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Mr. John Schnagl  
Office of Electricity Delivery and Energy Reliability (OE-20)  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, D.C. 20585

Submitted via email to: [SEC216h@hq.doe.gov](mailto:SEC216h@hq.doe.gov)

Re: Coordination of Federal Authorizations for Electric Transmission Facilities –  
Interim Final Rule and Proposed Rule (DOE, 10 CR Part 900)

RIN 1901-AB18

Dear Mr. Schnagl:

The utility operating companies of the American Electric Power System<sup>1</sup> (“AEP”) commend the Department of Energy (“DOE”) for its ongoing commitment to implement the provisions of the Energy Policy Act of 2005 (“EPAct”), specifically, as addressed here, the DOE’s continuing effort to establish procedures under which entities may request that DOE coordinate Federal authorizations for the siting of interstate transmission facilities. AEP submits these comments as an electric industry participant that is taking major steps and investing enormous resources in responding to the Congressional and federal initiatives aimed at improving this nation’s electric transmission infrastructure. AEP currently is engaged in joint ventures to develop major Extra High Voltage transmission projects in several areas of the country. As such, we are vitally interested in the effective implementation of EPAct.

In the past the DOE has been at the forefront of efforts to strengthen the nation’s electric transmission system. For example, DOE commissioned an independent study in 1997 that confirmed a critical reliability need in Eastern West Virginia and Southwestern

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<sup>1</sup> The AEP Operating Companies are AEP Texas North Company, AEP Texas Central Company, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and Wheeling Power Company.

Virginia, which was ultimately met by the Jacksons Ferry-Wyoming transmission line. DOE also played a key role in determining the root causes for the August 14, 2003 blackout and then played an integral role in establishing National Interest Electric Transmission Corridors ("NIETC").

The DOE has again stepped forward to tackle the very difficult issue of establishing procedures under which entities may request that the DOE assume a lead agency coordinating role over Federal authorizations for the siting of interstate transmission facilities. Section 1221 of EAct added section 216 to the Federal Power Act ("FPA") which provides in subsection (h) Coordination of Federal Authorizations for Transmission Facilities that "the Department of Energy shall act as the lead agency for purposes of coordinating all applicable Federal authorizations and related environmental reviews of the facility." The intent of this portion of the EAct is to ensure timely and efficient review and permit decisions for interstate electric transmission facilities by coordinating all federal reviews with the reviews of Indian tribes, multi-state entities, and State agencies that are willing to participate. This single coordinated authorization process could quickly establish binding intermediate milestones and ultimate deadlines for the review while eliminating duplication in the review and permitting process. AEP has firsthand experience with the type problems addressed by Congress in Section 216 (h). In 2002 the DOE stated that AEP's Jacksons Ferry-Wyoming line was the most important line in the eastern interconnection. However, that line took 16 years to complete, with 13 of those years devoted exclusively to multi-agency permitting and siting reviews. A major cause of that delay was inadequate coordination of the federal and state approval processes involved.

AEP is concerned that the interim Final Rule for implementation of Section 216 (h) announced by the DOE on September 19, 2008, in several respects, represents such a minimalist approach to implementation of EAct that it would be of limited effectiveness in addressing the problems identified by Congress. AEP generally supports the comments being submitted by the Edison Electric Institute (EEI) regarding the Interim Final Rule. We are submitting these additional comments to emphasize a few aspects of the proposed rule that are of critical importance to the objective of expediting the approval process for desperately needed new transmission infrastructure.

### **Single Siting Template**

Section 216(h)(5)(A) of the Federal Power Act states that "[a]s lead agency head, the Secretary, in consultation with the affected agencies, shall prepare a single environmental review document, which shall be used as the basis for all decisions on the proposed project under federal law." The Interim Final Rule proposed by DOE does not establish a single environmental review document. Instead, DOE interprets the requirement to prepare a consolidated environmental review document as merely requiring it to assemble the work of individual agencies and maintain the information available to be used – a clearing house function. AEP urges the DOE to establish a single environmental review document for electric transmission siting. Establishment of such a

document for electric transmission siting will simplify the application process and eliminate the need to submit duplicate information to multiple state and federal agencies.

