

**Testimony of Philip D. Moeller
Federal Energy Regulatory Commission
Before the Committee on Energy and Natural Resources
United States Senate
Oversight Hearing on
Energy Development on Public Lands and the Outer Continental Shelf
March 17, 2009**

Mr. Chairman, and members of the Committee:

My name is Philip Moeller and I am a member of the Federal Energy Regulatory Commission (Commission). Today I appear before you to represent my views as well as those of Acting Chairman Jon Wellinghoff regarding energy development on public lands and the outer continental shelf (OCS). Siting of much-needed energy infrastructure, both onshore and offshore, is important to meeting our Nation's energy needs and the goal of decreasing our reliance on carbon-emitting energy sources. Energy development on public lands and the OCS will play an important role in meeting this goal and I appreciate the opportunity to discuss the challenges and opportunities associated with it.

The Commission has been siting energy infrastructure for over 85 years. It has been responsible for siting hydroelectric facilities and accompanying transmission lines since the 1920's and has sited natural gas pipelines since the 1930's. In exercising these long-standing responsibilities our agency has worked closely with other Federal agencies, including working with federal land management agencies in siting energy infrastructure on federal lands. We stand ready to ensure that this successful coordination continues and that Federal

agencies work closely in the timely siting and permitting of necessary infrastructure, including the transmission and hydrokinetic energy facilities that will be needed to take us through the 21st century.

The Commission's Experience in Siting Energy Infrastructure on Public Lands and the OCS

The Commission is well-versed in reviewing and authorizing critical energy infrastructure projects, and in establishing a regulatory regime that encourages the development of appropriate energy projects, while at the same time protecting the interests of consumers and safeguarding the environment.

Based on its decades of experience in hydropower projects and associated transmission lines, as well as siting natural gas pipelines, the Commission has developed comprehensive, efficient processes that provide for public notice and extensive public participation, including participation by affected Federal agencies, Indian tribes, and states. These processes ensure the early identification of issues and any study needs (and where possible, consensual resolution of them), development of a thorough environmental analysis, and decisions based on a complete record and consideration of the public interest. We have also learned that a single federal agency having the responsibility and the authority to make siting decisions with regard to projects that affect the national interest is clearly the most efficient way to site major energy projects. In a typical infrastructure proceeding, the Commission involves, from the prefiling process forward, federal and state resource agencies (as well as other relevant federal agencies, such as the

Department of Homeland Security and the Department of Transportation), Indian tribes, local government, and private citizens, to assist in the early identification of issues and the development of the record. After gathering input from these sources, the Commission crafts a decision that comports with all aspects of the public interest.

Principles for Siting Energy Infrastructure Facilities

The following principles of energy infrastructure development have worked well in the disparate infrastructure siting disciplines under the Commission's jurisdiction: 1) a pre-filing process that allows and encourages all affected stakeholders to identify issues and any study needs early; requires working on environmental review and a project application simultaneously; and involves common efforts to resolve conflicts and to identify an acceptable environmental alternative; 2) designating a single lead agency to make the overall public interest determination, while respecting the roles of other federal and state agencies; 3) allowing that agency to establish a schedule for all actions related to a proposed project, thus ensuring that agencies act in parallel and that the public can rely on predictable milestones; 4) building one federal record, including one environmental document, on which decisions are made; 5) providing for expeditious judicial review in a single United States court of appeals (either in the circuit where the proposed facility is to be sited or in the District of Columbia Circuit), based on the record developed by the lead agency; and 6) once a federal decision has been made, authorizing the permittee to use federal eminent domain

to acquire the property needed for a project that has been determined to be in the public interest. The Commission has applied these principles across the areas it regulates, as I review below. Of particular note, the Commission has a long history of working together with federal and state agencies to site energy infrastructure in the public interest.

Hydropower Licensing

Since 1920, the Commission has been charged with licensing and overseeing the operation of the Nation's non-federal hydropower projects. Today, the Commission regulates over 1,600 projects with the capacity to produce over 54 gigawatts of clean, renewable electric energy, which represents more than half of the nation's approximately 100 gigawatts of hydroelectric capacity, and over five percent of the electric generating capacity in the United States. Further, under existing authority in the Federal Power Act (FPA), the Commission has sited thousands of miles of primary electric transmission lines related to these projects that have helped deliver this power to the nation's consumers.

A number of the hydropower projects regulated by the Commission are located, in whole or in part, on federal lands, for the most part within national forests managed by the Department of Agriculture's (Agriculture) U.S. Forest Service; on lands managed by the Department of the Interior's (Interior) Bureau of Land Management (BLM); at dams operated by Interior's Bureau of Reclamation; on Indian reservations under the jurisdiction of Interior's Bureau of Indian Affairs; or at dams operated by the U.S. Army Corps of Engineers. The Commission has

worked successfully with these entities to ensure that the hydropower licenses issued by the Commission appropriately balance all aspects of the public interest, including the development of power, environmental protection and enhancement, recreation, flood control, water supply, and irrigation.

