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U.S. Army Corps of Engineers
441 G Street NW
Washington, D.C. 20314-1000

Re: Docket ID No. COE-2015-0017
Comments of Berkshire Hathaway Energy on the U.S. Army Corps of Engineers
Proposal to Reissue and Modify Nationwide Permits

To Whom It May Concern:

Berkshire Hathaway Energy is a global energy services provider serving almost 11.6 million customers worldwide. Berkshire Hathaway Energy's United States business platforms utilize nationwide permits ("NWP") issued by the U.S. Army Corps of Engineers ("Corps") to conduct their daily operations and provide safe, reliable, affordable service to their customers. These businesses include MidAmerican Energy Company, an Iowa-based utility providing regulated electric and natural gas service; BHE Renewables, LLC, which owns natural gas, wind, geothermal, solar and hydro projects as an independent renewable power producer in New York, Arizona, Texas, California, Illinois and Hawaii and low-carbon natural gas facilities in New York, Arizona, Texas and Illinois; Kern River Gas Transmission Company, providing natural gas transportation from Wyoming to Southern California; Northern Natural Gas, an interstate natural gas transmission pipeline that spans from Texas to the Upper Midwest; PacifiCorp, which provides regulated electric service in California, Idaho, Oregon, Utah, Washington and Wyoming; and NV Energy Inc., which provides regulated electric and natural gas service in Nevada. Berkshire Hathaway Energy facilities generate electricity utilizing geothermal, hydroelectric, wind, solar, natural gas, coal and nuclear resources.

Through its MidAmerican Energy Company, NV Energy and PacifiCorp subsidiaries, Berkshire Hathaway Energy is the largest owner of renewable generation among U.S. rate-regulated energy providers, with more than 34 percent of its generating capacity being renewable. Construction of new infrastructure, continued development of renewable resources for electricity generation and the overall change to the electricity system in the U.S. as the country transitions to lower carbon sources is an important consideration as the Corps reissues and modifies NWPs. Berkshire Hathaway Energy supports the use of NWPs to streamline the authorization process, reduce administrative burdens, and lower overall costs of construction projects that will be needed to achieve the goals of the Clean Power Plan. Construction and maintenance of generating facilities may include a single wind turbine or thousands of acres for a solar farm; these facilities connect to transmission and distribution lines that may span

thousands of miles through several states.

Berkshire Hathaway Energy supports the Corps' intention to issue NWP's that "reduce administrative burdens on the Corps and the regulated public while maintaining environmental protection, by efficiently authorizing activities that have no more than minimal adverse effects, consistent with Congressional intent in the 1977 amendments to the Clean Water Act." 81 *Fed. Reg.* at 35190. The continued implementation of the NWP's is essential to the ongoing operation of Berkshire Hathaway Energy's businesses – particularly in circumstances when timely service restoration is critical.

Impact of Waters of the U.S. Litigation

Given the current controversy and pending litigation, along with the resulting stay, relating to Clean Water Act jurisdictional waters, it is important that the 2017 NWP's maintain the current regulatory definition of "waters of the United States." The NWP's should not be caught in the net of uncertainty through incorporating by reference the provisions of the Waters of the U.S. rule; rather, once the litigation over the Waters of the U.S. rule is complete and the requisite degree of certainty is achieved, the Corps may revisit or revise the NWP's as needed to address any changes to the rules as a result of litigation.

The NWP's may be impacted directly as a result of the Waters of the U.S. litigation – depending on the outcome, waters that previously were not considered to be jurisdictional would be deemed jurisdictional. As a result, construction and maintenance activities that previously did not require Section 404 permits could require authorization under NWP's. At the same time, it is important that the NWP structure and availability continue without interruption and not contemplate any and all changes that could be required at some point in the future.

Specific Comments on NWP Modifications and Reissuance

Berkshire Hathaway Energy's operating companies rely most often on NWP's 3 (maintenance) and 12 (utility line activities) in their operations. For the most part, the proposed changes to these NWP's are beneficial and appropriate as further discussed below.

The Corps seeks to revise language under NWP 12 to clarify that the permit authorizes only the discharge of dredged or fill material into water of the U.S. and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance or repair of utility lines as opposed to authorizing the construction, maintenance, or repair of utility lines *per se*. See 81 *Fed. Reg.* at 35,198. The proposed revised language better describes the limited scope of the Corps' authorization under the Clean Water Act and the Rivers and Harbors Act.

In addition, the Corps proposes to add Note 2, clarifying that separate and distant crossings of waters of the U.S. may qualify for separate NWP authorization. This clarification is consistent with longstanding Corps practice and the definition of "single and complete project" set forth in 33 C.F.R. § 330.2(i). See *id.* (citing 56 *Fed. Reg.* 59,110 and 77 *Fed. Reg.* 10184). The Corps' interpretation rests on the well-founded premise that discharges of dredged or fill material at narrow crossings of separate and distant waters typically have minimal effects on the individual waters crossed, as well as the overall watersheds.

Likewise, the Corps proposes to add a reference to its regulation (33 C.F.R. § 330.6(d)) concerning independent utility in proposed Note 2 to NWP 12. See 81 *Fed. Reg.* at 35,198. Projects can consist of individual components that each have independent utility and thus, the fact that one component may require an individual permit should not affect the ability to obtain NWP authorizations for the other components.

Increasing the Feasibility and Usability of NWPs

The Corps seeks comment on a number of aspects of NWP 51 and 52, including acreage limits and preconstruction notification thresholds, limits on the number of permanent water-based renewable energy generation units that can be authorized under NWP 52, whether to authorize floating solar energy generation facilities under NWP 52, and whether to expand NWP 52 beyond pilot projects. See 81 *Fed. Reg.* at 35,203. The Corps should adopt several changes to those permits that will facilitate the timely development of renewable energy projects. In their current form, the terms of NWPs 51 and 52 are overly restrictive; as a result, Berkshire Hathaway Energy's operating companies rarely seek to obtain authorizations under those permits.

The Corps should require preconstruction notifications for NWPs 51 and 52 only in limited circumstances. If the waters of the U.S. rule is upheld, preconstruction notifications should be required only for discharges that result in the loss of greater than 1/2 acre of waters of the United States. Otherwise, PCNs should be required only for discharges that result in the loss of greater than 1/10 acre of waters of the United States. Discharges that are below that threshold would cause no more than minimal adverse environmental effects. Such a threshold would also be consistent with those established by the Corps in other NWPs. Given the Corps' determination that the 1/10-acre thresholds in those other NWPs are fully protective of the aquatic environment, renewable energy generation projects under NWPs 51 and 52 should be subject to at least the same threshold. Establishing a 1/10 acre threshold, as opposed to requiring preconstruction notifications for all proposed activities under those NWPs, would not only assist in the advancement of renewable generation, but, likewise, would enhance the usability of these permits.

Berkshire Hathaway Energy encourages the Corps to move toward timely conclusion of this rulemaking to ensure that the benefits of NWPs continue to be realized.

Respectfully submitted,



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