

Mark Hegerle
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: Docket No. AD11-2-000

October 28, 2010

Dear Director Hegerle,

The GEF LORAX Working Group wishes to thank you for the opportunity to present landowners' concerns from the perspective of our densely populated NYC metropolitan region. I commend you on the scope of the expert panel and on the wide-ranging conversation which emerged during the roundtable. I trust that LORAX can continue to be of help in the process of defining solutions for the vegetation management issues outlined at Tuesday's technical conference.

In this letter, I would like to follow-up on certain issues and perhaps re-emphasize concerns and observations about regulatory issues which LORAX believes may be appropriate for consideration and resolution at the federal level.

I must first begin, however, with a comment on David Morrell's remarks "for the record" that the New York State Public Service Commission's (NYSPSC) "policies and rules have not caused the stated environmental impacts in Westchester and other locations in New York." I can not understand the intended context of this statement as the NYSPSC's own docket for Case 10-E-0155 (which is a review of current New York regulations for Transmission Vegetation Management Plans, TVMPs) is full of statements and detailed submissions, including photographic evidence, that widespread environmental impacts in fact have occurred – and in many locations are the norm, not the exception.¹ Furthermore, municipalities such as the City of Yonkers and the Towns of Greenburgh, Yorktown, Pleasantville, Clarkstown, Chester and Warwick, as well as the Counties of Rockland and Westchester, have also compiled similar materials documenting such impacts as outlined in my prepared statement.

So I am left to wonder why this claim – apparently against the factual record in the case – would be made by a representative of the NYSPSC? I have thought about this since the roundtable and have concluded that only by a careful parsing of the statement can the true meaning be ascertained. By stating that NYSPSC's policies and rules have not caused such environmental impacts, Mr. Morrell is trying to emphasize the NYSPSC order from earlier Case- 04-E-0822 requiring enhanced vegetation management does not in fact require clear-cutting across the ROW (and it doesn't). Nor does it require specific mitigation of impacts, if any.

¹ The docket for Case 10-E-0155, Proceeding on Motion of the Commission as to New York State's Electric Utility Transmission Right-of-Way Practices, can be accessed at <http://www.dps.state.ny.us> .

But with this reading, another larger issue becomes apparent: the NYSPSC is also required to review, approve and oversee TVMPs of the various state Transmission Operators (TO). It is obvious from a review of the TVMPs for Con Edison and O&R that the actual in-field results of the operations in no way conformed to the approved TVMPs. Clear-cutting was not approved as a standard methodology. However, as reports started to flood in to NYSPSC, what oversight actions occurred? Where were NYSPSC's field staff to monitor and assure the public that the proper methodologies had been chosen and were being implemented in a "best practices" manner? Simply saying that "the policies and rules did not result in environmental impacts" glosses over the point that they (NYSDPS - Department of Public Service staff for NYSPSC) are required to be regulators of all such TVMPs and must therefore perform necessary oversight to ensure compliance. Thus, we can clearly see that the regulatory framework failed at the state level.

Moving on to other parts of the roundtable discussion:

Motivation

The hypothesis that Transmission Operators (TOs) are relying upon clear-cutting methods to avoid steep penalties for Category 1 or Category 2 class non-compliance events is refreshing in its clear understanding of the corporate profit motive. Avoidance of any risk of steep fines would be a mandatory compliance goal to ensure fiduciary responsibility to shareholders. And as the Category 1 fine may be based not just upon wire contact, but mere incursion of growth into the clearance zone, this would compel utility managers to implement the draconian clear-cutting that has been reported in many regions.

Perhaps there may be a regulatory mechanism to adjust fines such as a "three strikes" or perhaps a sliding penalty rule regarding non-contact incursions. Initial events within a period of time would result in warnings and further oversight inspections, not high fines.

Furthermore, LORAX believes that there must be specific regulatory constraints negating clear-cutting as an acceptable "best practice". While it might be put forward as a necessary step for some integrated vegetation management (IVM) methodologies, this should not be allowed without proper environmental review and mitigation planning.

Mitigation

All TVMP activities should be required to have full environmental analysis, review, public comment, and mitigation planning. This should be part of the generic FAC-003 process requirements to ensure both "best practices" and environmentally sound results.

