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Subject: Southern California Edison Company Comments on the Department of Energy's Request for Information (RFI) on a draft Integrated, Interagency Pre-Application (IIP) Process for Improving Performance of Federal Permitting and Review of Infrastructure Projects

The Department of Energy (DOE) has requested public input on a draft IIP Process prepared in collaboration with other federal agencies. Southern California Edison Company (SCE) is interested in improving the process used by federal agencies to approve infrastructure projects, such as transmission lines and substations proposed to be located on federal lands. DOE asked for feedback as to whether the draft IIP would meet the goals stated in the June 7, 2013 Presidential memorandum on Transforming our Nation's Electric Grid Through Improved Siting, Permitting, and Review. The draft IIP process is intended to ultimately result in reducing the time required for federal agencies to reach a decision to approve or deny a transmission project on federal lands while also ensuring compliance with environmental laws, which is one of the goals in the President's June 7, 2013 memorandum.

IIP Process Purpose:

The proposed IIP process focuses on activities that occur prior to a project proponent submitting to a federal agency an application for constructing a transmission line on federal land. The IIP would establish a coordinated series of meetings and other actions that would take place prior to a Federal agency accepting a high-voltage transmission line application or taking other action that would trigger Federal review, permitting, consultation, or other requirements, such as those required under the National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act, and Sections 7 and 10 of the Endangered Species Act. The proposed IIP process is intended to improve interagency and intergovernmental coordination, to encourage early engagement with stakeholders, and to help ensure project proponents develop and submit accurate and complete information early in the project planning process.

SCE Comments on Draft IIP:

1. The IIP Process Should be Voluntary.

SCE strongly supports the proposal to make the draft IIP process a voluntary, add-on process, allowing project proponents to determine if the IIP process will be beneficial for

their particular project. As written, the draft IIP may not provide sufficient value to many project proponents, who might decide to not undertake a lengthy IIP process. Thus, maintaining the process as voluntary is essential.

2. NEPA Considerations.

DOE characterizes the essential draft IIP benefit as “ensuring that potential issues are identified before a project proponent files an application, thereby simplifying later review processes.” Identifying potential issues and transmission line routes through the IIP process are intended to make the NEPA environmental review and agency authorization processes smoother and more timely. However, the draft IIP seems to lengthen the overall process associated with transmission line authorizations through the commitment of time and resources prior to a project proponent filing an application. Given the amount of information a project proponent must provide to DOE, and the scope of the meetings, the IIP process could result in an extension of a project’s schedule rather than a reduction in the schedule.

Furthermore, the draft IIP does not identify how the NEPA process would be improved or shortened. Likewise, neither could SCE identify any clear time efficiencies in NEPA that would arise due to the IIP. Instead, the IIP appears to be more of a collaborative overlay solution on top of existing, complex inter-governmental processes, rather than a solution that aggressively cuts through and replaces interagency, bureaucratic red tape and would result in a more timely decision on a project application.

In fact, the draft IIP makes clear that the IIP will not supplant the NEPA process or any agency authorization process. The draft IIP states that the federal agencies input in the IIP process does not bind the agencies to any positions, recommendations, or discussions made during the IIP. This lack of commitment means that while the draft IIP could result in organizational and timeline improvements to existing interagency processes, nothing is guaranteed. SCE understands that the agencies cannot act in a manner that would dictate decisions that would be derived from the NEPA process. Conversely, some assurances should be attained that would result in a shorter and more efficient NEPA review. For example, the Federal Energy Regulatory Commission hydroelectric project licensing regulations have a pre-application process that is intended to shorten the NEPA process. To attract project proponents to use the IIP, DOE should consider what can be done to assure NEPA reviews will not be duplicative with the work and discussions occurring in the IIP process.

3. Agency Commitments to Participate in the IIP.

If a project proponent chooses to use the IIP, too much flexibility for federal agencies is built into the draft IIP process: 1) provisions for voluntary participation by non-federal agencies and some activities for federal agencies; 2) limited mandatory requirements on agency participation (e.g., no forfeiture of a right to later modify agreed upon mitigation measures identified earlier in the draft IIP process);¹ 3) a lack of enforcement

¹ Examples: Section II.E.3 identifies a number of federal entity information requirements to be presented at the initial meeting. However, subsection (3) qualifies the obligation to provide information by stating “to the extent possible and based on the information provided by the project proponent”—which enables federal entities to not come prepared to the Initial Meeting.

mechanisms regarding the level (or absence) of agency participation; and 4) no change in agency jurisdictional authority that would occur when the agency begins to process the project proponent's application.

