UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY

Coordination of Federal	**)**	
Authorizations for Electric	**)**	**10 CFR Part 900**
Transmission Facilities	**)**	**(RIN 1901-AB18)**

COMMENTS OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE INTERIM FINAL RULE

INTRODUCTION

The Staff of the Public Utilities Commission of the State of California ("CPUC") hereby provides its comments pursuant to the Department of Energy's ("DOE") Interim Final Rule on Coordination of Federal Authorizations for Electric Transmission Facilities, which was published in the Federal Register on Friday, September 19, 2008.

The CPUC is a constitutionally established agency charged with the responsibility for regulating electric corporations within the State of California. In addition, the CPUC has a statutory mandate to represent the interest of electric consumers throughout California in proceedings before the Federal Energy Regulatory Commission ("FERC") and DOE.

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DISCUSSION

On September 19, 2008, DOE's Interim Final Rule on Coordination of Federal Authorizations for Electric Transmission Facilities was published in the Federal Register. Pursuant to section 216 of the Federal Power Act ("FPA"), the Interim Final Rule establishes procedures under which entities may request DOE coordination of federal agency authorizations for the siting of interstate electric transmission facilities.

The CPUC Staff is of the view that DOE's Interim Final Rule is a much needed improvement on the current lack of coordination among federal agencies on the siting of needed new electric transmission lines through lands over which federal agencies have jurisdiction, and the CPUC Staff fully supports the spirit of this rule. However, DOE's final rule should go much further then the current Interim Final Rule.

I. Coordination

The CPUC Staff agrees with much of what is contained in the Interim Final Rule. For example, the rule states that DOE's coordination of federal agency authorizations is a request driven process. This is a sound outlook, as

DOE coordination should apply only to those projects that specifically ask for such services. Current state processes work well, and most applicant are satisfied with the current process. Federal intervention is only needed in select cases and should be given only when requested.

The Interim Final Rule states that the DOE will reject any requests for federal coordination if the requester has already applied to FERC for backstop siting approval to construct or modify a transmission facility in a National Interest Electric Transmission Corridor ("NIETC"). The CPUC Staff notes that in such circumstances, DOE has already delegated its FPA Section 216(h) federal coordinating authority to FERC. In view of the fact that FERC has set forth the procedure that it will follow in such circumstances, the CPUC Staff has no opposition to this provision of the Interim Final Rule.

While FPA Section 216(h) has designated DOE to take the lead in coordinating the approvals for transmission lines by the various federal agencies with land use authority over such lines, DOE apparently does not believe that it should be the "lead agency" under the National Environmental Policy Act ("NEPA"). Rather, Section 900.6(a)(1) of the Interim Final Rule states DOE and the permitting entities responsible for issuing federal authorizations will "jointly determine" the most appropriate lead agency to prepare the required NEPA documents. CPUC Staff believes that this is a reasonable approach; however, we would encourage DOE, before it adopts the final rule in this matter, to consider and to spell out in some detail the circumstances under which DOE itself might

assume a lead agency role under NEPA for proposed new transmission projects.

Additionally, Section 900.6(a)(2) states that non-federal agencies with independent, non-federal permitting authorities (such as a CPUC or other state regulatory commissions) are encouraged to participate in this process. The CPUC Staff strongly supports this particular language.

Finally, in its discussion of the Interim Final Rule, DOE states that it "expects that permitting entities will coordinate applicable Federal authorizations and related environmental reviews even in instances where no coordination request has been received by DOE"[1]. The CPUC Staff would caution DOE against such optimism. In California, one of the biggest reasons for delays in the permitting of new transmission permitting has been delay on the part of federal agencies. As we understand it, one of the main reasons why the Energy Policy Act of 2005 included FPA Section 2316(h) was that in most cases prior to this section's enactment, timely coordination among federal agencies was not taking place.

II. Interstate Siting and Renewables

Environmental review typically represents one of the most significant areas of delay in the process of approving new transmission projects. Often, the greatest source of such delay is associated with the proposed siting of part of a new transmission line on federal land, and the necessary amendments to federal land

[1] Coordination of Federal Authorizations for Electric Transmission Facilities; Interim Final Rule and Proposed Rule; Federal Register, Vol. 73, No. 183, Friday, September 19, 2008, at 54457.

use plans that such siting requires. The CPUC Staff appreciates the fact that the Interim Final Rule is intended to expedite this process, but the value of the Interim Final Rule is somewhat limited, especially in the case of the aggressive efforts of California (and other Western states) to push the development of new renewable energy resources, especially when those resources and the associated new transmission will all be located in-state.

Much of California's renewable resources is located on federally managed land and/or will require transmission access over such land, such that coordination with, and approvals from, federal land management agencies are critical to the viability of these projects. However, the Interim Final Rule states that the DOE's role in coordinating federal agency approvals only applies to facilities that are used for the transmission of electric energy in interstate commerce. The interim rule acknowledges that this limitation is placed upon the DOE is "consistent with the intent of Section 216 of the FPA, which is titled "Siting of Interstate Electric Transmission Facilities," and adheres to the definition of transmission facilities used by FERC in Order No. 689"[2].

However, if this is the true intent of Section 216 of the FPA, questions arise over the designations last year by DOE of large portions of Southern California as a NIETC. The interim final rule raises an important question in this regard. Why should DOE point to the potential for renewable development as a driving force behind the designation of the Southwest NIETC, while at the same time purporting

[2] Id.

to limit the applicability of its responsibility to coordinate federal agency approvals over transmission projects that would access such renewable resources to interstate projects? Does DOE mean to say that if a proposed transmission project is within a designated NIETC, it may not qualify for DOE federal coordination if it is wholly contained within a single state?

CPUC Staff understands that the phrase, "in interstate commerce," is a legal term of art with complex significance. However, DOE needs to clarify that it does not see its authority under FPA Section 216(h) as being limited to interstate projects. Coordination of applicable federal agency approvals would be beneficial for, and should apply to, all major transmission projects, not just to interstate transmission projects.

CONCLUSION

For the foregoing reasons, as the final rule on Coordination of Federal Authorizations for Electric Transmission Facilities moves forward, DOE should take into account the concerns of the CPUC Staff.

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Respectfully submitted,

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