Notification

Advanced notification of landowners must be guaranteed in conjunction with full disclosure of intended TVMP activities and available mitigation options. Hearings at the municipal level would also ensure that the public education component of both state and federal regulations would be fully implemented. Such notification should be sufficiently in advance of local TVMP activities (60 or 90 days) so as to provide a reasonable opportunity for landowners to research and address any legal concerns they may have.

Habitat Conversion

Support for the ANSI 300 Part 7 IVM standards and its accompanying “workbook” must be tempered with an understanding that the process of IVM itself results in the wholesale loss of valuable habitat for a wide range of plant and animal genera and species types. Thus, while implementing IVM creates an “early successional” landscape of low forbes (grasses), perennials and small woody shrubs which may provide habitat resources for ground nesting birds, turtles, rabbits and other small mammals, it also concurrently destroys habitat for tree-nesting birds, amphibians and many mammals. Furthermore, the disturbed earth of clear-cut zones become ripe ground for the spread of invasive plants and noxious animals (such as white tailed deer) along the right-of-way (ROW). In some situations, trimming and maintaining of trees in the border zone may be most appropriate for the surrounding community.

Many residents and landowners in our region have a strong preference for trees and woodland environments. This is one of many reasons that they have moved into the northern suburbs in the first place. So the standard IVM approach beginning with clear-cutting the ROW will cause a surge of negative public reaction. Education, by itself, will not ameliorate this reaction. However, better practices combined with mitigation will.

One means to balance the issue of habitat conversion & loss is to buffer the effects by means of implementing a “tiered” wire zone – border zone (“wz-bz”) vegetation management approach. In this management scheme, larger vegetation can be left in situ at greater distances from the centerline and conductors. The appropriate maximum height is a trigonometric relationship between tree height and actual wire clearance based on specific site topography. Also, species type and growth rate needs to be considered so as to eliminate risk from fall over (of the tree) towards the wire zone. By leaving buffers of native / natural vegetation in place, a reduction in mitigation would be required.

Thus, the tiered wz-bz management approach augmented with appropriate replanting should become a regulatory requirement, or at least detailed as the preferred “best practice.”

Tree Valuation

As I had outlined in the LORAX statement, the ecosystem-based valuation of environmental impacts due to tree removal should become a standard part of any environmental review, siting or TVMP approval process. Landowners, adjacent residents and municipalities would thus have a metric by which to properly value the impacts of tree loss and could better achieve reasonable mitigation or remuneration for such loss.

Training & Supervision

When approved TVMPs are not followed, and clear-cutting and widespread environmental impacts result, this can best be understood as a combined failure of training and oversight. TVMPs must require environmental surveys and in-field demarcation of protected areas as well as trees selected for removal. To achieve this goal, the TOs must be able to prove that there is adequate staff with the proper training to

perform such bio-assays and site surveys. This is not necessarily a certified arborist's training!

Likewise, during TVMP implementation, both state and federal regulators must ensure that proper monitoring and quality assurance of results occurs (i.e.; results in compliance with approved plans). Exceptions to the TVMP or to "best practices" and standards such as ANSI 300 Part 1 (which disallows topping and extreme pruning) should cause immediate site work cessation and heavy fines for non-compliance.

Easements

One of the more unexpected revelations of the roundtable was the archaic nature of many of the landowner easements. Often, these were secured in the 1940's and 1950's and the language reflects none of the modern concerns of citizens, nor understanding from environmental sciences. It is unclear whether or not many landowners even know the details of their easements.

Certainly, new easements for ROW expansion or new siting need to be created with clear, understandable language reflecting current concerns and understandings. Perhaps a generic national standard or "model easement" is needed? But for current owners with easements, the need to ensure proper education and advanced notification by the TOs is paramount.

It should also be noted that in the Westchester County area much of the transmission line right of way property is directly owned by the TO and thus the number of easements over private property is limited – the major one being from the NYC DEP over the Catskill Aqueduct lands. Yet, even if the utility directly owns the property, they must still be held accountable to follow federal and state environmental regulations, as well as to provide reasonable mitigation for impacts on adjacent landowners.

In closing, I would like to thank you once again for holding this FERC technical roundtable to help clarify the problems with and possible solutions to current Transmission Line Vegetation Management Practices, regulations and policies. Please contact the LORAX Working Group for any further assistance, review or analysis that you may require.

Regards,

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