



VIA INTERNET

August 17, 2006

Robin Heard
Director, Easement Programs Division
Natural Resources Conservation Service
P.O. Box 2890
Washington, DC 20013-1854

Submitted to: Rules@usda.gov

Re: Healthy Forests Reserve Program, Interim Final Rule with Request for Comments

Dear Director Heard:

The Edison Electric Institute ("EEI") is the association of United States shareholder- owned electric utilities, international affiliates, and industry associates worldwide. Our members have the potential to be affected by the Natural Resource Conservation Service's ("NRCS's") Healthy Forests Reserve Program ("HFRP") interim final rule published at 71 Fed. Reg. 28547-28562 on May 17, 2006.

EEI members generate almost 60 percent of all electricity generated by electric companies in the country, and serve approximately 70 percent of all electric utility ultimate customers nationwide. EEI's members pride themselves on careful and proactive management of their environmental responsibilities. These efforts yield positive results for the environment, electricity consumers, and shareholders.

EEI's members operate facilities and engage in activities that can interact with lands enrolled in NRCS conservation reserve programs, including not only the proposed HFRP, but also the existing Wetlands Reserve Program ("WRP") and Grasslands Reserve Program ("GRP"). As a result, EEI and our members have a significant interest in improving the operation of these reserve programs, in particular how the programs interact with existing and proposed electric generation, transmission, and distribution facilities.

EEI supports the goals of the NRCS programs to protect and restore some of the Nation's valuable and scarce resources, including the proposed HFRP that is the subject of this rulemaking. However, NRCS, its field personnel, and conservation reserve program enrollees need to coordinate the HFRP and other NRCS

reserve programs with national energy needs. Our nation relies heavily on its existing electric generation, transmission, and distribution infrastructure. These existing facilities are long-lived assets critical to supplying electricity to residents, businesses, and communities throughout the country. As the facilities or the rights-of-way on which they are located come up for renewal, and as utilities need to access the facilities for operation and maintenance, the presence of easements related to the NRCS reserve programs can create hurdles. In addition, there is a significant need for new electric transmission lines in many parts of the U.S. to meet reliability needs and to relieve congestion on the transmission grid. Congress recognized this and included several provisions to facilitate the retention and expansion of the electric transmission grid in the Energy Policy Act of 2005 ("EPAct 2005") that was passed last August.¹

Critical infrastructure, such as electric transmission lines, and conservation reserve lands can and need to coexist. However, our members have encountered certain situations with the WRP that have lead to concerns about the use of a similar programmatic approach for HFRP when it comes to working with publicly beneficial projects, in particular utility projects governed by state and other federal agencies. Programmatic accommodations that allow and encourage NRCS to work with the utilities can provide overall improved projects for all parties. In the following comments, we identify issues of concern and recommend action to be taken by NRCS to address these concerns, both in the HFRP context and in the other reserve programs.

Electric Transmission Lines Should Be Viewed as Fully Compatible With Lands Enrolled in NRCS Conservation Reserve Programs

Based on experiences with the WRP and GRP, EEI members have reported that at least some state NRCS offices have interpreted the structure of the reserve programs as not allowing co-location of electric transmission lines with lands enrolled in these programs. EEI encourages the NRCS to take programmatic steps to prevent such a constraint because utility and reserve program uses of the same land typically are viewed as fully compatible. For example, transmission lines are located on lands throughout the U.S. managed by federal agencies including the Bureau of Land Management, Fish & Wildlife Service, Forest Service, and National Park Service. The utility rights-of-way on these federal lands are managed in a way that is compatible with each agency's mission. The HFRP and other reserve programs should not be implemented in a way that considers utility transmission and other facilities an incompatible use.

¹ Pub. L. No. 109-58, 119 Stat. 594, 315, and 1283 (2005).

Public Notice Needed For Impending NRCS Projects

Siting and permitting utility facilities such as transmission lines can take several years from project beginning to final approval by state and federal agencies, the acquisition of the necessary utility easements, and construction of the facilities. EEI recommends that there should be public notice of and the opportunity for comments on all impending NRCS projects, including easements in the HFRP, WRP, and GRP. Public notice and comment would facilitate a transparent federal process and would allow other entities, such as utilities and siting authorities, the opportunity to know about a pending NRCS project prior to a reserve program easement agreement being signed with a landowner. Without such prior notice of projects under consideration by NRCS, an electric transmission line project could be sited and approved by state and federal agencies in the same location as a pending NRCS easement, or NRCS could approve an easement without taking into consideration the need for transmission or other utility facilities on that land or in that geographic area.

