



Quinlan J. Shea, III
Vice President, Environment

October 31, 2013

Ms. Julie A. Smith
Office of Electricity Delivery and Energy Reliability (OE-20)
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Submitted electronically via email to: juliea.smith@hq.doe.gov

Re: Improving Performance of Federal Permitting and Review of Infrastructure Projects, Request for Information, 78 Fed. Reg. 53436 (Aug. 29, 2013)

Dear Ms. Smith:

The Edison Electric Institute (EEI) is pleased to provide these comments in response to the questions raised in the above-referenced Department of Energy (DOE) Request for Information (RFI) regarding the proposed pre-application process for siting transmission projects requiring interagency and intergovernmental coordination in an effort to improve the efficiency, effectiveness, and predictability of the transmission siting, permitting, and review processes.

The proposed Integrated, Interagency Pre-Application (IIP) Process builds upon the collaboration of the steering committee created under Executive Order 13604 (Improving Performance of Federal Permitting and Review of Infrastructure Projects) and addresses the directives of Section 4(a) of the Presidential Memorandum (Transforming our Nation's Electric Grid Through Improved Siting, Permitting and Review) issued in

June 2013. Specifically, the proposed IIP Process creates a mechanism for transmission project developers to engage early on with Federal Entities and other stakeholders with decisional authority to ensure a complete and accurate siting application as well as early identification of potential areas of concern. According to DOE, the goals of the IIP Process are to:

- enhance early communication and coordination among stakeholders;
- encourage early engagement and outreach with the public;
- develop iterative feedback on possible routing alternatives;
- promote predictability; and
- ultimately, lead to timely decisions regarding permitting while ensuring compliance with environmental laws.

EEI is the association of U.S. shareholder-owned electric companies, international affiliates, and industry associates worldwide. Our U.S. members represent about 70 percent of the nation's electric utility industry. Our members provide electricity for 220 million Americans, operate in all 50 states and the District of Columbia, and directly employ more than 500,000 workers. To provide electricity to their customers, our members rely on a network of electricity generation, transmission, and distribution facilities, many of which our members construct, own, and operate.

Transmission facilities are used to convey electricity from generating resources to population centers and other customer sites. Transmission facilities can be quite lengthy as generation facilities, especially renewable energy, may be located long distances from

load centers. Furthermore, the transmission facilities form an integrated grid that is highly interdependent and must be carefully designed, built, maintained, and managed at a utility, state, and regional level to ensure a reliable, affordable supply of electricity.

EEI members need to maintain their existing transmission facilities and to upgrade and build new transmission facilities to assure reliable service to customers. With electricity demand forecast to increase nearly 30 percent by 2040,¹ additional generation and transmission facilities will be needed. Also, increased constraints on electricity generating plants, such as new federal air, water, and solid-waste regulations, are likely to shut down or require retrofits to some traditional power plants and require replacement of power generation and transmission facilities. Interconnecting new generation resources, including renewable resources, also will require some upgrades and new transmission construction. The Administration recognizes the importance of a strong, resilient grid and its impacts on the U.S economy.² It has directed federal agencies to improve siting, permitting, and review processes requiring federal approvals in order to encourage the development of much-needed infrastructure.³

To site interstate transmission facilities, EEI member companies often must acquire a number of federal permits, including land-use authorizations for rights-of-way across federal lands and various environmental permits under federal law, such as wetland dredge-and-fill permits under section 404 of the Clean Water Act. Even as the

¹ EIA, *Annual Energy Outlook 2013*.

² Executive Office of the President, *Economic Benefits of Increasing Electric Grid Resilience to Weather Outages* (Aug. 2013).

³ See, e.g., Executive Order 13604 – Improving Performance of Federal Permitting and Review of Infrastructure Projects (Mar. 22, 2012).

need for new and upgraded transmission facilities has accelerated, obtaining federal permits has become more difficult and time consuming. In many cases, federal permit decisions for transmission projects lag behind siting and permitting decisions at the state and local levels, complicating the siting process and significantly delaying construction of important facilities.

