

AMENDMENT NO. _____ Calendar No. _____

Purpose: To establish a procedure for the siting of certain interstate electric transmission facilities.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

S. _____

To invest in the energy and outdoor infrastructure of the United States to deploy new and innovative technologies, update existing infrastructure to be reliable and resilient, and secure energy infrastructure against physical and cyber threats, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. HICKENLOOPER

Viz:

1 At the end of subtitle A of title I, add the following:

2 **SEC. 10___. SITING OF CERTAIN INTERSTATE ELECTRIC**
3 **TRANSMISSION FACILITIES.**

4 Part II of the Federal Power Act (16 U.S.C. 824 et
5 seq.) is amended by adding at the end the following:

6 **“SEC. 224. SITING OF CERTAIN INTERSTATE ELECTRIC**
7 **TRANSMISSION FACILITIES.**

8 “(a) **DEFINITIONS.**—In this section:

9 “(1) **AFFECTED LANDOWNER.**—

1 “(A) IN GENERAL.—The term ‘affected
2 landowner’ includes each owner of a property
3 interest, as noted in the most recent county or
4 city tax record as receiving the relevant tax no-
5 tice with respect to that interest, in land or
6 other property described in subparagraph (B).

7 “(B) LAND AND OTHER PROPERTY DE-
8 SCRIBED.—The land or other property referred
9 to in subparagraph (A) is any land or other
10 property—

11 “(i) that is or will be crossed by the
12 energy transmission facility proposed to be
13 constructed or modified under the applica-
14 ble certificate of public convenience and
15 necessity;

16 “(ii) that is or will be used as a facil-
17 ity site with respect to the energy trans-
18 mission facility proposed to be constructed
19 or modified under the applicable certificate
20 of public convenience and necessity;

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

24 “(I) is owned by an electric util-
25 ity; and

1 “(II) is located not more than
2 500 feet from the energy transmission
3 facility to be constructed or modified
4 under the applicable certificate of
5 public convenience and necessity;

6 “(iv) that abuts the boundary of a
7 proposed facility site for the energy trans-
8 mission facility to be constructed or modi-
9 fied under the applicable certificate of pub-
10 lic convenience and necessity;

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

14 “(I) will be used for the energy
15 transmission facility to be constructed
16 or modified under the applicable cer-
17 tificate of public convenience and ne-
18 cessity; and

19 “(II) is located not more than
20 500 feet from the proposed location of
21 that energy transmission facility; or

22 “(vi) on which a residence is located
23 not more than 500 feet from the boundary
24 of any right-of-way for that energy trans-
25 mission facility.

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

6 “(3) FACILITY SITE.—The term ‘facility site’
7 includes—

8 “(A) a right-of-way;

9 “(B) an access road;

10 “(C) a contractor yard; and

11 “(D) any temporary workspace.

12 “(4) HIGH-VOLTAGE, DIRECT CURRENT TRANS-
13 MISSION FACILITY.—The term ‘high-voltage, direct
14 current transmission facility’ means a transmission
15 facility that uses direct current for the bulk trans-
16 mission of electric energy.

17 “(5) ENERGY TRANSMISSION FACILITY.—The
18 term ‘energy transmission facility’ means, as appli-
19 cable—

20 “(A) an alternating current transmission
21 facility; or

22 “(B) a high-voltage, direct current trans-
23 mission facility.

24 “(b) CERTIFICATE OF PUBLIC CONVENIENCE AND
25 NECESSITY.—

1 “(1) IN GENERAL.—On receipt of an applica-
2 tion under subsection (e)(1) relating to an energy
3 transmission facility described in paragraph (2), the
4 Commission, after making the finding described in
5 paragraph (3) with respect to that energy trans-
6 mission facility, shall issue to any person, by publi-
7 cation in the Federal Register, a certificate of public
8 convenience and necessity for the construction,
9 modification, operation, or abandonment of that en-
10 ergy transmission facility, subject to such reasonable
11 terms and conditions as the Commission determines
12 to be appropriate.

13 “(2) ENERGY TRANSMISSION FACILITY DE-
14 SCRIBED.—An energy transmission facility referred
15 to in paragraph (1) is an energy transmission facil-
16 ity that—

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

22 “(B) is not less than 1,000 MW or 1,000
23 MVA in power capacity.