The IIP proposes to invite state and local government entities that would have an interest in the siting and licensing of a transmission project to participate. SCE is pleased the IIP will seek state and local government participation. State and local participation is important to a successful pre-application process when, as in most instances, the transmission line would be on both federal lands and lands under state jurisdiction. For example, having the federal agencies encourage a certain corridor or route as a part of the IIP, only to find that the corridor/route would be unacceptable to state and local government would be a waste of energy. SCE understands that the IIP cannot supplant state and local agency processes or require state participation. For some projects, state and local agency participation may be critical to the pre-application process' success. All involved state agencies should be linked in by a formal process, even if the IIP cannot bind state agencies to participate.

Additionally, the draft IIP does not require federal agencies to attend meetings. Moreover, the IIP recognizes that federal agency participation may depend upon the agency entering into a cost recovery agreement with the project proponent. The IIP acknowledges that federal agencies cannot enter into such agreements until after an application has been filed. SCE recommends that the DOE work with the other federal agencies to resolve their potential attendance issues so that the IIP will achieve a commitment for federal agency participation.² Thus, a project proponent would need the option to discontinue the IIP should key federal, state, or local agencies decide not to participate in the pre-application process.

4. Comments on Draft IIP Sections.

a. Sections 1.E(1) and (2).

SCE recommends that the IIP be available to all transmission lines projects under FERC jurisdiction, and not just transmission lines that meet the definition of being used in "interstate commerce for sale at wholesale" or a requirement that if the transmission line only crosses land administered by one federal agency, then it must be "considered for federal financial assistance from a Federal Entity" to qualify for the IIP. These restrictions are too limiting. For example, while a transmission line may only cross federal land under one agency's jurisdiction, many other federal agencies may be critical to the licensing process (Army Corps of Engineers and U.S. Fish and Wildlife Service (USFWS)), which could make the IIP of value to a project proponent.

Additionally, under subsection II.G "the federal entities reserve the right to provide additional comments as needed. The preliminary feedback and any later feedback do not constitute an agency decision or commitment by those federal entities to approve any authorization request." SCE recognizes that the agencies cannot make decisions prior to reviewing an application and undertaking the required NEPA environmental review. Conversely, agencies should use their best efforts to provide valuable information to a project proponent to avoid additional information requests during the NEPA review process.

² The draft IIP should make clear that cost recovery agreements would cover only reasonable agency participation costs.

b. Section I.E(3) and (5).

Subsection (3)(b)(i)(1) states that Federal Entities must attend the initial and final meetings. However, this statement was significantly weakened by other statements in subsection (5) that such attendance is subject to staffing resource availability and cost recovery agreements. The draft IIP also appears inconsistent regarding whether a Federal Entity must attend interim meetings. Subsection (3)(b)(ii)(4) states that Federal Entities must attend interim meetings unless DOE determines that a Federal Entity does not need to attend interim meetings. However, subsection (3)(b)(ii)(2) indicates that the Federal Entity can make the determination concerning attendance at interim meetings. This apparent inconsistency must be clarified.

The involvement of Federal Entities in the IIP is dependent upon the role those entities will play in the authorization of a project. For example, if the project will require a Biological Opinion from the USFWS, then holding the IIP meetings without the USFWS will provide significantly less value to a project proponent. The same consideration is true for certain Non-Federal Entities. Consequently, SCE strongly recommends that Federal Entities be required to attend meetings if either DOE or the project proponent deems attendance necessary. Additionally, a project proponent should be able to discontinue proceeding with the IIP if key Federal Entities and/or Non-Federal Entities do not commit to participate in the process.

c. Section II. Initial Meeting.

Section II prescribes a number of requirements for project proponents and Federal Entities related to the Initial Meeting among these parties to discuss the proposed project. To start, section II.A. requires a project proponent to submit an Initiation Request package with information designed to inform the Federal Entities about a proposed project. However, much of the information in subsections (A)(8) and (9) may be too detailed for an initial meeting, and section II.E requires Federal Entities to bring this same information to the initial meeting. For example, subsection (8) requires information regarding environmental, geotechnical, land use, and military constraints, avoidance, minimization, and mitigation options. Subsection (A)(9) goes on to require this type of information to be put into detailed maps and geospatial information systems format. Depending upon the situation, a project proponent may or may not have that information readily available whereas an agency might. To reduce this redundancy and make the IIP more efficient, a project proponent should not spend significant time compiling this information when the agencies already have the information.

