

United States House of Representatives Small Business Committee

Testimony of Mark C. Hayden General Manager, Missoula Electric Cooperative

“Expediting Economic Growth: How Streamlining Federal Permitting Can Cut Red Tape for Small Businesses.”

September 6, 2017

Good morning Chairman Chabot, Ranking Member Velázquez, and members of the Committee, my name is Mark Hayden, and I am the General Manager of Missoula Electric Cooperative (MEC) in Missoula, Montana.

Thank you for the opportunity to testify today, and allowing me to share my thoughts on how streamlining federal permitting can cut red tape for small businesses. Missoula Electric Cooperative is a proud member of the National Rural Electric Cooperative Association, the Montana Electric Cooperatives’ Association, and the Northwest Public Power Association. By way of background, MEC is a consumer-owned electric utility serving the electric distribution needs of approximately 15,000 meters in Western Montana and Eastern Idaho. Our workforce includes 41 skilled and dedicated employees committed to serving the energy needs of our member-owners. The nearly 2,000 miles of distribution line that we maintain deliver energy to some of the most wild and scenic locations in the country- 286 miles of which cross federal land.

For me, the timing of this hearing could not be more appropriate. The wildfires burning in Western Montana are having a devastating effect on our state and local economies. Currently five active fires have burned nearly 250,000 acres in, or adjacent to, MEC’s service territory, and personnel totaling nearly 2,500 are protecting lives and property on many fronts. Lives have been lost, homes have been lost, and hundreds of resident evacuations due to the threat of fire, including my own family. In the small community of Seeley Lake, smoke concentrations have hovered in the hazardous range for weeks, and a lake normally bustling with summer recreationists has been closed to allow aircraft access to the precious fire-fighting water resource. In short, a community whose economy relies heavily on summer tourists has been dealt a devastating blow. I fully recognize that the fires burning in Montana today were all lightning sparked, but also realize the increased risk that long delays in federal approval of permit applications, inadequate fuels reduction programs, and other factors bring to our co-op and to our infrastructure.

Electric cooperatives face a myriad of permitting and regulatory requirements in order to conduct our business. For some it may be permitting a new gas plant, and for others relicensing an existing small hydropower installation. At MEC, our permitting challenges have centered around our Special Use Permits and the National Environmental Policy Act (NEPA) review

process used to amend these agreements. We work diligently to maintain positive relations with those who hold the permits authorizing our power lines on federal land, primarily the U.S. Forest Service and to a lesser degree the Bureau of Land Management. However, long delays in application processing hinder our ability to adequately plan, and add significant project cost.

We are constantly working to improve system reliability and reduce the risk of power-line-caused wildfire, and vegetation management is a critical component of our program, especially on federal land. A great example of this occurs regularly in the clearing of danger trees outside of our rights-of-way during our co-op's Routine Operations and Maintenance activities.

Representatives from MEC and local Forest Service officials communicate periodically and expectations are understood. As a result, managers and crews can adequately plan for the time and financial resources necessary to complete a project. But this positive situation is not found on all rights-of-way managed by the Forest Service. Other cooperative representatives have testified before Congress of inconsistent federal land management policies, long delays in approval and review times, and unnecessary liability resulting from these delays.

In short, federal reforms are needed to cut red tape and make it easier for electric cooperatives to manage vegetation to limit downed power lines, prevent catastrophic fires, and respond to emergencies.

For that reason, we commend the House for recently passing H.R. 1873, the "Electricity Reliability and Forest Protection Act" that received strong bipartisan support. This legislation would give electric utilities more consistent procedures and a streamlined process in order to better manage utility rights-of-way.

Unfortunately, in other cases, significant delays occur, especially during major Operation and Maintenance activities, where compliance with NEPA is a concern. Such approvals are a requirement of our Special Use Permit, and necessary to assuring electricity service is not jeopardized as a result of work needed on rights-of-way.

For my co-op in Montana, our service area, like so many parts of the West, has been adversely affected by the Mountain Pine Beetle infestation and the dead and dying trees left in its wake. One of the areas hardest hit is in the Swan Valley north of Seeley Lake, Montana. Obviously, one of the most effective ways to improve service reliability and mitigate fire risk is to bury an overhead power line. As you can imagine, each instance of tree/power line contact can pose significant risk of wildfire ignition under the right environmental conditions. However, converting overhead distribution lines to underground is an expensive proposition, especially for a small cooperative like MEC, so this cannot be standard practice.