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

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

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

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

10 “(I) this part; and

11 “(II) any rules and regulations
12 promulgated by the Commission pur-
13 suant to this part;

14 “(B) the energy transmission facility to be
15 constructed, modified, or operated under the
16 certificate of public convenience and necessity
17 will—

18 “(i) traverse not fewer than 2 States;

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

21 “(iii) have a power capacity of not less
22 than 1,000 MW or 1,000 MVA; and

23 “(C) the construction, modification, or op-
24 eration proposed in the application—

1 “(i) will maximize, to the extent rea-
2 sonable and economical, the use of—

3 “(I) existing rights-of-way; and

4 “(II) the transmission capabili-
5 ties of existing towers or structures;
6 and

7 “(ii) will minimize the use of eminent
8 domain.

9 “(4) RULEMAKING.—Not later than 270 days
10 after the date of enactment of this section, the Com-
11 mission shall issue rules specifying—

12 “(A) a pre-filing process during which a
13 person described in subsection (c)(1) and the
14 Commission shall consult with the appropriate
15 State agencies in each State the proposed
16 project traverses;

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

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

23 “(i) to traverse not fewer than 2
24 States;

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

4 “(iii) to have a power capacity of not
5 less than 1,000 MW or 1,000 MVA;

6 “(D) criteria for determining the reason-
7 able and economical use of—

8 “(i) existing rights-of-way; and

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

11 “(E) the manner in which an application
12 submitted under subsection (c)(1) and any pro-
13 posal for the construction or modification of an
14 energy transmission facility shall be considered,
15 which shall be consistent with State statutory
16 and regulatory policies concerning generation
17 and retail sales of electricity in the States in
18 which the electric energy transmitted by the en-
19 ergy transmission facility will be generated or
20 sold; and

21 “(F) the manner in which the Commission
22 will consider the needs of communities that will
23 be impacted directly by the proposed energy
24 transmission facility, including how any impacts

1 of the proposed energy transmission facility will
2 be mitigated or offset.

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

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

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

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

20 “(ii) provide to the individuals and en-
21 tities described in paragraph (6)(B) notice
22 and reasonable opportunity for the presen-
23 tation of any views and recommendations
24 with respect to the draft scoping document
25 or draft environmental impact statement.

1 “(6) NOTICE AND OPPORTUNITY FOR A HEAR-
2 ING ON APPLICATIONS.—

3 “(A) IN GENERAL.—In any proceeding be-
4 fore the Commission to consider an application
5 for a certificate of public convenience and ne-
6 cessity under this section, the Commission
7 shall—

8 “(i) publish a notice of the application
9 in the Federal Register; and

10 “(ii) provide to the individuals and en-
11 tities described in subparagraph (B) a no-
12 tice and reasonable opportunity for the
13 presentation of any views and rec-
14 ommendations with respect to the need for,
15 and impact of, the construction or modi-
16 fication of the energy transmission facility
17 proposed to be constructed or modified
18 under the certificate.

19 “(B) INDIVIDUALS AND ENTITIES DE-
20 SCRIBED.—The individuals and entities referred
21 to in subparagraph (A) are—

22 “(i) each State in which the energy
23 transmission facility proposed to be con-
24 structed or modified under the applicable

1 certificate of public convenience and neces-
2 sity is or will be located;

3 “(ii) each affected landowner; and

4 “(iii) as determined by the Commis-
5 sion—

6 “(I) each affected Federal agen-
7 cy; and

8 “(II) each Indian Tribe that may
9 be affected by the proposed construc-
10 tion or modification.

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

13 “(i) require an applicant for a certifi-
14 cate of public convenience and necessity
15 under this section to provide any notice re-
16 quired under this section; or

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

20 “(I) the applicant for the applica-
21 ble certificate of public convenience
22 and necessity; or

23 “(II) any other person that has a
24 financial interest in the project pro-

1 posed in the application for that cer-
2 tificate.

3 “(c) APPLICATIONS.—

4 “(1) IN GENERAL.—A person desiring a certifi-
5 cate of public convenience and necessity under this
6 section shall submit to the Commission an applica-
7 tion at such time, in such manner, and containing
8 such information as the Commission may require.