Thus, EEI and its members have a strong interest in seeing federal agencies act to substantially improve, coordinate, and uniformly apply the existing federal transmission siting and permitting process. EEI and its members believe that substantial improvement in such transmission siting and permitting processes will benefit all utility customers, who depend upon adequate, reliable, and reasonably-priced electricity to carry on their daily business and to support economic growth.

Specific Comments on Key Issues

EEI commends the Administration's efforts to improve the efficiency and predictability of the permitting process for transmission development, and we support the concept of a streamlined pre-application process to enable early engagement and coordination among federal, state, tribal, and other entities with permitting authority. EEI believes that, with improvements, the proposed IIP Process could help address the directives of Section 4(a) of the June 2013 Presidential Memorandum and work toward the Administration's goals of modernizing the grid to ensure the growth of America's clean energy economy, improve electric reliability and resiliency, reduce congestion, and create cost savings for consumers.

However, in order to achieve these goals, EEI recommends a number of improvements in the proposed IIP Process, to ensure that it actually will improve and streamline the overall transmission siting process. EEI has some concerns that the IIP Process as proposed would overlay additional federal permitting procedures on top of existing, complex inter-governmental processes, rather than aggressively cutting through and replacing interagency inconsistencies and inefficiencies. Thus, EEI recommends a number of changes in the proposed IIP Process in order to ensure a more effective and timely federal authorization process.

A. EEI Strongly Supports an Applicant-Driven Pre-Application Process.

EEI strongly supports the applicant-driven nature of the IIP Process, allowing project developers to elect to use or not to use the process. Given the voluntary nature of the IIP Process, EEI encourages DOE to allow interested applicants to participate in the process for a transmission project regardless of voltage, without a “regionally or nationally significant” qualifier, and without a requirement that projects cross multiple federal jurisdictions or involve federal financial assistance. This will ensure that all transmission projects that are required to obtain federal permits – and the utilities that will rely on and customers that will be served by those facilities – have the opportunity to benefit from the proposed process. Ideally, applicants should be able to use the IIP Process for lower voltage projects on request, absent good cause not to allow them to do so. At a minimum, DOE should consider factors such as the importance of the proposed project to the local electric transmission network, and anticipated difficulties of siting the facilities without access to the coordinated review process.

In addition, DOE should remove the requirement that those developers who choose not to participate in the IIP Process inform DOE in writing as soon as possible regarding their decision to forgo assistance. This requirement is unnecessary because the pre-application process is strictly voluntary. Project developers who wish to use the IIP Process will alert DOE, and that should suffice.

EEI also encourages DOE to provide flexibility during any transition period in adopting the IIP Process. Developers that have already accomplished some of the milestones within the IIP Process prior to its formal implementation should have the option to request participation without having to start over. Such developers would be required to show DOE and other agencies that certain milestones have already been accomplished in order not to repeat those steps. Such flexibility could be helpful in encouraging developers that might benefit from the IIP Process to engage in the process.

B. EEI Supports DOE Taking the Lead Agency Role in the IIP Process and Beyond.

EEI supports DOE taking a strong lead role in the IIP Process and coordinating federal permitting for transmission using the authority granted to DOE by Federal Power Act (FPA) section 216(h) in the Energy Policy Act of 2005. EEI believes that DOE should stay fully involved in the IIP Process, acting directly as lead agency and ensuring that the section 216(h) pre-application process and timeframe are followed. DOE should also take the lead during the transition from the IIP Process to the post-application review process, to ensure a smooth transition, especially if another lead agency is designated once a formal application for review is filed by the project developer.

FPA section 216(h) effectively designates DOE to be the lead agency for post-application review, though DOE has delegated that authority under a nine-agency memorandum signed after the section was enacted. Following submission of an application, EEI encourages DOE either to retain responsibility as lead agency or to ensure that if another agency acts as the lead agency the other agency properly implements its responsibilities under section 216(h), in particular, setting and enforcing deadlines and compiling a single environmental review document on which all decisions under federal law are to be based. Without DOE leadership in these areas, EEI is concerned that agencies will not honor the provisions of section 216(h), in particular the one-year deadline for permit decisions and related environmental reviews, and the requirement to work from a single environmental review document, a key means of avoiding duplicative reviews.