To avoid this conflict, notice and continued discussion by NRCS with utilities about current and future projects and infrastructure needs is vitally important. The time period when a project is undergoing state/federal agency review is particularly risky because no additional or new information about NRCS easement decisions is currently added to this process to inform decision-makers, and NRCS may designate easements that could complicate and delay facilities that are fairly far along in the siting approval process. The result can be faulty decisions by both NRCS and the siting authorities, with significant negative consequences for the nation's utility infrastructure.

Identification of Existing HFRP, WRP, and GRP Easements and Utility Projects

EEI members and other utilities also need to know the locations of existing conservation easements. If all conservation easements were cataloged electronically and regularly updated, the information could easily be shared with the necessary utilities. The only currently effective means of obtaining information about NRCS easements that have been taken on parcels of property along proposed transmission line routes is to do a title search on each potentially affected parcel of property to determine if an NRCS easement has been recorded. This is an expensive, time consuming task that could be avoided if the NRCS made the location of its existing and planned easements publicly available so that utilities could easily identify where the easements may be located. Local offices of the NRCS currently endeavor to do so electronically and do share that information, but in some member company experience, the local NRCS office have insufficient funding available to do this except on an annual basis.

Likewise, after a utility has identified formal alternative routes for new power lines, a mechanism should be set up for the utility to inform NRCS. In addition, after a utility has filed a formal application for construction of facilities, it would be helpful if NRCS would stay any further action on proposed easements within the identified utility routes until final action is taken on the application by state and federal agencies.

Existing Utility Land and Operation, Maintenance, and Upgrade Rights Need to Be Better Understood and Honored

NRCS needs to better understand and honor existing utility land rights (a) by providing adequate notice to utilities of pending HFRP and other reserve projects on property that already has utility easements and (b) by protecting those easements in any subsequent NRCS reserve easements. A better understanding of utility needs for access to operate, maintain, and upgrade facilities also is needed. Utilities have experienced impediments to maintaining power lines in the vicinity of easements enrolled under the WRP program, for example, even though the utility easement granting the utility the right to operate and maintain its facilities was secured prior to the wetland reserve easement. EEl is concerned the HFRP and other reserve programs could inadvertently result in barriers to utilities being able to perform state and federal mandated vegetation management along rights-of-way, especially danger trees just outside the rights-of-way. It should be noted that the U.S. Forest Service is a signatory to a May 25, 2006 Memorandum of Understanding ("MOU") in which EEl also is a participant regarding utility vegetation management, and the MOU reflects the Service's understanding of the importance of adequate vegetation management to sustain reliable electric transmission and the need to comply with electric system reliability and fire prevention standards. We would like NRCS to reflect this same understanding in its reserve programs.

The HFRP Program Should Foster Cooperation with all Stakeholders

To avoid future conflicts between the development of new, much needed transmission facilities, the HFRP program should be designed and implemented in a way that fosters cooperation between NRCS, enrolled landowners, and electric utilities. Communication among all parties is the key to fostering cooperation and avoiding future conflicts. The HFRP program should be designed to encourage cooperation and result in win-win solutions. Each of these functions would provide value to the utility siting process and the NRCS conservation programs. In turn, utilities also may be able to identify ways to help add value to the restoration projects being contemplated by the NRCS. The sharing of information and expertise can enhance both the ability of NRCS and utilities to accomplish their respective missions.

NRCS regulations should clearly allow transmission facilities to be located within reserved lands, without the need to modify individual easements.

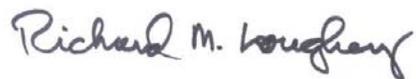
Transmission facilities are located on national forests and other federally reserved lands throughout the U.S., and transmission line rights-of-way provide valuable edge habitat and other ecological and wildlife benefits, with minor “footprints” or impacts on the underlying lands. EEI strongly encourage NRCS to clarify in its regulations that electric transmission facilities are compatible with its reserve programs and may be located on lands covered by NRCS easements without the need to modify each individual easement. For example, in many cases, linear utility projects may assist NRCS and the landowner with their joint goal of protecting restored areas by restricting access or other development in a buffer area.

Conclusion

EEI appreciates the opportunity to submit comments on the HFRP interim final rule and related WRP and GRP programs. As stated above, EEI supports the goal of the HFRP and these other programs to protect and restore natural resources through cooperative agreements with private landowners. Our members have expressed some concerns about the implementation of the existing reserve programs. These concerns center on the need for improved communication between NRCS and utilities and the need for better access to data on the location of existing and proposed conservation easements. EEI and its members look forward to working with NRCS to address these important issues.

If you have any questions about these comments, please contact me at 202/ 508-5647 or rloughery@eei.org, Henri Bartholomot in EEI's General Counsel's office at 202/ 508-5622 or hbartholomot@eei.org, or Meg Hunt in our Governmental Affairs office at 202/ 508-5634 or mhunt@eei.org.

Sincerely,



Richard M. Loughery
Director, Environmental Activities