

Mr. John Schnagl
Office of Electricity Delivery and Energy Reliability (OE-20)
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

Re: **Coordination of Federal Authorizations for Electric Transmission Facilities –
(DOE, 10 CR Part 900, RIN 1901-AB18- Federal Register Vol. 73, no. 183, Friday,
September 19, 2008)**

Dear Mr. Schnagl:

The Western Business Roundtable (“Roundtable”) respectfully submits the following comments relating to the U.S. Department of Energy’s (DOE) request for public comments regarding implementation of its transmission siting obligations under Section 216(h) of the Federal Power Act (*RIN 1901-AB18- Federal Register Vol. 73, no. 183, Friday, September 19, 2008*).

Our membership is comprised of a coalition of CEOs and senior executives of corporations and organizations representing a broad cross-section of Western business interests – including those engaged in construction, manufacturing, mining, electric power generation and oil and gas exploration and development. Because our companies and their employees live and work in the West, we understand the importance of sensible environmental policy and economic development in the Western states.

We appreciate the opportunity to comment on this proposed rulemaking. Transmission issues are of keen interest to our member organizations, all of which are involved in economic activities in the West. We know what a difference it will make, on the ground, for DOE to complete implementation of the various transmission initiatives assigned to it under the Energy Policy Act of 2005 (EPAAct05).

Thus, we applaud DOE for moving forward with this rulemaking. If the Department implements its EPAAct05 obligations in the manner Congress intended under the statute, it will be in a position to make a meaningful improvements in federal transmission siting and permitting processes. That, in turn, will be very helpful in increasing the regulatory certainty upon which energy infrastructure investment depends.

THE ROUNDTABLE'S POSITION

The Roundtable has long been an ardent voice calling for substantial upgrades/expansion of the nation's -- and particularly the West's -- electricity infrastructure systems. Our region has seen dramatic growth over the past decade. The transmission system has not kept up. This situation was serious when the EAct05 was enacted. It is dire now.

Consider these facts:

- Experts forecast that U.S. electricity demand will grow by 18 percent in the next eight years. The projections put that demand increase at 30 percent by 2030.
- In its October 2007 study, "*2007 Long-Term Reliability Assessment*," the North American Electric Reliability Corporation (NERC) found that long-term capacity margins on the nation's transmission systems are already inadequate to protect these systems from interruptions such as brownouts or blackouts. Absent immediate investments, this condition will worsen over the next decade.
- A recent NextGen Energy Council study, citing NERC data, notes that U.S. baseload generation capacity reserve margins "have declined precipitously to 17 percent in 2007, from 30-40 percent in the early 1990s," A 12-15 percent capacity reserve margin is the minimum required to ensure reliability and stability of the nation's electricity system. NextGen estimates that the U.S. will require about 120 gigawatts (GW) of new generation just to maintain a 15 percent reserve margin. That will require at least \$300 billion in generation and transmission facility investments by 2016. Attached please find the NextGen study for your reference.
- According to NERC data, the U.S. will require more than 14,500 miles of new electricity transmission lines by 2016. The Western Electricity Coordinating Council (WECC) may require nearly 7,000 of those miles.

All these statistics paint a stark picture. Clearly, steps need to be taken to drive efficiencies in the transmission siting and construction processes. EAct05 envisioned that DOE should take a major role in that regard: the Department is essentially to be the adult in the room, forcing other members of the federal family to focus, to stick with deadlines and to coordinate their consideration of projects with each other and states.

That disciplining role is incredibly important for large, often multi-state linear infrastructure like transmission lines. In the West, such projects involve complicated federal-states permitting processes, including land use authorizations for rights-of-way across a variety of federal lands. Frequently, it is the federal permit decisions that are most complicated and, therefore, prone to paralysis. Not surprisingly, delays have been common and chronic. Thus, the federal government must share responsibility for the situation the West finds itself in today.

SPECIFIC ROUNDTABLE COMMENTS

We strongly support DOE's decision to produce actual regulations that clarify its authorities under Section 216(h) of the Federal Power Act (which was enacted under EAct05) and procedures by which they will be carried out. We believe formal regulations put the Department in a stronger position to fulfill the role Congress intended under EAct05 than do less formal agreements (i.e. Memorandums of Agreement, for example).

Here are some of our specific thoughts on how these proposed regulations might be strengthened:

1. DOE is right to make its involvement applicant-driven.

We are pleased that DOE interprets its Section 216(h) authority to allow for an applicant-driven process, where DOE will intervene as lead agency when asked to do so by a project applicant. This is the most efficient approach. In instances where an applicant believes there exists a constructive partnership between the relevant federal agencies, itself, and the state permitting authorities for the review of a project without DOE involvement, requiring DOE to exercise its lead agency authority would be unnecessary and counterproductive.

We do think that this portion of the rule would benefit from further clarification. Applicants should be able to request DOE involvement from the moment an application is filed for federal authorization. Involvement should not be triggered only for those projects where an Environmental Impact Statement (EIS) is required. Certainly, there are other federal decision making that can be crucially important (decisions on categorical exclusions or environmental assessments, for example). We believe the rule would be strengthened by a clarification on this point.

2. DOE needs to be more aggressive in asserting its lead agency role.

We are perplexed by how little authority DOE has actually chosen to assert. It appears to be recommending self-imposed limitations on its lead agency authority under Section 216(h), even at the risk of undercutting its ability to successfully carry out its statutory obligations. Some examples:

- **DOE self-limits the kinds of transmission projects it will be involved in** --In § 900.2(a), DOE indicates that it will only accept a request to exercise its lead agency authority for "facilities that are used for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale." We are not clear what range of projects, with federal agencies' involvement, DOE seeks to exclude, or why DOE would create this ambiguity at all. At a minimum, DOE needs to explain what, if any, proposed transmission projects it believes would be excluded under this limitation.

