

**Troy, Angela (CONTR)**

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**From:** Judith Lee <jleeeeps@mchsi.com>  
**Sent:** Tuesday, February 16, 2016 10:04 PM  
**To:** OERegs  
**Cc:** Bob Cunningham; Judith Lee  
**Subject:** RIN 1901-AB36 comments  
**Attachments:** IIP comments EPS PCS.docx; ATT00001.htm

Please find attached comments to the proposed rule RIN 1901-AB36 for the “Coordination of Federal Authorizations for Electric Transmission Facilities” for the Integrated Interagency Pre-Application Process (IIP). A great improvement, thank you very much!

Judith Lee and Robert Cunningham

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It's not true what they say: We are not made of flesh and blood. Humans, all of us, are made of choices. Aaron Abeyta

**Date:** February 16, 2016

**Subject:** Comments on proposed amendments for “*Coordination of Federal Authorization for Electric Transmission Facilities*” 10 CFR Part 900

**RIN 1901-AB36**

**POC:** Julie A. Smith, DOE Office of Electricity Delivery and Energy Reliability

**These comments are submitted by:**

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We appreciate the opportunity to review and comment on the revised 216(h) rule, the Integrated Interagency Pre-application process (IIP). Our previous detailed comments were submitted on September 23, 2013 in response to the original proposed rule. Our comments here are based on how this revised rule addressed those in the comments submitted in 2013.

**A. Two Meetings and Clear Delineation between IIP and NEPA**

Our previous comments focused on the proposed IIP process, with four meetings, not only providing important information among the involved federal, state, and local governments, Tribes, and the proponent prior to the proponent submitting an application, but in so doing, duplicating much of the processes and public involvement required under NEPA prior beginning the NEPA process, under the oversight and with the involvement of DOE. We are pleased that DOE now proposes only two meetings, with agenda content for each meeting similar to that which we recommended, and the meeting results focusing the information needed for a complete application and informing the subsequent NEPA process in appropriate ways. As we recommended, this approach should fully comply with the requirements of EPA Act of 2005 Section 216(h), the Executive Orders, the nine-agency MOU, and federal agency land use regulations. If the project proponent chooses not to use the IIP voluntary process, then the default is back to the MOU and agency regulations and procedures already in place. Even if the IIP process as managed by DOE is not elected for use by the project proponent, the detailed meeting topics and processes outlined in the IIP would be very helpful to the authorizing federal agencies and project proponent.

**B. Agency Roles and Stakeholder Involvement**

The Lead Agencies (the federal NEPA lead and DOE as the 216(h) lead) and the cooperating and participating federal, state, and local agencies and tribes now play their proper roles at appropriate times, avoiding incorrectly delegating inherently governmental responsibilities to the project proponents - which was a major concern with the original proposed rule for us. Stakeholder involvement conducted by the project proponent as a contribution to the pre-application

process is helpful; however, formal government-to-government consultation with tribes should be conducted by the Lead federal agency. Under the revised IIP process, tribes are offered key roles in the IIP as potentially affected non-governmental entities.

**C. Use of FLPMA §503, EPLA §368, and Disturbed Land**

We support the explicit encouragement for applicants and agencies to identify siting corridors in these pre-designated and disturbed areas for minimizing conflicts and impacts.

**D. Cost Recovery**

Considering the differing approaches to and delegation of authority for cost recovery for the various agencies, we support the ways that cost recovery is discussed in the proposed IIP process.

**E. Identification of Lead NEPA Agency**

Although we recommended that the federal agencies identify the Lead Agency for the purposes of NEPA compliance at the first meeting, with DOE oversight and involvement, we also support waiting until after both pre-application meetings for the involved agencies to reach their own agreements. The rule appropriately provides for the DOE, cooperating agencies, and/or CEQ become involved when a disagreement occurs regarding Lead Agency designation. After the second meeting, the parties should be clear on the degree of involvement of the various agencies in the authorization decisions and consultation processes, resulting in a smoother designation of the Lead Agency based on clear rationale.

**F. Mitigation Approach**

We support the identified mitigation approach of first avoiding, minimizing, and then compensating for residual impacts, perhaps at the landscape scale, consistent with the Presidential Memorandum.

**G. DOE Involvement in NEPA after an Application is Accepted**

We originally supported DOE providing oversight as part of the NEPA process, but with the clear and appropriate delineation between the pre-application process and the NEPA and environmental review processes once the application is accepted, the Lead Agency should be able to meet the schedules agreed to during the pre-application meetings in good faith. The NEPA Lead agency should not need oversight at that point, and should be willing to comply with Presidential direction and the nine-agency MOU.

**H. Tracking Qualifying and Non-qualifying Projects**

The DOE-managed Regulatory and Permitting Information Desktop (RAPID) Toolkit addresses our concern with tracking both Qualifying and Non-qualifying projects, regardless of whether the proponent elects to use the IIP processes.

**I. Typographical Error in Revised Rule**

In Section 900.5(d), the phrase “Request to the Council on Environmental Quality for a fine [sic] determination” has both the typographical error (“fine” should be “final”) and is an incomplete phrase.

**J. Conclusion**

As we said in our original letter, our comments are based on a collective seven decades of experience in both government service and private practice, combined with a detailed review of existing laws, regulations, Executive Orders, and agency procedures. With the thoughtful revisions made by DOE, we believe the proposed rule will be both practical for authorizing agencies and their applicants and effective in efficiently focusing completed applications and protecting the environment. Implementation of the rule should prove beneficial during the pre-application process as well as providing good information and analysis for informing the subsequent NEPA reviews.

Thank you again for the opportunity to comment.