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OE Docket No. RRTT-IR-001
Submitted via email to: Lamont.Jackson@hq.doe.gov

COMMENTS OF THE AMERICAN WIND ENERGY ASSOCIATION ON THE DEPARTMENT OF ENERGY'S REQUEST FOR INFORMATION RELATED TO THE PERMITTING OF TRANSMISSION LINES

Dear Mr. Jackson,

The American Wind Energy Association[1] (AWEA) appreciates the opportunity to provide comments to the Department of Energy's Office of Electricity Delivery and Energy Reliability (DOE) on its request for information[2] (RFI), which was published in the Federal Register on February 27, 2012,[3] seeking public comments on questions related to permitting transmission lines on behalf of the federal Rapid Response Team for Transmission (RRTT).

I. Introduction

[1] AWEA is the national trade association representing a broad range of entities with a common interest in encouraging the deployment and expansion of wind energy resources in the United States. AWEA's members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy supporters, utilities, marketers, customers and their advocates.
[2] *Available at* https://www.federalregister.gov/articles/2012/02/27/2012-4464/rapid-response-team-for-transmission.
[3] Rapid Response Team for Transmission Request for Information, 77 Fed. Reg. 11517 (Feb. 27, 2012).

At both the federal and state level, increased reliance on renewable energy has been firmly established as a principal policy objective. Twenty-nine states currently maintain renewable energy standards, and in his most recent State of the Union Address, the President said, "I'm directing my administration to allow the development of clean energy on enough public land to power three million homes."[4]

As the RFI recognizes, transmission is of central importance to increasing the penetration of renewable energy because regions rich in those resources are typically located far from population centers. For wind energy, in particular, most of the nation's best wind resources are located in the plains, from the Dakotas to Texas, while most of the country's population lives along the coasts.

A host of factors contribute to the challenges of expanding the nation's transmission infrastructure, and this RFI states that it "is focused on making the development times for generation and transmission to be more commensurate with one another." In general, transmission facilities take longer to develop than generation facilities, because by their very nature transmission lines traverse long distances, span different jurisdictions, and demand greater resources for construction. This variance in development times contributes to what has been labeled the "chicken and egg" problem, in which neither generation nor transmission developers are willing to commit to build facilities without the certainty that the other will likewise follow through on construction.

AWEA commends the RRTT for soliciting feedback on how to address the challenges associated with the incongruent development times for generation and transmission facilities and has provided comments below in accordance with the focus of this RFI. While closing the development time gap between these interrelated facilities holds promise for resolving

[4] *Available at* http://www.whitehouse.gov/the-press-office/2012/01/24/remarks-president-state-union-address.

transmission siting problems, the reality is that transmission line development will likely always take longer than most generation developments. From the experience of AWEA's members, problems associated with transmission development often originate because there is a dispute over the need for new infrastructure. Specifically, if transmission planners can link the need for a transmission line to a policy directive supporting it, such as a reliability standard, siting challenges have a much greater chance of being overcome than if the impetus is a more amorphous policy or economic goal. The Federal Energy Regulatory Commission's (FERC) Order 1000 has recognized the need for transmission planning to take into consideration public policy objectives, and as this policy continues to be implemented, AWEA hopes that it will result in more policy directives serving as the impetus for driving both the planning and development of new transmission infrastructure.

Below AWEA offers its feedback on the questions outlined in the RFI with respect to the incongruent development times between generation and transmission facilities. In general, AWEA's position is that federal agencies should do everything within their authority to reduce permitting times for transmission projects so that policy goals associated with renewable energy deployment are not compromised.

II. Responses to Select Questions

Question 1(a): *Describe the challenges created both by the timeline for obtaining regulatory permits for transmission and by the Incongruent Development Times.*

Response: Currently, transmission developers are unable to count on any certainty with respect to a time frame for obtaining regulatory permits for transmission and, in turn, generation developers do not have the needed certainty as to when, if at all, transmission will materialize to bring their energy to market. In other words, the uncertainty regarding permitting timelines creates two main risks for such projects: an indefinite length for getting a permit acted upon and

a delayed outcome with respect to that decision. Indeed, the development risks to both transmission and generation is the chief challenge posed by incongruent development times.

These risks may help explain the failure to build the needed transmission infrastructure in this nation over the last half century. And, this all translates into generation projects being substantially delayed, adding significant costs to those projects, and in the worst cases, those projects are "stillborn"— never come to fruition due the fact that there is no certainty that transmission projects will be present in a timely manner to bring their product to load. While federal agencies cannot guarantee if a transmission permit will ultimately be granted, as discussed herein, there are actions they can take to reduce the risk with respect to getting a permit acted upon in a timely manner.

