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

Submitted electronically via email to: SEC216h@hq.doe.gov

Re: Consolidated Comments of the Edison Electric Institute ("EEI") on
(1) DOE Interim Final Rule, RIN 1901-AB18, 73 Fed. Reg. 54456 (Sept. 19, 2008) and
(2) DOE Proposed Rule, RIN 1901-AB18, 73 Fed. Reg. 54461 (Sept. 19, 2008)

Dear Mr. Schnagl:

EEI is pleased to provide these integrated comments on DOE's above-referenced interim final and proposed rules implementing new Federal Power Act ("FPA") section 216(h), enacted as part of section 1221 of the Energy Policy Act of 2005 ("EPAct05"). The interim final rule establishes procedures under which entities may request that DOE coordinate federal authorizations for the siting of interstate electric transmission facilities. The proposed rule amends the interim final rule, among other things, to clarify a provision of section 216(h) setting forth deadlines for completing federal authorizations and related environmental reviews once an application is submitted with such data as the Secretary considers necessary.

I. Comments Applicable to Both the Interim Final and Proposed Rules

A. EEI and Our Members Have a Direct and Substantial Interest in These Rulemakings

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. 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 because most generation facilities (including ones that depend on renewable energy, coal, and other natural resources) are often located some distance from customers. 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.

To site such long linear facilities, our member companies often must acquire any number of federal permits, including land use authorizations for rights-of-way across federal lands and various environmental permits under federal law. Even as the need for new and upgraded transmission facilities has accelerated to meet projected growth in electricity demand of 30 percent by 2030, obtaining federal permits has become more difficult and time consuming.

Frequently, federal permit decisions for transmission projects lag behind siting and permitting decisions at the state level, complicating the siting process and significantly delaying construction of badly needed facilities. Thus, EEI and its member companies have a strong interest in seeing the FPA section 216(h) provisions implemented so as to substantially improve the existing siting and permitting process. We believe that substantial improvement in the process will benefit all Americans, who depend upon adequate, reliable, and reasonably-priced electricity to carry on their daily business and to support economic growth.

B. Congress Enacted FPA Section 216(h) to Address Serious Concerns About the Need for Improved Federal Permitting of Transmission Facilities

In the years preceding enactment of EPAct05, which amended the FPA to include section 216(h), Congress was concerned about the length of time it was taking to site transmission infrastructure. Members of Congress recognized that lengthy delays serve as a disincentive to infrastructure investment, threaten reliability, and add to the cost of electricity for consumers. While much of the debate focused on the difficulties of siting major interstate transmission projects through traditional state and local government-based siting authorities, Congress was also cognizant that federal agencies are not always a constructive partner in helping to site needed facilities. Because of the predominance of federal land-holdings in the West, Western Governors were especially forceful in asserting the need for timely action on proposed transmission projects by federal agencies.

Congress had several specific concerns in mind when it drafted section 216(h).

- Multiple and duplicative environmental analyses: Congress was concerned about the tendency of federal agencies to require multiple and sometimes duplicative environmental analyses. A final decision on a project could be delayed for several years while a single agency required more than one supplemental analysis or multiple

agencies pursued their own separate analyses of similar issues to support their respective decisions. Whether separate analyses were required in good faith or as a means to avoid a decision on a project, the end result was costly to the applicant and the consumer.

- Lack of synchronization between federal and state processes: Congress heard testimony that it was not unusual for federal agencies to participate silently in a state process for siting new infrastructure, raising objections only after a state decision had been finalized. The need for one federal agency authorization infamously delayed a needed transmission project for 14 years, while the federal agency was accommodated and the two states involved had to reopen their approvals for the projects. The lack of any coordination among federal agencies and between federal agencies and states with respect to particular projects fostered a climate in which federal agencies had an incentive to compete for the position of last to grant project approval and not to engage meaningfully in state siting processes.