C. All Agencies with Applicable Federal Permitting Authority Should Be Required to Participate in the IIP Process.

In order to ensure robust coordination and increased efficiency, all agencies with federal permitting authority that would be applicable to a given project should be required to participate in the entire IIP Process for that project. In keeping with section 216(h), the IIP Process should apply to all federal agencies with relevant permitting authority as well as non-federal agencies implementing relevant delegated federal responsibilities. Furthermore, the agencies should be required to participate in the entire IIP Process because by allowing some to decline to participate in intermediate stages of the process, there is a risk that important obstacles or concerns would be left until the

Final Meeting when the proposed project has reached the final stages of conceptual design. Applicants would have spent significant time, effort, and investment in developing viable siting options only to have major impacts raised at the last minute, potentially negating and/or delaying all previous work, and imposing significant and needless additional costs on the project developer.

Without the full commitment and participation of all agencies with federal permitting authority, the IIP Process will provide significantly less value to the project developer. In fact, a developer faced with agencies declining to participate fully in the IIP Process should have the ability to withdraw from using the process.⁴ The goal of the IIP Process is to streamline the permitting process and to allow for open collaboration early in the process. Late disruptions would erase efficiencies gained during the IIP Process and should be avoided.

Furthermore, DOE should provide the opportunity for other non-federal agencies with a role in the transmission siting process to participate in the IIP Process. DOE should encourage those other agencies to attend all IIP Process meetings and should welcome their input.⁵

As recognized in the RFI, EEI is aware that agencies' budgetary constraints might limit participation in coordination efforts among agencies. Thus, EEI suggests that DOE

⁴ A project developer who wishes to withdraw from the IIP for any reason should be permitted to do so without losing the benefit of work already completed.

⁵ State participation in the IIP Process, other than under delegated federal programs, should remain at the sole discretion of the relevant states and in no way should be construed as impeding on state siting authority.

should explore mechanisms through which agencies could obtain the funding necessary to enable their participation in the proposed IIP Process, such as through Cost-Recovery Agreements (CRAs). Another approach would be for DOE to administer a single CRA for all of the agencies participating in the IIP Process for a given project, as this will enhance administrative efficiency.

EEI supports DOE's proposed use of "information technologies" to ensure that agencies that are unable to attend a meeting in person can still participate, and EEI encourages DOE to extend this option to all participating agencies and project developers. This will reduce financial and staffing burdens for already constrained federal and non-federal participants as well as developers.

D. The Proposed IIP Process Must Itself Not Be Overly Burdensome

In line with DOE's goal for the IIP Process to "ultimately reduce the time required to reach a decision to approve or deny a project," EEI supports DOE's proposal to specify response times for agencies at various steps in the IIP Process. However, to ensure the process actually reduces the amount of time it takes to obtain federal permits, DOE should shorten the proposed agency response times, and DOE should ensure that the IIP Process replaces and shortens rather than adds to existing steps in the overall federal permitting and siting process. DOE should also clarify that the components and deliverables in the pre-application process allow some flexibility depending on each applicant's unique circumstances.

For instance, there is some concern that the deliverable requirements may be duplicative, overly specific, and unduly burdensome. Many of the site condition deliverables required prior to the Initial Meeting are too specific and should only be shared voluntarily if, for instance, the project developer anticipates needing assistance to rectify potential pitfalls or has such information readily available. In fact, many of the requirements prior to the Initial Meeting with regard to known aquatic life, threats to aviation, and lands of historical significance are duplicative of information the federal agencies should already have.

Thus the Initial Meeting should be an opportunity for the project developer to present the basic project and to obtain agency information on the areas under federal jurisdiction that may be crossed by the proposed transmission line. Having the agencies provide such available information at the Initial Meeting will help streamline the process by reducing the significant amount of time a project developer must spend evaluating potential natural and cultural resource issues early in the proposal. In addition, in keeping with section 216(h)(4)(C), DOE should ensure that the agencies responsible for federal authorizations will communicate issues of concern and the likelihood of approval of the proposed project within 60 days of a request by the project developer.