Even though acquiring permits to construct transmission over federal lands is only one of the many hurdles a transmission developer must successfully complete when permitting a line that crosses federal lands, it is our understanding that this process takes up a disproportionate amount of time for a project and, in fact, becomes the primary driver of the development schedule. For instance, permits over state and private lands cannot be acquired until the federal agencies involved in siting the line decide on permits subject to their jurisdiction. In addition, it is difficult for associated transmission development activities, which have definitive timelines, to be met when developers have no concrete knowledge about when, or if, their permit over federal lands will be granted by federal agencies.

Question 1(b): *To what extent do the Incongruent Development Times hamper transmission and/or generation infrastructure development?*

Response: Long transmission lines can take a decade or more to permit and build while new generation facilities can often be permitted and built in less than three years. Considering the

current economic climate, new transmission projects will not be built without assurances of the financial commitment of generators to serve as customers. Likewise, generation developers require assurances that they will be able to transport their energy to population centers on a long-term and cost-effective basis. As discussed above, this creates a "chicken and egg" problem of generators not committing to build generation without transmission and transmission developers not committing to build transmission without generation.

Given that transmission projects generally take significantly longer to permit and construct than wind generation facilities, this lag in time often prevents wind developers from initiating projects since the possibility that the necessary transmission infrastructure may not be in place alters the risk/reward metrics of proposed developments, making it financially infeasible for investors. According to the DOE's *20% Wind Energy by 2030* report, "[a] new transmission facility, regardless of need or merit, will not be built until the participating utilities (and the financial community) have a very high degree of certainty that the cost of the facility will be recoverable in a predictable manner."[5] This required "high degree of certainty" is very difficult to achieve when generation and transmission development timelines are years apart. Merchant transmission developers are particularly impacted by the incongruent development times, as their projects typically carry an even higher degree of risk considering they are unable to rely on the financial support of a utility's customer base, and they require, by their very nature, significant upfront capital. In short, incongruent development times raise substantial financial barriers to not only transmission development but generation development as well, making it difficult to build a successful business model for either development activities.

[5] 20% Wind Energy by 2030: Increasing Wind's Contribution to U.S. Electricity Supply, at p. 99 (2008), *available at* http://www.nrel.gov/docs/fy08osti/41869.pdf.

Question 1(e): *How, if at all, do incongruent development timelines affect that decisions made in utilities' integrated resource planning?*

Response: Beyond impacting the decisions of wind developers themselves, utilities' integrated resource plans (IRPs) are also compromised by variances in development times. IRPs are usually long term plans that span 10-20 years. While transmission can be a component of an IRP, it is important to note that IRPs can and do change with regularity. Such plans provide guidance for investors, but are not binding and typically require at least some level of review by the state PUC, and in some cases, the relevant RTO or ISO. While IRPs can inform decisions on projects, IRPs do not in and of themselves result in approval or denial decisions with respect to individual generation or transmission projects. However, if an incongruent development time does introduce significant risks to the timing of and the likelihood of particular generation (such as renewable energy) getting built, we are concerned that utilities may decide to purchase or develop energy from less risky existing sources, even though those energy sources may be sub-optimal from an economic or environmental perspective.

Recent work for the Western Interstate Energy Board, the energy arm of the Western Governor's Association[6] describes interviews with utility generation planners, which inquired into their reactions to the development of large scale renewable energy projects and associated transmission in the WIEB "Western Energy Zones" project. In many of the interviews reported, utility generation planners told interviewers that the differences in timing between transmission

[6] WEIB and the WREZ project are described on the WEIB web site. Available at *www.**west**gov.org/wieb/* and http://www.westgov.org/wga/publicat/WREZ09.pdf.

and generation projects was a major barrier for utilities committing to develop renewable energy in the WREZ development zones.[7]

Question 1(f): *Do incongruent development timelines affect the ability of parties to enter into open seasons or power purchase agreements (PPAs)?*

Response: Incongruent development timelines do play a role in parties' decisions to enter into open seasons or power purchase agreements. For example, the Chinook project proposed by TransCanada was abandoned in 2010 after its nine month open season failed to elicit sufficient support from potential wind generation customers.[8] While a host of factors likely contributed to this occurrence, it is our understanding that the long development time for the transmission line and the late date at which it would have come into service worked to discourage interest among wind farm developers. Additionally, the transmission-generation lag time also prevents wind developers from making sound decisions about which open season proceedings to pursue and other strategies related to project development, such as whether to serve as an anchor tenant and secure transmission under that method.

