



April 18, 2011

Mr. Dave Casey
Mr. David Olsen
U.S. Army Corps of Engineers
Attn: CECW-CO-R
441 G Street, NW
Washington, DC 20314-1000

TRANSMITTED VIA E-MAIL

RE: Nationwide Permits (COE-2010-0035 and/or ZRIN 0710-ZA05)

Dear Messrs. Casey and Olsen:

On behalf of the Solar Energy Industries Association (SEIA) and its 1,000 members, I would like to express our appreciation for the U.S. Army Corps of Engineers' ongoing efforts to support the deployment of solar energy projects. The United States has some of the richest solar resources in the world and we should not miss an opportunity to create jobs and generate clean, reliable energy with an inexhaustible, domestic resource. While the solar industry welcomes the Corps' efforts to improve its processes related to solar energy development, we have significant concerns over the proposed nationwide permits for renewable energy generation. In short, we are concerned that such permits will hamper, rather than facilitate, new solar energy development.

We hope the attached comments are of assistance to the Corps and help yield a result that both the Corps and the solar industry find workable. To that end, I respectfully request the opportunity for SEIA to discuss these comments directly with you and will be contacting you.

Thank you for your consideration.

Best Regards,

A handwritten signature in blue ink that reads "Daniel M. Adamson".

Daniel M. Adamson
Vice President of Government Affairs

Contact

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New Renewable Energy Generation Nationwide Permits Should Include an Exemption from Pre-Construction Notification Requirements

While SEIA appreciates the U.S. Army Corps of Engineers' (Corps) efforts to develop a nationwide permit (NWP) tailored to renewable energy generation, SEIA is concerned that the proposed NWPs A and B will hamper, rather than aid, solar energy development. This is because the proposed NWPs A and B do not include a pre-construction notification (PCN) exemption for impacts under 1/10 acre, but instead require that every applicant submit a PCN. A PCN is a formal process through which a project developer is required to submit a formal notification package, including delineations, and requests confirmation from the district engineer that an activity complies with the terms and conditions of an NWP prior to commencing the proposed work. 76 Fed. Reg. 9,178 (Feb. 16, 2011). District engineers will respond to a PCN within 45 days of receiving a completed PCN. If the project developer has not received a reply from the Corps within 45 days, the developer may assume the project is authorized. *Id.* at 9,179.

Prior to issuance of this Federal Register notice, solar developers wishing to install generation tie (gen-tie) lines or other linear electrical facilities would qualify for a NWP 12 (Utility Line Activities). NWP 12 applies to activities required for the construction, maintenance, repair and removal of utility lines and associated facilities in U.S. waters, provided the activity does not result in the loss of greater than one-half acre of U.S. water. The definition of "utility line" includes any cable, line or wire used for electric transmission. *Id.* at 9,190-91. NWP 12 includes a PCN exemption whereby any project that does not, among other things, discharge greater than 1/10 acre of U.S. water is not required to submit a PCN. The effect of which is that to the extent practicable, developers seek to minimize their wetland impacts so they can remain under this threshold, thereby benefitting the project, the Corps and the resources themselves.

Since the issuance of NWP 12 in 2007, solar projects have qualified for a NWP 12, and have met the PCN exemption criteria. All of these projects have had no or minimal impact on the aquatic environment, and have provided clean, renewable energy to power thousands of homes. To continue the development of solar power projects in an efficient and cost-effective manner, proposed NWPs A and B should include a PCN exemption like NWP 12. Without a PCN exemption similar to the exemption in NWP 12, NWPs A and B will effectively impose a new burden on the linear aspects of solar projects, and would subject renewable energy projects to a more stringent permitting regime than non-renewable utility projects that continue to qualify for NWP 12.

The Corps Should Explain Why Proposed Nationwide Permits A and B Require a Pre-Construction Notification Requirement

With the introduction of the proposed NWPs A and B, SEIA's interpretation of the Federal Register notice is that the Corps will subject future solar projects, including their gen-tie lines

and other linear electrical facilities, to NWP A, as opposed to NWP 12, as NWP A applies to solar power and its attendant features¹, including utility lines.²

Because proposed NWPs A and B require a PCN for all activities, renewable gen-tie line developers that discharge less than 1/10 acre of U.S. waters will thus no longer be exempt from submitting a PCN. The Corps has not explained why a PCN is required under NWPs A and B. There is nothing unique about a solar project's gen-tie line and other linear electrical facilities when compared to another utility line. Many solar project gen-tie lines and other linear electrical facilities have met the PCN exemption requirements under NWP 12, and would meet those same requirements if the exemption were provided under NWPs A and B. Furthermore, the fact that the same PCN exemption from NWP 12 is included in the proposed new NWP 12 indicates that the Corps believes the exemption is reasonable and effective at minimizing environmental impacts from these linear facilities. The Corps should therefore include the same PCN exemption in NWPs A and B, or otherwise explain its reasoning behind requiring a PCN in NWPs A and B. If, however, the Corps cannot include the PCN exemption in NWPs A and B, renewable energy generation entities should continue to have the option to use NWP 12, as they have in the past, for siting and constructing utility lines necessary for renewable energy projects.