An initial meeting should typically be more general in nature. Federal and Non-Federal Entities have a wealth of this environmental, land use, and other information in their databases. Rather than requiring a project proponent to spend considerable time accumulating the detailed information required by subsections (8) and (9), we view an initial meeting as an opportunity for the project proponent to discuss what information it may have and determine the information already available at the agencies. SCE attempts to conduct this type of initial meeting with Federal and Non-Federal Entities during the beginning of each transmission project siting and licensing

process. The initial meeting provides the opportunity to informally meet with agency representatives and specialists to, among other things, (i) have the project proponent explain the nature and need for the transmission project, (ii) discuss at a high level the potential routes and corridors, (iii) discover areas of potential concern, (iv) learn about possible interested stakeholder groups, (v) determine the available information about the potential project areas. Federal and state land management agencies and resource agencies have a wealth of knowledge about the areas under their jurisdiction.

Currently, SCE meets with federal and state agencies to learn about areas of concern up front before SCE begins any extensive route investigation. This initial agency information is extremely useful in a project proponent's planning effort and gives the project proponent a significant amount of information that the agencies believe is important for initial planning purposes. SCE recommends that the IIP be modified to not require a project proponent to investigate and provide natural and cultural resource information prior to the initial meeting, unless the applicant indeed has that information already available. Rather, this should be an opportunity for the project proponent to explain the basic project and obtain agency information about the areas through which the transmission line may cross.

Section II.E(10) states that an applicant is required to submit a Public Outreach Plan. Yet, the draft IIP states earlier that DOE would "strongly encourage" the applicant to file such a plan. The intent must be clarified – is the Public Outreach Plan optional or mandatory? SCE provides more specific comments about having an optional Public Outreach Plan below when discussing sections IV.A and B.

Pursuant to section II.E(11), DOE may require the project proponent to create a project website. Similar to a Public Outreach Plan, if the creation of a project website is not otherwise a part of an agency's requirements to obtain an authorization from an agency, then the IIP should not require a project proponent to create a project website. The IIP should focus on helping the project proponent submit a complete application(s) with the relevant Federal Entities and Non-Federal Entities.

d. Section III. Quarterly Reporting and Overall IIP timeframe.

The requirement for a project proponent to submit quarterly status reports appears unnecessary. First, the use of quarterly reporting raises a concern because it implies that the IIP process will take significant time. The timelines within the draft IIP indicate that the entire process could be very time consuming. Additionally, the timelines do not recognize how much time it will take for a project proponent to compile all the information needed in the proposed four meetings.³ An IIP goal should be to expedite the process that a project proponent will use for preparing applications that seek authorization for a transmission project, not adding more layers of requirements and extending the time that it would otherwise take to prepare and file a complete application.

³ The Edison Electric Institute, whose comments SCE supports, provided SCE with a consultant's timeline for the IIP. According to HDR consultants, the IIP would take over 600 days to complete, without considering the amount of time necessary for a project proponent to complete the pre-requisite tasks between each of the four IIP meetings.

Second, the draft IIP does not define what would be in a quarterly report. Third, the draft IIP does not describe the benefits of a quarterly report. SCE is concerned that this report could take a substantial amount of time to compile and would detract from the overall goal of facilitating the preparation of an application in a timely fashion. Additionally, if the IIP were streamlined, then the benefit of a quarterly report would be minimal. SCE recommends deleting this requirement.

e. Section IV.A. Public Outreach Plan.

The draft IIP requires a project proponent to prepare and implement during the IIP period a Public Outreach Plan. Progressing to the final three IIP meetings is made contingent upon plan implementation. For each major transmission project, SCE prepares a Public Outreach Plan that is consistent with the IIP's proposal. However, SCE believes that the IIP should focus on helping a project proponent have the information necessary to prepare complete applications for each agency with jurisdiction over a project. The requirement to prepare a Public Outreach Plan and discuss that plan with Federal Entities and Non-Federal Entities is, to SCE's knowledge, outside the jurisdiction of those authorizing agencies. Moreover, the preparation of a Public Outreach Plan should be at the project proponent's discretion and not an IIP requirement. Once an application is submitted, the NEPA lead agency will have its own public involvement requirements as a part of the NEPA process. Thus, conditioning the IIP's proposed four meetings based upon Public Outreach Plan implementation is inappropriate. SCE recommends that this section be removed from the IIP. SCE would not be opposed to having a project proponent provide DOE with a Public Outreach Plan should the project proponent decide to create such a plan. The project proponent would have the discretion to provide updates on the plan's implementation.

f. Section IV.B. Tribal Coordination Plan.

