Pew

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The Honorable Maria Duaime Robinson
Director
Grid Deployment Office
U.S. Department of Energy
1000 Independence Ave. SW
Washington, DC 20585

Comments of The Pew Charitable Trusts on the Department of Energy's Notice of Proposed Rulemaking, Coordination of Federal Authorizations for Electric Transmission Facilities

Docket Number DOE-HQ-2023-0050
RIN 1901-AB62

Director Robinson:

The Pew Charitable Trusts (Pew) is pleased to offer comments on the Department of Energy's Notice of Proposed Rulemaking (Notice) on Coordination of Federal Authorizations for Electric Transmission Facilities. We are an independent, nonpartisan research and public policy organization dedicated to serving the American public. Pew's energy modernization project works with state and federal policymakers and other stakeholders to build a clean, reliable electric grid; advance the nation's transition to electric vehicles; and expand renewable energy solutions, such as offshore wind.

Pew sees this proposed rule as a sensible step to promote timely upgrades to and expansion of the nation's electric grid in order to more rapidly decarbonize electricity generation. We support the three key elements of this proposed rule –

- the creation of a new framework for coordinated federal authorizations;
- the designation of the Department of Energy as the lead agency for a single National Environmental Policy Act (NEPA) review; and
- a requirement for developer participation in a pre-application process.

Taken together, these elements can make for expedited and effective permitting of much-needed transmission facilities. We also support the requirements for a public participation and engagement plan as well as the flexibility of a standard schedule which can be altered by the Department based on the complexity of the review and other factors.

Transmission Projects Present Unique Challenges for Permitting

As documented by multiple studies,[i] enhanced transmission projects are critical to the goals of clean, reliable, and affordable energy. Nonetheless, they can also present unique challenges in terms of review and permitting.

Not only do these facilities generally traverse long distances, as the Department points out, but the extent of those distances can itself translate to dozens or even hundreds of potentially affected parties who may become engaged in discussions involving easements, purchase, or possible condemnation of land. In addition to affected private parties, a range of entities with interests and obligations pertaining to the management of public landscapes – including Tribal, state, and local governments, and multiple federal agencies – must be consulted and offered opportunities to participate in the review.

At the same time, the financial aspects of major transmission projects may also involve uncertainties and complexities somewhat unique to the transmission industry.[ii] While the Federal Energy Regulatory Commission (FERC) some time ago adopted rules that allow for market participation by non-incumbent transmission utilities, the economic and regulatory factors that apply to projects by such developers within any given state can vary significantly and can create possible hurdles to routing approaches. These varying factors and the ease or difficulty of interconnection access for transmission projects can also affect the planning, scheduling, and eventual route selection of projects at various times within a review and authorization process, thus complicating evaluation of various alternatives.[iii]

Early Consultation and Complete Information Can Prevent Delay

While some commenters may be skeptical of the value of a mandatory pre-application phase or have concerns about the extent of required information, we see from previous studies of various types of infrastructure projects and environmental reviews evidence that an open, transparent, and comprehensive review process can work to the benefit of the public and developers. As stated in a report from the Roosevelt Institute earlier this year,

> "Pre-application meetings, early stakeholder engagement, permit sequencing, and transparent schedules are proven methods for improving efficiency without compromising environmental standards or public participation."[iv]

A decade earlier, Lee and Cunningham offered similar advice:

> "Streamlining does not require taking unnecessary risks, such as setting time limits that are not commensurate with the complexity of the necessary analyses, delaying field surveys for cultural or natural resources until actual project construction, or limiting or postponing meaningful public and agency engagement."[v]

Other retrospective reviews of infrastructure permitting underscore these conclusions: For example, Ruple and Race's review of NEPA litigation found "an inverse relationship between the amount of time spent on Environmental Impact Statement (EIS) preparation and the likelihood that an EIS would be challenged in court."[vi] An earlier study by Ruple of EISs for large oil and gas development projects in several western states likewise indicated a greater likelihood of delay and needed supplemental work in cases where draft EIS's had been fast-tracked.[vii]

DOE's Proposal Strikes a Reasonable Balance

Pew believes that DOE's proposal reasonably accounts for these complex considerations and, while it cannot guarantee speedy, easy decisions in every case, it offers an appropriately streamlined approach to coordinating and facilitating transmission project authorizations. It does so by establishing clear requirements for the submission of essential information regarding a project and potentially affected resources early on and by assuring that all federal agencies, other relevant entities, and the public have access to such information at the outset.

