



March 28, 2012

Mr. Lamont Jackson
Office of Electricity Delivery and Energy Reliability (OE-20)
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Submitted electronically via email to: Lamont.Jackson@hq.doe.gov

Re: Department of Energy - Rapid Response Team for Transmission Request for Information, RRTT-IR-01, 77 Fed. Reg. 11517 (Feb. 27, 2012)

Dear Mr. Jackson:

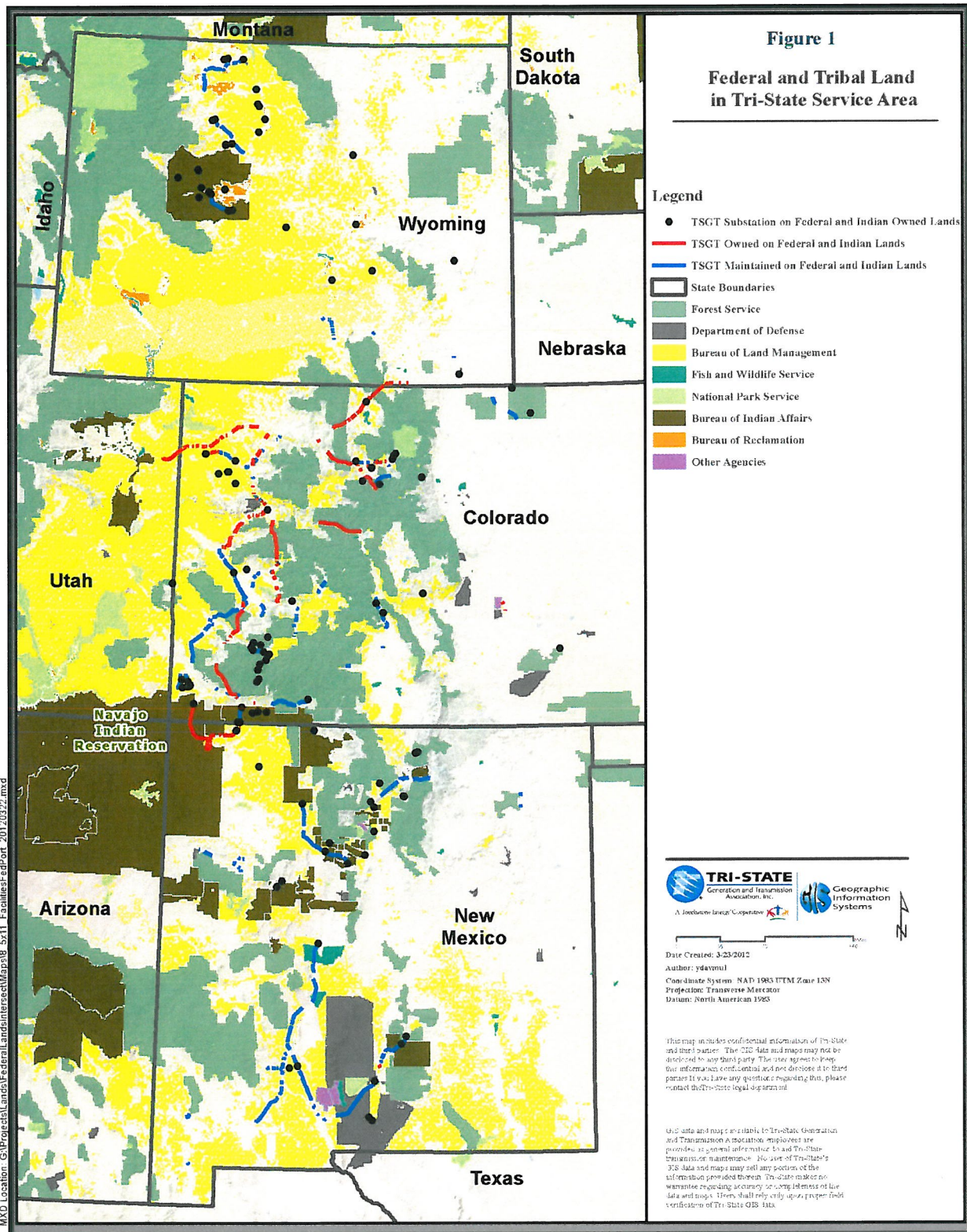
I. INTRODUCTION

Tri-State Generation and Transmission Association, Inc., (Tri-State) respectfully submits these responses to the specific questions raised in the Department of Energy's (DOE) above-referenced Request for Information (RFI) regarding federal efforts to resolve the issue of Incongruent Development Times for the siting and permitting of generation and its attendant transmission.