After considerable internal discussions regarding our situation in the Swan Valley, the decision was made in December 2013 to request permission to bury approximately 6.1 miles of overhead three-phase line on Forest Service land. An application was submitted to the Forest Service district office having jurisdiction over the proposed project, and, just one month after submittal, we were notified that approval of our request was expected by June of 2014.

In May of 2015 I was invited to provide testimony before the House Subcommittee on Water, Power and Oceans regarding the delay in approval of this project application. In preparation for my testimony, I placed one final call to the local Forest Service District Ranger to express my frustration just prior to the subcommittee hearing. This local official indicated that if I wanted to see things change I should take up my issue with Congress, at which point I told him that I intended to the following week! Two days later on Saturday, May 16th, the weekend prior to the hearing, MEC received unofficial notice via email that all associated field work had been completed on our project, confirmed that our co-op had paid the Forest Service for all associated costs, and that we were authorized to begin construction.

In all, MEC waited nearly 18 months for approval on the Swan Valley project. Our cost recovery bill from the Forest Service indicates that 10 different individuals spent an average of 2.3 days each on our project. Most troubling to me is that the project qualified for categorical exclusion, meaning neither an environmental assessment or environmental impact statement was required. I can only imagine the number of months or years project approval would have taken had those more in-depth investigations applied.

This situation I have described exemplifies the harm to small businesses of unnecessary delays. To be effective in business requires adequate planning, especially for large construction projects, and the current process for federal permit approvals makes that impossible. Firm timelines must be incorporated into the approval process, and early, consistent consultation with coordinating agencies should be mandated. The uncertainty surrounding the approval process when working with the Forest Service adds unacceptable risk to every project. For example, materials ordered too early not only add to the carrying cost during the delay, but also the risk of outright cancellation if the permit is not approved. Materials ordered too late risk long lead times in which an entire construction season can be lost to the changing seasons. When service reliability and fire prevention are a concern, inconsistency and delays risk unnecessary power interruption and increased potential for powerline sparked fires. All this leads to higher costs, which, ultimately, are borne by the owners of our cooperative utility – our members.

Proper vegetation and fuels management on federal land not only affects our utilities operations, but also those of our customers. Many of our customers, including large commercial accounts, are directly impacted by the Forest Services' actions in our region. For example, our largest customer is one of the few remaining family-owned lumber mills operating in Montana, and in working closely with them, I get to hear firsthand about some of the challenges faced by this small business. An executive at the company tells me he views the cumbersome and time-consuming process to fulfill NEPA requirements as the single most important barrier to implementing timely stewardship and restoration treatments on our National Forests. The process commonly has evolved into PhD dissertations of 400-800 pages for every decision to be approved by a line officer within the Forest Service. According to him, this process averages 3-5 years if there are no delays or interruptions from budget delays or fire suppression costs, which consume manpower and resources.

Montana's Governor has identified nearly 5 million acres of hazardous fuel conditions across the state in need of immediate fuel reduction treatments to reduce excess forest fuels. Over 590,000 acres across various ownerships in Montana have burned so far this year. Regulatory barriers to

proper vegetation and fuels management threaten not only the operations of our utility and the livelihoods of our members, but also of those businesses we serve.

Not all the challenges we face stem from NEPA. Earlier this year, our small utility submitted a second request for burial of a power line located in a different Forest Service district from the one I mentioned previously. This straightforward project proposes to bury approximately 4 miles of overhead line, much of which is located in heavily wooded forest today. The new location would be in highway right-of-way along U.S Highway 12. Regarding that request, I just received communication asking if we had considered delaying our project until next spring, even though it has been communicated that NEPA is not an issue. Problems cited by the Forest Service include delays in consultation with coordinating agencies, and resources stretched thin because of fire. We fully understand the reality of these factors, but believe that cross-agency consultation, review, and approval for a very straightforward and routine application should not take a year to achieve.

Mr. Chairman, members of the committee, for us the status quo is not an option. We need streamlined, expedited procedures that allow for timely implementation of projects to protect the long-term health of our forests, our small businesses, and the overall economies of the communities we serve. The best way to accomplish that is to provide consistency, flexibility, and accountability into the federal permitting and permit amendment processes, especially when system reliability and fire prevention are driving factors. We believe this can be done without abrogating the intent of federal regulations. I appreciate this Committee's work in examining how small businesses, such as Missoula Electric Cooperative, can benefit from regulatory reform and for holding this hearing today.

Thank you again for the honor of testifying before this Committee and I will be pleased to answer any questions.