9 “(2) REQUIREMENT.—An application submitted
10 to the Commission under paragraph (1) shall include
11 all information necessary for the Commission to
12 make the finding described in subsection (b)(3).

13 “(d) NOTICE TO AFFECTED LANDOWNERS.—

14 “(1) IN GENERAL.—The Commission shall pro-
15 vide written notice of an application submitted under
16 subsection (c)(1) to all affected landowners in ac-
17 cordance with this subsection.

18 “(2) REQUIREMENTS.—Any notice provided to
19 an affected landowner under paragraph (1) shall in-
20 clude the following:

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

23 ““The [name of applicant] has proposed build-
24 ing power lines that will cross your property,
25 and may also require building transmission tow-

1 ers on your property. If the Federal Energy
2 Regulatory Commission approves [applicant]’s
3 proposed project, then [applicant] will have the
4 right to build transmission towers on, and
5 power lines over, your property, or temporarily
6 use your property to construct the proposed
7 project, subject to paying you just compensa-
8 tion for the loss of your property.

9 “‘If you want to raise objections to this, or oth-
10 erwise comment on this project, you can do so
11 by submitting written comments to the Federal
12 Energy Regulatory Commission Docket No.
13 [_____]. You can do this electronically or by
14 mail. To do so electronically [to be inserted by
15 the Commission]. To do so by mail [to be in-
16 serted by the Commission].’.

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

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

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

23 “(iii) the timing of the proposed
24 project.

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

5 “(D) A general description of what the ap-
6 plicant will need from the landowner if the pro-
7 posed project is approved.

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

10 “(i) a website; and

11 “(ii) a local or toll-free telephone
12 number and the name of a specific person
13 to contact who is knowledgeable about the
14 proposed project.

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

17 “(i) a website; and

18 “(ii) a local or toll-free telephone
19 number and the name of a specific person
20 to contact who is knowledgeable about the
21 proposed project.

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

24 “(i) before the Commission; and

25 “(ii) in other proceedings under—

1 “(I) the Federal Rules of Civil
2 Procedure; and

3 “(II) the eminent domain rules of
4 the relevant State.

5 “(H) Any other information that the Com-
6 mission determines to be appropriate.

7 “(3) OBLIGATION OF APPLICANT.—An appli-
8 cant for a certificate of public convenience and ne-
9 cessity under this section shall submit to the Com-
10 mission, together with the application for the certifi-
11 cate, the name and address of each affected land-
12 owner.

13 “(e) REGULATORY JURISDICTION.—

14 “(1) IN GENERAL.—Except as provided in para-
15 graph (2), the Commission shall have exclusive juris-
16 diction over, and no State shall regulate any aspect
17 of, the siting or permitting of an energy trans-
18 mission facility constructed, modified, or operated
19 under a certificate of public convenience and neces-
20 sity issued under this section.

21 “(2) SAVINGS CLAUSE.—Nothing in this section
22 affects the rights of States under—

23 “(A) the Coastal Zone Management Act of
24 1972 (16 U.S.C. 1451 et seq.);

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

3 “(C) the Clean Air Act (42 U.S.C. 7401 et
4 seq.).

5 “(f) JUDICIAL REVIEW.—

6 “(1) IN GENERAL.—Any person aggrieved by
7 an order issued by the Commission under this sec-
8 tion may obtain review of the order in—

9 “(A) the court of appeals of the United
10 States for any judicial circuit in which the en-
11 ergy transmission facility to be constructed or
12 modified under the applicable certificate of pub-
13 lic convenience and necessity is or will be lo-
14 cated; or

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

17 “(2) PETITION FOR REVIEW.—

18 “(A) IN GENERAL.—A person may obtain
19 review under paragraph (1) by filing in the ap-
20 plicable court a written petition praying that
21 the order of the Commission be modified or set
22 aside in whole or in part.

23 “(B) TIMING.—A petition under subpara-
24 graph (A) shall be filed by not later than 60
25 days after the date on which the applicable

1 order of the Commission is published in the
2 Federal Register.

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

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

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

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

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

23 “(A) cannot acquire the necessary right-of-
24 way, land, or other property by contract;

1 “(B) is unable to agree with the owner of
2 the right-of-way, land, or other property with
3 respect to the compensation to be paid for that
4 right-of-way, land, or other property; or

5 “(C) cannot clear defective title with re-
6 spect to the right-of-way, land, or other prop-
7 erty.

