118TH CONGRESS
1ST SESSION

S. ______

To amend the Federal Power Act to establish a procedure for the siting of certain interstate electric transmission facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

[Senator's name] introduced the following bill; which was read twice and referred to the Committee on [Committee name]

A BILL

To amend the Federal Power Act to establish a procedure for the siting of certain interstate electric transmission facilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Streamlining Interstate Transmission of Electricity Act” or the “SITE Act”.

SEC. 2. SITING OF CERTAIN INTERSTATE ELECTRIC TRANSMISSION FACILITIES.

Part II of the Federal Power Act (16 U.S.C. 824 et seq.) is amended by adding at the end the following:
“SEC. 224. SITING OF CERTAIN INTERSTATE ELECTRIC TRANSMISSION FACILITIES.

“(a) DEFINITIONS.—In this section:

“(1) AFFECTED LANDOWNER.—

“(A) IN GENERAL.—The term ‘affected landowner’ includes each owner of a property interest in land or other property described in subparagraph (B), including—

“(i) the Federal Government;

“(ii) a State or local government; and

“(iii) each owner noted in the most recent county or city tax record as receiving the relevant tax notice with respect to that interest.

“(B) LAND AND OTHER PROPERTY DESCRIBED.—The land or other property referred to in subparagraph (A) is any land or other property—

“(i) that is or will be crossed by the energy transmission facility proposed to be constructed or modified under the applicable certificate of public convenience and necessity;

“(ii) that is or will be used as a facility site with respect to the energy transmission facility proposed to be constructed
or modified under the applicable certificate of public convenience and necessity;

“(iii) that abuts any boundary of an existing right-of-way or other facility site that—

“(I) is owned by an electric utility; and

“(II) is located not more than 500 feet from the energy transmission facility to be constructed or modified under the applicable certificate of public convenience and necessity;

“(iv) that abuts the boundary of a proposed facility site for the energy transmission facility to be constructed or modified under the applicable certificate of public convenience and necessity;

“(v) that is crossed by, or abuts any boundary of, an existing or proposed right-of-way that—

“(I) will be used for the energy transmission facility to be constructed or modified under the applicable certificate of public convenience and necessity; and
“(II) is located not more than 500 feet from the proposed location of that energy transmission facility; or
“(vi) on which a residence is located not more than 500 feet from the boundary of any right-of-way for that energy transmission facility.

“(2) ALTERNATING CURRENT TRANSMISSION FACILITY.—The term ‘alternating current transmission facility’ means a transmission facility that uses alternating current for the bulk transmission of electric energy.

“(3) ENERGY TRANSMISSION FACILITY.—The term ‘energy transmission facility’ means, as applicable—
“(A) an alternating current transmission facility; or
“(B) a high-voltage, direct current transmission facility.

“(4) FACILITY SITE.—The term ‘facility site’ includes—
“(A) a right-of-way;
“(B) an access road;
“(C) a contractor yard; and
“(D) any temporary workspace.
“(5) **High-voltage, direct current transmission facility.**—The term ‘high-voltage, direct current transmission facility’ means a transmission facility that uses direct current for the bulk transmission of electric energy.


“(b) **Certificate of Public Convenience and Necessity.**—

“(1) **In general.**—On receipt of an application under subsection (c)(1) relating to an energy transmission facility described in paragraph (2), the Commission, after making the finding described in paragraph (3) with respect to that energy transmission facility, shall issue to any person, by publication in the Federal Register, a certificate of public convenience and necessity for the construction, modification, operation, or abandonment of that energy transmission facility, subject to such reasonable terms and conditions as the Commission determines to be appropriate.

“(2) **Energy transmission facility described.**—An energy transmission facility referred
to in paragraph (1) is an energy transmission facil-
ity that—

“(A) traverses or, on construction or modi-
fication in accordance with a certificate of pub-
lic convenience and necessity issued under that
paragraph, will traverse not fewer than 2
States; and

“(B) is not less than 1,000 megawatts or
1,000 megavolt-amperes in power capacity.