Without a PCN Exemption, Solar Developers Will Have to Undertake the Burdensome and Expensive PCN Process

The Corps states that "Nationwide permits, as well as other general permits, are intended to reduce administrative burdens on the Corps and the regulated public, by efficiently authorizing activities that have minimal adverse environmental effects." 76 Fed. Reg. 9,175. Yet, requiring the solar energy industry to undergo the PCN process for utility lines and other linear electrical facilities will have the opposite effect, and will actually increase the administrative burdens on both the Corps and the regulated public.

NWPs A and B increase the administrative burden on solar developers by requiring a time-consuming and expensive PCN for every project, even those with minimal environmental

¹ Although proposed NWP A covers "attendant features" including roads, it is not clear, given that solar energy facilities have both linear (*e.g.*, transmission lines and roads) and non-linear (*e.g.*, solar equipment and substations) project components, how the Corps will calculate the loss of non-tidal waters. To the extent NWP A treats all components of the project (including those linear elements) as one "single and complete" project for the purposes of calculating acreage losses, there appears to be no benefit to seeking coverage under proposed NWP A (as opposed to the existing NWPs). Further, while developers typically seek coverage under the existing NWP 12 for project-related wetland impacts related to the installation of transmission lines, in almost all instances all other "attendant features" such as the transformers, substations and related earthwork are located outside of wetland and watercourse areas and therefore have no impact on these resources. SEIA seeks confirmation as to whether the Corps plans to treat losses of non-tidal waters attributed to linear attendant features as being added to those caused by "non-linear single and complete project" components for a single total loss calculation. In other words, we seek clarification of how the loss will be calculated for linear components of a solar energy facility.

² If future gen-tie line developers can continue to submit requests under NWP 12, the Corps should state that.

impact. First, it can take a couple of months for a solar developer to hire a consultant and draft and undertake the research necessary to complete a PCN. Second, even after a solar developer has completed the PCN and submitted it to the Corps, district engineers have up to 45 days to verify the request. *Id.* at 9,179. While 45 days is not an excessive amount of time, it delays a project's timeline where the development schedule is of the utmost importance and every day construction is delayed, a developer loses money. Third, completing a PCN can be expensive as many solar developers will have to hire consultants or lawyers to assist with the PCN documentation (e.g., delineations) and analysis. Fourth, a PCN requires an unspecified level of detail early in the development process. Renewable projects are fluid and much design detail cannot be finalized until later in the development process, long after a PCN has been submitted.

Furthermore, because any activities under NWPs A and B require a PCN, these activities may be subject to the Corps' mitigation requirement. For any project that requires a PCN and has wetland losses of 1/10 acre or less, it is within the district engineer's discretion to determine on a case-by-case basis whether mitigation is required to ensure no more than minimal adverse effects on the aquatic environment. *Id.* at 9,204-5. As solar projects generally have no or minor effects on the aquatic environment, unjustified mitigation conditions could be particularly unwarranted if the mitigation parameters are interpreted too stringently. The Corps should provide clear guidance on the scope of required mitigation. Moreover, SEIA is concerned that district engineers appear to have unfettered discretion to impose conditions or require mitigation. The Corps should define more precisely when a Corps district project manager or engineer can exercise discretionary authority. Regardless, this mitigation provision adds a level of uncertainty and stringency to NWPs A and B that is not present for utility projects under the existing NWP 12. Thus, NWPs A and B are overly burdensome for solar developers and unnecessarily require a PCN.

Requiring Solar Developers to Submit a PCN for Every Project Will Increase the Corps's Administrative Burdens

The Corps has acknowledged that it has "limited resources," and thus must focus on a "more extensive evaluation of projects that have the potential for causing environmentally damaging adverse effects." 76 Fed. Reg. 9,174. But NWPs A and B will require the Corps to use its limited resources to analyze projects that have not been shown to have a greater possibility of damaging the environment. As discussed above, prior to introduction of NWPs A and B, projects that discharged less than 1/10 acre of U.S. water were not required to submit a PCN. Solar projects met this criterion in the past, and thus did not execute PCNs. With PCNs required for every project under proposed NWPs A and B, the Corps has acknowledged that its paperwork burden will increase. *Id.* at 9,186. Because of its limited resources, the increase in PCNs could result in delays and administrative growing pains as district engineers learn to accommodate the influx of PCNs. Moreover, the Corps has not explained why renewable energy projects requesting NWPs A and B must submit a PCN, and thus undergo a more thorough environmental evaluation, than those non-renewable projects requesting NWP 12. The Corps has provided no indication that renewable generation activities are more likely to

cause environmentally damaging adverse effects than any other utility line activities. Thus, the Corps' PCN requirement for renewable generation projects contradicts the Corps's stated goals of (1) reducing administrative burdens for itself and the industry, and (2) using its limited resources to focus on those projects that could be more environmentally damaging.