II. TRI-STATE'S INTEREST IN THIS REQUEST FOR INFORMATION

Tri-State tracks and provides comments on matters that may affect our ability to complete our mission, which is to provide our member-owners a reliable, cost-based supply of electricity. Tri-State is a cooperative corporation headquartered in Westminster, Colorado, whose primary functions involve the generation, transmission, transformation and sale of electricity at wholesale to its forty-four member distribution cooperatives and public power districts located in Colorado, Nebraska, New Mexico and Wyoming. Tri-State's member distribution systems serve nearly 578,000 metered customers (translating to a population of more than 1.4 million people). Tri-State's 250,000 square mile member service territory includes approximately 5,213 miles of high voltage transmission line and 135 substations and switching stations. Tri-State owns, operates, or maintains over 1,380 miles of transmission lines that are currently located on federal and Native American tribal lands (see Figure 1). In addition, we have 113 transmission facilities (i.e. substations, telecommunications) located on federal and tribal lands.

Transmission facilities are a vital link between generating sources and distributing electricity to our members. High voltage transmission facilities cover long distances because most generation facilities (including ones that depend on renewable energy, coal, and other natural resources) are often located some distance from the load. These transmission facilities form an integrated, interdependent grid and must be carefully designed, built, maintained and



managed. Tri-State planners and engineers recommend transmission improvements that must be completed in a reasonable timely manner to ensure a reliable, affordable supply of electricity.

Tri-State's transmission projects require compliance with local, state and federal laws, regulations, and executive orders (collectively referred to as "Regulatory Permits") before project approval is granted. Tri-State receives federal funding for many of our transmission projects from the U.S. Department of Agriculture's (USDA) Rural Utilities Services (RUS). This funding triggers National Environmental Policy Act (NEPA) compliance for projects. In addition to the NEPA process, transmission projects routinely require extensive federal and multiple agency permit authorizations and compliance that include, but are not limited to: Section 404 of the Clean Water Act (CWA), National Pollution Discharge Elimination System (NPDES) of the CWA, Migratory Bird Treaty Act (MBTA), Bald and Golden Eagle Protection Act, Section 7 of the Endangered Species Act (ESA), Archaeological Resource Protection Act (ARPA), Clean Air Act (CAA), and Farmland Protection Policy Act (FPPA). Additionally, Tri-State must obtain Special Use Permits from the U.S. Forest Service (US), and/or Grants of Right-of-Way (ROW) from Bureau of Land Management (BLM). Plans of Development and Construction, and Operation and Maintenance Plans must accompany the NEPA documents to obtain these federal authorizations.

As the demand and need for new and upgraded transmission facilities has accelerated, obtaining Regulatory Permits has become more onerous and time-consuming for Tri-State. Similar burdens are placed on responsible federal regulatory agencies due to the sheer volume of work and magnitude of time required to prepare, process, review and finalize the permit applications, NEPA documents, and compliance authorizations. Tri-State has a vested interest in supporting efforts by federal agencies to improve the existing transmission siting and permitting process, particularly in the Western power grid of the U.S. (Western Interconnection).

III. The Catch-22 Assumption

DOE stated in the Information Request that, "Since the Catch-22 is avoided when a load-serving entity (LSE) is developing the generation and transmission for its own customers, for purposes of answering the questions, please assume that non-LSE's are developing the generation and its attendant transmission." Tri-State takes exception to DOE's premise that the Catch-22 is avoided when a LSE is developing both the generation and transmission for its own customers. Being the LSE does not automatically assure a timely and congruent transmission development time. Even if developed by the same entity, renewable energy and other forms of generation can usually be permitted and constructed in one to two years, whereas related transmission can take much longer.

IV. DOE should broaden focus to include expediting existing electrical infrastructure improvements.

The focus on expediting new transmission facility permitting associated with new generation is a highly desirable goal; however, efforts on the part of DOE and the Rapid Response Team for Transmission (RRTT) to expedite transmission facility permitting should be broadened to include improvements to existing electrical infrastructure. The present electrical grid is stressed

and reaching capacity and key circuits need to be rebuilt or upgraded. Additionally, transmission rights-of-way (ROW) on federal and tribal land are expiring and in need of renewal. Rebuilding, upgrading, or repermitting existing transmission facilities frequently trigger the same regulatory review processes associated with new transmission facilities and frequently encounter the same protracted delays in approval. Therefore, a similar streamlined process sought for new transmission lines should be extended to these existing facilities improvement categories as well.

