



October 17, 2013

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**Subject:** SunZia Southwest Transmission Project comments on Department of Energy's August 29, 2013 Federal Register Notice regarding *Improving Performance of Federal Permitting and Review of Infrastructure Projects*.

The following comments are provided to the Department of Energy (DOE) in response to the agency's request for information on (RFI) the draft Integrated Interagency Pre-Application (IIP) Process. These comments reflect the views and suggestions of the SunZia Southwest Transmission Project (SunZia). The Bureau of Land Management is the lead agency for processing our right-of-way application and they have experienced over three years of the delay in their NEPA compliance efforts. We appreciate the opportunity to comment on the IIP Process and our intent is to provide constructive feedback to enhance DOE's draft proposal because we believe it has the potential to prevent costly delays to future transmission projects pursued by our company.

DOE's RFI specifically asked for feedback on, "*...whether the proposed IIP Process efficiently meets the goals below and stated in the Transmission Presidential Memorandum.*" The draft IIP Process is extensive and may not represent the most efficient method for achieving the goals for the IIP Process or the Presidential Memorandum. See comments below for potential inefficiencies from the perspective of a Project Proponent that may engage in this process.

DOE's RFI also requested feedback on, "*...whether all Federal agencies with applicable permitting authority to the proposed project should be mandatorily required to participate in the IIP Process.*" A mandatory requirement for all Federal Entities to participate in the IIP Process exceeds the expectation of the June 7, 2013 Presidential Memorandum; however we support such a requirement. We agree with DOE's draft proposal to require participation by identified Federal Entities in the initial and final meetings. This arrangement could help protect the Project Proponent during the official NEPA process by preventing a Federal agency from making later claims of not being fully aware of proposed transmission projects and their potential impacts.

In the interest of streamlining the time needed to complete the IIP Process, we agree with DOE's proposal that participation by all Federal Entities in the interim meetings is not required. To avoid potential complications stemming from lack of participation by all Federal Entities in the interim meetings, we suggest that Section I.E.(3)(b)2.ii. can be improved upon. Such improvements could include requiring written notice from each Federal Entity that decides to not participate in the interim meetings. The notice could have a submittal deadline within the thirty calendar-day period that follows DOE's determination that the meeting request satisfies the IIP Process requirements. The notice could include a description of the agency's reason for not participating and a statement documenting that they have reviewed the Project Proponent's meeting request and state whether

or not they have any concerns with the proponent's submittal. The intent of requiring such a notice is to prevent a Federal Entity from raising issues during the required Final Meeting that could have been raised during the interim meetings that would have allowed more effective and timely consideration of those issues. We believe thorough documentation of the Federal Entities' concerns on the project proposal during the pre-application process will benefit the Project Proponent and lead agency during the formal NEPA process.

One of the main objectives of the IIP Process is to obtain early collaboration and feedback from Federal Entities and lack of participation from any one agency inherently defeats this objective and could significantly diminish the effectiveness of the process. There are potentially significant costs to the Project Proponent associated with the IIP Process and lack of participation from Federal Entities reduces the incentive for Project Proponents to elect to incur these costs.

SunZia has specific concerns on the project proponent's costs for satisfying the IIP Process, the public outreach plan, participation by non-federal entities, and the initiation request. These concerns are described below.

#### Costs to a Project Proponent to Satisfy the IIP Process

A Project Proponent's decision to elect to undertake the IIP Process requires a general knowledge of the estimated cost for completing the process. We understand that costs will be project specific depending on the scope and scale of the transmission facility. The draft IIP Process could provide information on Federal cost recovery requirements that a project proponent could expect. For example, the "Cost Recovery" section of the IIP Process description states:

*"Federal Entity attendance at IIP Process meetings and other Federal Entity participation in the IIP Process depends on agency resources or the authority to recover costs from Project Proponents. Currently, certain agencies may only exercise cost-recovery authorities after an application has been submitted. To the extent allowable by law, some Federal Entities may seek cost recovery from the Project Proponents as soon as possible in the IIP Process."*

We recommend that this section be expanded to describe which Federal Entities have the authority to seek cost recovery during the IIP Process. It is especially important to understand DOE's ability to seek cost recovery as this agency has many responsibilities pursuant to the current draft IIP Process.