The Commission has executed a number of memoranda of understanding (MOUs) with other agencies with regard to the hydropower licensing process. These include MOUs with the Bureau of Reclamation and the Corps ensuring that Commission licensing actions appropriately recognize those entities' jurisdiction, an MOU with the State of Oregon regarding the licensing of offshore projects, and a series of agreements with a variety of agencies developed by the Interagency Taskforce on Hydropower Licensing.

In addition, the Commission developed, through a process of extensive interagency cooperation and negotiation, its integrated licensing process, designed to streamline the licensing process through the early identification of issues, the development of consensus regarding the gathering of environmental information, and the coordination of action by agencies with jurisdiction to issue necessary authorizations. This effort was premised on the understanding that dependable and affordable hydropower requires a licensing process that is efficient and fair.

While the FPA vests in the Commission the ultimate authority to license hydroelectric projects that are in the public interest, the act recognizes the need for the managers of public lands to have an important voice in the process. For example, the Commission regularly works with federal land managers pursuant to

section 4(e) of the FPA, which, with respect to licenses issued within reservations of the United States, as that term is defined in the FPA, reserves authority to the Secretary of the department managing the reservation to impose as license conditions whatever measures the Secretary deems necessary for the protection and utilization of the reservation. Thus, hydropower development on public lands occurs with the concurrence and assistance of these agencies.

Natural Gas Pipeline Certification

Under the Natural Gas Act, the Commission has for over 65 years issued certificates of public convenience and necessity authorizing the construction of natural gas pipelines. Under the Commission's oversight, the country has developed a robust, comprehensive pipeline grid that moves natural gas supplies from producing areas to consuming regions. Since 2000, the Commission has approved over 13,000 miles of new pipeline, with a capacity of nearly 95 billion cubic feet per day of natural gas. In total, there are nearly 215,000 miles of interstate natural gas pipeline in service that cross multiple states.

Natural gas pipelines often cross public lands, typically national forests or lands managed by BLM. In such cases, the Commission works with the Forest Service or BLM (which generally serve as cooperating agencies for the preparation of the Commission's environmental documents) to identify land management issues and to develop appropriate conditions to protect federal lands. Typically, the Commission requires natural gas companies to satisfy all of the federal land managers' concerns before allowing pipeline construction to begin.

The Commission has executed memoranda of understanding with a number of agencies with regard to their respective duties concerning natural gas facilities.

These include:

- Interagency Agreement Among the Federal Energy Regulatory Commission, United States Coast Guard and Research and Special Programs Administration for the Safety and Security Review of Waterfront Import/Export Liquefied Natural Gas Facilities, February 2004; and
- Memorandum of Understanding Between United States Army Corps of Engineers and the Federal Energy Regulatory Commission Supplementing the Interagency Agreement of the Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission, June 2005.
- Memorandum of Understanding Between the Department of Transportation and the Federal Energy Regulatory Commission Regarding Liquefied Natural Gas Facilities, April 1985;
- Memorandum of Understanding Between the Department of Transportation and the Federal Energy Regulatory Commission Regarding Natural Gas Transportation Facilities, January 1993;
- Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews Conducted in Conjunction with the

Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission, May 2002;

- Memorandum of Understanding Related to the Licensing of Deepwater Ports Among the U.S. Department of Commerce, U.S. Department of Defense, U.S. Department of Energy, U.S. Department of Homeland Security, U.S. Department of the Interior, U.S. Department of State, U.S. Department of Transportation, U.S. Environmental Protection Agency, Federal Energy Regulatory Commission, Council on Environmental Quality, May 2004; and
- Memorandum of Understanding on Coordination of Environmental Reviews for Pipeline Repair Projects, June 2004.

Siting Interstate Electric Transmission Facilities

Electric transmission lines, particularly in the Western part of the United States, may need to cross federal lands to bring energy to market. Timely permitting by federal land agencies can be critically important to ensuring sufficient transmission infrastructure, including transmission needed to move location constrained resources such as wind power to interconnect with the interstate transmission grid and reach consuming regions.

Most electric transmission siting is done by state and local authorities. However, the Energy Policy Act of 2005 gave the Commission the authority, in limited circumstances, to permit interstate electric transmission facilities within

national interest electric transmission corridors designated by the Department of Energy (DOE). While the Commission has not yet been called upon to exercise this authority, the Commission and eight other Federal agencies, including DOE, Interior, Agriculture, the Environmental Protection Agency, the Department of Commerce, the Council on Environmental Quality, the Department of Defense, and the Advisory Council on Historic Preservation, in July 2006, executed a memorandum of understanding on early coordination of federal authorizations and related environmental reviews required in order to site electric transmission facilities. This should ensure cooperation among the signatory agencies with respect to the siting of interstate electric transmission facilities.

With respect to its transmission siting authority, the Commission also has in place procedures that involve extensive information-sharing and consultation with state and federal agencies, members of the public, and other stakeholders. The Commission staff is currently working with one potential applicant under these regulations, using the prefiling process to provide information regarding necessary data and analyses.

