

October 31, 2013

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**RE: Improving Performance of Federal Permitting and Review of Infrastructure Projects:  
Comments on a Draft Integrated, Interagency Pre-Application (IIP) Process**

Dear Ms. Smith and Mr. Lawrence:

Please accept these comments on the draft Integrated, Interagency Pre-Application (IIP) Process on behalf of the Wyoming Infrastructure Authority (WIA), in response to your August 29, 2013, Request for Information (RFI) on “Improving Performance of Federal Permitting and Review of Infrastructure Projects.” We are committed to state and federal cooperation to accelerate the statutory reviews, permits, and consultations required for electric transmission lines. Towards this goal, the WIA has engaged with the Administration’s Rapid Response Team for Transmission (RRTT); the President’s Council on Environmental Quality (CEQ); and the Western Governor’s Association’s (WGA) Transmission Siting Task Force to review regulatory requirements; prepare transmission line permitting roadmaps; participate in developing tools to assist in public outreach; siting; obtaining permits; and in the review of Memorandums of Understanding (MOU) aimed at coordination during the application processes required for transmission line development.

We would like to commend CEQ, RRTT, WGA and all the other individuals and entities involved in improving the permitting and siting process. For improvements to be made, there first has to be a recognition that improvements are, in fact, needed. That climate exists today and has for some time. When listing recommendations for improvements, the item most often mentioned is the need for greater communication and collaboration between agencies and intra-agency efforts with the BLM having the distinction of the governmental entity most often mentioned. Leadership and accountability issues are near the top of most lists. The WIA is certainly in the camp that recommends improvements be made to significantly improve such communication and collaboration; clear responsibilities are communicated to employees; people in leadership positions need to lead; and all the individuals involved in the NEPA process need to be held accountable for his or her role in the process. The WIA is hopeful improvements will be made, as they are critically important to improve both near-term siting requirements and the provision of a sound long-term siting strategy.

Wyoming is also involved in reviewing and permitting the Gateway West and TransWest Express transmission lines, two (2) of the seven (7) projects selected by the RRTT. This involvement has provided us with a very strong understanding of the state and federal permitting regulations and the inter-agency coordination required to successfully move projects from permit application to permit approval in a timely manner. .

We have reviewed the proposed IIP Process in great detail, and we believe it should be rewritten in its entirety. The IIP Process fails to “efficiently meet” your stated goal “**to improve interagency and intergovernmental coordination.**” Instead, the proposed IIP Process is duplicative relative to the intent and requirements of the existing NEPA process. Everything that is proposed in the IIP Process could be accomplished by the existing NEPA regulations if implementing guidelines were consistent across federal agencies; if there were consistent enforcement or penalties for agencies’ delays or failures to act; and if federal agencies made it clear who within their teams were accountable for owning and making decisions in a timely way.

Unfortunately, instead of working to “improve interagency and intergovernmental coordination” within the government agencies required to respond to and process permit applications, it appears that the proposed process is pointing fingers at the utilities and transmission developers, who simply cannot build any transmission lines of any significant length in the Western U.S. without crossing federally managed land. As you are likely already aware, well over half of all of the Western U.S. is federally owned and managed. Our experience has shown that the current delays in permitting are not because utilities and developers haven’t spent significant time and capital to study and understand the best potential transmission line routes with the least potential conflicts, and time talking with and reaching out to stakeholders, prior to submitting their right-of-way applications to the federal government. The delays happen within the federal agencies’ implementation of the required NEPA process, where there appears to be a lack of engagement, knowledge, training and focus of agency staff, as well as ever-changing and conflicting agency policies, preventing timely permitting decisions from being made.

In other words, to fulfill the goals of the Presidential Memorandum and Executive Order as cited in your RFI, we believe the DOE should be focusing its efforts on improving the federal agencies’ “post-application” processes in order to have the maximum positive benefit of reducing permitting timeframes. Asking project proponents to do more and duplicative “pre-application phase” work will not and cannot make a difference on the degree to which “interagency and intergovernmental coordination” is effective. If you were running a kitchen and trying to get steaks served to customers sooner and fresher, you would look at the processes used in the kitchen, the skills of your cooks, and the efficiency and capability of the serving staff. Would you try to solve the problem simply by ordering a higher-grade cut of steak?

We have a few more comments and recommendations to follow.

1. There is an overwhelming need for **better communications between state and federal agency field offices** to provide unified reviews and direction in developing protocols for similar species and sensitive habitats. The NEPA process already provides for a pre-application process that would better serve this purpose if conducted more formally.
2. There should be extreme care to make any IIP process beneficial **to reduce the federal timeline and not extend the time required for obtaining permits on federal lands**. From our interpretation, the proposed IIP process would require approximately 600 calendar days and, as a result, would extend the NEPA process 2 ½ to 3 years, which is unacceptable. For context, Gateway West filed its SF 299 application with the U.S. Bureau of Land Management in May 2007 and, more than six years later, is still awaiting a Record of Decision. The original SF 299 application for the TransWest project was filed with BLM in November 2007, and the federal agencies have scheduled their Record of Decision for fall 2014, approximately 7 years later.
3. The IIP should articulate an overall federal process schedule of 36 months from U.S. DOE acceptance to publishing of the NEPA Record of Decision. This would result in an IIP process that yields a project plan based on defined requirements that can be refined during the NEPA scoping phase to improve the efficiency and effectiveness of data collection necessary to support the federal review and permitting process.
4. Any IIP process should not require duplicative public outreach requirements. The proposed “Project Proponent Public Outreach Plan” includes multiple elements that are already required as part of the NEPA process, and simply adds more time, more cost and more public confusion. We think the outlined requirements should be considered for the federal agencies’ project team to complete as part of their compliance with the NEPA process, after the right-of-way application has been submitted. Under the terms of typical cost recovery agreements between project proponents and federal agencies, the project proponents are paying for all of this work anyway.

5. As proposed, the IIP process is not binding on the agencies. Much of what is proposed is already included in the 9-agency MOU; in existing CEQ regulations; and in the NEPA guidelines of several federal agencies. In addition, the proposed process suggests that the proponent be responsible for tribal consultation; this clearly does not fall within nation-to-nation consultation requirements.
6. It is our recommendation that the Lead NEPA agency be established following the corridor routing meeting. This would result in the recognition of how prior appeals and subsequent legal decisions have informed the lead federal Agency's NEPA implementation process.

One last observation and recommendation is to require project proponents to enter into cost sharing agreements early in the pre-NEPA process. We have seen literally 10's of thousands of MW of proposed transmission projects and requests for transmission service across the west over the last few years. Gateway West and Gateway South are prime examples. Given the significant amount of transmission requests in their queue, PacifiCorp/Rocky Mountain Power/Idaho Power (for Gateway West) had designed both of the transmission lines as double-circuit 500 kV lines with a total of 6,000 MW of capacity. When the time came for those entities with service requests to start spending money, they all vanished, without exception. Today the lines are designed as single-circuit 500 kV lines with a total capacity of 3,000 MW and are being built to provide service to native load customers only. Requiring project proponents or those requesting transmission service to expend capital on an earlier timeline would result in projects and requests that remain with much greater attention and more efficient, cost effective processes.

Thank you for your hard work to make federal permitting faster and more effective, for the benefit of our country, our state and the citizens we are privileged to serve. We would be pleased to provide additional detail or respond to questions regarding our comments and recommendations.

Sincerely,

*Loyd Drain*

Loyd G. Drain