

**Comments of Duke Energy Corporation
to the Energy Task Force
in Response to the August 20, 2001 Federal Register Notice**

Introduction

Executive Order 13212 (May 18, 2001) established an interagency task force, chaired by the Chairman of the Council on Environmental Quality (CEQ), to ensure that federal agencies responsible for permitting energy-related facilities are coordinating their efforts. On August 20, 2001, the Council issued a notice requesting comments on the scope of Energy Task Force activities, specific suggestions, and examples of permitting or other decision making processes which should be improved or streamlined.

Duke Energy appreciates the opportunity to comment on this very important effort. Duke Energy Corporation is a \$49 billion energy company with significant energy assets in the areas of electricity generation, transmission and distribution, and natural gas gathering, processing and transmission. As such, we have considerable experience with the Federal, state and local regulatory issues associated with developing, upgrading, and maintaining energy facilities. We are very pleased that the Administration has formed the Energy Task Force to help identify and resolve interagency and intergovernmental coordination problems that impede sensible energy project development. We commend the Administration for taking on this important initiative.

These comments lay out several suggestions for the work of the Task Force. If we can provide further information or assistance as the Task Force pursues this initiative, please do not hesitate to contact David Mitchell, Director, Federal Governmental Affairs, at (202) 331-8090.

Summary

Duke Energy has the following suggestions for the Task Force:

FERC and NRC should participate. Given their central role in important energy regulatory matters, the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) should participate in the Energy Task Force activities to the extent possible. Their participation should, of course, recognize their status as independent agencies and respect the ex parte rules applicable to pending cases.

Coordination with State (and local) regulators should be emphasized. Improving coordination with state and local regulators can be of vital importance. For instance, state inaction under Section 401 of the Clean Water Act can stifle energy

projects. The Task Force should look for opportunities to coordinate with State regulators to expedite energy project reviews.

Focus on processes to improve coordination among agencies. Better coordination among Federal agencies offers great opportunities to improve the timeliness of Federal action, by coordinating schedules where multiple agency actions are needed and sharing the information needed for various regulatory reviews.

Build on ongoing efforts. For instance, significant work has been done by the Interstate Natural Gas Association of America (INGAA) on improving coordination among Federal agencies in the NEPA review process for new gas pipelines, and this work should be pushed through to fruition. Similarly, work on making administrative improvements to the hydropower licensing process, involving FERC, the Department of the Interior, the Department of Agriculture, and the Department of Commerce, should be continued.

Disseminate the message of E.O. 13212 within the agencies. Attention from high-level officials to improving review processes and expediting key energy projects can ensure broad staff attention to the policy announced in E.O. 13212.

Be strategic in getting involved in individual projects. The Task Force can be most helpful by working to improve the overall interagency and intergovernmental coordination processes and emphasizing the Administration policy in favor of expeditious review of energy projects. The Task Force will not have the resources to devote attention to a significant number of individual projects. The Task Force should work on individual projects where there are strategic opportunities, such as projects of national importance and projects employing innovative regulatory approaches.

Devote effort to processes that are “broken.” Energy project regulatory processes in need of reform include hydropower relicensing and natural gas pipeline approvals. In contrast, the NRC’s relicensing process, from our experience, works quite efficiently.

Advance Administration-sponsored legislative reforms in programs such as hydropower licensing reform. Sensible legislative reforms are needed in some multi-agency regulatory processes to expedite necessary energy development. Hydropower licensing reform is a prime example of a regulatory program where legislative reform is needed. This interagency task force with White House leadership should recommend and support such Administration legislative efforts.

Discussion

Duke Energy is a large diversified energy company. Its subsidiaries own and operate fossil-fuel-fired electric generation facilities, nuclear power stations, hydroelectric facilities, electric transmission and distribution facilities, natural gas gathering and processing facilities, and natural gas pipelines. These comments reflect Duke Energy's experience with energy regulation for this broad range of energy projects.

a. Natural Gas Pipelines

The Interstate Natural Gas Association of America has filed separate comments in response to the Energy Task Force's August 20th notice. Duke Energy endorses the INGAA comments, and highlights some of the key issues from our perspective.

New interstate pipelines, as well as expansions to existing interstate systems, require certification by FERC under the Natural Gas Act. The FERC approval process includes the appropriate National Environmental Policy Act (NEPA) review and verification that applicants obtain permits from numerous federal, state and local agencies. Although the FERC continues to improve its pipeline certification process in order to reduce unnecessary delays, the other federal, state and local agencies have not to date been as concerned about expedition. Better coordination would speed pipeline approvals, without compromising environmental requirements.

