

The logo for WEST ASSOCIATES features the company name in a serif font on a light green background. To the left is a teal circle with a red vertical bar. To the right is a stylized white 'W' on a teal background.

WEST ASSOCIATES

October 31, 2013

Mr. Christopher Lawrence
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: Christopher.Lawrence@hq.doe.gov

Re: Department of Energy – Improving Performance of Federal Permitting and Review of Infrastructure Projects, Request for Information, 78 Fed. Reg. 53436 (Aug. 29, 2013)

Dear Mr. Lawrence:

I. INTRODUCTION

Western Energy Supply and Transmission Associates (“WEST”)¹ respectfully submits these comments in response to the questions raised in the above-referenced Department of Energy (DOE) Request for Information (RFI). This RFI addresses the proposed pre-application process for siting of transmission projects requiring interagency and intergovernmental coordination in an effort to improve the efficiency, effectiveness and predictability of the transmission siting, permitting and review processes.

The proposed Integrated, Interagency Pre-Application (IIP) process builds upon the collaboration of the steering committee created under Executive Order 13604 (Improving Performance of Federal Permitting and Review of Infrastructure Projects) and addresses the directives of Section 4(a) of the Presidential Memorandum (Transforming our Nation’s Electric Grid Through Improved Siting, Permitting and Review) issued in June 2013. Specifically, the proposed IIP creates a mechanism for transmission project developers to engage early on with Federal entities with siting jurisdiction and other stakeholders with decisional authority to ensure a complete and accurate siting application as well as early identification of potential areas of concern. The goals of the IIP process are, and should be to:

- enhance early communication and coordination among stakeholders;
- encourage early engagement and outreach with the public;
- develop iterative feedback on possible routing and alternatives;
- promote predictability; and
- ultimately lead to timely decisions regarding permitting while ensuring compliance with environmental laws by narrowing alternatives for the NEPA process and producing better environmental outcomes.

II. WEST ASSOCIATES INTEREST IN THIS REQUEST FOR INFORMATION

¹ These comments are provided on behalf of WEST Associates Members, including Arizona Electric Cooperative, Basin Electric Cooperative, NV Energy, PacifiCorp, Portland General Electric, Public Service Company of New Mexico, Salt River Project, Tucson Electric Power Co. and Colorado Springs Utilities.

WEST is a coalition of nine public- and investor-owned, vertically integrated electric utilities generating electric energy in eleven western states. WEST typically comments on rulemakings in which high-level policy issues bear broad applicability across a significant portion of its membership. 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.

Western electric utilities need to maintain their existing transmission facilities and in many cases will need to upgrade existing and build new transmission facilities in coming years. Western states also have a greater share of Federal Lands and Indian Reservations compared to other regions of the United States (see Figure 1.)