V. RESPONSE TO QUESTIONS

(1). The development timelines for generation and attendant transmission are often not coordinated or run concurrently. Because of the lengthy time to obtain regulatory reviews, permits and approvals (collectively “Regulatory Permits”), major new transmission lines can take significantly longer to develop than some types of generation to which the transmission would connect. This Request for Information will refer to the difference in development times between generation and transmission as “Incongruent Development Times.” Please answer the following:

a. Describe the challenges created both by the timeline for obtaining Regulatory Permits for transmission and by the Incongruent Development Times.

Response: Renewable generation and other forms of generation such as natural gas-fired resources can typically be developed much faster than the attendant transmission lines, particularly when the interconnection of the generation requires “Network Upgrades” to the Transmission Provider’s (utility) transmission system. In the absence of federal funding or federal regulatory approvals (e.g., air or water permits, etc.), if the project is located on private property there may be no federal nexus so NEPA will not apply. Also, generation sites typically involve fewer jurisdictions from which approval is required. Local county permitting may be required based on the state and may involve only one jurisdiction. However, the attendant transmission lines are linear and are more likely to cross multiple jurisdictions. Such transmission lines may be 40, 50 or 70 miles in length and may involve numerous other Regulatory Permits which increase the pre-construction approval timelines. Securing ROW for transmission lines may require approval from any number of local, state, federal, and tribal agencies, all of which have their own review processes. The resulting compliance process can take years, and on multiple-state projects, decades.

For example, in Colorado, transmission siting is characterized by strong local government involvement.¹ According to Colorado law, no public utility may construct electric transmission facilities within the boundaries of any local government unless the utility complies with the local government’s zoning rules.² In addition, a utility must notify the affected local government of its plans to site a major electrical facility before filing a request for a Certificate of Public Convenience and Necessity or before any annual filing with the public utilities commission that

¹Report of the Task Force on Statewide Transmission Siting and Permitting. Submitted to the Governor and Colorado General Assembly in Compliance with Senate Bill 11-045. December 1, 2011. Available at: http://www.dora.state.co.us/puc/projects/TransmissionSiting/SB11-45/Report/SB11-45TF_RptToGA_12-01-2011.pdf

²COLO. REV. STAT. § 40-5-101(3)

proposes or recognizes the need for construction of a new facility.³ Note that these regulatory requirements may or may not apply to the renewable developer (“Interconnection Customer” or IC) depending upon whether the IC qualifies as a Transmission Provider / Transmission Operator or Utility, in addition to being a Generator Operator / Owner. These state-specific requirements illustrate a further challenge. Not only are there difficulties associated with obtaining Regulatory Permits and dealing with Incongruent Development Times, the time required for project approvals also depends on what entity is developing the generation or transmission project since different requirements frequently apply to utilities as compared to independent, non-regulated project developers.

In general, as the grid becomes more regional in nature, and transmission lines are expected to do more and carry more power than they have in the past, the challenges of developing needed transmission are exacerbated. These challenges include committing to a multi-year project, raising capital to finance the project, addressing regulatory issues at the state and federal level, and addressing stakeholder concerns associated with siting. All of these challenges create risks and barriers to developing adequate transmission capacity. Ultimately, undue delays in obtaining Regulatory Permits and duplicative permitting efforts only serve to postpone the construction of needed transmission lines and the benefits such projects provide.

- b. To what extent do the Incongruent Development Times hamper transmission and/or generation infrastructure development?

Response: The Incongruent Development Times cause project proponents to carefully consider the feasibility and ability to obtain Regulatory Permits as part of the transmission planning process. In addition to electrical engineering analysis, and system alternative studies, project proponents must evaluate the time and feasibility of securing the Regulatory Permits in order to meet the stated purpose and need of the project. These same realities are not lost on those who may oppose new transmission line projects. Stakeholders who may disagree with a proposed project for various reasons increasingly utilize the regulatory approval process as a means to challenge and delay required project approvals. The result is project costs increase, planning assumptions must be revised due to the passage of time, and much needed, complicated, multi-jurisdictional transmission facilities get delayed. As project timelines increase, this hampers plans to service or add additional generation. This then inhibits certain states’ ability to develop and deliver their stated energy policies and Renewable Portfolio Standard (RPS) objectives. Subsequently, the achievement of national energy policy and objectives are delayed or thwarted.