- Trend towards shorter land use authorizations for transmission facilities: At a time when the nation's electricity infrastructure was developing into a highly-interconnected and interdependent grid, federal land agencies were discussing 10-15 year land use authorizations that afforded little assurance that facilities would not be forced to relocate at the end of an authorization. This emerging issue not only introduced uncertainty into managing and maintaining grid infrastructure, it posed a barrier to financing new infrastructure.

Finally, Congress was concerned that individual federal land managers had little incentive to consider needs beyond their local interests. Even where transmission facilities could be accommodated without adversely affecting the purposes for which certain federal land is managed and protected, some individual land managers would refuse to entertain the location of a facility, forcing other federal and private lands to bear the burden of hosting critical infrastructure.

Section 216(h) was therefore conceived to improve and streamline the process for obtaining federal authorizations without upending existing requirements of environmental and other laws. EEI believes that section 216(h)'s requirements are fairly straightforward. DOE is responsible for acting as the lead agency for coordinating the permitting schedules and undertaking environmental reviews of projects covered by section 216(h). DOE is responsible for preparing a single environmental review document for the project. DOE is responsible for ensuring that permitting agencies complete their reviews and issue permitting decisions within one year of receiving an application to the maximum extent possible. And DOE is charged with coordinating the federal, state, and tribal permitting processes for the facility.

In preparing these comments, EEI has evaluated the interim final rule and the proposed rule advanced by DOE with an eye on three principal issues, in light of the problems section 216(h) was intended to address: (1) whether DOE's interpretations of its lead agency authorities comport with the statute; (2) whether DOE's interpretations will increase decision efficiency and timeliness by federal agencies; and (3) whether the interim final rule and proposed rule will encourage federal permitting agencies to engage constructively in the siting of essential transmission facilities.

C. DOE Has Important New Responsibilities Under FPA Section 216(h) and Needs to Implement Them More Fully Than as Set Out in the Interim Final and Proposed Rules

In EPAct05, DOE received a number of important new authorities aimed at improving transmission infrastructure siting and permitting, notably including the authorities set out in FPA section 216. Section 216 creates a dual structure for DOE to work with others to facilitate transmission siting and permitting. On the one hand, DOE is responsible for evaluating congestion in the nation's transmission grid and designating National Interest Electric Transmission Corridors ("national interest corridors" or "NIETCs") where the Federal Energy Regulatory Commission ("FERC") can exercise backstop siting authority. On the other hand, under section 216(h), DOE is responsible for performing a lead-agency role to improve land use, environmental, and other authorizations under federal law.

EEI applauds the careful work that DOE has undertaken to complete the first congestion analysis of the nation's electricity grid as required under EPAct05 and to designate the first two NIETCs, namely the mid-Atlantic and Southwest national interest corridors. We hope that these designations will accelerate state action to resolve grid congestion in these two NIETCs and also will provide an avenue for transmission project approval through FERC if states fail to act.

DOE's lead agency and coordination authorities under section 216(h) are no less important than these backstop siting authorities. Under section 216(h), while federal agencies retain the critical responsibility to approve or disapprove a permit or land use authorization for a transmission project, Congress charged DOE with achieving a more efficient, timely, and coordinated permitting process – one that has decisions under federal law being made promptly rather than lagging behind those of the states. The one-year window for states to complete their decisions prior to an applicant approaching FERC for a construction permit under FPA section 216(b), and the one-year window for federal agencies to complete their permitting decisions once an application has been submitted with necessary data under FPA section 216(h), parallel one another. Together, these independent sections support the view that Congress intends a concurrent and expedited approach to federal and state decision-making.

EEI applauds DOE's decision to produce regulations establishing procedures under section 216(h) and clarifying DOE's authorities, rather than relying solely on the current Memorandum of Understanding with other federal agencies completed in August 2006. As explained below,

EEI also strongly supports DOE's decision to exercise its lead agency authority when asked to do so by an applicant (i.e. to have the new rules operate as "applicant driven"). However, EEI is concerned that DOE has interpreted its lead agency authority in too limited a fashion. As a result, there may be little benefit to an applicant seeking DOE involvement on a project, and the interim final and proposed rules could negate Congressional efforts to address the dysfunctions that can occur when federal authorizations are required for a transmission project.