The IIP would require project proponents to submit a Tribal Coordination Plan. SCE has the same concerns about "requiring" a project proponent to prepare a Tribal Coordination Plan that we have with the requirement for a Public Outreach Plan. A project proponent should be able to proceed with discussions with interested tribal stakeholders at its discretion. Moreover, a Tribal Coordination Plan does not reduce the "government to government consultations" that the Federal lead NEPA agency must conduct. Additionally, some parts of the IIP (subsections IV.B(1)(g), (j), and (k)) indicate that the project proponent should have already spoken to tribal representatives prior to the initial meeting. Such discussions may be premature. The initial agency meetings constitute the beginning of the project siting and licensing process and tribal discussions would likely occur after an initial meeting with agencies. This will give the project proponent more basic information with which to begin discussions with Native American governments.

g. Sections V and VI. Study Corridor Meeting and Routing Meeting.

Following the Initial Meeting, the draft IIP proposes that the project proponent, DOE, and other participating entities hold a Study Corridor meeting and a Routing meeting. The Study Corridor meeting requires that the project proponent provide more detailed

information to the agencies for review. The Routing Meeting builds on the Study Corridor Meeting. However, the meetings' components are very similar and may be redundant and unnecessary depending upon the project's scope and the amount of work performed by the project proponent. In fact, the IIP should make the Study Corridor Meeting and the Routing Meeting optional at the project proponent's discretion. A project proponent may determine that these meetings are unnecessary based upon the Initial Meeting and any offline discussions with Federal Entities and Non Federal Entities. A project proponent may choose to go directly to a Final Meeting instead of undertaking these two interim meetings. Section II.F. should make clear that the parties will discuss the need for these interim meetings during the Initial Meeting, and that the project proponent can dispense with the meetings.

If a project proponent decides to hold a Study Corridor and/or a Routing Meeting, the DOE should reduce the time frames for holding the meetings. For example, DOE should take 30 days to determine if the information provided by the project proponent in the Routing Meeting request is sufficient instead of 60 days. See section VI.B. This would then be similar to the 30 day determination for a Study Corridor Meeting in section V.C. Section VI.B should include a sentence that DOE will notify the project proponent within a 30 day period after reviewing the submitted information, similar to the notification required in section V.C. Additionally, the project proponent should have that ability to modify the information provided to DOE prior to either a Study Corridor or Routing meeting. Based upon prior discussions with DOE and the other agencies, the project proponent may wish to reduce the scope of these interim meetings. This will better focus the meetings' purpose and more efficiently meet the objective of a timely process that results in the project proponent filing a complete application.

As noted above, the Study Corridor and Routing meetings should not be tied to the review and feedback of the Public Outreach Plan as indicated in our comment above. Project proponents should be able to proceed with the level of public outreach that they believe is appropriate without having to comply with public outreach requirements prior to engaging with agencies for the Study Corridor Meeting and the Routing Meeting.

h. Section VII. Final Meeting.

The Final Meeting agenda seems duplicative with the Routing Meeting agenda, thus lending further support for making the Routing Meeting optional at the project proponent's discretion. The time frames for setting up the Final Meeting are too long. DOE should commit to 30 day periods within sections VII.B and C instead of 60 day periods to provide notice and to set up a meeting.

5. Overall IIP Recommendation.

The comments above are intended to help improve the draft IIP as written. SCE greatly appreciates the DOE's interest in assuring that a complete application is filed with the Federal Entities with jurisdiction over a proposed project. SCE believes that having Federal and Non-Federal Entity participation in a pre-application effort to obtain

information, ideas, and to refine how a transmission line project should be sited is invaluable. Our past experience has shown that these discussions can make a significant difference in planning a project.

However, SCE believes that the DOE should take a fundamentally different approach with the IIP. Instead of a heavily prescriptive formula, we recommend the IIP create a more informal and flexible process of information sharing among a project proponent and the Federal and Non-Federal Entities. The number of meetings should be determined by the project proponents need for information and advice. If Federal Entities and Non-Federal Entities cannot be mandated to attend meetings, then DOE should help facilitate those entities attendance at a series of meetings. If an entity does not attend a meeting, DOE can commit to later reaching out to that entity to obtain any necessary information and to get the entities concerns, which in turn can be relayed to the project proponent.

Additionally, SCE recommends that DOE focus on opportunities to streamline Federal Entities permitting processes and measurably shorten agency timelines. If the draft IIP becomes implemented, it should contain mandatory process review and deadline provisions for the Federal Entities, with consequences associated or missed deadlines.

SCE appreciates the opportunity to comment and respectfully request that DOE consider incorporating the above comments in the final IIP, should DOE proceed with creating such a process. Should you have any questions about these comments, please contact me at 626.302.4459.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nino Mascolo".

Nino Mascolo