“(3) FINDING DESCRIBED.—The finding re-
ferred to in paragraph (1) is a finding that—

“(A) the applicant for a certificate of pub-
lic convenience and necessity is able and will-
ing—

“(i) to carry out the activities and
perform the services proposed in the appli-
cation in a manner determined to be ap-
propriate by the Commission; and

“(ii) to achieve compliance with the
applicable requirements of—

“(I) this part; and

“(II) any rules and regulations
promulgated by the Commission pur-
suant to this part;
“(B) the energy transmission facility to be constructed, modified, or operated under the certificate of public convenience and necessity will—

“(i) traverse not fewer than 2 States;

“(ii) be used for the transmission of electric energy in interstate commerce; and

“(iii) have a power capacity of not less than 1,000 megawatts or 1,000 megavolt-amperes; and

“(C) operation of the energy transmission facility as proposed in the application—

“(i) will—

“(I) enable the use of renewable energy;

“(II) reduce congestion; or

“(III) improve the reliability of the transmission system; 

“(ii) will maximize, to the extent reasonable and economical, the use of—

“(I) existing facility sites; and

“(II) the transmission capabilities of existing energy transmission facilities; and
“(iii) will, to the extent practicable, minimize the use of eminent domain.

“(4) RULEMAKING.—Not later than 18 months after the date of enactment of this section, the Commission shall issue rules specifying—

“(A) a pre-filing process during which a person described in subsection (c)(1) and the Commission shall consult with—

“(i) the appropriate State agencies, State public utility commissions, and State energy offices in each State the proposed project traverses;

“(ii) appropriate Federal agencies; and

“(iii) each Indian Tribe that may be affected by the proposed project;

“(B) the form of, and information to be contained in, an application submitted under subsection (c)(1);

“(C) requirements for determining whether the applicable energy transmission facility will be constructed or modified—

“(i) to traverse not fewer than 2 States;
“(ii) to be used for the transmission of electric energy in interstate commerce; and

“(iii) to have a power capacity of not less than 1,000 megawatts or 1,000 mega-volt-amperes;

“(D) criteria for determining the reasonable and economical use of—

“(i) existing rights-of-way; and

“(ii) the transmission capabilities of existing towers or structures;

“(E) the manner in which an application submitted under subsection (c)(1) and any proposal for the construction or modification of an energy transmission facility shall be considered, which, to the extent practicable, shall be consistent with State statutory and regulatory policies concerning generation and retail sales of electricity in the States in which the electric energy transmitted by the energy transmission facility will be generated or sold; and

“(F) the manner in which the Commission will consider the needs of communities that will be impacted directly by the proposed energy transmission facility, including how any impacts
of the proposed energy transmission facility
could be mitigated or offset.

“(5) **PUBLIC NOTICE, COMMENT, AND OPPOR-
TUNITY FOR A HEARING ON CERTAIN DRAFT DOCU-
MENTS.—**

“(A) IN GENERAL.—The Commission shall
provide not less than 90 days for public com-
ment on any initial scoping document or draft
environmental impact statement prepared for
an energy transmission facility with respect to
which an application for a certificate of public
convenience and necessity has been submitted
under subsection (c)(1).

“(B) **NOTICE AND OPPORTUNITY FOR HEARING.—** The Commission shall—

“(i) publish in the Federal Register a
notice of the filing of each draft scoping
document or draft environmental impact
statement described in clause (i); and

“(ii) provide to the individuals and en-
tities described in paragraph (6)(B) notice
and reasonable opportunity for the presen-
tation of any views and recommendations
with respect to the initial scoping docu-
ment or draft environmental impact statement.

