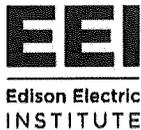


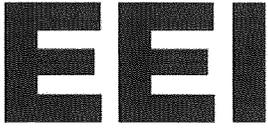
Alexander, Lynn

From: Ball, Sarah <SBall@eei.org>
Sent: Monday, April 04, 2016 4:48 PM
To: OERegs
Cc: Onaran, Karen; Loughery, Richard; Bartholomot, Henri; Hunt, Margaret
Subject: RIN 1901-AB36
Attachments: IIP Process NOPR_FINAL EEI Comments_04.04.16.pdf

Please find attached the comments of the Edison Electric Institute on the Department of Energy's proposed rule to amend its regulations for the timely coordination of Federal Authorizations for proposed interstate electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA).

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April 4, 2016

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: oeregs@hq.doe.gov

Re: Coordination of Federal Authorizations for Electric Transmission Facilities, Notice of Proposed Rulemaking, 81 Fed. Reg. 5383 (Feb. 2, 2016)

Dear Ms. Smith:

The Edison Electric Institute (EEI) is pleased to provide these comments in response to the above-referenced Department of Energy (DOE) Notice of Proposed Rulemaking (NOPR) to amend its regulations governing coordination of federal authorizations for electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA). The proposed Integrated Interagency Pre-application Process (IIP) is intended to improve the efficiency, effectiveness, and predictability of the permitting process for transmission projects requiring interagency and intergovernmental coordination.

EEI is the association that represents U.S. investor-owned electric companies, with international affiliates and industry associates worldwide. 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. With more than \$90 billion in annual capital expenditures, the electric power industry is also responsible for millions of jobs outside of our direct operations.

Reliable, affordable, and sustainable electricity powers the economy and enhances the lives of all Americans.

EEI members need to maintain their existing transmission facilities and to upgrade and build new transmission facilities to assure reliable and affordable electric service to customers. With increased regulatory constraints on existing electricity generating plants, new renewable generation mandates and the obligation to provide interconnection between often remote generating sites and load centers, additional generation and transmission facilities will be needed. To site transmission facilities, EEI member companies often must acquire a number of permits and authorizations issued by federal agencies, including land-use authorizations for rights-of-way across federal lands and various environmental permits under federal law. While the need for new and upgraded transmission facilities has accelerated, obtaining federal permits remains difficult and time consuming. Thus, EEI and its members have a strong interest in seeing federal agencies act to substantially improve, coordinate, streamline, and uniformly apply the federal transmission siting and permitting process.

Executive Summary

EEI commends DOE for proposing to amend existing regulations to implement the IIP in furtherance of the Administration goals for improved performance in the siting, permitting, and review of infrastructure projects. EEI has supported and continues to support the Administration's efforts to improve the efficiency and predictability of the permitting process for transmission development, and we have supported and continue to 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 and its members believe that substantial improvement in the federal transmission siting and permitting process 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.

However, EEI has some concerns about whether the NOPR as proposed is sufficient to produce results that would meaningfully improve the coordination between and among federal permitting agencies and improve the overall federal permitting process. In particular, EEI is concerned that the proposed process will be inherently flawed without DOE more firmly exercising a lead agency role to ensure that other federal agencies with federal permitting authority over transmission participate in the IIP. DOE also should ensure that the federal agencies adhere to a streamlined schedule and work from the consolidated record produced in the IIP for the process and issuance of federal permits.

Therefore, in order to achieve actual improvements in the transmission siting process, EEI recommends a number of changes in the proposed IIP to ensure a more effective and timely federal authorization process.

Concerns About Specific Proposed Regulatory Provisions

The following discussion refers to the NOPR's proposed regulatory revisions, which would be codified at 10 CFR Part 900: Coordination of Federal Electric Authorizations for Electric Transmission Facilities pursuant to section 216(h) of the Federal Power Act.

§ 900.1 Purpose

EEI recognizes that there is value in providing applicants the option to engage in a streamlined procedure for federal permit review for long linear transmission projects that implicate the jurisdictions of multiple federal and state agencies under federal law. Therefore, EEI strongly supports the stated purpose of the IIP, which is to provide a process for the timely

coordination of federal permits for proposed transmission facilities, and the IIP framework within which DOE will facilitate early cooperation and exchange of information, including environmental information, required under federal law to site and permit qualified electric transmission facilities.