The uncertainty that accompanies the incongruent development times also influences the ability of wind generators to enter into PPAs. PPAs typically include provisions that release the utility or the generation developer from their obligations in the event that the transmission associated with a project does not materialize. However, if a generation project has secured transmission, or has secured transmission that has a relatively short development time, this makes the generator more competitive for entering into PPAs.

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[7] **"**WREZ Phase III Report to the Western Governors: Executive Summary" and "Renewable Resources and Transmission in the West: Interviews on the Western Renewable Energy Zones Initiative." The report is on the RAP web site: http://www.raponline.org/featured-work/meeting-transmission-needs-in-western-state

[8] *See* MSTI, Chinook Could Play Vital Role in Congestion Relief – WECC, Sept. 28, 2011 ("We are not pursuing the project at the moment . . . ."), http://www.wecc.biz/library/StudyReport/Documents/Articles/msti-chinook-could-play-v.pdf.

Question 2: *Besides improving the efficiency of permitting and approving transmission, what other steps could the federal government take to mitigate the incongruent development times?*

Response: Under section 216(h) of the FPA, DOE is authorized to act as the Lead Agency to coordinate federal authorizations and related Federal Agency Reviews required to site an interstate electric transmission facility on federal land. DOE has previously delegated its 216(h) authority to FERC for transmission projects located within National Interest Electric Transmission Corridors (NIETCs) as designated by the Secretary of Energy. Section 1221 of the Energy Policy Act of 2005 (EPAct '05) requires that all federal agencies with authority to issue Federal authorizations enter into a memorandum of understanding to ensure timely and coordinated review and permitting of electricity transmission facilities.

Under the 2009 MOU,[9] DOE is to exercise its authority to designate a Lead Agency for coordinating all required federal authorizations and Federal Agency Reviews for transmission proposals other than applications made pursuant to section 216(b) of the FPA (projects proposed to be sited in a NIETC). This designation is supposed to recognize the agency with the most significant land management interests related to the project. We think that DOE should consider serving as the Lead Agency for all required federal authorizations and Federal Agency Reviews for transmission proposals. This would better allow timelines for processing such requests to be uniform.

In addition, the 2009 Memo merely states that Participating Agencies will ensure that timelines are fairly negotiated and met. Consistent with Section 1221, we think that the Participating Agencies should enter into another memorandum of understanding that will *ensure*

[9] Memorandum Of Understanding Among The U.S. Department Of Agriculture, Department Of Commerce, Department Of Defense, Department Of Energy, Environmental Protection Agency, The Council On Environmental Quality, The Federal Energy Regulatory Commission, The Advisory Council On Historic Preservation, And Department Of The Interior, Regarding Coordination In Federal Agency Review Of Electric Transmission Facilities On Federal Land, *available at* http://www.achp.gov/docs/TransmissionMOU.pdf (October 23, 2009) (2009 MOU).

the timely review and permitting of transmission facilities. This could include giving the Lead Agency more authority to establish binding schedules and ensure that the Participating Agencies meet those deadlines. We think that this can be done without altering the authority of any Participating Agencies and that all existing environmental reviews and safeguards can similarly be maintained. We appreciate that there are statutory and regulatory requirements that must be fulfilled prior to, for example, a Record of Decision being issued. These requirements, however, can and should be fulfilled in a timely manner and can be done in a manner that ensures that such requirements are met.

AWEA appreciates the fact that each agency with jurisdiction over a project has an independent legal obligation to comply with NEPA. The applicable regulations, however, allow cooperating agencies to adopt a lead agency's EIS if it concludes that its NEPA requirements and its comments and suggestions have been satisfied. The structure then is already in place for multiple agencies to cooperate and participate in the preparation of one EIS. This prevents duplicative applications, analysis and increased costs. When agencies refuse to cooperate in this fashion and instead require separate environmental analysis to take place, costs are increased for the project and its overall schedule is extended. Therefore, we think a new MOU should state that Participating Agencies considering the same proposed action with respect to granting permits for transmission should be required to act as cooperating agencies along with the Lead Agency in the preparation of the EIS.

We also believe that an entity should be established by the Participating Agencies, through an additional MOU, that is vested with supervisory authority from the Lead Agency responsible for NEPA compliance. The entity should be tasked with overseeing, supervising and closely coordinating activities to maintain an agreed-upon schedule for the required

environmental analysis. For example, the entity would have the responsibility of shepherding the project through the Environmental Impact Statement (EIS) stage, including performing the following functions.

In addition, we think the Participating Agencies should appoint experienced team leads for each resource area, such as biology and cultural. These project leads would oversee, supervise and coordinate activities among the various field offices in their resource areas. Project leads would ensure that field offices act consistently in their application of various agency policies and regulations and could help resolve disagreements among field offices.

