Edison Electric Institute
Power by Association℠

Mr. Lamont Jackson
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: Lamont.Jackson@hq.doe.gov

Re: Department of Energy - Rapid Response Team for Transmission Request for Information, RRTT-IR-01, 77 Fed. Reg. 11517 (Feb. 27, 2012)

Dear Mr. Jackson:

I. INTRODUCTION

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 Federal efforts to address the issue of "incongruent development timelines" for the siting and permitting of electricity generation and attendant transmission. Though EEI acknowledges that these timelines do not run congruently, EEI believes that the most effective use of the Administration's Rapid Response Team for Transmission (RRTT) would be to continue its focus on coordinating and streamlining the transmission siting and permitting processes.

II. EEI INTEREST IN THIS REQUEST FOR INFORMATION

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 generation facilities (including ones that depend on renewable energy, coal, and other natural resources) may be located some distance 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 continue reliably serving their customers. With electricity demand forecast to increase 30 percent by 2030[1], additional generation and transmission facilities clearly 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 to require replacement of power generation and transmission facilities. Interconnecting new generation resources, including renewable resources, also will require some upgrades and new transmission.

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 need for new and upgraded transmission facilities has accelerated, obtaining federal permits has become more difficult and time consuming. Frequently, federal permit decisions for transmission projects lag behind siting

[1] EIA, *Annual Energy Outlook 2011*

and permitting decisions at the state level, complicating the siting process and significantly delaying construction of important facilities.

Thus, as EEI noted in its comments on DOE's recent Notice of Proposed Rulemaking (NOPR) regarding DOE lead agency authority under Federal Power Act (FPA) section 216(h), EEI and our member companies have a strong interest in seeing federal agencies act to substantially improve the existing federal transmission siting and permitting process throughout the country. We believe substantial improvement in the 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.

III. COMMENTS

In response to DOE's current RFI about the interplay between generation and transmission development timelines, EEI encourages DOE and the RRTT to continue to focus attention on improving the transmission siting and permitting process and not divert attention to trying to coordinate the timelines for transmission and generation development. FPA section 216(h) gives DOE a strong role in streamlining the transmission siting and permitting process, in particular as to federal permits. By contrast, the development and siting of generation resources are largely outside of DOE's control.

EEI strongly supports DOE and RRTT efforts to shorten the timeline for transmission development by coordinating the federal transmission siting and permitting process. While it is true, as noted in the RFI, that timelines for generation and transmission projects often do not run concurrently, we believe that the best way to address this concern is to focus on facilitating and streamlining transmission siting efforts. This will provide the regulatory certainty needed for both transmission and generation developers to make investment decisions.

A. DOE Should Remain Focused on Facilitating the Federal Siting and Permitting Process for Transmission and Not Limit that Focus to Transmission Projects Tied to New Generation.

EEI applauds the continuing efforts of DOE and the RRTT in developing streamlined and coordinated approaches for the siting and permitting of transmission projects. The RRTT should continue to focus on ways to shorten the timelines for federal permitting with regard to all transmission projects, not solely for transmission projects tied to new generation facilities. EEI is concerned that the RRTT pursuing the issues raised in the RFI might prove a distraction from the RRTT's core federal coordination efforts.

The focus of the RFI appears to be the disparity in development timelines for transmission projects linked to remote generation. However, in fulfilling DOE's lead agency requirements for transmission siting, DOE's review should not ignore scenarios where transmission projects connect other resources that may benefit from process improvements.

With regard to the interplay between generation and transmission siting, EEI emphasizes that the planning framework for transmission and generation are generally separate and not always contingent upon one another. Thus, federal intervention concerning the interplay between these processes would likely not be helpful and could be counterproductive. In states with vertically-integrated utilities, generation is typically addressed through state-mandated Integrated Resource Planning proceedings, while in organized markets administered by regional transmission organization (RTOs) and independent system operators (ISOs), the decision of when and where to build new generation is based on market signals. By contrast, in states with vertically-integrated utilities, transmission planning is initially done by the electric utility planning to meet its peak load, while in RTOs and ISOs, transmission planning is done through regional planning processes that are overseen by the Federal Energy Regulatory Commission (FERC). Though in those RTOs without Integrated Resource Planning procedures, there is a

need for better alignment of generation and transmission planning that is not an issue for the RRTT to address.

