

**Statement of
Karen E. Mouritsen
Deputy Assistant Director, Energy, Minerals, and Realty Management
Bureau of Land Management
Department of the Interior
House Natural Resources Committee
Subcommittee on Water, Power, and Oceans
H.R. 2358, Electricity Reliability and Forest Protection Act
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Introduction

Thank you for the opportunity to provide the Department of the Interior's views on H.R. 2358, the Electricity Reliability and Forest Protection Act, which amends the Federal Land Policy and Management Act (FLPMA) by adding new provisions regarding vegetation management, facility inspection and operation, and maintenance of electric transmission and distribution facility rights-of-way (ROWs). The Bureau of Land Management (BLM) works closely with thousands of public, private, and cooperative utility organizations to manage ROWs for the transmission and distribution of electrical power. The Department values these partnerships and the vital services that electric utilities provide for local communities and the nation. We also value our shared relationships and responsibilities with our federal utility partners, the federal Power Marketing Administrations.

The Department notes that the draft legislation was provided to us about one week before the hearing date and the bill was introduced late last week, less than a week prior to the hearing, leaving little time for analysis of the introduced bill's provisions. We will provide preliminary views on the bill in this statement, but the Department reserves the right to submit additional comments about the introduced bill to assist in developing the Administration's position if necessary. We also would be glad to engage in further discussion with the sponsor and the Subcommittee on the bill. As it is currently written, however, the Department opposes the bill's automatic authorizations and extremely constrained review timeframes.

The BLM manages roughly 245 million acres of federal land consistent with its mission to sustain the health, diversity, and productivity of America's public lands for the use and enjoyment of present and future generations. As part of that mission, the BLM has issued thousands of miles of ROWs for electricity transmission and distribution under FLPMA and other applicable authorities. The BLM recognizes that the approval of ROWs that are thoughtfully sited are crucial to the economic vitality of our nation. Congress reinforced this in Section 103 of FLPMA which defines ROWs as one of the principal or major uses of the public lands. Currently, the BLM administers over 15,000 authorizations for electric transmission and distribution facilities, ranging from low-voltage 12 kilovolt (kV) lines to high-voltage 500 kV lines and related infrastructure.

The BLM is committed to ensuring public safety and reliability with respect to the electricity transmission ROWs it administers. The BLM takes its responsibility for the administration of these ROWs seriously, values the opportunity to work with utility companies to serve our communities, and works simultaneously to meet its obligations for the management and protection of natural and cultural resources on the public lands as well as protection of public

health and safety. To support the necessary upgrades needed to improve reliability and increase capacity, the President's FY 2016 budget includes a program increase of \$5.0 million in the Cadastral, Lands and Realty Management program to enhance the BLM's ability to identify and designate energy corridors in low conflict areas and to site high-voltage transmission lines, substations, and related infrastructure in an environmentally sensitive manner.

Before the enactment of FLPMA in 1976, the BLM issued a significant number of ROWs under various authorities. These earlier ROWs were often issued for terms of 40 to 50 years and typically do not contain vegetation management and reliability standards. Because FLPMA repealed the prior authorities, the BLM can only address reauthorization under Title V of FLPMA. Reauthorization generally requires analysis under the National Environmental Policy Act (NEPA) and other laws that were not in existence when the original authorizations were granted. This process represents a substantial workload for the BLM, but ultimately leads to the issuance of ROWs with clear and consistent terms and conditions that address, among other topics, maintenance issues such as vegetation management.

In addition, the BLM is aware that the Federal Energy Regulatory Commission (FERC) issued an order in September 2013 approving updated transmission vegetation management standards. Those standards, which became enforceable for transmission owners in July 2014, were implemented to improve the reliability of electric transmission systems by preventing outages from vegetation located on transmission ROWs and minimizing outages from vegetation located adjacent to ROWs. The standards also address maintaining clearances between transmission lines and vegetation on and along transmission ROWs and reporting vegetation-related outages to the Regional Reliability Organizations (RRO) and the North American Electric Reliability Council (NERC). The BLM appreciates FERC's issuance of these standards and their emphasis on improving transmission safety and reliability. The BLM also appreciates the work of utilities which have increasingly sought to conduct vegetation management treatments within and adjacent to ROWs on BLM-administered public lands to comply with these new standards. In some situations, the current ROW authorizations may not be consistent with the updated NERC standards; in those situations the BLM works with the individual ROW holders to address their concerns.

