

December 17, 2011



COMMENTS TO THE SELECT COMMITTEE ON EFFICIENCY IN GOVERNMENT -
NATURAL RESOURCE PERMITTING

Gaelectric appreciates the opportunity it's been given to submit comments to the Select Committee on Efficiency in Government. Gaelectric is a wind power development and energy storage company with offices in Great Falls, Butte, and Helena. Gaelectric has secured over 230,000 acres of windy private lands in Montana and arranged transmission interconnection and transmission service to move over 500MW of power to energy markets. Gaelectric has made a very significant, long-term financial commitment to develop wind energy and energy storage projects within Montana.

General Comments on Permitting

Generally, wind power projects do not require major operational permits. Wind power projects do not discharge air or water pollutants or generate solid or hazardous waste streams. Wind power projects cause temporary surface disturbances which can readily be reclaimed to meet landowners' preferences and/or return them to their original condition when the enabling land lease agreements terminate. Wind power projects typically require temporary construction permits which adequately protect Montana's natural resources from damage during the construction of wind power projects.

Wind power projects primarily affect amenities, such as aesthetics, rather than natural resources. Those amenities are properly and adequately addressed locally through comprehensive land use plans and ordinances. Comprehensive studies conducted by the Lawrence Berkley National Laboratory reveal wind power projects to not adversely affect property values of homes in the project area, <http://eetd.lbl.gov/ea/ems/reports/lbnl-2829e.pdf>. Nonetheless, wind developers like Gaelectric employ best management practices to separate project elements from homes, active raptor nests, and other sensitive areas to minimize impacts and public controversy.

While local opposition often emerges to development proposals in Montana, including wind power projects, the natural resource permitting requirements and public participation opportunities have worked well here. The major permitting laws in Montana have been tested, updated regularly to remain relevant and have protected and enhanced Montana's natural resources well since their enactment. Wind power projects pose no new or substantial threat to natural resources that

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wasn't contemplated and addressed by existing natural resource permitting requirements.

While the existing permitting system seems to be working well, Gaelectric believes there are two areas where the Legislature could clarify its intentions and improve its natural resources permitting requirements for wind power developers and others. The first is to clarify how environmental reviews completed under provisions of the Montana Environmental Policy Act (MEPA) can be used to condition State Land leases. The second is to review and revise the findings required for certification under the Montana Major Facility Siting Act (MFSA), in particular sections 75-20-301 (1)(a), (d)(ii), (d)(iii) and f, in light of the utility regulatory changes which have occurred over the past four decades.

Application of the MEPA review and findings to State Land leasing

Montana wind power developers are encouraged and routinely request the opportunity to lease State Lands within Montana for inclusion in their projects and to enhance education revenues to the State. Leasing State Lands is an "action" that triggers review pursuant to MEPA.

State lands are "held in trust for the people" pursuant to Article X, Section 11 (1) of the Montana Constitution. Under the Constitution, the Montana Board of Land Commissioners "has the authority to ... lease ... school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law", Article X, Section 4. The 2011 Legislature passed SB233 to resolve a long running debate over whether MEPA confers added authority to state agencies beyond what has been explicitly provided for in an existing statute.

Gaelectric feels it would be useful for the Legislature to clarify which "regulations and restrictions", if any, might limit the trust responsibilities granted to the Board of Land Commissioners in the leasing of State Lands. Further, it would help to have the Legislature expressly articulate how the Board of Land Commissioners might be restricted, if it can be restricted, from using the MEPA environmental review as a basis for imposing conditions within its leases. For example, can the Board of Land Commissioners or the Department of Natural Resources condition a lease on measures identified through the MEPA environmental review to mitigate potential wildlife impacts? To compensate for projected wildlife habitat loss? To mitigate aesthetic concerns?

Public participants in the MEPA process occasioned by a leasing request should fully understand what can and cannot be expected and what authority and latitude the Board of Land Commissioners might have to avoid unnecessary confusion, acrimony and potential legal challenges. The public participation process needs to be fair and open; that requires everyone to understand the rules at the outset.

Revising and Harmonizing the Basis of Need and Related Findings under MFSA

In the early 1970s, when the MFSA was enacted, legislators were focused exclusively on utilities with mandates to serve specified loads within protected service territories. Utilities typically owned the generation they used to serve their retail power customers. They planned and built the new generation required to serve their load growth. They owned and controlled access to the transmission lines they used to service their load customers. There were legitimate concerns utilities could use their singular control of the power system to plan and build unnecessary facilities or environmentally harmful facilities without a public discussion over what and why facilities should be built. MFSA was intended to provide a forward, prospective look at utility developments. The utilities' rate regulators were afforded a backward, retrospective look to determine whether utilities' investments were "used and useful" to the utilities' captive load customers.