- **DOE self-limits its involvement to projects involving multiple federal agencies --** In the proposed rule, DOE expresses the view that Section 216(h) is intended to give an applicant “...seeking more than one federal authorization for the construction or modification of electric transmission facilities with access...” to a process for having the federal reviews carried out in a coordinated manner. We would strongly urge the Department not to limit its participation to those projects with multiple federal agencies involved. Applicants should not be precluded from having DOE serve as lead agency merely because only one federal permitting entity is involved. Applicants may well want to have DOE at the table to manage the interactions of a single federal agency with state entities, if for no other reason than to make bring pressure to bear to ensure that the federal elements are completed on a timely basis.
- **Contrary to the plain language of the statute, DOE hands off EIS preparation.-** In §900.6 of the rule, DOE interprets the requirement to prepare a consolidated environmental review document, for purposes of NEPA compliance, as merely requiring it to assemble and maintain the work of individual agencies.

This approach diverges from the plain language of Section 216(h)(1)(C)(5)(A), which states: “As lead agency head, the Secretary, in consultation with the affected agencies, *shall prepare* a single environmental review document, which shall be used as the basis for all decisions on the proposed project under Federal law” {*emphasis added.*} This is further reinforced by definitions within Council on Environmental Quality Regulations (CEQ) which provide: “*Lead agency* means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.” (*40 C.F.R. §1508.16*)

- **DOE should not carve out lead agency authority for projects that trigger FERC backstop siting authority from its authority – it should delegate to FERC when appropriate --** In §900.2(c), DOE states it will not accept a request to exercise its lead agency authority for any project for which an application has been submitted to the FERC for a construction permit under 80 CFR 50.6 or for which pre-fling procedures have been initiated under 18 CFR 50.5. Projects impacted here are those located in National Interest Electric Transmission Corridors (NIETC). We certainly understand and agree that these projects are a special class that the statute puts FERC in control of for permitting. A more seamless way to accomplish that hand-off would be simply for DOE to delegate its lead agency authority to FERC for those projects located in a NIETC corridor.

3. DOE should standardize permit terms to cover the useful life of facilities:

Section 216(h)(8)(A)(i) clearly provides that the Secretary of Energy is to decide the duration of a land use authorization. The rule’s language on this topic needs to be clarified to provide

DOE will make that determination and that the determination will be binding on the permitting agency.

Further, we believe that DOE, in making the determination, needs to tie permit terms to the useful life of the facilities being permitted. Doing so would allow the Secretary to establish the durations of various kinds of facilities on a generic basis. This clear-cut and consistent approach is critically important, given the huge capital investments required for these projects, and their importance to the reliability of the integrated grid,

4. Getting the deadlines right matters -- They are key tools in driving efficiency in the federal permitting process.

We believe that EAct05 contemplated a fairly simple structure to drive efficiencies in the federal review/approval process. Federal agencies retain their responsibility to approve or disapprove a permit or land use authorization for a transmission project. However, DOE is given enough authorities to assure that the process moves forward efficiently, in alignment with the timelines that are occurring in relevant state permitting processes.

Control of the clock is crucial for transmission projects, particularly given the pressing needs the grid currently faces. DOE must use its 216(h) authorities to align federal permitting processes with those of states, resulting in concurrent processes, rather than allowing federal decisions to lag behind.

Under EAct05, there is a one-year window for states to complete their decisions prior to an applicant approaching FERC for a construction permit and a one-year window for federal agencies to complete their decisions once an application has been submitted with necessary data. These provisions parallel one another, supporting the view that Congress intended a concurrent approach to federal and state decision-making.

Yet, in §900.9 of the proposed rule, DOE interprets the statutory deadline for federal agency permit decisions in a way that assures these decisions will continue to lag behind state decisions and may even allow federal authorizers to justify delays beyond those already experienced by applicants.

The rule sets a deadline for federal decisions to be completed one year after a categorical exclusion determination is made, or an environmental assessment finding of no significant impact is made, or 30 days after close of public comment on a draft EIS. This strings out the decision-making process. None of these proposed triggers for the one-year period to begin find any support in the text of the statute. It is critically important that DOE clarify the rule to make clear that the one-year clock begins once an application is complete, as determined by the Secretary, *not* by the permitting agency.

We are also uncomfortable with the vague criteria DOE suggests be established to trigger for extension of the one-year federal deadline. § 900.9(b)(2) provides that when another

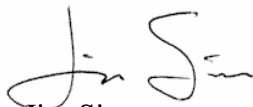
provision of federal law “does not permit compliance” with the one-year statutory deadline that the “permitting entity shall cite the provision of Federal law that prevents the final decision on the Federal authorization request from being issued within one year...” We strongly urge the Department to redraft the rule to require the permitting agency to make a timely application for an extension of the deadlines which fully explain, based on both the law and the facts of the case, why compliance is impossible. DOE should require agencies making this application to include a projected date for completion and should hold them to it.

CONCLUSION

We fully appreciate how difficult it is to force institutional change, in the manner that EPAAct05 contemplated. However, we strongly urge DOE to step up to the challenge. DOE understands more than any other federal agency the need to upgrade and expand the nation’s electricity grid, and the cost to consumers of a failure to do so. Without major transmission improvements, reliability will suffer.

On behalf of the many member organizations of the Western Business Roundtable, thank you for the opportunity to comment on this policy initiative so important to the continued vitality of the West.

Sincerely,



Jim Sims
President & CEO

Attachment (1)