



September 9, 2011

Mr. David H. Meyer
Office of Electricity Delivery and
Energy Reliability (OE-20)
U.S. Department of Energy
1000 Independence Avenue, SW
Washington DC 20585
congestion09@anl.gov

**Re: Response of the Large Public Power Council to Proposed Delegation
of Department of Energy Authority Under Federal Power Act § 216 to
FERC**

Dear Mr. Meyer:

These comments are submitted on behalf of the Large Public Power Council (LPPC)¹ in response to the proposed delegation to the Federal Energy Regulatory Commission (FERC) of authority invested in the Department of Energy (DOE) under section 216 of the Federal of Power Act, as outlined in the documents posted at <http://www.congestion09.anl.gov/>.

LPPC acknowledges the importance of alleviating obstacles to needed transmission development and sees value in an effort to site transmission lines more efficiently. LPPC has, in other circumstances, opined that the public could benefit from expanding federal siting authority in a manner which respects state and local interests and expertise. Nevertheless, LPPC objects to the proposed delegation to the extent that it is designed to facilitate the designation of corridors reflecting transmission facilities that are identified pursuant to FERC Order No. 1000² as those eligible for regional cost recovery. Further, LPPC

¹ LPPC represents 25 of the largest state and municipal utilities in the nation. The organization represents the larger, asset owning members of the public power community. Together, LPPC's members own approximately 35,000 miles of transmission, representing nearly 90 percent of the transmission investment owned by non-Federal public power entities in the United States. LPPC's members are Austin Energy, Chelan County Public Utility District No. 1, Clark Public Utilities, Colorado Springs Utilities, CPS Energy (San Antonio), Electricities of North Carolina, IID Energy (Imperial Irrigation District), Grant County Public Utility District, JEA (Jacksonville, FL), Long Island Power Authority, Los Angeles Department of Water and Power, Lower Colorado River Authority, MEAG Power, Nebraska Public Power District, New York Power Authority, Omaha Public Power District, Orlando Utilities Commission, Platte River Power Authority, Puerto Rico Electric Power Authority, Sacramento Municipal Utility District, Salt River Project, Santee Cooper, Seattle City Light, Snohomish County Public Utility District No. 1, and Tacoma Public Utilities.

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 76 Fed. Reg. 49,842 (Aug. 11, 2011), 136 FERC ¶ 61,051 (2011).



strongly objects to the rushed schedule for soliciting and considering comments in this matter.

In comments filed in response to the Notice of Proposed Rulemaking (NOPR) issued in the docket leading up to Order No. 1000, and on rehearing filed with FERC on August 22, 2011, LPPC has objected to FERC's proposal to allocate the cost of proposed new transmission facilities regionally to load serving entities whether or not they choose to use the facilities to meet their service needs.³ As a policy matter, LPPC believes that costs for new regional and interregional facilities should be recovered from entities choosing to use them, and not on an involuntary basis, whether service is taken or not. LPPC believes that the funding mechanism FERC has proposed risks substantial investment in unneeded facilities that the market would not otherwise support, and that this will skew decision-making in connection with choices among generating resources, only some of which would benefit from subsidized transmission construction under Order No. 1000. FERC's proposed cost allocation mechanism under Order No. 1000 differs from the exercise of its historical authority to allocate the cost of new construction among a transmission provider's existing customers to the extent that FERC now proposes to permit new transmission developers to recover costs from entities with whom they do not have an existing service relationship.

DOE's proposed delegation of FPA Section 216 authority to FERC appears to be largely motivated by an interest in siting of transmission facilities for which costs would be allocated region-wide pursuant to Order No. 1000. To this extent, LPPC believes that the delegation would not serve the public interest, and would be employed in the service of a cost recovery mechanism that LPPC believes to be unlawful.

LPPC believes the DOE has provided insufficient time to enable parties meaningfully to evaluate the proposed delegation and that the schedule for issuing a decision suggests too rushed a process for considering the comments that are filed. Further, the legality of DOE's actions are of concern. LPPC notes that it is at least an open question whether the delegation would be lawful under the Department of Energy Organization Act. While it is true that DOE has the authority to delegate certain of its functions, the specific references in FPA section 216 to authority respectively to be exercised by DOE and FERC suggest that the statute specifically contemplated discrete roles for each entity, not a unified procedure. Further, it is not at all clear that the impact of the decision in *Piedmont Environmental Council, et al. v. FERC*, (4th Cir. No. 07-1651) may be limited to the Fourth Circuit.

Particularly in view of the controversial purpose to which the proposed delegation of authority may be put, and in light of the substantial legal question whether the delegation is permissible, LPPC strongly counsels DOE against proceeding without the benefit of a

³ See Petition for Rehearing of the Large Public Power Council, filed August 22, 2011 in FERC Docket No. RM10-23-000.



full notice and comment procedure. The proposal now appearing on DOE's website has been the subject of private conversations between industry representatives selectively chosen for briefing by federal officials only weeks ago, and has been available for broad public comment for a matter of days only.

Thank you for this opportunity to provide our input.

Yours truly,

/s/

Bill Gaines
Director of Utilities and Chief Executive Officer
Tacoma Public Utilities
On behalf of the Large Public Power Council