In addition to differing planning structures in general, planning needs and processes for transmission and generation resources are regionally different. Whereas planners in the West frequently see transmission needed for newly developed generation projects far from the existing infrastructure, other areas of the country face reliability concerns or economics as the primary drivers for new transmission. Given that the generation and transmission planning processes are often on distinctly separate study and planning schedules, siting and permitting of generation and attendant transmission are rarely on the same timeline. Yet, in fact, generation and transmission are built when and where needed, each taking the other into account, without federal involvement.[2]

Thus, it is unclear what DOE or the RRTT hope to accomplish with regard to generation permitting timelines. Attempting to include generation as a consideration could further complicate the transmission siting process and could result in unintended consequences and further hinder the desired streamlined approach**.** It should be noted that attempting to advance transmission and generation together can invoke FERC standards of conduct and/or code of conduct issues regarding information sharing between various functions within a utility and may cause further delays and complications. For these reasons, EEI respectfully recommends that the DOE and the RRTT continue to focus on streamlining the federal permitting process for transmission, focusing on improvements that are most likely to provide meaningful benefits to address the serious problem of delays currently inherent in seeking federal authorizations for transmission siting.

[2] However, as EEI has repeatedly emphasized, significant delays are often encountered in the transmission siting process due to difficulties encountered in obtaining requisite federal authorizations.

B. The Federal Government Should Focus on Transmission Siting and Permitting Coordination and Streamlining Efforts.

As noted earlier, EEI strongly supports an improved section 216(h) coordination of federal agency permitting processes applicable to all transmission projects where developers seek inclusion in the joint agency process. EEI supports the federal coordination process contemplated by the DOE in its section 216(h) proposed rulemaking and through the RRTT process. As noted in its comments in response to the DOE NOPR, EEI proposes that:

- the federal government should allow applicants to seek section 216(h) assistance for particular projects where coordination among federal, non-federal, state, and tribal agencies would streamline the permitting process for siting transmission;
- DOE should act as lead agency or actively monitor a designated lead agency to ensure proper implementation of its responsibilities under section 216(h), and in particular, setting and enforcing deadlines and compiling a single environmental review document on which all decisions directly related to the electric transmission facility under federal law are to be based; and
- agencies should be required to let applicants and DOE know as soon as possible, and no later than 90 days in advance, if the agency is not likely to be able to meet the one-year deadline under section 216(h) for completing its review and decision, the reason(s) why, and the date as soon after the one-year deadline by which the agency anticipates being able to complete its review and decision.

C. Delays In Transmission Permitting Are a Leading Factor of Incongruent Development Times.

The RFI asks what are the primary risks for developing transmission. New transmission can be a challenge to build for a number of reasons. As the grid becomes more regional in nature and transmission lines are expected to do more and carry more power than they have in the past, over longer distances, the challenges of developing needed transmission facilities are exacerbated. These challenges include committing to a multi-year project, raising capital to finance the project, addressing regulatory issues at the state and federal level, and addressing stakeholder concerns associated with siting. Several of these challenges fall outside of the RRTT efforts. However, all of them create risks and potential barriers to developing adequate transmission capacity.

Obtaining regulatory permits can result in unpredictable delays to the construction of needed transmission. Prior to seeking regulatory permits, transmission projects are evaluated through planning processes that identify local and regional needs. The likely development time, which includes the time it takes to receive all regulatory permits, is considered when analyzing the need for a transmission project. Actual construction times vary, but construction time is typically only a small fraction of the overall development time of a transmission project. A much larger percentage of project development is the time necessary to secure all required siting and permitting approvals. To ensure reliable operation of the transmission network, transmission plans must anticipate long development lead-times and identify local and regional needs years ahead of time. As with any projection, the probability of correctly identifying all system needs decreases the further out in time the needs must be identified. Moreover, once these system needs have been identified, delays in receiving regulatory permits, which cause impediments to transmission project development, may cause local or regional reliability issues.