“(C) TRIBAL CONSENT.—With respect to an Indian Tribe that may be affected by a potential project, the Commission—

“(i) shall provide notice to the appropriate Tribal officials and an opportunity of public comment in accordance with subparagraph (A); and

“(ii) shall not approve a scoping document or draft environmental impact statement unless consent has been obtained from the proper Tribal officials in a manner consistent with the requirements of section 2 of the Act of February 5, 1948 (62 Stat. 18, chapter 45; 25 U.S.C. 324).

“(6) NOTICE AND OPPORTUNITY FOR A HEARING ON APPLICATIONS.—

“(A) IN GENERAL.—In any proceeding before the Commission to consider an application for a certificate of public convenience and necessity under this section, the Commission shall—

“(i) publish a notice of the application in the Federal Register; and
“(ii) provide to the individuals and entities described in subparagraph (B) a notice and reasonable opportunity for the presentation of any views and recommendations with respect to the need for, and impact of, the construction or modification of the energy transmission facility proposed to be constructed or modified under the certificate.

“(B) INDIVIDUALS AND ENTITIES DESCRIBED.—The individuals and entities referred to in subparagraph (A) are—

“(i) an agency, selected by the Governor (or equivalent official) of the applicable State, of each State in which the energy transmission facility proposed to be constructed or modified under the applicable certificate of public convenience and necessity is or will be located;

“(ii) each affected landowner; and

“(iii) as determined by the Commission—

“(I) each affected Federal agency; and
“(II) each Indian Tribe that may be affected by the proposed construction or modification.

“(C) PROHIBITION.—The Commission may not—

“(i) require an applicant for a certificate of public convenience and necessity under this section to provide any notice required under this section; or

“(ii) enter into a contract to provide any notice required under this section with—

“(I) the applicant for the applicable certificate of public convenience and necessity; or

“(II) any other person that has a financial interest in the project proposed in the application for that certificate.

“(c) APPLICATIONS.—

“(1) IN GENERAL.—A person desiring a certificate of public convenience and necessity under this section shall submit to the Commission an application at such time, in such manner, and containing such information as the Commission may require.
“(2) REQUIREMENT.—An application submitted to the Commission under paragraph (1) shall include all information necessary for the Commission to make the finding described in subsection (b)(3).

“(d) NOTICE TO AFFECTED LANDOWNERS.—

“(1) IN GENERAL.—The Commission shall provide written notice of an application submitted under subsection (c)(1) to all affected landowners in accordance with this subsection.

“(2) REQUIREMENTS.—Any notice provided to an affected landowner under paragraph (1) shall include the following:

“(A) The following statement in 14-point bold typeface:

“The [name of applicant] has proposed building power lines that will cross your property, and may also require building transmission towers on your property. If the Federal Energy Regulatory Commission approves [applicant]’s proposed project, then [applicant] may have the right to build transmission towers on, and power lines over, your property, or use your property to construct the proposed project, subject to paying you just compensation for the loss of your property.
“‘If you want to raise objections to this, or otherwise comment on this project, you can do so by submitting written comments to the Federal Energy Regulatory Commission Docket No. [______]. You can do this electronically or by mail. To do so electronically [to be inserted by the Commission]. To do so by mail [to be inserted by the Commission].’

“(B) A description of the proposed project, including—

“(i) the location of the proposed project (including a general location map);

“(ii) the purpose of the proposed project; and

“(iii) the timing of the proposed project.

“(C) The name of, and the location in the docket of the Commission at which may be found, each submission by the applicant to the Commission relating to the proposed project.

“(D) A general description of what the applicant will need from the landowner if the proposed project is approved, including the activities the applicant may undertake and the facili-
ties that the applicant may seek to construct on the property of the landowner.

“(E) A description of how the landowner may contact the applicant, including—

“(i) a website; and
“(ii) a local or toll-free telephone number and the name of a specific person to contact who is knowledgeable about the proposed project.

“(F) A description of how the landowner may contact the Commission, including—

“(i) a website; and
“(ii) a local or toll-free telephone number and the name of a specific person to contact who is knowledgeable about the proposed project.