For example, Tri-State and Xcel Energy partnered on a transmission line project in south central Colorado in 2008. The project was intended to address reliability concerns and facilitate the development of renewable energy by using one common set of transmission facilities. This would lessen environmental and land use impacts that would result from two separate projects and save consumers money. Following a lengthy process, the Colorado PUC issued a Certificate of Public Convenience and Necessity that was promptly challenged and then appealed to District Court. Meanwhile, numerous renewable energy providers are without Purchase Power

³COLO. REV. STAT. §29-20-108(4)(a)

Agreements (PPA) as much needed transmission capacity and interconnection opportunities are delayed. Now in 2012, our partner, Xcel Energy, is re-considering its participation in the project due to the inability to timely provide transmission service to renewable energy providers in the project area. Further delays and challenges are expected as the project proceeds through the NEPA process. In addition to the CPCN and federal approvals that are required, local approval from four counties will also be required.

- c. What are the primary risks associated with developing transmission vis-a-vis the timeline for obtaining Regulatory Permits as well as the Incongruent Development Times?

Response: The primary risk is the financial risk caused by delays in securing the Regulatory Permits. Transmission facilities require a substantial commitment to a multi-year process. Many Tri-State projects are financed through the U.S. Department of Agriculture's (USDA) Rural Utilities Services (RUS). Such projects require considerable amounts of capital that cannot be recovered until the project is complete and placed into service. If the project fails, then Tri-State has no mechanism to recover the funds from RUS and must absorb the costs from their general funds. The longer the development time, the longer the lag in cost recovery and, therefore, the larger the financial risk of the project.

In addition, transmission planning assumptions that were valid when the project was first proposed may need to be revisited when the regulatory approval process extends into years. Transmission and resource planning requirements are constantly evolving as are state and federal energy policies. Given the challenges associated with the timeline for obtaining Regulatory Permits and the Incongruent Development Times, this results in utilities attempting to "hit a moving target" or being forced to redesign projects in response to developments that occurred during the protracted regulatory approval process.

- d. How is the financing for developing the attendant transmission influenced by its lengthy development time and by the Dissonant (sic) Development Times?

Response: This is a major issue for renewable interconnect requests in areas where Tri-State doesn't have transmission access. It causes a chicken-and-egg situation where the transmission provider needs the developer to pay upfront for the transmission, but the developer can't get financing for their project until the transmission is guaranteed. When five to seven years is added to the schedule in order to complete an Environmental Impact Statement (EIS) for the transmission line, developers cannot withstand the delay and projects fail.

- e. How if at all, do development timelines and the Incongruent Development Times affect the decisions made in utilities' integrated resource planning, if applicable?

Response: Transmission infrastructure is critical to efficient resource planning. Projects with timelines that are overly long or with significant permitting risk are not considered viable for "must provide" IRP service obligations. Given the long lead times required for transmission approvals, Tri-State transmission planning must frequently be done far in advance of the associated resource planning if there is any hope of having the transmission approved in time for the generation in-service date. This leads to some transmission projects being proposed based on

assumptions of future resource needs, or known resource needs being delayed due to the inability to obtain timely transmission approvals. Tri-State is not suggesting we are in favor of integrated resource and transmission planning – simply pointing out the dilemma.

- f. How do development timelines and the Incongruent Development Times affect the ability of parties to enter into open seasons or power-purchase agreements?

Response: Parties are unlikely to assume open season transmission capacity purchase risk without a level of certainty to recover those costs. This certainty is obtained through purchase power agreements with end users – typically Load Serving Entities (LSE). These LSEs will not select the open season alternatives or suppliers using future open season capacity if development times, likelihoods, and incongruencies are not within their risk profile.

- (2) Besides improving the efficiency of permitting and approving transmission, are there any other steps the federal government could take to eliminate the barriers created by the Dissonant (sic) Development Times?