By virtue of its congestion analyses, DOE understands more than any other federal agency the need to upgrade and expand the nation's electricity grid, and the cost to consumers of a failure to do so. DOE also understands the importance of grid expansion to maintaining fuel-diverse generation portfolios (a benefit to consumers) and to accessing new renewable, clean coal, and nuclear resources.

Accordingly, as discussed in the remainder of these comments, EEI encourages DOE to revise the interim final rule and the proposed rule to comply more fully with the clear requirements of the statute and Congressional intent. Such an approach will assure more efficient and timely decisions by federal authorizers. We are concerned that the rules in their current form will result in little improvement over the status quo.

D. EEI Strongly Supports the Applicant-Driven Feature of the Interim Final and Proposed Rules

In the preambles to both the interim final rule and the proposed rule, DOE interprets its section 216(h) authority to allow for an applicant-driven process. That is, DOE will intervene as lead agency when asked to do so by an applicant. EEI strongly supports this interpretation by DOE. In instances where an applicant believes there is a constructive dialogue between itself and relevant federal, state, and tribal permitting authorities without DOE involvement, requiring DOE to exercise its lead agency authority would be unnecessary and could be counterproductive. Thus, in terms of prioritizing its resources, DOE has made a reasonable policy choice to take a value-added approach to its involvement. Moreover, in proposed 10 CFR § 900.7, DOE would require a permitting agency to notify DOE of an authorization request within five days of issuing a notice of intent to prepare an environmental impact statement ("EIS"). With such notice, DOE can offer applicants to assist in complex cases if useful to help move a project along even apart from the section 216(h) process.

II. Comments on Specific Provisions of the Interim Final Rule

A. The Lead Agency Rule Should Apply to Any Transmission Facility Outside ERCOT as to Which an Applicant Seeks DOE's Assistance

In 10 CFR § 900.2(a), DOE indicates that it will accept a request to exercise its lead agency authority only for "facilities that are used for the transmission of electric energy in interstate

commerce for the sale of electric energy at wholesale." EEI urges DOE to delete this limitation, or at a minimum to indicate that this will not be a substantial hurdle to DOE exercising lead-agency authority.

DOE justifies the "interstate commerce" limitation by relying on the title of section 216, "Siting of Interstate Electric Transmission Facilities." However, in section 216(k), Congress explicitly excluded from section 216 only transmission facilities located within the Electric Reliability Council of Texas ("ERCOT"). Given that facilities in ERCOT are isolated from the interstate transmission grid, section 216(k) should properly be viewed as the full extent of facilities Congress intended to exclude from section 216 as not being in interstate commerce. Otherwise, section 216(k) would be redundant. And DOE already excludes ERCOT facilities from the interim final rule, at 10 CFR § 900.2(b). Therefore, rather than create ambiguity and uncertainty, EEI urges DOE to delete paragraph 900.2(a) and to renumber the remaining paragraphs of section 900.2 accordingly.

If DOE does retain paragraph 900.2(a), DOE should clarify that the paragraph is not intended to act as a substantive limitation. Once an electron is transmitted on the grid, it typically can go anywhere in interstate commerce. Thus, EEI would argue that paragraph 900.2(a) does not exclude from applicant-requested assistance any transmission facilities beyond the ERCOT facilities covered by paragraph 900.2(b), and DOE should recognize this in the rule.