The Energy Task Force efforts should include the FERC in its activities.¹ The FERC is the primary regulating agency for natural gas pipelines and should therefore play a fundamental role in coordinating pipeline activities. FERC has undertaken significant effort to streamline pipeline certification² (and hydropower relicensing). The FERC experience in working with other Federal and state agencies in the certification process would be invaluable as the Task Force seeks opportunities for greater coordination.

Improving coordination between Federal regulators and state and local regulators is critical. Prior to construction, a pipeline company must obtain numerous local, state and federal permits and clearances. Poor inter-agency coordination, conflicting agency decisions, and duplicative data requests raise costs and slow development.

In 1999, INGAA released a study that looked at ways to improve coordination of state and federal agencies³ and included a model interagency agreement. INGAA's

¹ FERC should participate in the Task Force in a manner consistent with its status as an independent agency and with the ban on ex parte discussions of pending cases.

² See *Ideas for Better Stakeholder Involvement in the Interstate Natural Gas Pipeline Planning Pre-Filing Process*, FERC Staff, August 2001.

³ *Coordinating Federal Agency Review During Environmental Approval Process*, The INGAA Foundation, 1999.

subsequent NEPA study⁴ made recommendations on improving integration of NEPA review with National Historic Preservation Act (NHPA) and Endangered Species Act (ESA) compliance, and with other federal, state and local permitting processes; eliminating inappropriate, overlapping and inconsistent federal, state and local permitting and mitigation requirements; and enhancing interagency communication, coordination and decision making. Duke Energy urges the Task Force to build on INGAA's efforts and develop memoranda of understanding to better coordinate and streamline the pipeline review process.

The Energy Task Force will get the most "bang for the buck" by focusing its limited resources on developing interagency and intergovernmental coordination processes rather than focusing on the details of many specific projects. One critical energy project deserving the Task Force's attention, however, is the construction of a natural gas pipeline from the North Slope of Alaska to the lower 48 states. The Alaska Natural Gas Transportation System (ANGTS) project is subject to a unique regulatory and diplomatic framework represented by the Alaska Natural Gas Transportation Act (ANGTA), the Northern Pipeline Act in Canada and the Agreement on Principles between the two countries. The ANGTA framework is specifically designed to expedite regulatory review and construction of an Alaska gas pipeline, by, among other things, providing for special coordination of Federal and State regulatory oversight through the ANGTA-created Office of the Federal Inspector. While this structure for expediting regulatory action is sound and need not be altered, the Task Force can assist by monitoring progress on the ANGTS and, as necessary, reinforcing with the agencies involved the need to give top priority to this vital project.

b. Fossil Generation

Duke Energy North America, a subsidiary of Duke Energy Corporation, is a leading wholesale energy merchant, and as part of its business it develops merchant power plants. Duke Power is Duke Energy's regulated utility serving over 2 million customers in North and South Carolina. Both Duke Power and Duke Energy North America own and operate a significant number of fossil-fuel-fired power plants.

The timely approval of permits is an essential part of an overall successful power plant development effort. Duke Energy North America will permit approximately 30 new power projects each year. In order to expedite the permitting process, consistent application of regulations by all regions/states is extremely important, especially in the determination of best available control technology (BACT) and lowest achievable emission rate (LAER).

⁴ *Improving Implementation of the National Environmental Policy Act (NEPA)*, The INGAA Foundation, 2000.

The increased construction of new peaking and intermediate power plants exposes a need to revise permit language and content to more accurately take into account the operating characteristics of combined cycle and combustion turbine facilities. Specifically, it needs to be recognized that these plants will cycle up and down frequently, with significant impacts on emissions controls and emissions levels, especially during start up and shutdown. Permit variances for these excursions are necessary simply to be able to run these plants in the manner needed to support a reliable electric system.

New emission control requirements must be both environmentally and economically justifiable. New controls, such as selective catalytic reduction and oxidation catalysts, on simple cycle combustion turbines will significantly increase the price, decrease availability/reliability, but will not materially improve the environment. The Energy Task Force should support a dialog between the Department of Energy and the Environmental Protection Agency on how to most effectively reform the air regulatory programs, through administrative changes or legislative proposals, to protect the environment in a manner consistent with maintaining reliable electrical service.