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

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

13 “(B) the appropriate State court.

14 “(3) NOTICE OF DECISION TO ISSUE CERTIFI-
15 CATE.—The holder of a certificate of public conven-
16 ience and necessity may not exercise the right of
17 eminent domain under this subsection with respect
18 to any property covered by the certificate unless the
19 Commission has first, in addition to publishing the
20 notice of certificate of public convenience and neces-
21 sity in the Federal Register, provided all affected
22 landowners with notice of—

23 “(A) the decision of the Commission to
24 grant the certificate; and

1 “(B) the procedures for obtaining judicial
2 review of that decision under subsection (f), in-
3 cluding a description of the time period for
4 seeking judicial review under that subsection.

5 “(h) CONDEMNATION PROCEDURES.—

6 “(1) APPRAISALS.—

7 “(A) IN GENERAL.—The holder of a cer-
8 tificate of public convenience and necessity shall
9 have any property that the holder seeks to ac-
10 quire through the exercise of the right of emi-
11 nent domain under subsection (g) appraised in
12 accordance with generally accepted appraisal
13 standards by an appraiser selected by the owner
14 of the property, subject to subparagraph (D).

15 “(B) REQUIREMENTS.—

16 “(i) COSTS.—The applicable holder of
17 a certificate of public convenience and ne-
18 cessity shall pay for each appraisal carried
19 out under subparagraph (A).

20 “(ii) INSPECTIONS.—The owner of the
21 applicable property (or a designated rep-
22 resentative of the owner) shall be given the
23 opportunity to accompany the appraiser
24 during any inspection of the property that

1 is part of an appraisal under subparagraph
2 (A).

3 “(C) TIMING.—An appraisal under sub-
4 paragraph (A) shall be carried out before the
5 holder of the certificate of public convenience
6 and necessity—

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

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

12 “(D) SELECTION OF APPRAISER.—If the
13 owner of the applicable property does not select
14 an appraiser under subparagraph (A) by the
15 date that is 60 days after the date on which the
16 holder of the applicable certificate of public con-
17 venience and necessity requests that the owner
18 do so, the holder shall have the right to select
19 the appraiser.

20 “(2) OFFERS OF JUST COMPENSATION.—

21 “(A) IN GENERAL.—Any offer of just com-
22 pensation made to an affected landowner of
23 property that is covered by a certificate of pub-
24 lic convenience and necessity—

25 “(i) shall be made in writing;

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), a district court of the
3 United States shall have no jurisdiction to
4 condemn any interest owned by a State.

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

8 “(I) to condemn any existing util-
9 ity or transportation easement or
10 right-of-way that—

11 “(aa) is on State property;
12 or

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

15 “(II) to condemn any real prop-
16 erty conveyed to a State for the pur-
17 pose of obstructing the construction,
18 modification, or operation of an en-
19 ergy transmission facility in accord-
20 ance with a certificate of public con-
21 venience and necessity issued under
22 this section.

23 “(4) LIMITATION ON CONDEMNATION.—In any
24 action or proceeding to exercise the right of eminent
25 domain under subsection (g), a court—

1 “(A) may condemn an interest in property
2 only to the extent necessary for the specific fa-
3 cilities described in the applicable certificate of
4 public convenience and necessity; and

5 “(B) may not—

6 “(i) condemn any other interest; or

7 “(ii) condemn an interest for any pur-
8 pose not described in that certificate.

9 “(5) RIGHT OF POSSESSION.—With respect to
10 any action or proceeding to exercise the right of emi-
11 nent domain under subsection (g), an owner of prop-
12 erty covered by the applicable certificate of public
13 convenience and necessity shall not be required to
14 surrender possession of that property unless the
15 holder of the certificate—

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

18 “(B) has deposited the amount of that
19 award with the court.

20 “(6) LITIGATION COSTS.—

21 “(A) IN GENERAL.—A holder of a certifi-
22 cate of public convenience and necessity that
23 commences an action or proceeding to exercise
24 the right of eminent domain under subsection
25 (g) shall be liable to the owner of any property

1 condemned in that proceeding for the costs de-
2 scribed in subparagraph (B) if the amount
3 awarded to that owner for the property con-
4 demned is more than 125 percent of the
5 amount offered to the owner by the holder be-
6 fore the commencement of that action or pro-
7 ceeding.