A key component of the IIP process is to facilitate the early submission, compilation, and documentation of information needed for subsequent coordinated, transparent environmental review of a project by federal agencies under the National Environmental Policy Act (NEPA) following the submission of an application or request for authorization. EEI strongly supports this aspect of the IIP, as long as the pre-application work informs the NEPA process and reduces duplicative efforts by applicants and federal entities.

While aspirational, the proposed regulations must provide more than simple assurances that an applicant's work will be utilized to inform the record for the formal reviews under applicable federal law. Rather, the proposed IIP should seek to reduce duplicative work, streamline and shorten the overall application and review process, and increase resource efficiencies for private and public participants by actively encouraging the permitting authorities to rely on the environmental review performed as part of the IIP process.

§ 900.2 Applicability

First, EEI agrees with DOE that use of the IIP should be entirely at the election of applicants for federal permits related to transmission projects, not mandated or forced upon applicants. If the IIP produces the efficiencies we all hope it will, applicants naturally will be drawn to use it. If not, they should not be forced to use it.

Second, EEI supports the inclusion of projects DOE has proposed would qualify for the IIP Process, defined in Section 900.3 as "Qualifying Projects." Yet we also encourage DOE also

to accommodate use of the IIP for other projects, and we have some suggestions for additions to the category of “Other Projects.”

“Qualifying Projects” are defined as:

(1) A non-marine high voltage electric transmission line (230 kV or above) and its attendant facilities or other regionally or nationally significant non-marine electric transmission line and its attendant facilities, in which:

(i) All or part of the proposed electric transmission line is used for the transmission of electric energy in interstate commerce for sale at wholesale; and

(ii) All or part of the proposed electric transmission line crosses jurisdictions administered by more than one Federal entity or crosses jurisdictions administered by a Federal entity and is considered for Federal financial assistance from a Federal entity.

(2) Qualifying Projects do not include those for which a project proponent seeks a construction or modification permit from the FERC for electric transmission facilities in a DOE designated National Interest Electric Transmission Corridor under section 216(b) of the FPA.

While most, if not all, EEI member projects consist of high-voltage transmission facilities at 230kV or above, EEI also supports the option for facilities that do not meet the Qualifying Projects definition, defined in section 900.3 as “Other Projects,” to seek DOE assistance in the federal permit process. Other Projects include facilities for the transmission of electric energy in interstate commerce, but that otherwise do not meet the 230 kV or above qualification. Given the voluntary nature of the IIP, EEI encourages DOE to allow interested applicants to participate in the IIP for any transmission project that is defined by the Federal Energy Regulatory Commission (FERC) as part of the Bulk Electric Power (BES) System, which includes all transmission elements operated at 100 kV or higher.

In FERC Order No. 743, the Commission found “that many facilities operated at 100 kV and above have a significant effect on the overall functioning of the grid and that the majority of 100 kV and above facilities in the United States operate in parallel with other high-voltage and extra high-voltage facilities, interconnect significant amounts of generation sources and operate

as part of a defined flowgate.” FERC explained that this “illustrates their parallel nature and therefore their necessity to the reliable operation of the interconnected transmission system.”¹ Adopting FERC’s bright-line threshold of 100 kV or higher 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.

§ 900.4 Integrated Interagency Pre-application (IIP) process

Section 900.4 provides the procedures and information requirements of the proposed IIP as well as a proposed framework for implementing the process. EEI supports several elements of the IIP as proposed, but we have concerns about whether the overall process is sufficient to produce results that would meaningfully improve the coordination between and among federal permitting agencies. We delineate our concerns and our suggestions for improvement below.

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

First, we support the applicant driven nature of the IIP, where participation is voluntary and at the project proponent’s discretion. However, if the purpose of the process is to facilitate cooperation and coordination of federal permitting agencies, participation of those federal entities having an authorization or consultation responsibility related to the project should be mandatory. In the proposal, federal entities identified by DOE as supplying a federal authorization related to the project are “expected” to participate in the IIP, but are allowed to decline attendance simply by clarifying in writing to DOE that they do not have any involvement or have minimal involvement, along with a supporting rationale for their non-involvement. In

¹ *Revision to Electric Reliability Organization Definition of Bulk Electric System*, Order No. 743, 133 FERC ¶ 61,150 at P 73 (2010), *order on reh’g*, Order No. 743-A, 134 FERC ¶ 61,210 (2011).