### **Comprehensive Schedule**

In order for the single environmental review document to be effective at accelerating the approval process and eliminating duplication, it would also be helpful for DOE to create a comprehensive schedule for participating agencies. To accomplish this the DOE should clearly define the roles that various entities will play within the approval process. This approval process could identify opportunities to expedite the process, such as opportunities to conduct joint public comment periods and public hearings when multiple agencies must consider the same or similar issues. . When creating this schedule the DOE may draw upon the experience of the Federal Energy Regulatory Commission (“FERC”). The FERC has extensive experience coordinating Federal and state agencies that was gained by certificating numerous natural gas pipelines and licensing our nations’ many hydropower projects. As part of these efforts, the Commission formed close relationships with the numerous environmental and other affected entities and signed Memoranda of Understanding (MOUs) and similar documents to facilitate coordination.

AEP believes that detailed consultation between DOE and the Commission will provide extensive knowledge and expertise that will inform the rulemaking process and improve the final rule. AEP also recommends that DOE seriously consider delegating these responsibilities to the Commission, in light of the Commission’s extensive experience.

AEP does not believe that such a coordinated effort would diminish the role of any federal or state agency that is involved in the approval process. Nor would such coordination preempt the authority of any participant. Instead, it simply would accelerate the approval process and save resources by eliminating duplication.

### **Non-federal Entities**

The EAct also allows the DOE to involve Indian tribes, multi-state entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews with the Federal authorization and environmental reviews. This coordination is aimed at establishing prompt and binding intermediate milestones and ultimate deadlines for the review of Federal decisions relating to the proposed facility. DOE proposes that non-federal entities may elect to participate in the process. AEP believes that increased coordination between the DOE and non-federal entities in appropriate instances could help to foster the goals of the Energy Policy Act by streamlining the application process and eliminating duplication. Such participation, of course should be “applicant-driven,” as appropriately recommended by DOE, and DOE should clarify that such participation should be limited to that allowed by federal law.

## **One Year Time-Table**

Section 216(h)(4)(B) of the Federal Power Act states that the “Secretary shall ensure that, once an application has been submitted with such data as the Secretary considers necessary, all permits decisions and related environmental reviews under all applicable Federal laws shall be completed (i) within 1 year, or (ii) if a requirement of another provision of federal law does not permit compliance with clause (i), as soon thereafter as is practicable.” Section 216(h)(1)(B) provides that the one year deadline begins “once an application has been submitted with such data as the Secretary considers necessary . The proposed rule sets a deadline for federal decisions to be completed one year after a categorical exclusion determination is made, or an environmental assessment finding of no significant impact is made, or 30 days after close of public comment on a draft EIS. This approach to implementing the one-year deadline unduly prolongs the decision-making process. As EEI points out, DOE’s approach could easily turn the one-year deadline into a three-year deadline.

The appropriate trigger to start the one-year clock is when the application has been filed and determined to be sufficiently complete by the Secretary. DOE should reflect this approach in its final rule. Moreover, DOE should establish a clear process which details exactly when an application is submitted and deemed complete providing notice to the applicant when the one year time period begins. A definite timeline should include deadlines by which the approving agencies must act on an application. This will help to ensure that the approval process continues to progress and that transmission will be sited as quickly as possible while still meeting all the required siting criteria. The creation of a definite timeline will also, by establishing a definitive decision date, allow applicants to begin planning for post-approval activities with greater certainty. However, the creation of a firm timetable must be coupled with clear back-stop siting processes to assure that each federal and state siting entity is committed to the established time commitment for much-needed transmission facilities.

## **Conclusion**

The EPAAct attempts to expedite the siting and approval process for electric transmission lines by combining all Federal reviews into a single coordinated authorization process which would establish ultimate deadlines and eliminate duplication. AEP suggests adoption of enhancements to the rule, as discussed above, to avoid having applications become snarled in the requirements of multiple agencies, leading to the type of lengthy delays AEP faced in developing the Jacksons Ferry-Wyoming line.

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