On the other hand, some developers may need to determine a specific route early in the process, even before the Initial Meeting, which only asks for projects with two identified end points that have not yet identified potential study corridors or proposed routes. In this case, the subsequent corridor and routing meetings would be unnecessary

and duplicative of work already performed, wasting time and resources and incurring additional expense. This is in direct contrast to the IIP goal of creating a more efficient, streamlined process. Instead, project routing should be studied with recommended adjustments as needed, rather than a strict adherence to the proposed IIP Process interim steps and deliverables.

EEI is also concerned about the level of engineering design detail the proposed IIP Process would require at the pre-application stage. In order to conserve time and better fit project sequencing, final design details should not be necessary for an agency to make recommendations during the pre-application process, though project developers should have the option to provide such details if helpful in their individual cases. But in general, and certainly for a large study area intersecting multiple states or jurisdictions, only high level land-use planning data should be needed.

EEI finds other required deliverables to be unclear, overly burdensome, and duplicative. For instance, there is some inconsistency as to the IIP proposal's public outreach provisions. Early in the IIP Process proposal, DOE states that project developers are "strongly encouraged to develop a Public Outreach Plan." However, Sections IV.A and B of the proposed process would *require* project developers to submit a Public Outreach Plan and a Tribal Coordination Plan and to designate one individual to serve as the primary contact person for public outreach. This requirement is likely outside the jurisdiction of the participating federal agencies to impose, and it would create additional obligations that would prolong rather than shorten the IIP Process. The IIP

Process should focus only on assisting developers to prepare a formal and complete application for federal permitting in dialogue with the relevant Federal Entities and Non-Federal Entities. DOE should delete the outreach and coordination plan requirements or at least should make them voluntary.

Similarly, the notion that DOE may require the project developer to develop and maintain a website to share project information should not be part of the pre-application process. Once a formal project application is submitted, the NEPA lead agency will likely have its own public involvement requirements as part of the NEPA process. Additionally, parts of the IIP proposal indicate that the project developer should have begun outreach with the tribal representatives prior to the Initial Meeting. Such discussions may be premature. The initial agency meetings represent the beginning of the planning process, and tribal discussions could occur after an initial meeting with the agencies regarding viable siting options. Again, public outreach and tribal communication proposals during the pre-application process should be solely at the discretion of the project developer.

Finally, DOE must ensure that participating agencies act within the specified timetable and that such timetable actually reduces the overall amount of time to prepare and review a project application and creates real process efficiencies. DOE should impose and enforce strict deadlines for agency feedback so as not to allow parties to unnecessarily delay the pre-application process and thus thwart project development. Should the project developer feel the Study Corridor and Routing meetings are necessary, DOE should implement a 30-day response period indicating that it has sufficient data to

proceed. Other agencies and stakeholders should be given similar timeframes in order to submit feedback on the project developer's proposal. Should feedback not be provided within the specified timeframe, there is an assumption of approval and the project developer will continue to proceed through the IIP Process.

E. The IIP Process Should Inform the Permitting and NEPA Administrative Record

The proposed IIP Process requires a project proponent to implement functions and tasks that may also be required by the underlying federal permitting programs and associated federal laws, such as the National Environmental Policy Act (NEPA). The proposed IIP Process states that the project proponent's and agencies' detailed and site-specific work during the pre-application process (potentially including full public, agency, and tribal government engagement leading to an identified route) is intended to inform government processes as part of the administrative record, as appropriate.

As demonstrated in the attached Appendix A, the estimated duration for the IIP Process as proposed would be a minimum of 615 days, which raises concerns that the IIP Process will simply lengthen and complicate rather than shorten and simplify the overall permitting process. In light of this time commitment, DOE should clarify how the IIP Process will inform and expedite permitting and NEPA review and will create greater efficiencies. At a minimum, the DOE-collected record of the IIP Process contains valuable information that should be part of the permitting and NEPA record and should be incorporated into and relied on in permitting and NEPA decisions regardless of when the permitting and NEPA Notice of Intent has been published.