“(G) A summary of the rights that the landowner has—

“(i) before the Commission; and
“(ii) in other proceedings under—
“(I) the Federal Rules of Civil Procedure; and
“(II) the eminent domain rules of the relevant State.
“(II) Any other information that the Commission determines to be appropriate.

“(3) Obligation of Applicant.—An applicant for a certificate of public convenience and necessity under this section shall submit to the Commission, together with the application for the certificate, the name and address of each affected landowner.

“(e) Regulatory Jurisdiction.—

“(1) In General.—Except as provided in paragraph (2), the Commission shall have exclusive jurisdiction over, and no State shall regulate any aspect of, the siting or permitting of an energy transmission facility constructed, modified, or operated under a certificate of public convenience and necessity issued under this section.

“(2) Savings Clause.—Nothing in this section affects the rights of States under—

“(A) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

“(B) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

“(C) the Clean Air Act (42 U.S.C. 7401 et seq.); or
“(D) division A of subtitle III of title 54, United States Code (formerly known as the ‘National Historic Preservation Act’).

“(f) JUDICIAL REVIEW.—

“(1) IN GENERAL.—Any person aggrieved by an order issued by the Commission under this section may obtain review of the order in—

“(A) the court of appeals of the United States for any judicial circuit in which the energy transmission facility to be constructed or modified under the applicable certificate of public convenience and necessity is or will be located; or

“(B) the United States Court of Appeals for the District of Columbia Circuit.

“(2) PETITION FOR REVIEW.—

“(A) IN GENERAL.—A person may obtain review under paragraph (1) by filing in the applicable court a written petition praying that the order of the Commission be modified or set aside in whole or in part.

“(B) TIMING.—A petition under subparagraph (A) shall be filed by not later than 60 days after the date on which the applicable
order of the Commission is published in the Federal Register.

“(3) PERSON AGGRIEVED.—Notwithstanding any other provision of this Act, a person aggrieved by an order of the Commission issued under this section need not—

“(A) have been a party to the proceedings before the Commission in which that order was issued in order to obtain judicial review of the order under this subsection; or

“(B) have requested rehearing before the Commission prior to seeking judicial review.

“(g) RIGHT OF EMINENT DOMAIN FOR ENERGY TRANSMISSION FACILITIES.—

“(1) IN GENERAL.—The holder of a certificate of public convenience and necessity may acquire through the exercise of the right of eminent domain in a court described in paragraph (2) any right-of-way, land, or other property that is necessary to construct, modify, operate, or maintain an energy transmission facility in accordance with that certificate if the holder—

“(A) cannot acquire the necessary right-of-way, land, or other property by contract;
“(B) is unable to agree with the owner of the right-of-way, land, or other property with respect to the compensation to be paid for that right-of-way, land, or other property; or

“(C) cannot clear defective title with respect to the right-of-way, land, or other property.

“(2) COURT DESCRIBED.—A court referred to in paragraph (1) is—

“(A) the district court of the United States for the district in which the applicable land or other property is located; or

“(B) the appropriate State court.

“(3) NOTICE OF DECISION TO ISSUE CERTIFICATE.—The holder of a certificate of public convenience and necessity may not exercise the right of eminent domain under this subsection with respect to any property covered by the certificate unless the Commission has first, in addition to publishing the notice of certificate of public convenience and necessity in the Federal Register, provided all affected landowners with notice of—

“(A) the decision of the Commission to grant the certificate; and
“(B) the procedures for obtaining judicial
review of that decision under subsection (f), in-
cluding a description of the time period for
seeking judicial review under that subsection.

“(h) CONDEMNATION PROCEDURES.—

“(1) APPRAISALS.—

“(A) IN GENERAL.—A holder of, or appli-
cant for, a certificate of public convenience and
necessity shall have any property that the hold-
er or applicant seeks to acquire through the ex-
ercise of the right of eminent domain under
subsection (g) appraised in accordance with
generally accepted appraisal standards by an
appraiser selected by the owner of the property,
subject to subparagraph (D).