EEI also wishes to note that the DOE lead agency provisions of section 216(h) were developed independently of most of the rest of section 216, which deals predominantly with DOE's authority for designating NIETCs and FERC's backstop siting authority. The heading of section 216 should not be misread to imply a limitation on DOE's lead agency authority. Indeed, the first legislation to give DOE lead agency authority was introduced in March, 2003, by Mr. Shadegg of Arizona, and only later was incorporated into comprehensive energy legislation. Mr. Shadegg's bill, H.R. 1388, did not contain the language of limitation DOE applies in section 900.2, nor did subsequent versions of the bill. The placement of the DOE lead agency provisions in section 216 was one of topical convenience, not a reflection of Congressional intent to place any limitation on the facilities covered under section 216(h), especially beyond the ERCOT facilities excluded in section 216(k).

B. <u>DOE Should Not Require Multiple Federal Authorizations to Qualify for the Lead Agency Process</u>

In the preambles to both the interim final rule and the proposed rule, DOE expresses the view that "section 216(h) is intended to give an applicant seeking more than one Federal authorization for the construction or modification of electric transmission facilities with access" to a process for having the federal reviews carried out in a coordinated manner. EEI urges DOE to reconsider this "more than one authorization" limitation. A single permit can be a significant undertaking if, for example, it is a land use authorization. An applicant may desire DOE

assistance in assuring that the relevant federal land agency works constructively with the state certifying agencies to make timely decisions. DOE should not preclude itself from serving as lead agency merely because only federal one permit is required, if an applicant requests DOE's help.

C. DOE Needs to Improve the Use of Lead Agency Authority in NIETCs

In 10 CFR §900.2(c), DOE states that it will not accept a request to exercise its lead agency authority for any project for which an application has been submitted to the FERC for a construction permit under 80 CFR 50.6 or for which pre-filing procedures have been initiated under 18 CFR 50.5. EEI is concerned about this, in three ways.

First, there is no basis in the language of FPA section 216(h) for DOE to delay or decline to exercise its lead agency responsibility when a proposed transmission facility is in an NIETC. Indeed, projects located in a national interest corridor are likely to be the ones most urgently needed to address congestion issues that prompted DOE to designate the corridor. Though DOE has delegated its lead agency authority to FERC once an applicant for a transmission facility in an NIETC has submitted a FERC backstop siting application for the project, until such time DOE remains responsible for implementing section 216(h). In particular, the one-year deadline under section 216(h) runs from submittal of an application to a federal agency. So, for example, if an applicant files one or more applications for federal land use authorizations and environmental permits while also undergoing state siting reviews and requests DOE lead-agency assistance, DOE needs to implement section 216(h) without waiting for a subsequent FERC process to start, even if DOE might otherwise conclude that the applicant is involved in "pre-filing" activities that ultimately might lead to an application to FERC for backstop siting approval.

Second, paragraph 900.2(c) creates a clear gap in implementing FPA section 216(h). As noted in the preceding paragraph, DOE's current delegation of lead agency authority to FERC applies only once a backstop siting application has been filed. But paragraph 900.2(c) would prevent a transmission project applicant from seeking DOE lead agency assistance once the FERC backstop pre-filing process begins, and that can be years before a FERC backstop siting application is filed. Thus, paragraph 900.2(c) would create up to a multi-year delay in application of the lead agency authority, directly contrary to Congressional intent.

Third, if a project applicant seeks DOE involvement when one or more applications for federal authorizations are filed and those authorizations are not issued before the applicant files an application for FERC backstop siting, DOE needs to ensure a smooth hand-off of lead agency authority to FERC when and if the applicant does file an application for FERC backstop siting approval. The rule needs to address this issue in a positive way, rather than delaying implementation of section 216(h) until such a hand-off occurs.

To address these concerns, EEI urges DOE to delegate lead agency authority to FERC for all projects within national interest corridors, subject to two conditions. First, the delegation should be conditioned on FERC exercising the lead agency authority only in response to an applicant asking FERC to do so – that is, retaining the applicant-driven feature of the current rule. Second, the delegation should be conditioned on FERC exercising lead agency authority promptly when requested, without waiting for a FERC backstop pre-filing process or application.