Incongruent development timelines could also be mitigated through the expansion of DOE activities related to the designation of NIETCs, as authorized by Section 1221 of EPAct '05. Despite the fact that the DOE opted not to delegate additional authority to FERC with respect to designating these important transmission corridors, in a joint DOE-FERC public statement issued on October 11, 2011, DOE stated its desire to "[s]olicit statements of interest from transmission developers while considering what National Corridors to designate."[10] Consistent with this declaration, transmission project developers should be allowed to introduce directly transmission projects to the DOE and attain expedited permitting under the corridor designation.

Section 1222(c) of EPAct '05 authorizes Federal Power Marketing Administrations (PMAs) to accept third-party financing for upgrading existing transmission facilities and for new electric power transmission facilities and related facilities. Such third-party financing can expedite the transmission project development process in two ways. First, additional third-party funds can be used directly for financing the project. Second, because Federal PMAs have

[10] Available at http://energy.gov/articles/doe-and-ferc-joint-public-statement-back-stop-siting#main-content.

eminent domain authority over state lands within their jurisdictions, additional siting barriers to siting can be lifted. DOE should therefore urge the PMAs to engage in third-party financing as a means to accelerate the transmission project development process.

Question 3: *What strategies can the federal government implement to decrease the time that its federal agencies spend evaluating transmission permits?*

Response: *see answer above*

Question 4: *One way to make the Regulatory Permit process and development times between remote generation and attendant transmission more commensurate, is to decrease the time for permitting transmission by some amount. In determining how much time can be saved, developing a benchmark may be helpful. What benchmark should be used?*

Response: *see answers below*

Question 4(a): *Power Purchase Agreements (PPAs) as the Benchmark—How far in the future do load serving entities (LSEs) seek to purchase energy or capacity from remote sources? Do LSEs seek PPAs that begin delivering energy/capacity 3 years from the signing of the PPA? 7 years? 10 years? Please explain why PPAs are signed at this time.*

Response: The designation of a benchmark for setting an aspirational standard period of time by which all permits must be issued is an effective method of redressing the incongruent development times. The timetable that characterizes PPAs might be able to serve as an appropriate metric. Generally, load serving entities (LSEs) will issue a request for proposal (RFP) seeking generation resources that will come online within 1-4 years.

Question 4(b): *Development times as the benchmark—How long does it take to design, permit and build different types of remote generation?*

Response: There is not a "typical" development timeline, as there are a myriad of site-specific issues that impact timing.

Question 5: *In your experience, how long does it take to design, permit and build transmission?*

Response: As with constructing energy generation facilities, the unique characteristics of each transmission project prevent us from being able to define a "typical" development timeline. However, based on the experiences of AWEA members, it is not uncommon for a decade to pass between the time in which the permit process is commenced and when the project becomes operational.

Question 6: *Assume that Federal, state, Tribal and local governments sought to set a goal for the length of time used for completing the Regulatory Permitting process for transmission projects so that the development times between generation and transmission were more commensurate, what goal should that be? As the length of the project and the number of governments with jurisdictions increase so will the time necessary for permitting and approvals; accordingly, consider providing a goal that could be scalable according to the length of the line.*

Response: Given the respective characteristics of each type of development and the fact that transmission by its very nature must pass through a series of state and local jurisdictions, transmission projects will likely always have a longer permitting timeline than generation projects. AWEA's position is that there is no "magic number" by which reducing the incongruence in development times is necessary to realize benefits. Indeed, any reduction in that differential will result in an improved development climate for transmission. In light of the fact that most of the nation's best wind resources are located in areas that need long transmission

lines to get to market, any strides that are made in reducing the transmission permitting timeline will also help reduce related uncertainty surrounding generation development.

It is important to recognize that each transmission project faces unique challenges depending on its length, the jurisdictions it traverses, and a host of other characteristics. Due to this variety, AWEA supports the establishment of an aspirational development timeline that sets a standard duration during which all permits should be issued. As for the specific period by which all permits should be issued, the PPA timeline of 1-4 years detailed above could serve as an effective aspirational benchmark. To best align this timeline with the activities of transmission developers, the period should begin to run from the date on which the developer files its permit application. The implementation of such an aspirational standard would have the benefit of facilitating the goal of reducing the incongruent development timelines between generation and transmission projects.

III. Conclusion

AWEA submits these comments for the RRTT's consideration and respectfully requests that the RRTT act consistent with the points raised herein when carrying out its subsequent activities related to transmission.

Respectfully submitted,

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