8 “(B) COSTS DESCRIBED.—The costs re-
9 ferred to in subparagraph (A) are litigation
10 costs incurred for the action or proceeding de-
11 scribed in that subparagraph by the owner of
12 the property condemned, including—

13 “(i) reasonable attorney fees; and

14 “(ii) expert witness fees and costs.

15 “(i) ENFORCEMENT OF CONDITIONS.—

16 “(1) IN GENERAL.—An affected landowner the
17 property of which has been acquired by eminent do-
18 main under subsection (g) shall have the right—

19 “(A) to enforce any condition in the appli-
20 cable certificate of public convenience and ne-
21 cessity; and

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

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

4 “(j) OTHER LANDOWNER RIGHTS AND PROTEC-
5 TIONS.—

6 “(1) FAILURE TO TIMELY COMPLETE
7 PROJECTS.—

8 “(A) SURRENDER OF CONDEMNED PROP-
9 ERTY.—

10 “(i) IN GENERAL.—An individual or
11 entity from which an interest in property is
12 acquired through the exercise of the right
13 of eminent domain under subsection (g) by
14 the holder of a certificate of public conven-
15 ience and necessity that is issued for the
16 construction, modification, or operation of
17 an energy transmission facility may de-
18 mand that the holder of the certificate sur-
19 render that interest to that individual or
20 entity if—

21 “(I)(aa) the energy transmission
22 facility is not in operation (as modi-
23 fied, in the case of a modification of
24 an energy transmission facility) by the
25 date specified in the certificate (in-

1 including any modification of the certifi-
2 cate by the Commission); and

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

6 “(II) subject to clause (ii), the
7 holder of the certificate, with the ap-
8 proval of the Commission, abandons
9 the portion of the energy transmission
10 facility that is located on the applica-
11 ble property relating to that interest.

12 “(ii) REQUIREMENT.—The Commis-
13 sion may not approve in a certificate of
14 public convenience and necessity issued
15 under this section or in any subsequent
16 proceeding the abandonment of all or any
17 part of an energy transmission facility un-
18 less the Commission requires the holder of
19 the applicable certificate of public conven-
20 ience and necessity to offer to each indi-
21 vidual or entity described in clause (i) the
22 option of having the property acquired
23 from that individual or entity as described
24 in that clause restored to the condition

1 that the property was in prior to the
2 issuance of the certificate.

3 “(B) REPAYMENT OF CONDEMNATION
4 AWARD.—If an individual or entity described in
5 subparagraph (A)(i) demands the surrender of
6 an interest under that subparagraph, the holder
7 of the applicable certificate of public conven-
8 ience and necessity shall be entitled to repay-
9 ment of an amount equal to not more than 50
10 percent of the condemnation award relating to
11 the interest.

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

15 “(2) MATERIAL MISREPRESENTATIONS.—

16 “(A) RESCISSION OF TRANSACTION.—

17 “(i) IN GENERAL.—An affected land-
18 owner that proves, by a preponderance of
19 the evidence, that the affected landowner
20 has granted a right-of-way or any other in-
21 terest based on a material misrepresenta-
22 tion made by or on behalf of an applicant
23 for, or holder of, a certificate of public con-
24 venience and necessity under this section

1 shall have the right to rescind the trans-
2 action.

3 “(ii) JURISDICTION.—The district
4 courts of the United States shall have ju-
5 risdiction over any action arising under
6 clause (i).

7 “(B) CIVIL PENALTIES.—

8 “(i) IN GENERAL.—If an applicant
9 for, or holder of, a certificate of public con-
10 venience and necessity makes a material
11 misrepresentation, or if a material mis-
12 representation is made on behalf of such
13 an applicant or holder, to an affected land-
14 owner concerning the energy transmission
15 facility to be constructed or modified under
16 the certificate, the applicant or holder shall
17 be subject to a civil penalty in an amount
18 not to exceed \$10,000 per affected land-
19 owner to which the misrepresentation was
20 made.

21 “(ii) PROCEDURE.—The penalty de-
22 scribed in clause (i) shall be assessed by
23 the Commission after providing notice and
24 an opportunity for a public hearing.

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