FERC will be better positioned to shepherd a project through the backstop siting process if it has exercised lead agency authority from the moment an applicant has requested assistance with federal land use, environmental, and other federal authorizations, rather than having to await the backstop siting process. Any other approach gives short shrift to the obligation imposed by the statute for DOE to synchronize any federal reviews with the state process for siting transmission facilities.

EEI also urges DOE to ensure that when both DOE and FERC exercise the lead agency authority, an aggressive outreach to coordinate a concurrent decision-making process with the states and tribes is pursued. This will help to ensure that federal authorizations do not lag or ignore related state and tribal ones.

D. DOE May Wish to Consider Delegating All FPA Section 216(h) Authority to FERC

DOE may wish to consider making a full delegation of its lead agency authorities to FERC, even for projects proposed outside the boundaries of a national interest corridor, subject to the same two conditions described above. That is, the lead agency process should remain applicant-driven and should run promptly from the applicant's request for lead agency assistance without awaiting a FERC backstop siting process. Such a broad delegation would relieve DOE of the demand on its limited resources, allowing DOE to focus its resources as a cabinet agency on moving projects ahead promptly. Furthermore, FERC has the staffing, expertise, and cost-recovery mechanism to handle this responsibility.

E. Lead Agency Authority Is Applicable to All Projects, Not Only Those with an EIS

Section 216(h) applies broadly to transmission projects, not just ones that require an EIS. Though EEI does not read DOE's interim final rule as saying otherwise, the proposed rule's references to deadlines stemming from public comments on a draft EIS may create confusion on this point. To avoid such confusion, DOE should clarify in the interim final rule that, on request by an applicant, DOE will exercise its lead agency authority promptly, without the need for an EIS, and the request can come at any time upon filing an application for an authorization with a federal agency. That is, an applicant can seek DOE involvement prior to any decision being made with respect to categorical exclusions, environmental assessments, or EISs, and DOE will promptly provide lead-agency assistance.

F. Preparation of the Consolidated Environmental Review Document is DOE's Responsibility

In the preamble to the interim final rule and in 10 CFR § 900.6, 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. EEI believes this interpretation is contrary to the statutory requirement.

Section 216(h)(1)(C)(5)(A) provides:

> As 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.

Therefore, the Department's statement in the preamble to the interim rule that the term "lead agency" in section 216(h) means it is "lead coordinating agency for environmental reviews, not the lead agency for preparing the environmental review under the National Environmental Policy Act," is an incorrect interpretation of what the statute requires.

The statute specifically provides that the Department "shall prepare a single environmental review document" under NEPA, not "coordinate" such a document (emphasis added). This is further reinforced by the statutory designation of the Department as "lead agency head." Council on Environmental Quality Regulations (CEQ) provide:

> *Lead agency* means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement. 40 C.F.R. §1508.16

Therefore, the designation of the Department as the "lead agency" clearly indicates that the Department's role under section 216(h) encompasses preparation of an environmental review document for the purposes of NEPA compliance. Congress specifically used "lead agency," a widely known term of art under NEPA, not "lead coordinating agency."

The FPA section 216(j) NEPA "savings clause" included in EPAct05 does not compel a different result. It provides

> Except as specifically provided, nothing in this section affects any requirement of an environmental law of the United States, including the National Environmental Policy Act of 1969.

The section 216(h) lead agency provisions "specifically" provide that the Department's role in the NEPA process for interstate transmission facilities is elevated beyond what it would be in the absence of section 216(h). Therefore, they are not somehow rendered moot by section 216(j).

Consequently, in order to make the interim rule better conform to the statutory wording, the Department must at a minimum preserve the option for the Department, at the request of a project proponent, to "prepare a single environmental review document" in its capacity as "lead agency."

EEI recognizes that resource issues are central to the capacity of DOE to fulfill the requirement to prepare environmental review documents. EEI members customarily enter into cost-sharing agreements with federal agencies, including FERC, to cover the cost of preparing the necessary analyses. EEI encourages DOE to adopt a similar approach. As an alternative, DOE could draw upon FERC's long expertise and resources to prepare the environmental documents.