Response: The federal government should ensure proper consideration is given to the impacts and consequences that new policy directives have on critical infrastructure projects already underway in obtaining Regulatory Permits. Uncertainty regarding new federal policies on federal lands can impact the viability of developing a new generation resource and, as a result, transmission paths and transmission path sizing. For example, Tri-State is concerned that some of the management recommendations in the BLM's Greater Sage-Grouse Interim Management Policies and Procedures are not feasible management options, and may conflict with standards and federal regulations that utilities are required to comply with for safe and reliable delivery of power. Also, overly broad habitat designations to protect the Greater Sage-Grouse may have a negative effect on Tri-State's ability to efficiently and cost-effectively manage and maintain existing infrastructure.

Revised or proposed draft revisions of BLM Resource Management Plans (RMPs) and Forest Service Land Management Plans (LMPs) have removed or significantly reduced reliable and safe access to existing ROWs under new travel management plans and management under the Roadless Rule. The National Park Service (NPS) has also been expanding monument and park jurisdiction over existing ROWs and then finding the transmission line an "incompatible use" with future plans.

- (3) What strategies can the federal government take to decrease the time that federal agencies require for evaluating Regulatory Permits for transmission? What other steps can the federal government take to address the challenges created by Incongruent Development Times?

Response: Tri-State urges DOE to work with the other RRTT agencies to provide schedule certainty and assign accountability within the federal land agencies to deliver NEPA milestones on schedule. In particular, Tri-State suggests that DOE focus its attention on establishing specific line officer/state director performance goals to ensure project milestones are met.

It is Tri-State's understanding that the agencies will retain siting and permitting authority and approval discretion while interagency processes will continue. To ensure that project barriers are removed, the RRTT should use National Project Managers (NPM) that have demonstrated strong and proven project management skills. NPMs should set and establish reasonable timeframes for inter- and intra-agency review and response throughout the NEPA process. NPMs also need not, and preferably should not, automatically be NEPA specialists; rather NPMs should possess knowledge of the project, its purpose and need, and understand how to work across the various agencies while understanding the role of other Resource Specialists and Regulators. Tri-State currently works with Realty Specialists on all of our large transmission projects who, through no fault of their own, do not have the necessary experience or required knowledge of the NEPA process. Tri-State often gets conflicting information from Realty Specialists and NEPA Coordinators and there is a general lack of consistency from office to office. Consistency is one of our more significant issues with all projects. The Realty Specialists, NEPA Coordinator, and Resource Specialists all need to be moving in the same direction. The converse can also pose problems when Project Managers that are NEPA Coordinators become involved to the point of micro-managing the project.

The NPMs primary role should be to manage the project process through performance measurements and process schedules. Performance measurements and process schedules should be developed and implemented early in coordination with the project proponent, agencies and other state, local and public stakeholders. The RRTT should develop reporting standards for the performance measures and design explicit processes for staff input to which the involved agencies should submit to the NPM. Working with a Deputy Project Manager (DPM)/NEPA specialist, the NPM should be expected to be diligent in identifying delays and subsequently following up and escalating the issues with the appropriate line officer or the state/regional office to achieve swift resolution to ensure permitting timeframes are being met. Discussing project progress should also occur at regularly scheduled management meetings at the agency and interagency level. These Project Management practices need to be made a federal priority so the benefits can be more broadly realized.

The RRTT will also need to resolve institutional issues such as staff absences (e.g., annual leave, fire detail), expanding workloads under increased budget cuts, and loss of staff due to retirement at critical project junctures.

Tri-State is concerned that these institutional constraints are actually continuing to grow rather than be ameliorated by the RRTT. Budgets need to be increased to address the workload for federal staff who are already involved in multiple types of development projects with demanding environmental permitting schedules. Under these staff constraints, it is not uncommon for interdisciplinary team members to change during the course of the project resulting in extremely different input regarding the proposed transmission route and alternatives, which heavily impacts the timing and course of the environmental analysis. This also causes the agency to lose sight of what their decision-making role is, and the project becomes burdened with inappropriate and unreasonable analysis requirements and mitigation. The RRTT and NPM need to temper comments that are not constructive and reasonable from new Inter Departmental Team (IDT) members who lack knowledge of the project's history and process. The IDT should also consist of staff members who understand how transmission lines are sited, constructed and maintained.

The Council on Environmental Quality (CEQ) Guidance states that an Environmental Assessment (EA) under NEPA should take three months to complete and an EIS should take 12 months. DOE is well aware that those EA and EIS documents for transmission projects actually take much longer. While Tri-State understands there is no NEPA roadmap, and that NEPA is defined by “shades of gray,” there remains a significant need to use the many tools and opportunities already available to ensure that project approval is achieved quickly and correctly.