To give an example of what the DOE and RRTT can do to assist streamlining the process, in some cases, NEPA evaluations have been expanded when projects involve both federal and private lands to include analysis of conditions well beyond the impacted federal lands, and, at times, sweep in loosely associated stand-alone actions otherwise beyond the control of the federal agency. These expansions are not a statutory requirement, but are an exercise of discretion by land managers. To facilitate the establishment of prompt and binding milestones as provided for in 216(h), EEI believes there should be a limited exercise of this authority by land managers, who should consistently focus on core federal responsibilities during NEPA evaluations.

D. Permitting Delays Create Financial Risks for Transmission Developers.

Unpredictable permitting deadlines and delays also create risk for investors and can make it difficult to finance projects. It is essential to balance customer and investor interests in the construction of sufficient transmission capacity to maintain reliability, minimize congestion, and enable the integration of generation sources, including renewable resources. Transmission is a long lead-time investment when compared to other types of utility plant additions. A typical transmission line requires five years or more to site, permit and construct. Large-scale transmission projects, such as high-voltage overlays and those needed for renewable integration, can involve even longer lead-times.

In deciding where to invest capital, investors compare the risk characteristics of alternative investment options. As noted above, investing in large-scale transmission projects requires a commitment to a multi-year process. These projects are capital intensive and require large amounts of cash outlays throughout development that may not be recovered until the

transmission project is placed into service.[3] The uncertain time lag between investment and cost recovery hampers cash flow, and can create scenarios where utilities face negative cash flow in order to develop these needed transmission projects. The longer the development time, the longer the lag in cost recovery and therefore the larger the financial risk to the project. Consequently, due to these conditions, some otherwise beneficial projects have been postponed or canceled.

E. The Benchmark for Permitting Transmission Should be One Year, as Mandated by Section 216(h).

FPA section 216(h) specifies that federal agencies are to complete their reviews and authorizations within one year of receiving an application to site a transmission facility, unless other federal law precludes meeting such one-year deadline, in which case they must complete their work as close to practicable to the one-year deadline. EEI strongly recommends that DOE and the RRTT adopt the one-year deadline in their federal permitting coordination efforts. The clear intent of Congress was to set a strict permitting timeline in order to combat the significant delays in obtaining the necessary approvals to move needed transmission projects forward.

In order to meet the one-year deadline, EEI encourages DOE to direct the permitting agencies to adopt a streamlined pre-filing mechanism in which potential applicants will gather needed information and participate in stakeholder outreach, so that final applications are as complete as possible and ready to be acted on when submitted. Permitting agency regulations should specify necessary environmental studies and required information, tailored through pre-filing consultation, so that minimal additional information gathering will be required after an application is filed. At the same time, the pre-filing process should remain as concise and

[3] Under certain limited circumstances, a transmission developer may be authorized the use of Construction Work In Progress (CWIP), which allows the utility to recover the return on capital investments during the construction period. While CWIP may benefit cash flow during construction, it does not provide recovery of the principal transmission investment, which cannot be recovered until the project is placed in service.

streamlined as possible, to avoid simply moving delays in the overall siting process from post-filing to pre-filing.

IV. CONCLUSION.

EEI appreciates the opportunity to provide these comments in the interest of improving the siting and permitting of transmission. If you have any questions or need additional information, please contact Tony Ingram, EEI Senior Director, Federal Regulatory Affairs (202/508-5519, tingram@eei.org), Rick Loughery, Director, Environmental Activities (202/508-5647, rloughery@eei.org), Karen Onaran, EEI Program Manager & Senior Analyst (202/508-5533, konaran@eei.org) or Henri Bartholomot, EEI Director, Regulatory Legal Issues (202/508-5622, hbartholomot@eei.org).

Respectfully submitted,

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