

*Comments to the Honorable Steven Chu on the Proposed Delegation to the Federal Energy Regulatory Commission of Responsibilities Under Section 1221 of the Energy Policy Act of 2005*

Thank you for the opportunity to provide comments on a proposed additional delegation of authority from the Department of Energy to the Federal Energy Regulatory Commission under Section 1221 of the Energy Policy Act of 2005.

We recommend that the Department of Energy not delegate authority to the Federal Energy Regulatory Commission. We believe that a delegation at this time would be counterproductive in reaching our mutual goal of expeditious permitting of needed transmission in the Western Interconnection. States have not been the major obstacle to permitting new transmission.

Instead, under Section 1221(h), Federal agencies should focus on executing the promising Rapid Response Teams for Transmission to improve federal agency permitting of transmission, which is the major permitting obstacle to transmission projects in the Western Interconnection. The Rapid Response Teams should advance coordination efforts between state and federal permitting agencies for the selected pilot projects. The Teams should also develop a factual inventory of the factors inhibiting timely permitting action.

In the West, substantial transmission construction is underway that will meet the region's needs through at least 2020. For example, Subregional Planning Groups have identified 44 "foundational" transmission projects covering 5,000 miles that are expected to be in service by 2020. FERC staff has identified more than 8,000 miles of transmission projects in the Western Interconnection with proposed in-service dates by June 2013.<sup>1</sup> There are many additional proposed transmission projects.

More coordinated federal and state permitting action is our highest and most urgent priority. Diverting state and federal agency resources from permitting pending projects to deal with a reshuffling of federal agency responsibilities under

---

<sup>1</sup> FERC Office of Energy Projects Energy Infrastructure Update for July 2011.

Section 1221 will undercut achievement of our mutual objective of building needed transmission. Pursuing the delegation of pre-emption authority to FERC is unproductive given there is no evidence that untimely state permitting processes on private land is the primary cause of delay for currently proposed projects. Pre-empting states will do nothing to overcome the lack of demand for transmission, litigation and federal permitting delays -- the major limitations on transmission development.

If the Department of Energy decides to proceed with a delegation of additional authority to FERC, the Department should establish a **joint state/federal team to develop and recommend conditions that should be applied to any delegation of responsibilities** to FERC. For example, that team should consider such conditions as the following:

- Require common decision deadlines for state and federal permitting actions with consequences for agencies for failing to meet the deadlines;
- Require that any applicant for a National Interest Electric Transmission Corridor designation has had their project studied as part of a regional transmission planning process and that the project was found to be necessary under a wide range of plausible futures, demonstrates sufficient commitment from users to ensure financial viability, and, if not built, would significantly diminish opportunities to develop needed infrastructure in the future;
- Require, where appropriate, that applicants have their projects evaluated as part of a rigorous integrated resource plan review;
- Evaluate the effect of congestion on dispatch of resources and whether the extent of congestion and the costs it imposes are sufficiently large to justify adding capacity;
- Where congestion studies are deemed useful, rely on analyses done in regional transmission planning processes;
- Clarify whether and to what extent the delegation would apply to currently proposed transmission projects; and
- Identify conditions under which the one-year clock for state action would be halted (e.g., failure of timely completion of a federal EIS, incomplete permit applicants, litigation).

**Further, we recommend that the Department of Energy direct that a delegation agreement be accompanied by a statement of the problems** in the Western Interconnection and Eastern Interconnection being addressed. The problem statement should be backed by factual information that has been confirmed with stakeholders. The problem statement for the Western Interconnection should be informed by the analyses developed as part of the WECC Interconnection-wide Transmission Plan that will be delivered to you by September 30.

Finally, it is important that the designation of National Interest Electric Transmission Corridors be based on a demonstration that such designation is needed and is not simply a way for project sponsors to bypass public permitting processes.

Commissioner John Savage  
Oregon Public Utility Commission

Commissioner Susan Ackerman  
Oregon Public Utility Commission

Chairman Joshua Epel  
Colorado Public Utilities Commission

Commissioner James K. Tarpey  
Colorado Public Utilities Commission

Commissioner Matt Baker  
Colorado Public Utilities Commission

Chairman Ted Boyer  
Utah Public Service Commission

Commissioner Richard M. Campbell  
Utah Public Service Commission

Commissioner Ron Allen  
Utah Public Service Commission