Such a mechanism for incorporating pre-application work into post-application reviews currently exists for federal transportation projects, where NEPA implementing regulations (23 CFR 771.111) allow for “early scoping” that can be used to link the transportation planning processes with the environmental review.⁶ Early scoping is essentially early coordination and project development with appropriate agencies and stakeholders prior to the filing of the formal application. It involves the exchange of information from the inception of a proposal for action to the preparation of the NEPA-mandated environmental review documents. As drafted, the IIP process is tantamount to an early scoping process and would provide a seamless transition from planning to project-specific environmental evaluation. See also the Federal Energy Regulatory Commission’s alternative hydro licensing process regulations (at 18 CFR 4.34(i)), which provide for submission of a draft environmental assessment or environmental impact statement with a license application.

While there are no guarantees that incorporation of the results of the IIP Process into the permitting and NEPA analysis will lead to expedited permitting times, the IIP Process’s early coordination and project development requirements provide an important opportunity for environmental, regulatory, and resource agency concerns to be identified and addressed early in the process. EEI urges DOE to create a vehicle whereby the IIP record can be incorporated into and inform the post-application permitting and NEPA

⁶ APPENDIX A TO PART 450—LINKING THE TRANSPORTATION PLANNING AND NEPA PROCESSES, <http://www.ecfr.gov/cgi-bin/text-idx?SID=68c7c56e94803a210fc973f613342f86&node=23:1.0.1.5.11.3.1.21.14&rgn=div9>

process. Without such a vehicle, project developers are unlikely to participate in the IIP process.

F. The Proposed IIP Process Should Be Codified.

EEI encourages the IIP Process to be codified in conjunction with the 216(h) coordinated permitting process, through an additional round of notice and comments. This will ensure a concise and consistent application of coordination efforts and will create additional certainty for transmission developers pursuing projects as to what forums are available for obtaining federal permits. Codifying the IIP Process also will create certainty for DOE and other federal agencies that conduct and participate in this process in regards to their budgeting and staffing needs going forward. However, such codification should retain the voluntary nature of participation in the IIP Process and must incorporate the specific clarifications sought by EEI regarding project developer deliverables.

* * * * *

In closing, EEI appreciates the opportunity to provide these comments in the interest of improving the siting and permitting of transmission projects requiring federal approval. If you have any questions or need additional information, please contact Tony Ingram, Senior Director, Federal Regulatory Affairs (202/508-5519, tingram@eei.org), Rick Loughery, Director, Environmental Activities (202/508-5647, rloughery@eei.org), Karen Onaran, Manager, Federal Regulatory Affairs (202/508-5533, konaran@eei.org) or

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Henri Bartholomot, Associate General Counsel, Regulatory and Litigation (202/508-5622, hbartholomot@eei.org).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Quinlan J. Shea, III". The signature is fluid and cursive, with a horizontal line at the end.