G. Determination of Appropriate Level of Coordination is DOE's Responsibility

The interim rule provides that following receipt of a request for coordination that DOE and the relevant permitting entities "shall jointly determine the appropriate level of coordination required." 10 C.F.R § 900.6(a)(1). While EEI agrees that consultation and cooperation between DOE and the permitting agencies is critical to the success of this process, in the end it is DOE that has the authority to decide the appropriate level of consultation. This needs to be clarified. Also, the applicant needs to be part of that discussion.

H. Duration of Federal Land Use Authorizations is DOE's Responsibility

Section 216(h)(8)(A)(i) provides that the Secretary of Energy, not the permitting agency, decides the duration of a land use authorization. The interim rule preamble provides that the Secretary shall make this "determination prior to the close of the public comment period for the draft of the NEPA compliance documents." The rule should specify that this determination is binding on the permitting agency.

In addition, rather than determining the duration of each federal land use authorization on a case-by-case basis, which would be highly inefficient and burdensome, the Secretary should establish the duration of such authorizations on a generic basis. The anticipated use of a transmission facility does not vary from project to project. Indeed, transmission facilities are typically intended to be used for a very long time. Given the capital requirements of building new transmission, the transaction costs associated with siting and permitting a new facility, and the reliance on the facility once integrated into the nation's electricity grid, the Secretary should make a blanket determination that recognizes the relative permanence of these facilities. Thus, the duration of such authorizations should be the maximum length of time authorized by law. To the extent a unique situation arises where the generic duration is inappropriate, the

applicant or relevant permitting agency could petition the Department to permit a longer or shorter duration for a land use authorization.

III. Comments Specific to the Proposed Rule

A. DOE and Other Agencies Must Honor the Statutory One-Year Deadline

In the proposed rule, at 10 CFR § 900.9, DOE proposes an interpretation of the statutory deadline for federal agency permit decisions in a way that assures these decisions will continue to lag behind state decisions and may even allow federal authorizers to justify delays beyond those already experienced by applicants. 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 inappropriately strings out the decision-making process. None of these proposed triggers for the one-year period to begin find any support in the text of the statute, and none is lawful. To give just one example, it could take two years following submission of an application for an agency to issue a DEIS for a transmission project. This would effectively translate the one-year deadline in the statute to a three-year deadline, precisely the outcome the statute was passed to prevent. Consequently, the final rule must provide that the one-year deadline begins once an application is complete, as determined by the Secretary, not by the permitting agency.

Inasmuch as considerable environmental analysis – including an initial draft of an environmental impact statement where one is required – is completed by the time a formal permit application is filed with a federal agency for a permit, EEI believes the appropriate and lawful trigger to start the one-year clock is when the application has been filed and determined to be sufficiently complete by the Secretary. DOE must reflect this approach in its final rule.

To assist the Secretary in reaching a conclusion about the completeness of an application, EEI encourages DOE to work with the relevant federal agencies to develop a standard application form to be used by an applicant. Additionally, EEI recommends that DOE follow a model used by California and other states. No later than 30 days after an application has been filed, the Secretary in consultation with the permitting agencies, should issue a "letter of completeness" confirming whether or not the filed application contains the sufficient information to support the federal review. If the application and supporting data are considered incomplete, the applicant should be advised about the deficiencies so they can be remedied and the application completed.

Also, if an applicant should desire to take advantage of a pre-filing consultation with the agencies, DOE should work with the relevant agencies to work to assure that the consultation is sufficiently robust to assist the applicant in preparing an application that will be sufficient upon its filing. Additionally, DOE should clarify that the one-year deadline applies not only to the record of decision but also to the issuance of the construction permit that allows dirt to be turned.