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 for that project.

DOE has the authority under FPA section 216(h) to achieve this goal. Section 216(h) gives DOE lead agency authority to set and to enforce deadlines for federal permits related to electric transmission, and to compel and require other federal agencies to use a single consolidated record of review for the federal permits. This authority necessarily extends to the pre-application as well as post-application process, so that the overall issuance of permits and authorizations by federal agencies operates under this DOE lead agency umbrella. Just as FERC regulations specify the pre-application process for natural gas pipeline permits under the Natural Gas Act and hydropower facility licenses under the FPA, so should DOE's IIP regulations specify the pre-application process for transmission facilities subject to DOE's section 216(h) lead agency authority, when applicants elect to call on that authority.

The IIP only will be as valuable as it is comprehensive in receiving early input from all appropriate federal agencies to coordinate permitting activities. Without active engagement from all applicable federal agencies, the pre-application process will not generate the qualitative input necessary to enable the project proponent to benefit from early identification, coordination and review of project issues and constraints. In order for the IIP to be successful all stakeholders, including applicants and federal entities alike, must be willing to commit resources. Active involvement of the key federal stakeholders ensures that key issues are identified early in the process, which results in efficient use of resources by public and private sectors.

Without some procedural safeguards or guarantee that the entire contingent of federal agencies will participate in a pre-application review, a proponent runs the risk of having to

perform duplicative work because a single agency was not involved or did not participate in advance of the formal NEPA or other federal permit related review. Without the full commitment and participation of all agencies with federal permitting authority, the IIP will provide significantly less value to the project developer. EEI recommends that DOE have a defined role in helping to ensure that federal entities engage in the IIP process.

The IIP Process Should Inform the Permitting and NEPA Administrative Record

EEI supports DOE's recommendation that participating federal agencies use the information gathered during the IIP to inform the NEPA process. According to the proposal, the final *IIP Resources Report* "provides an accurate description of the proposed . . . project, including stakeholder outreach activities and feedback, summary information on environmental resources, and potential impacts, potential issues, and identification of constraints by Federal entities and non-Federal entities." (81 Fed. Reg. 5394) The wealth of information gathered requires the project applicant to perform a significant amount of work compiling information and preparing responses. It is important that the IIP give applicants credit for analysis conducted during the process and that the process reduces the burden in the formal federal permit review, including NEPA review.

EEI recommends that the pre-application information become mandatory for federal permit reviews, including NEPA reviews. EEI believes that in order for the IIP Process to be of tangible benefit to proponents, DOE will need to provide a mechanism that clearly connects participation in the IIP to a reduction in the overall federal permit timeline. For this reason, EEI recommends that the pre-application information become mandatory for federal permit and NEPA reviews. Only then will project proponents be more likely to participate in the IIP and realize permitting efficiencies.

In light of this recommendation, DOE should clarify how the IIP will inform and expedite permitting and NEPA review. 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.² 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 should provide a seamless transition from planning to project-specific permit and environmental evaluation. We urge DOE to look at FERC’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 into the permitting and NEPA analysis will lead to expedited permitting times, the IIP’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 process. Absent such a vehicle, project developers are unlikely to participate in the proposed IIP process.

* * * * *

² 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>

In closing, EEI appreciates the opportunity to provide these comments in the interest of codifying a pre-application process to improve the siting and permitting of transmission projects requiring federal approval. If you have any questions or need additional information, please contact me (202/508-5208, sball@eei.org); Rick Loughery, Director, Environmental Affairs, (202/508-5647, rloughery@eei.org); Karen Onaran, Manager, Federal Regulatory Affairs (202/508-5533, konaran@eei.org) or Henri Bartholomot, Associate General Counsel, Regulatory and Litigation (202/508-5622, hbartholomot@eei.org).

Respectfully submitted,



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Manager, Environmental Affairs
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Cc: Quin Shea