Hydrokinetic Projects

In recent years, the Commission has begun to receive applications for preliminary permits and licenses for hydrokinetic projects, which are projects that generate electricity through the motion of waves or the unimpounded flow of tides, ocean currents, or inland waterways. An Electric Power Research Institute (EPRI) study has estimated the potential for wave and current power in our

nation's oceans to be over 350 billion kilowatt hours per year, which could increase hydropower production from its current 10 percent of our energy portfolio to 20 percent. Under its FPA authority to license hydroelectric projects, the Commission has issued and pending about 170 preliminary permits representing 10,000 megawatts of potential generation to entities studying hydrokinetic projects.

The Commission has responded to the prospects for this new form of renewable energy in a number of ways, including:

- Issuing a declaratory order with respect to the Verdant Project in New York City, concluding that short-term testing of new technology for projects that are not connected to the interstate electric grid may not require a Commission license.
- Issuing a policy statement with respect to the issuance of preliminary permits for hydrokinetic projects, designed to encourage competition.
- Developing a program to issue, on an expedited basis, short-term pilot licenses for hydrokinetics projects with limited environmental impacts, to provide for the testing of new technology and the gathering of environmental information, while ensuring environmental protection.
- Issuing the first license for a hydrokinetic project, for the Makah Bay Project, off the coast of Washington State.

- Issuing a license amendment authorizing the installation of the first instream hydrokinetic project, in the Mississippi River, in Minnesota.

The Commission's consideration of hydrokinetic projects has required the Commission to consider and resolve a number of legal and policy issues. For example, the proponents of the Makah Bay Project initially asked the Commission to declare that an offshore project was beyond the Commission's jurisdiction. The Commission concluded, however, that because section 23(b) of the FPA requires the licensing of project works located across, along, or in any of the navigable waters of the United States" and the FPA defines "navigable waters" very broadly, as "those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States," an offshore project within U.S. waters was required to be licensed.

Ultimately, the applicant, after initially filing a petition for judicial review of the Commission's order, concluded that the Commission's unified licensing regime was preferable to seeking authorizations from various agencies in separate proceedings, and filed for, and, following a public process involving extensive participation from federal and state

agencies, an affected Indian tribe, and other stakeholders, was granted a license to test its technology.

The Commission has also been asked to determine whether its long-standing FPA authority to license hydroelectric projects applies to hydrokinetic projects on the OCS or whether such authority resides in the Department of Interior's Mineral Management Service (MMS). The Commission determined that it has authority over such projects but that it can exercise such authority in a way that does not conflict with the authority of the MMS over other OCS activities. The staffs of the two agencies two years ago developed language for a memorandum of understanding pursuant to which MMS would continue to exercise its general authority over activities on the OCS, and the Commission would issue licenses for OCS hydropower projects. Under this agreement, the Commission and MMS could work together, as the Commission has for decades done with the Forest Service when it issues licenses and permits within national forests; with Interior, when it issues licenses and permits on Indian reservations, on BLM lands and on Bureau of Reclamation dams; and with the Corps of Engineers, when it issues authorizations for projects at Corps facilities.

This memorandum has not been signed but the type of framework it uses would rely on a well-established, successful scheme of regulation with respect to hydropower projects located on the OCS. It also would result in

all hydrokinetic projects, whether onshore, in state waters, or on the OCS, being subject to a uniform licensing and oversight regime. Moreover, it would permit exercise of the Commission's expertise in siting the primary transmission lines connecting hydrokinetic projects to the electric grid, which would not be the case if the Commission has no jurisdiction over the underlying projects. Finally, the Commission's jurisdiction over hydrokinetic projects on the OCS would not hinder in any way the timely develop of associated wind facilities (subject to MMS regulation) on the OCS.

The process used by the Commission for reviewing proposed hydrokinetic projects provides a procedure that is collaborative, comprehensive, and well-suited to addressing new technologies; has been designed, based on pre-existing, time-tested procedures and through public comments and lessons learned from experience, to foster the orderly, timely development of hydrokinetic projects; and offers all affected federal agencies a role in determining license conditions for projects within their areas of interest. I am pleased to report that Acting Chairman Wellinghoff and Secretary of Interior Salazar have begun active discussions regarding coordination of Interior and FERC jurisdiction related to the OCS and the expeditious resolution of an MOU between the two agencies.

Conclusion

The Commission has for many years successfully sited energy projects on different types of federal lands, working cooperatively with the agencies that manage those lands. I believe that this can continue in the future with respect to all of the types of energy projects the Commission sites, including hydropower projects located on the OCS. It is in our national interest that all government agencies join in taking whatever steps we can to ensure that the nation has a secure energy future. We must jointly overcome obstacles, as the Commission has a long history of working with its sister agencies to do, rather than stumbling over them.

Thank you again for giving me the opportunity to appear before you today. I would be happy to answer any questions you may have.