We encourage DOE to consider opportunities for cost control measures. For example, when a Federal Entity seeks cost recovery, the agency should provide their estimated costs to the Project Proponent early in the IIP Process. DOE could also consider capping the costs a Federal Entity can seek in their cost recovery request. Cost recovery could be tied to active and demonstrable participation in the IIP Process and could have control measures to protect the Project Proponent from undue financial burdens. The intent of this recommendation is to give the Project Proponent an opportunity to better estimate the total costs for completing the IIP Process and determine if such costs are worth the hypothetical benefit of a streamlined NEPA examination.

The draft IIP Process proposes tasks that may result in significant expenses to the Project Proponent. Specifically, the draft proposes expenses associated with the public outreach and tribal coordination plans, at least four IIP Process meetings, maintenance of one or more websites, and preliminary resource data collection, mapping and surveys during development of study corridors and alternate routes. We recommend that DOE consider the impact of these costs to the proponent and develop strategies for limiting this financial burden.

Because the IIP Process does not satisfy NEPA requirements for public scoping, development of a reasonable range of alternatives, or compliance with Section 106 of National Historic Preservation Act and Sections 7 and 10 of the Endangered Species Act, a project proponent cannot assume the IIP Process will result in any cost reductions during the formal NEPA process. As such, development capital spent on the IIP Process must be factored into the Project Proponent's preliminary assessment on whether or not to pursue a transmission project. DOE's current draft presents another layer of permitting risk to the Project Proponent potentially making it difficult to justify spending additional at-risk development capital on a voluntary process.

#### Public Outreach Plan

Under the draft IIP Process, the Project Proponent is responsible for developing a Public Outreach Plan. The plan requires the proponent advertise and host public meetings, record public requests for information, and respond to public comments among other tasks. This activity does not satisfy a lead agency's responsibilities for public outreach required by NEPA.

We recommend that the activities of the Public Outreach Plan are incorporated into the NEPA administrative record. The IIP Process outreach activities should also be disclosed to the public during the lead agency's public scoping process. Conducting two rounds of public meetings, hosted by two different entities creates an opportunity for public confusion. The project proposal may change substantially after the proponent hosts public meetings. Consequently, we recommend that the lead agency is prepared to clarify any discrepancies of information provided during the proponent's IIP Process related meetings and the lead agency's public scoping meetings.

#### Participation of Non-Federal Entities

We are concerned that potential opposition from Non-Federal Entities may unnecessarily delay the IIP Process or a lead agency's acceptance of a right-of-way application if DOE requires the Project Proponent resolve the issues raised by these stakeholders. As written, the draft IIP Process implies that participation of the Non-Federal Entities is voluntary. We suggest the addition of language that explicitly states their participation or approval of the proposed transmission project is not required in order for the IIP process to move forward.

#### Initiation Request

DOE's states that the Project Proponent's Initiation Request should include:

*"A description of the Project Proponent's financial and technical capability to construct, maintain and decommission the project" (Section II.A.(4))*

We are concerned that DOE's expectation for financial information may not be warranted at this early stage of project development. If financial information is needed in order for the IIP Process to proceed, we recommend that this section only require the Project Proponent demonstrates financial capability to fund the development phase.

DOE's states that the Project Proponent's Initiation Request should include:

*"Potential avoidance, minimization, and mitigation options (onsite and offsite) to reduce the potential impacts of the proposed project, including existing Regional Mitigation Strategies, where available, and onsite and offsite management activities, where applicable."* (Section II.A.(8)(f))

DOE recommends that the Initiation Request includes a vague definition of the transmission project: the two proposed end points and any intermediate substations and no identification of Study Corridors or Proposed Routes. We believe that DOE's requirement for the Project Proponent to specify onsite and offsite mitigation strategies at this stage of project conception is premature because the vague definition of the project makes it impossible to understand the transmission facility's environmental impacts.

Please contact me should you have any questions regarding the comments contained herein.

Sincerely,



Tom Wray  
Project Manager  
SunZia Southwest Transmission Project