Several tools and opportunities should be implemented to improve the efficiency of projects, including “tiering” to National Programmatic EISs and other regional transmission projects, to incorporate existing information by reference rather than develop new documents that contain repetitive analysis and reanalysis; developing standard NEPA document templates to provide consistency from region to region, district to district, field office to field office and even within the same field or ranger district station office; preparing a template for the purpose and need for transmission projects that also considers reliability impacts, which should not generally vary from project to project. Additionally, the federal government should focus on identifying for inclusion in the DEIS only the environmentally preferred alternative and the agency preferred alternative on public lands and the federal government should not look to resolve routing controversies on non-public lands for federally handled projects; that is, the federal government needs to have a clear and consistent understanding of how to address projects on non-federal lands as “connected actions” or whether they have direct/indirect or cumulative effects.

For corridors that have already undergone a preliminary environmental analysis, such as the DOE 368 Preliminary EIS process, the RRTT should create finite timelines for an expedited review and the granting of rights of way. Likewise, the RRTT should ensure that the lead agency also sets/establishes/reiterates a set protest resolution period to address protests to a FEIS. This process should not take more than 60 days, as is too common today.

(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?

a. Example—power purchase agreements (PPA) as the benchmark: how far in the future do load serving entities (LSE’s) seek to purchase energy or capacity from remote resources? Do LSE’s seek PPAs that begin delivering energy/capacity 3 years from the signing of the PPA? 7 years? 10 years? Please explain why PPA’s are signed at this time.

b. Example—development times as the benchmark: How long does it take to design, permit and build different types of remote generation?

Response: There are significant policy obstacles to the timely siting and permitting of transmission, which creates a disconnect between generation and transmission planning. A renewable energy resource (e.g. utility-scale wind project) can be sited, permitted and built within two to three years in many cases, whereas large transmission projects can take seven to ten years or longer to materialize.

(5) In your experience, how long does it take to design, permit and build transmission?

Response: Seven to ten years depending on the transmission voltage level, the length and routing of the transmission line and the number of state/local jurisdictions and federal agencies involved. Tri-State has also encountered projects that have taken longer than ten years when there has been a protracted regulatory permitting process due to opposition and general regulatory process delays.

(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: Tri-State agrees there are more complexities dealing with long multi-state projects that include more regional and state offices, ranger districts, field offices and jurisdictions. It should be reasonable to expect the Lead Federal Agency to complete the NEPA process from ROW application to the Record of Decision and ROW Grant for long multi-state projects within three years and should not exceed four years, at most. Single or two-state projects should be done within two years and should not exceed three years.

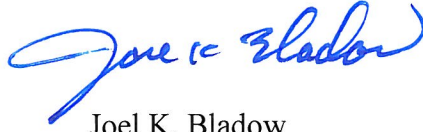
VI. Conclusion

Tri-State appreciates the opportunity to provide these comments in the interest of improving the siting and permitting of transmission. While the technological choices are well understood, transmission planning requires policy development, integration, and implementation on the state, regional, and federal level. Basic infrastructure needs are not just in one state or region of the country but required on a national basis. Options for improvements within the current planning, permitting and siting framework are somewhat limited in the immediate future. Formally altering NEPA is particularly difficult, if not impossible. There have also been no shortage of federal planning and rule recommendations or draft bills to “put teeth” in the designation and expedited siting of transmission lines. Therefore, the near-term success, or failure, of the objectives set out with establishment of the RRTT under the Administration's Nine Agency MOU largely rests in the ability to utilize the planning and project management tools and opportunities that already exist. Such tools and skills include the use of several strong NPMs, NEPA DPMs, and RRTT team members that are highly skilled planners who understand transmission siting, development and maintenance and the broad regulatory roles and requirements that each of the federal, state and local agencies have in the permitting process.

If you have any questions or need additional information, please contact Timothy Woolley, Assistant General Counsel – Regulatory Affairs at 303-254-3277 or twoolley@tristategt.org.

You can also contact Rick Thompson, Senior Manager, Transmission Land Rights and Permitting at 303-254-3211 or rick.thompson@tristategt.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joel K. Bladow". The signature is fluid and cursive, with the first name "Joel" being more prominent.

Joel K. Bladow
Senior Vice President, Transmission
Tri-State Generation and Transmission
Association, Inc.

cc: Richard Meyer, NRECA