A lot has changed since those days. Public policies have evolved to encourage non-utility generation and functional, open power and transmission markets to capture the economic efficiencies monopolists had ignored or actively frustrated. When the MFSA was enacted, there were no non-utility generators (NUGs), no competitively motivated Independent Power Producers (IPPs), no Federal Energy Regulatory Commission (FERC) Open Access Transmission Tariff (OATT) requirements, no Regional Transmission Organizations (RTOs), and no organized, functional electricity markets with full participation from IPPs and third party transmission providers. Jurisdictional utilities and their regulators virtually controlled everything and made all of the important decisions. The world has changed markedly since the time in which the MFSA was passed; the need determination and related findings under the MFSA have not. They must change to be relevant to the world we inhabit today.

The Legislature has amended the MFSA, eliminating most generation from its purview, to recognize new entrants to the power generation business and newly emergent power markets. No similar changes have yet been made to the MFSA basis of need and related findings for transmission facilities to account for the FERC OATT requirements and the emergence of non-utility, third party transmission providers. The MFSA still has a legitimate role in reviewing routing alternatives for proposed linear facilities to minimize their impacts and accommodate publicly expressed resource values. However, the basis of need and related findings are archaic.

Today's utilities have another, new set of customers for whom they are mandated to provide service, transmission service customers. Under the FERC OATT, jurisdictional entities are required to interconnect and provide transmission service to those requesting such service. Requests are made on the Open Access Same-Time Information System (OASIS), an electronic bulletin board, utilities maintain to comply with the FERC OATT. (For background, readers may visit - http://en.wikipedia.org/wiki/Open_Access_Same-Time_Information_System.) The FERC OATT protects utilities' native load customers from bearing any of the costs

which might be occasioned without benefits to them from the transmission additions and/or improvements needed to provide the requested, mandated service to transmission customers. Assuming they do not benefit from the new facilities, native load customers have been made indifferent under the FERC OATT to these additions which are secured and fully paid for by the transmission customers requesting interconnection and transmission service. Further, the FERC OATT mandates very public transmission planning processes that were historically the exclusive purview of the local utility.

The key point from the perspective of the MFSA “basis of need” finding is utilities no longer unilaterally control access to and use of their system as they did when the MFSA was enacted and have no discretion over whether they interconnect and provide transmission service when it is properly requested from them. The “basis of need” today is the FERC OATT as evidenced by the requests jurisdictional entities receive or make on their own behalf to interconnect and secure the transmission service they want to use. Construction of the transmission additions and system improvements required for satisfying all requests to interconnect and secure transmission service is mandatory.

Alternatives, such as energy efficiency to reduce power demand, which have historically been studied under the MFSA as alternatives to constructing transmission infrastructure do not address the “basis of need”. These measures do not provide the mandated service. Considering these alternatives under the MFSA is counterproductive and irrelevant within the context of today’s utility regulatory framework.

Similarly, the findings required in 75-20-301 (d)ii and (d)iii, “that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems” and “that the facility will serve the interests of utility system economy and reliability” are outdated. They predate the FERC OATT requirements for regional transmission planning and the formation of coordinated planning organizations such as Columbia Grid, the Northern Tier Transmission Group and other similar efforts to plan expansion of the interconnected, interstate grid across all affected utilities’ systems. These findings frustrate the efficient, coordinated expansion of the grid by introducing a more limited set of potentially conflicting interests into issues affecting matters of interstate commerce.

In summary, the basis of need and related findings under MFSA were adopted at a time nearly 40 years ago when utilities controlled access to their systems and their operations were very parochial and self-directed. Recent utility regulatory changes have broken down the resultant balkanized transactional restrictions and opened utility systems to new market entrants and market forces. In this regard the MFSA has not kept pace. The basis of need and related findings under the MFSA should be reviewed, revised and harmonized with the FERC OATT and other states’ siting requirements to recognize the public policy changes which have occurred since its original passage.

Closing remarks

Gaelectric is extremely pleased to have been asked to offer suggestions for study to the Select Committee on Efficiency in Government. If the Committee chooses to pursue the issues we've raised or similar related ones, Gaelectric would actively participate in your deliberations and would commit staff expertise and resources to the Committee to assist it in completing its work. Again, thank you for this opportunity to make suggestions for the study by the Committee.

Respectfully,

A handwritten signature in black ink that reads "Van Jamison". The signature is written in a cursive style with a large, stylized "V" and "J".

Van Jamison

Vice President, Public Affairs and Strategic Assets

Gaelectric, LLC