“(B) REQUIREMENTS.—

“(i) COSTS.—The applicable holder of,
or applicant for, a certificate of public con-
venience and necessity shall pay for each
appraisal carried out under subparagraph
(A).

“(ii) INSPECTIONS.—The owner of the
applicable property (or a designated rep-
resentative of the owner) shall be given the
opportunity to accompany the appraiser
during any inspection of the property that
is part of an appraisal under subparagraph
(A).

“(C) Timing.—An appraisal under sub-
paragraph (A) shall be carried out before the
holder of, or applicant for, the certificate of
public convenience and necessity—

“(i) makes an offer of just compensa-
tion under paragraph (2); or

“(ii) commences an action or pro-
ceeding to exercise the right of eminent do-
main under subsection (g).

“(D) Selection of Appraiser.—If the
owner of the applicable property does not select
an appraiser under subparagraph (A) by the
date that is 60 days after the date on which the
holder of, or applicant for, the applicable certifi-
cate of public convenience and necessity re-
quests that the owner do so, the holder or ap-
licant shall have the right to select the ap-
praiser.

“(2) Offers of Just Compensation.—

“(A) In general.—Any offer of just com-
pensation made to an affected landowner of
property that is covered by a certificate of public convenience and necessity—

“(i) shall be made in writing;

“(ii) may not be for an amount less than the fair market value of the property, as determined by an appraisal carried out under paragraph (1); and

“(iii) shall include compensation for—

“(I) any lost income from the property; and

“(II) any damages to any other property of the owner.

“(B) Timing.—The holder of, or applicant for, a certificate of public convenience and necessity may not make an offer of just compensation to an affected landowner until the date that is 30 days after the date on which the Commission provides a notice to the affected landowner under subsection (g)(3).

“(3) Jurisdictional limitations.—

“(A) Minimum jurisdictional amount.—A district court of the United States shall only have jurisdiction of an action or proceeding to exercise the right of eminent domain under subsection (g) if the amount claimed by
the owner of the property to be condemned exceeds $3,000.

“(B) State ownership interests.—

“(i) In general.—Except as provided in clause (ii), a district court of the United States shall have no jurisdiction to condemn any interest owned by a State.

“(ii) Exception.—Notwithstanding clause (i), a district court of the United States shall have jurisdiction—

“(I) to condemn any existing utility or transportation easement or right-of-way that—

“(aa) is on State property;

or

“(bb) is on private property and is owned by a State; and

“(II) to condemn any real property conveyed to a State for the purpose of obstructing the construction, modification, or operation of an energy transmission facility in accordance with a certificate of public convenience and necessity issued under this section.
“(C) Tribal Land.—A district court of the United States shall have no jurisdiction to condemn any interest in Tribal land.

“(4) Limitation on Condemnation.—In any action or proceeding to exercise the right of eminent domain under subsection (g), a court—

“(A) may condemn an interest in property only to the extent necessary for the specific facilities described in the applicable certificate of public convenience and necessity; and

“(B) may not—

“(i) condemn any other interest; or

“(ii) condemn an interest for any purpose not described in that certificate.

“(5) Right of Possession.—With respect to any action or proceeding to exercise the right of eminent domain under subsection (g), an owner of property covered by the applicable certificate of public convenience and necessity shall not be required to surrender possession of that property unless the holder of the certificate—

“(A) has paid to the owner the award of compensation in the action or proceeding; or

“(B) has deposited the amount of that award with the court.
“(6) Litigation costs.—

“(A) In general.—A holder of a certificate of public convenience and necessity that commences an action or proceeding to exercise the right of eminent domain under subsection (g) shall be liable to the owner of any property condemned in that proceeding for the costs described in subparagraph (B) if the amount awarded to that owner for the property condemned is more than 125 percent of the amount offered to the owner by the holder before the commencement of that action or proceeding.