Cooperative Approach

Under the Energy Policy Act of 2005, which directed federal land managing agencies to expedite approvals necessary to allow the owners or operators of electric transmission or distribution facilities to comply with standards for vegetation management that imminently endanger the reliability or safety of the facilities, the BLM and other federal agencies work to increase their collaboration with utilities. The BLM is a party, along with other Departmental agencies, the Environmental Protection Agency, the Forest Service, and the Edison Electric Institute (an association of shareholder-owned electric companies), to an interagency Memorandum of Understanding (MOU) that formalizes a cooperative approach to streamline the management of vegetation near utility facilities. The MOU facilitates a variety of mutually accepted goals, including maintaining reliable electric service, improving safety, reducing the likelihood of wildfires, reducing soil erosion, reducing environmental risk, streamlining administrative processes, and incorporating integrated vegetation management (IVM) where appropriate. Under the MOU, the parties agreed to a set of IVM practices intended to protect human health and the environment and also agreed to the principles of cooperation, timely communication, and

consistent management. The current MOU has expired, but its operational principles are still in use and the parties are currently working toward approving a new MOU.

The BLM works closely with utilities that hold many BLM ROWs, such as Arizona Public Service, NV Energy, and Idaho Power, to establish master agreements that provide standard terms and conditions that can be applied to multiple ROW grants. These agreements enhance consistency across BLM offices and create greater predictability and efficiency for the utility operators as they conduct business with the BLM. In Idaho, this cooperation has led to increased efficiency approving operations and maintenance proposals for transmission ROWs and associated infrastructure. Another way the BLM collaborates with utilities is through offering training to BLM employees with the assistance of industry experts.

The BLM appreciates any opportunity to work collaboratively with all our stakeholders and partners, including utility companies, and recognizes the value of advance planning for future maintenance needs when possible. Ongoing communication and coordination are also critical to ensuring that both the BLM and the utility can respond to vegetation management requirements in a timely manner.

Vegetation Management in Rights-of-Way

The growth of vegetation within utility ROWs can, in some cases, pose risks to the infrastructure needed to provide a continuous supply of electrical power. Trees can fall or otherwise make contact with overhead power lines, resulting in power outages or fires, which pose threats to public safety, private property, and natural resources. Ground fires can create heat damage to facilities or burn wooden power poles. Thus, to provide a dependable supply of electricity, utilities must manage vegetation near their transmission and distribution lines to prevent blackouts and wildfires; a goal shared by the BLM. Plans of development incorporate various information elements, including health and safety standards and maintenance actions needed to ensure that the ROW grant holders and the BLM know what to expect when vegetation management is undertaken. Advance planning is critical for the BLM to expedite any approvals necessary to allow ROW grant holders to conduct vegetation management activities.

When issuing or renewing a ROW grant to a utility company, the BLM completes an analysis required by NEPA and other statutes, including consideration of activities necessary for the ongoing maintenance and operation of those lines. The analysis may also consider other resources or activities appropriate for the location or management needs of a particular ROW. The BLM includes standard terms and conditions for the management of vegetation, agreed upon by both the agency and the ROW grant holder, when issuing the ROW grant. Under the terms and conditions typically included in ROW grants, a utility company may conduct minor trimming, pruning, and weed management to maintain the ROW or facility after simply notifying the BLM. Further BLM authorization is typically not required.

In some cases, BLM approval is needed prior to ground disturbance and the cutting and removal of any timber or vegetative resources that have market value. The utility company can often obtain BLM approval for the removal of hazard trees through a streamlined process (e.g., utilizing categorical exclusions). For an emergency situation causing an imminent hazard, no BLM pre-approval would be necessary. For other actions within the ROW, but beyond its scope, BLM approval is needed. These actions may require additional environmental analysis. In

general, the degree of analysis required for a specific vegetation removal action depends on the resources affected, the scope of the action to be taken, and the environmental analysis that had been previously completed. To facilitate efficiency, the BLM encourages early and ongoing communication with our utility partners regarding vegetation management needs and concerns.

Hazardous Fuels Management

The National Cohesive Wildland Fire Management Strategy represents a collaborative approach to restoring and maintaining resilient landscapes, creating fire-adapted communities, and managing wildfire response in a complex environment. The BLM is committed to protecting people, property, and resources from wildland fire, and uses a proactive approach to treat hazardous fuels. The BLM regularly completes hazardous fuels reduction treatments, including thinning, salvage, and prescribed burns.

The BLM routinely works with partner organizations to engage in land and watershed restoration, community preparedness, and hazardous fuels reduction activities. Departmental agencies employ an integrated approach to wildland fire management, including the prioritization of hazardous fuels treatments to mitigate the potential risk of wildfires. Utilities that hold ROW grants are an important partner in this approach. Hazardous fuels reduction projects that protect vital infrastructure can also help the Department of the Interior to protect rural communities from wildland fire, and the presence of important infrastructure is one of the factors that the Department considers in prioritizing hazardous fuels projects.

Electrical transmission ROWs can often provide significant potential for the establishment of fuel breaks and for linking hazardous fuels reduction projects ultimately creating a stronger network of fuel breaks, which contributes to landscapes that are more resilient to fire. Such projects help the BLM to protect communities and natural resources from wildland fire, and the utilities to ensure protection of their electricity transmission and distribution infrastructure. The Cohesive Strategy highlights the importance of working with communities to identify community values and infrastructure, including electricity transmission facilities, to be prioritized for proactive mitigation of wildfire risk.