The Task Force should look at local and state interface issues, including relationships between Federal and state air regulators, for instance, and the relationships between air regulators and other state and local regulatory decisions. In the process of state permitting for addition of a scrubber to a coal plant, for example, Duke Energy learned that siting and construction of the landfill for disposal of the scrubber material could take up to 4 years. Federal permitting improvements may not help tremendously if parallel improvements are not made at the state level as well.

c. Hydropower Relicensing

Hydropower constitutes 15% of Duke Power's generating capacity, and delivers 15-25% of each day's peak load. Duke Power is facing the relicensing of over 80% of its hydro facilities by 2008.

FERC expects to receive over 200 applications to relicense existing hydropower facilities through 2010, representing a total capacity of about 22,000 megawatts. Relicensing existing facilities often imposes new conditions that can reduce the electrical output of a hydro facility⁵ and can reduce its operational flexibility to generate at times when most needed for system reliability. Thus, hydropower relicensing can have important energy impacts.

⁵ A recent FERC analysis shows average generation losses of over 4 percent as a result of new conditions resulting from relicensing. *Report on Hydroelectric Licensing Policies, Procedures, and Regulations: Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000*, FERC Staff, May 2001, at 50 n.115. Other analyses suggest even greater losses.

President Bush's Energy Plan endorses hydropower licensing reform, and Duke Energy recommends that the Energy Task Force coordinate with White House leadership for the Administration to recommend and support legislative reforms. The record developed in Congressional hearings over the past two years, as well as the FERC's report to Congress on licensing process improvements pursuant to Section 603 of the Energy Act of 2000,⁶ show the need for reform of this cumbersome multi-agency process.

Through legislative reforms or changes in resource agency practice, for instance, mandatory conditioning authority (under sections 4(e) and 18 of the Federal Power Act) should be exercised in a way that leads to licensing decisions that balance energy, environmental and economic concerns.

The current practice under section 401 of the Clean Water Act (CWA) demonstrates the need for better coordination with state regulators. Section 401 water quality certificates for hydroelectric projects are issued by state agencies, and FERC action on the licensing decision cannot proceed without a certificate. New licenses and their environmental benefits are often delayed pending state action. Delays are commonplace. Moreover, state-imposed conditions often overlap with matters considered by FERC (most notably, on minimum flow conditions). Additionally, section 401 and the National Pollutant Discharge Elimination System (NPDES) permit requirements under section 402 of the CWA should be evaluated to eliminate redundancies in the respective approval processes. Perhaps the Section 401 certification and the NPDES permitting process could be consolidated into a single, unified approval.

Another example of valuable process reforms would be managing the resource agency requirements for detailed and extensive studies prior to acting on a relicensing application. Recognizing that studies are both expensive and time-consuming, studies should be requested only when truly needed to assess the impacts of the project.

The permitting processes for new power plants and major pipelines is typically 1-2 years. In contrast, the timeframes for relicensing existing hydropower projects can be as much as 10 years,⁷ at a cost to the applicant in the range of \$1 million per year.

d. Nuclear Generation

The Nuclear Regulatory Commission should participate, in an appropriate manner, in the Energy Task Force's initiative. It is a key energy regulator, and has made some licensing process improvements that may provide useful lessons for other areas of energy regulation.

⁶ *Report on Hydroelectric Licensing Policies, Procedures, and Regulations: Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000*, FERC Staff, May 2001.

⁷ FERC found that the average time needed to process license applications was 52 months, *id.* at 31, and the application is preceded by a multi-year pre-filing process.

Duke Power was among the first commercial licensees to work with the NRC in reinventing its nuclear license renewal process – a process that can deliver license decisions in approximately 4 years, including the time for the applicant to prepare the application, as well as for the NRC to act on the application. The NRC made significant improvements in its license renewal process. Duke believes that similar improvements can benefit the hydropower licensing process as well.

For example, in fulfilling NEPA requirements for relicensing, the NRC determined that many issues could be subject to generic review. Many environmental issues were addressed in a generic environmental impact statement. Only a limited number of site-specific issues remain and these are the focus of the case-specific environmental reviews.

Conclusion

Duke Energy Corporation commends the Administration for its initiative to streamline governmental review of energy infrastructure projects. Duke Energy appreciates the opportunity to submit these comments, and is prepared to work with CEQ and the other Energy Task Force members on this important effort.