



STATE OF NEW JERSEY
Board of Public Utilities

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September 9, 2011

The Honorable Steven Chu
Secretary of Energy
Washington, DC. 20585

Re: Delegation of Authority to the Federal Energy Regulatory Commission

Dear Secretary Chu:

The New Jersey Board of Public Utilities ("NJBPU" or "Board") welcomes the opportunity to submit comments regarding the Department of Energy's ("DOE") proposed delegation of authority to the Federal Energy Regulatory Commission ("FERC" or "Commission") to: (i) conduct congestion studies; (ii) designate National Interest Electric Transmission Corridors ("NIETCs"); and (iii) become the lead agency for the purpose of coordinating all federal authorizations and environmental reviews.

The NJBPU takes no position on the legal question of delegation; the statutes speak for themselves. To the extent, however, that the proposed delegation may help streamline the federal permitting process across different federal agencies, the NJBPU agrees with steps that will address those issues. In the official statement¹ on FERC Order 1000 on transmission planning and cost allocation ("Order 1000"), Commissioner Moeller noted FERC's lack of legal authority to require other federal agencies to act and the consequential inability of Order 1000 to address the delays in siting transmission projects. Commissioner Moeller's statement specifically mentioned the delays in the construction of the Susquehanna-Roseland transmission line, the New Jersey portion of which was approved by the NJBPU in 2010, yet remains pending before the National Park Service. The Board hopes that FERC's new role as the agency with power to establish schedules for the completion of actions under the Federal law may mitigate similar delays in the future.

¹ See: <http://www.ferc.gov/media/statements-speeches/moeller/2011/07-21-11-moeller-E-6.asp>

In delegating the authority to conduct congestion studies and to designate transmission corridors, the powers given to the DOE or to FERC by the Federal Power Act must not be expanded. The NJBPU believes that the delegation of authority to FERC should be subject to the following limitations / conditions:

1. FERC shall not designate project specific NIETCs. The NJBPU continues to advocate that NIETCs should be defined broadly on a geographic basis in order to afford FERC and states flexibility to site transmission lines in the most cost-effective manner. The DOE's designation of NIETCs in the past has been on regional basis and should continue being designated as such, especially now that FERC Order 1000 has strongly embraced the importance of cost effective planning and siting of transmission projects. Indeed this approach has been previously rejected and the states and interested parties have moved forward based upon that decision.
2. FERC shall wait until the conclusion of states' proceedings before initiating processes to exercise its backstop authority. The NJBPU believes that parallel state and federal permitting proceedings are both wasteful and an inappropriate usurpation of legitimate state interests that will render state proceedings moot. Furthermore, parallel state and federal proceedings will prevent effective consultation to states in the federal permitting processes; first because states that are in the process of considering an application to build a transmission line have not yet made the necessary findings as to the need for and the impacts of the proposed transmission line; and second because the state resources are normally limited and would likely be focused on dealing with the state proceeding. Current law requires an opportunity for the state to review permit petitions to site transmission lines before any Federal backstop siting authority can be exercised. This process must remain and not be disturbed by parallel state proceedings.
3. FERC shall adopt as a general rule the decision of the United States Court of Appeals for the Fourth Circuit in *Piedmont Environmental Council v. FERC*². The Court established in this case that the sentence "withheld approval [of a permit application] for more than 1 year" in the Federal Power Act under 16 U.S.C.S. § 824p. (b)(1)(C)(i), does not include the denial of a permit application by the appropriate state authority. FERC's conceptual paper explaining the delegation proposal seems to suggest that the Commission will adopt the Court's decision only for states under the Fourth Circuit's jurisdiction. The NJBPU asserts that there is no need for a discriminatory exercise of FERC's backstop authority and that the Fourth Circuit decision should be the rule for all circuits absent a finding from a court of competent jurisdiction. The delegation of powers should make this clear; otherwise it would serve to streamline a process that results on discriminatory treatment of certain states.

² *Piedmont Environmental Council v. FERC*, 558 F.3d 304. (4th Cir. 2009, cert. denied, sub nom *Edison Elec. Inst. v. Piedmont Envtl. Council*, 130 S. Ct. 1138, 175 L. Ed. 2d 972 (2010).

States have a legitimate interest to contribute to the development of a reliable and cost-efficient electricity supply system. The siting of new transmission lines is a key component of this interest and so the Board appreciates DOE's and FERC's efforts to improve the involvement of states in these federal processes and encourages the DOE to consider the limitations submitted herein to the proposed delegation of authority to FERC.

Truly Yours,

A handwritten signature in black ink, appearing to read 'Lee A. Solomon', with a long horizontal flourish extending to the right.

Lee A. Solomon, President
New Jersey Board of Public Utilities