H.R. 2358, Electricity Reliability and Forest Protection Act

H.R. 2358 amends FLPMA by adding new provisions regarding vegetation management, facility inspection and operation, and maintenance of electric transmission and distribution facility ROWs. Specifically, it requires the Secretary of the Interior and the Secretary of Agriculture to provide ROW grant holders the option of developing plans to conduct such activities to comply with applicable system reliability and fire safety requirements. The bill specifies that the Secretaries would not have the authority to modify the reliability and safety requirements, and that the Secretaries must jointly develop a process to review and approve within 30 days the vegetation management plans and any amendments to them. The review and approval process would have to include a way for the agencies to notify ROW grant holders of any changed conditions that warrant modifications to the plans, provide grant holders with the opportunity to submit proposed plan amendments to address the changed conditions, and allow the grant holders to continue implementing the portions of approved plans that do not adversely affect the conditions causing the need for modifications.

The bill mandates that the Secretaries apply the categorical exclusion process under NEPA to the vegetation management plans. The plans, which could cover one or more ROWs, would become part of the authorizations governing the covered ROWs and danger trees adjacent to the ROWs. Danger trees are defined as any trees inside the ROWs or trees outside the ROWs that would come within 10 feet of power lines or related structures if they fell. Once a plan is approved, the ROW grant holder would notify the granting agency of vegetation management activities it anticipates undertaking in the coming year, describe the activities, and certify that the activities conform to the plan.

In cases where vegetation within ROWs or danger trees adjacent to ROWs have contacted or are in imminent danger of contacting electric transmission lines, H.R. 2358 provides authority for grant holders to prune or remove the vegetation as long as they notify the appropriate agency within 24 hours afterwards. Similarly, in cases that are not deemed as hazardous but where vegetation within or adjacent to ROWs does not meet NERC, state, or local standards, grant holders may conduct vegetation management activities to meet those clearance requirements if the agency fails to allow such activities within three business days after receiving a request for authorization to undertake them. The bill requires the Secretaries to annually report on requests and actions under both of these situations. If either Secretary fails to allow ROW grant holders to conduct vegetation management in order to comply with federal, state, or local reliability and fire safety requirements, the bill relieves the ROW grant holders of liability if the vegetation causes or contributes to wildfire damage, loss, or injury.

Finally, H.R. 2358 requires the Secretaries to take additional steps regarding implementation. The bill encourages both Secretaries to develop training programs for relevant employees regarding electric system reliability standards and fire safety requirements. It also directs the Secretaries to propose implementing regulations within one year of enactment and finalize them within two years.

Analysis

As currently written, H.R. 2358 would apply to thousands of existing ROWs, some of which were approved decades ago and will soon expire. The Department supports early and frequent communication with the holders of these ROWs to plan for and address their needs, including the incorporation of plans for maintenance and vegetation management. The Department opposes, however, the bill's automatic authorizations and extremely constrained review timeframes. The BLM already provides opportunities for ROW grant holders to establish plans of operation that address vegetation management, and routine activities generally do not require separate BLM approvals. Most of the ROW grants issued within the past 20 years include such plans of operation, which address vegetation management. The bill's mandatory approval timeframe of 30 days for vegetation management plans is not realistic given the potential scope of such plans and the number of ROWs they could cover. Additionally, H.R. 2358 does not provide any flexibility for the agencies to address inadequate or incomplete plans, including such matters as cultural and natural resource needs, emergency or routine maintenance procedures, or procedures for treatment of vegetation adjacent to the ROW. The Department also notes that such a timeframe would not allow time for important coordination with local communities.

Likewise, the Department believes that the timeframe of three business days to respond to requests for treatments is problematic. The mandatory approval required under this provision

would preclude the BLM's ability to work with utility companies to modify requests when and where appropriate to ensure treatments satisfy BLM resource management responsibilities and address utility needs in a manner that is safe given current conditions. Furthermore, the Department believes the language in the bill should be clarified in several other ways. For example, the term "adjacent" is not adequately defined.

The Department defers to the Department of Justice regarding the waiver of liability, but notes that this provision may conflict with the Department's existing regulatory authority regarding strict liability, which is a standard term and condition of numerous existing ROW grants. The Department also notes that FLPMA and existing regulations provide the BLM with significant latitude to administer ROWs, and new regulations may not be necessary.

Conclusion

The BLM values our partnerships with the holders of electrical transmission and distribution ROWs, and we will continue to work toward further collaboration to accomplish our shared goals. We believe that early and coordinated planning and communication are essential to ensure that vegetation management can occur expeditiously and that ROW holders can comply with standards for vegetation management. We appreciate the opportunity to continue to work closely with ROW holders, and the Committee's attention to this issue. Thank you for the opportunity to be here, and I would be glad to answer any questions.