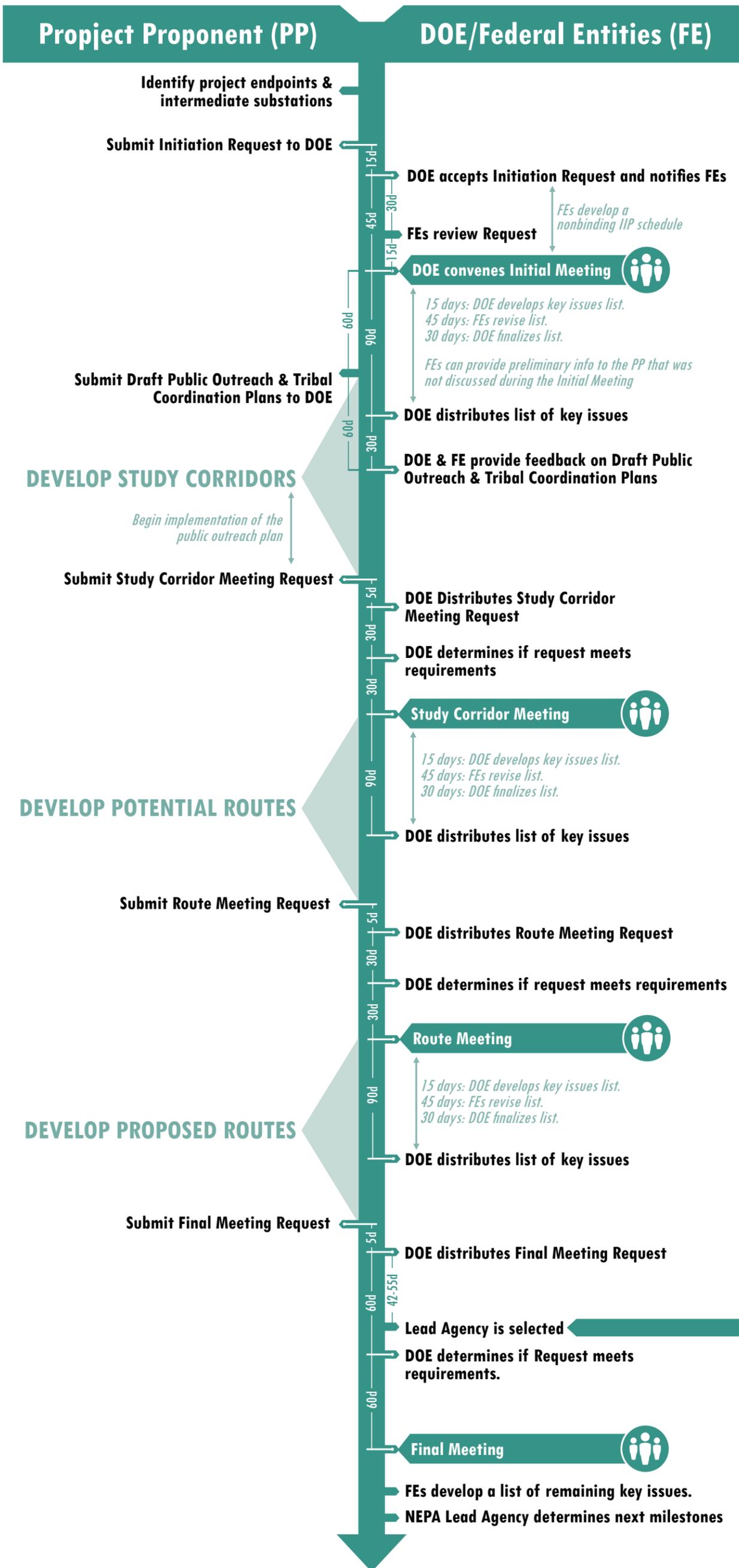
Quinlan J. Shea, III

Attachment – Appendix A

Appendix A

Integrated, Interagency Pre-Application (IIP) Process

The IIP Process is a series of meetings and other actions that a transmission line developer can elect to initiate prior to any other Federal review.



WHAT QUALIFIES?

Non-marine transmission lines that are either:

- a. 230 kV or above
- b. Regionally or nationally significant
 - Interstate energy sale
 - Involves more than one Federal entity
 - Receives Federal financial assistance

WHY ELECT AN IIP?

- Enhance early communication
- Improve interagency and intergovernmental coordination
- Emphasize public outreach
- Promote predictability
- Develop early iterative feedback
- Ensure accurate and complete information is submitted
- Facilitate efficient and compliant environmental reviews
- Reduce potential siting conflicts
- Decrease the time required to approve or deny a project

Minimum IIP timeframe: **24** 615 days

SELECTING A LEAD AGENCY



- 3 NEPA Lead Agency (LA) selection processes:**
1. DOE (in consultation with the FEs) will select the LA
 2. If the project crosses DOI or USDA land, DOI & USDA have 30 days to determine which will act as LA and 10 days to notify DOE of decision. The DOE has 2 days to reject the decision.
 3. If DOE or DOI & USDA do not select a LA, the FEs have 45 days to jointly determine an LA, and 10 days to notify DOE.

ONGOING ACTIONS:



- PP submits quarterly status updates to DOE. DOE distributes these reports within 10 days of receipt.
- DOE must notify any additional FEs within 30 days of the next meeting.



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- Create interagency review schedule
- Issue an NOI to Prepare an EA or EIS
- Scoping Meetings

Adapted from: www.federalregister.gov/articles/2013/08/29/2013-21098/improving-performance-of-federal-permitting-and-review-of-infrastructure-projects