“(B) Costs described.—The costs referred to in subparagraph (A) are litigation costs incurred for the action or proceeding described in that subparagraph by the owner of the property condemned, including—

“(i) reasonable attorney fees; and

“(ii) expert witness fees and costs.

“(i) Enforcement of Conditions.—

“(1) In general.—An affected landowner the property of which has been acquired by eminent domain under subsection (g) shall have the right—
“(A) to enforce any condition in the applicable certificate of public convenience and necessity; and

“(B) to seek damages for a violation of any condition described in subparagraph (A).

“(2) JURISDICTION.—The district courts of the United States shall have jurisdiction over any action arising under paragraph (1).

“(j) OTHER LANDOWNER RIGHTS AND PROTECTIONS.—

“(1) FAILURE TO TIMELY COMPLETE PROJECTS.—

“(A) SURRENDER OF CONDEMNED PROPERTY.—

“(i) IN GENERAL.—An individual or entity from which an interest in property is acquired through the exercise of the right of eminent domain under subsection (g) by the holder of a certificate of public convenience and necessity that is issued for the construction, modification, or operation of an energy transmission facility may demand that the holder of the certificate surrender that interest to that individual or entity if—
“(I)(aa) the energy transmission facility is not in operation (as modified, in the case of a modification of an energy transmission facility) by the date specified in the certificate (including any modification of the certificate by the Commission); and

“(bb) there is no request for the extension of that date pending before the Commission; or

“(II) subject to clause (ii), the holder of the certificate, with the approval of the Commission, abandons the portion of the energy transmission facility that is located on the applicable property relating to that interest.

“(ii) REQUIREMENT.—The Commission may not approve in a certificate of public convenience and necessity issued under this section or in any subsequent proceeding the abandonment of all or any part of an energy transmission facility unless the Commission requires the holder of the applicable certificate of public convenience and necessity to offer to each indi-
vidual or entity described in clause (i) the
option of having the property acquired
from that individual or entity as described
in that clause restored to the condition
that the property was in prior to the
issuance of the certificate.

“(B) Repayment of Condemnation
Award.—If an individual or entity described in
subparagraph (A)(i) demands the surrender of
an interest under that subparagraph, the holder
of the applicable certificate of public conven-
ience and necessity shall be entitled to repay-
ment of an amount equal to not more than 50
percent of the condemnation award relating to
the interest.

“(C) Jurisdiction.—The district courts
of the United States shall have jurisdiction over
any action arising under this paragraph.

“(2) Material Misrepresentations.—

“(A) Rescission of Transaction.—

“(i) In General.—An affected land-
owner that proves, by a preponderance of
the evidence, that the affected landowner
has granted a right-of-way or any other in-
terest based on a material misrepresenta-
tion made by or on behalf of an applicant for, or holder of, a certificate of public convenience and necessity under this section shall have the right to rescind the transaction.

“(ii) JURISDICTION.—The district courts of the United States shall have jurisdiction over any action arising under clause (i).

“(B) CIVIL PENALTIES.—

“(i) IN GENERAL.—If an applicant for, or holder of, a certificate of public convenience and necessity makes a material misrepresentation, or if a material misrepresentation is made on behalf of such an applicant or holder, to an affected landowner concerning the energy transmission facility to be constructed or modified under the certificate, the applicant or holder shall be subject to a civil penalty, to be assessed by the Commission, in an amount not to exceed $10,000 per affected landowner to which the misrepresentation was made.

“(ii) PROCEDURE.—The penalty described in clause (i) shall be assessed by
the Commission after providing notice and
an opportunity for a public hearing.

“(iii) REQUIREMENT.—In determining
the amount of a penalty under clause (i),
the Commission shall take into consider-
ation the nature and seriousness of the vio-
lation.”.