside the public right-of-way is based on those criteria;

(iv) Streams, rivers and wetlands that may be disturbed during construction;

(v) Portions of the route located within lands that require zoning changes, variances or exceptions;

(vi) Whether the proposed transmission line would be outside of areas where historical, cultural or archeological resources are likely to exist, are listed, or determined by the state historic preservation officer to be eligible for listing on the national register of historic places; and

(vii) A description of the transmission structures and their dimensions.

(j) Exhibit J - Construction Schedule. The construction schedule shall include the dates when the transmitting utility proposes to begin construction and the estimated date when construction will be completed. This schedule should be broken down into topics including surveying,

exploration or other activities. The transmitting utility shall also provide a map showing all areas that may be temporarily disturbed by any activity related to the design, construction and operation of the proposed transmission facility.

(k) Exhibit K - Map. A map identifying all areas designated for protection by a tribe, the state or federal government including, but not limited to, monuments, wilderness areas, wildlife refuges, scenic waterways and similar areas. The map shall identify affected tribal lands and locations that may have cultural significance to any tribe. If the proposed route traverses wetland areas, provide copies of all permits related to such wetlands. The map shall denote all airports and private airstrips within ten thousand (10,000) feet of the centerline of the proposed route. The map shall show all commercial AM radio transmitters and all FM radio transmitters within ten thousand (10,000) feet of the centerline and all microwave relay stations or similar installations within two thousand (2,000) feet of the centerline of the proposed route.

(l) Exhibit L - Affected Landowners. Describe the efforts utilized to notify all affected landowners. Indicate in a quantitative fashion the amount of property already acquired or optioned from affected landowners.

(m) Exhibit M - Soils and Geotechnical Work. Describe the locations along the proposed transmission route where the transmitting utility proposes to perform site specific geotechnical work including, but not limited to, railroad crossings, major road crossings, river crossings, dead ends, or corners. Describe where geological reconnaissance and other site specific studies provide evidence of existing landslides or marginally stable slopes that could be made unstable by the planned construction. This exhibit shall also contain a map showing the location of existing and significant potential geological and soil stability hazards and problems, if any, on the proposed route and in the adjacent vicinity that could adversely affect, or be aggravated by, the construction and operation of the proposed transmission facility.

(n) Exhibit N - Seismic Hazards. The transmitting utility shall include an analysis and assessment of the seismic hazards that may occur along the proposed transmission route.

(3) The transmitting utility shall also provide any other information that the commission requests.

(4) The transmitting utility shall include, with its application for a route certificate, written prefiled testimony that supports the information contained in the application. Such testimony shall be in a form that conforms to the commission's rules of procedure.

(5) After notice and an opportunity for hearing, the commission shall issue its final order denying, granting, or granting with conditions the application for a route certificate. The commission shall issue its final order no later than twelve (12) months after the application for a route certificate is filed, unless the transmitting utility agrees to an extension in writing.

(6) The transmitting utility will make available copies of its complete application on its project website and at publicly accessible locations in each county. The application will also be available on the commission's website.

[61-1705, added 2007, ch. 186, sec. 1, p. 538.]

61-1706. CONSTRUCTION STANDARDS. Each transmitting utility will construct, install, operate, and maintain its transmission facility in compliance with the current edition of the national electrical safety code published by the institute of electrical and electronic engineers, inc. Transmission facilities shall be constructed and operated in a manner to best accommodate the public and to prevent interference with service furnished by other public utilities insofar as practical.

[61-1706, added 2007, ch. 186, sec. 1, p. 542.]

61-1707. PUBLIC WORKSHOPS. (1) After a transmitting utility has filed its notice of intent with the commission and before it files the application for a route certificate, the transmitting utility shall conduct informal public workshops at location(s) along the proposed transmission route. The purpose of the workshops is to provide information about the transmission project and the process for obtaining construction authority.

(2) After a transmitting utility has filed an application for a route certificate, the commission will determine whether the staff should conduct an informational public workshop at locations along the proposed transmission route. The purpose of the public workshop is for the commission staff to dispense information concerning the transmission utility's application and to advise interested persons on how to participate in the commission's review proceeding.

(3) Notice of the public workshops shall be issued a minimum of fourteen (14) days prior to the workshop to newspapers of general circulation and radio and television stations in the affected area.

[61-1707, added 2007, ch. 186, sec. 1, p. 542.]

61-1708. EFFECT OF ISSUANCE OF ROUTE CERTIFICATION. (1) Subject to any conditions attached to the certificate by the commission, a final commission order granting a route certificate shall bind the state and each of its agencies, divisions, bureaus, commissions, boards and local governments as to the approval of the authorized transmission route and the construction and operation of the authorized transmission facility.

(2) Issuance of a route certificate to a transmitting utility authorizes the utility to exercise the right of eminent domain pursuant to chapter 7, title 7, Idaho Code.

(3) Issuance of the route certificate shall not be construed to preempt jurisdiction of any state agency or local government over matters that are not included in and governed by the route certificate including, but not limited to, employee health and safety, wage and hour or other labor regulations, other design and operational issues that do not relate to the siting of the transmission facilities.

[61-1708, added 2007, ch. 186, sec. 1, p. 542.]

61-1709. COMMISSION PROCEDURES -- ADMINISTRATIVE REMEDY -- RECONSIDERATION -- JUDICIAL REVIEW. (1) All matters arising under this chapter shall be governed by the commission's rules of procedure.

(2) The commission's proceeding to review an application for a route certificate for the construction of transmission facilities in a designated national interest electric transmission corridor shall constitute a necessary administrative remedy for a person aggrieved by a local government's final land use action on a transmitting utility's application to construct transmission facilities in a designated national interest electric trans-

mission corridor. Judicial review shall not be available from a local government's final land use decision concerning a transmitting utility's application to construct transmission facilities in a national interest electric transmission corridor. A person aggrieved by a local government's final land use action involving the construction of a proposed transmission facility route in a national interest electric transmission corridor must participate in the commission's proceeding and seek judicial review of the commission's final order.

(3) Reconsideration of, appeal from, and stay of orders issued pursuant to this chapter shall be governed by law as for orders of the commission in other matters.

[61-1709, added 2007, ch. 186, sec. 1, p. 543.]