We are hopeful that DOE's proposed approach—which creates a forum for sharing of information across agencies and with the public, moves up consultation with Tribes and others, and proceeds in an iterative fashion—can increase public confidence in the review process, eliminate unnecessary authorization and permitting delays, and protect communities and natural resources.

On the question that the Department poses regarding the area of review, Pew recommends a construct which allows for some flexibility. The proposed one-quarter of a mile distance comports with the distance that FERC would use for project notification requirements in cases that meet the criteria of National Interest Electricity Transmission Corridors. However, there may be cases in which a wider area of review is warranted during consideration of the impacts of

a proposed transmission corridor for example, areas that include National Wildlife Refuges, designated wilderness areas, cultural resources, or Indigenous sacred sites. Indeed, a wider view of a corridor under consideration might also allow for identification of practical but preferable alternative routing options. Thus, we see this distance proposal as one that could be managed like the standard template schedule, which is set but open to change, depending upon the project under review.

Again, Pew appreciates this opportunity to offer comments and overall supports this effort by the Department to improve the process for permitting much-needed transmission projects across the country. We look forward to the finalization of the rule.

Sincerely,

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[i] See, for example, Joskow, Paul L., "Transmission Capacity Expansion Is Needed to Decarbonize the Electricity Sector Efficiently," Joule (2019), https://doi.org/10.1016/j.joule.2019.10.011 ; Kasam-Griffith, A., Turkmani, N. S., Wolf, M. J., Peluso, N. C. & Green, T. W. Transmission transition: modernizing U.S. transmission planning to support decarbonization. MIT Science Policy Review 1, 87-91 (2020),

https://sciencepolicyreview.org/2020/12/transmission-transition-modernizing-u-s-transmission-planning-to-support-decarbonization/ ; Einberger, Mathias, Teplin C., "The Best Time to Plan Transmission Was 15 Years Ago. The Second-Best Time is Now," RMI, April 22,2022, https://rmi.org/the-best-time-to-plan-transmission-was-15-years-ago-the-second-best-time-is-now/ ; Davis, Lucas W., Hausman, C., Rose, N.L., "Transmission Possible?: Prospects for Decarbonizing the US Grid," working paper 31377, National Bureau of Economic Research, June 2023, https://www.nber.org/system/files/working_papers/w31377/w31377.pdf

[ii] See, for example, Clifford, Catherine, "Why it's so hard to build new electrical transmission lines in the U.S., CNBC, February 21, 2023, https://www.cnbc.com/2023/02/21/why-its-so-hard-to-build-new-electrical-transmission-lines-in-the-us.html

[iii] See, for example, "How Are We Going to Build All That Clean Energy Infrastructure?: Considering Private Enterprise, Public Initiative, and Hybrid Approaches to the Challenge of Electricity Transmission," Niskanen Cneter and the Clean Air Task Force, August 2021, https://www.niskanencenter.org/wp-content/uploads/2021/08/CleanEnergyInfrastructure_Report_08.19.21.pdf

[iv] Pleune, Jamie, "Choosing between Environmental Standards and a Rapid Transition to Renewable Energy is a False Dilemma," Roosevelt Institute, May 2023, https://rooseveltinstitute.org/wp-content/uploads/2023/05/RI_Choosing-between-Environmental-Standards-and-a-Rapid-Transition-to-Renewable-Energy-Is-a-False-Dilemma_Brief_202305-1.pdf

[v] Lee, Judith and Cunningham, R., "Demystifying NEPA to Speed the Review and Permitting of Energy Generation and Transmission and Other Projects and Programs," Environmental Law Reporter, 2013, https://www.academia.edu/24272190/Demystifying_NEPA_to_Speed_the_Review_and_Permitting_of_Energy_Generation_and_Transmission_and_Other_Projects_and_Programs

[vi] Ruple, John C. and Race, K.M., "Measuring the NEP Measuring the NEPA Litigation Bur A Litigation Burden: A Re den: A Review of 1,499 Federal Court Cases," Environmental Law, Vol. 50, 2020, https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1008&context=stegner_pubs

[vii] Ruple, John C. and Capone, M., "NEPA, FLPMA, and Impact Reduction: An Empirical Assessment of BLM Resource Management Planning in the Mountain West," Environmental Law, 2017, https://dc.law.utah.edu/cgi/viewcontent.cgi?article=1003&context=stegner_pubs