B. Extension of the One-Year Permitting Deadline Should Not Be Casually Allowed

Proposed 10 CFR § 900.9(b)(2) provides that, when another provision of federal law "does not permit compliance" with the one-year statutory deadline, the "permitting entity shall cite the provision of Federal law that prevents the final decision on the Federal authorization request from being issued within one year." This would allow a permitting agency to override the statutory one-year deadline with a cryptic one-sentence reference to NEPA or some other statute, without offering any explanation as to why an extension of the deadline is legally necessary. This would effectively undercut the statutory one-year deadline.

Instead, the rule should be modified to require the permitting agency to timely apply to DOE for permission not to issue a permit or permits within the one-year deadline. Any such application should fully explain, based on both the applicable law and facts, why compliance with the one-year deadline is a legal impossibility. Moreover, the application should include a projected date for when the permit in question shall be issued. The applicant should be invited to provide its views in response. In turn, DOE should make the ultimate determination whether to approve or disapprove a request for extension of the one-year deadline. Furthermore, if DOE approves such a request, DOE should set a specific new deadline, informed by the other agency's explanation of the need and requested deadline, input by the applicant, and the urgency of need for the project.

EEI is aware of recent efforts by one of our members to get approval for a transmission project through a joint permitting process that involved all the relevant state and federal agencies. In this process, the federal agencies have continued to lag severely behind the state agencies in making their permitting decisions, delaying the construction of a vitally important transmission project intended to serve an area with constrained electricity supply. DOE's lead agency rules need to prevent this problem from recurring.

C. Notification to DOE Should Be Expanded

In proposed 10 CFR § 900.7,EEI urges DOE to require notification from a federal authorizer any time an application for a permit is filed, not just for those projects that will require an EIS. Constraining the reporting requirement to cases where an EIS is necessary has two problems. First, such an approach will often delay timely notification to DOE because the decision as to whether or not to conduct an EIS can sometimes be delayed for a considerable period. Second,

an EIS-only notification means that DOE will have an incomplete picture and thus understanding of proposed transmission projects using federal lands or requiring other federal authorizations. Transmission projects that involve the preparation of an Environmental Assessment rather than an EIS can still be significant.

IV. Conclusion

EEI recognizes that improving a process that involves multiple decision makers on a lengthy linear facility presents considerable challenges. We appreciate the tremendous work that DOE has done to date on implementing EPAct05's provisions, and we encourage adoption of EEI's recommendations to refine the interim final rule and the proposed rule. In particular, we encourage DOE to develop final rules implementing FPA section 216(h) that:

- Ensure the lead-agency process remains applicant-driven, and when an applicant does request use of the process:
- Apply to any transmission facility outside ERCOT;
- Apply whether one or more federal authorizations are involved;
- Apply to all projects, without the need for an EIS and without awaiting the decision whether to prepare an EIS or preparation of an EIS;
- Ensure that the lead-agency responsibilities are implemented promptly both within and outside NIETCs, with no delay related to the FERC backstop siting process;
- Specify that, on further request by an applicant, DOE will prepare a single, integrated environmental review document, rather than relying on other agencies to prepare the document or on a non-integrated amalgam of documents;
- Ensure that federal authorizations will be for a long-term duration set by DOE (or by delegation FERC), with sufficient authority for the permit-holders to manage transmission rights-of-way in the interest of electric reliability and the environment.
- Honor the Congressional directive for federal authorizations to be completed within one year of a complete application barring contrary federal law; and
- Hold federal agencies to that time frame, rather than allowing casual departures from it.

We appreciate your consideration of EEI's comments. If you have any questions about these comments, please contact me or Henri Bartholomot (hbartholomot@eei.org, 202/ 508-5622), Meg Hunt (mhunt@eei.org, 202/ 508-5634), David Dworzak (ddworzak@eei.org, 202/ 508-5684), or Rick Loughery (rloughery@eei.org, 202/ 508-5647) on EEI staff.

Respectfully submitted,

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