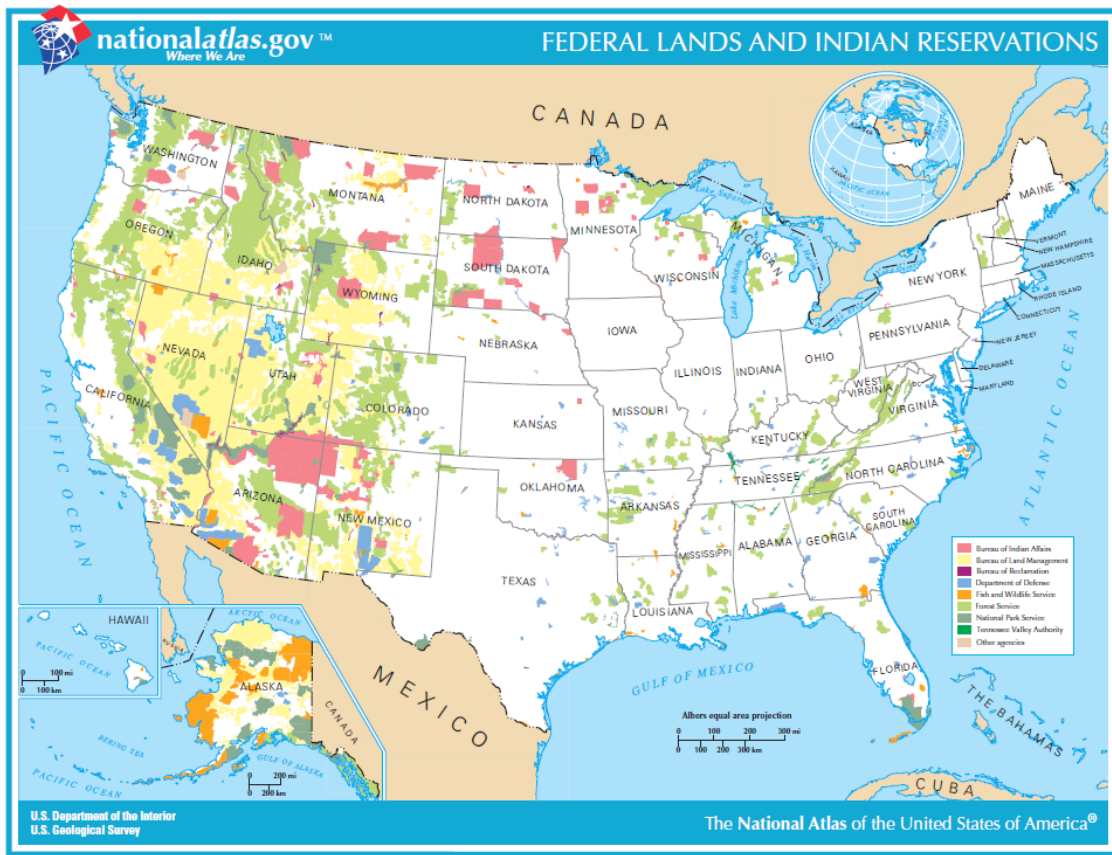


Figure 1 – Public and Indian Lands

Electricity demand is expected to increase nearly 30 percent by 2040², requiring additional generation and transmission facilities. Increased constraints on existing electricity generating plants, such as new Federal air, water, and solid waste regulations, are likely to shut down or require retrofits to some existing power plants and will also likely drive construction of new power generation and transmission facilities. The Administration recognizes the importance of a strong, resilient grid and its impacts on the U.S economy.³ It has directed Federal agencies to create a more efficient permitting process in order to encourage the development of much-needed infrastructure.⁴

To site transmission facilities, western utilities often must acquire many federal permits, including land use authorizations for rights-of-way across federal lands and dredge-and-fill permits under section 404 of the Clean Water Act. 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 and permitting decisions at the state level, complicating the siting process and significantly delaying construction of important facilities. In some cases, state and federal processes for line siting do not always come to the same conclusions regarding the development of alternatives with the least environmental impact. WEST Associates sees value in a streamlined pre-application process that brings *all* stakeholders together early in project planning to determine the best project alternatives. WEST encourages Federal agencies to act to substantially improve the existing Federal transmission siting and permitting process throughout the country. We believe substantial process improvements, once realized, will: (1) deliver significant benefits to the nation's utility customers who depend upon adequate, reliable and reasonably-priced electricity to carry on their daily business; and (2) support vital economic growth across the country.

III. COMMENTS

1. WEST Supports an Applicant-Driven Pre-Application Process.

WEST is very supportive of the applicant-driven nature of the IIP process allowing project developers to elect whether they wish to utilize the IIP process. For those projects where established processes are working well, a mandatory IIP procedure could add an unnecessary burden to project developers and may further delay the siting and permitting process.

2. WEST Supports DOE Taking the Lead Agency Role in the IIP Process and Beyond.

WEST is supportive of DOE taking a strong lead role in the IIP Process and coordinating federal permitting for transmission under DOE's role granted by FPA

² EIA, *Annual Energy Outlook 2013*.

³ Executive Office of the President, *Economic Benefits of Increasing Electric Grid Resilience to Weather Outages* (Aug. 2013).

⁴ See, e.g., Executive Order 13604 – Improving Performance of Federal Permitting and Review of Infrastructure Projects (Mar. 22, 2012).

Section 216(h) under the Energy Policy Act of 2005. WEST believes that DOE should stay fully involved in the IIP Process, acting directly as lead agency and ensure that the process is followed and enforcing deadlines. DOE should also take the lead role during the transition from the IIP process to the designation of such other lead agency once a formal application for review is filed by the project developer. Following selection of a lead agency, WEST encourages DOE to ensure that the lead agency properly implements its responsibilities under section 216(h), in particular, setting and enforcing deadlines and compiling a single environmental review document on which all decisions under federal law are to be based. Without DOE leadership in these areas, WEST is concerned that agencies will not sufficiently honor the one-year deadline set in section 216(h) or sufficiently work from a single environmental review document, as needed to avoid duplicative reviews.

3. All Federal Agencies with Applicable Permitting Authority Should Be Required to Participate in the IIP Process.

After reviewing the description of the process, we are concerned the federal entities are not required to participate in the entirety of the IPP process. In order to ensure robust coordination and increased efficiency, all federal agencies with permitting authority that would be applicable to a given project should be required to participate in the entire IIP Process for that project. Similarly, relevant state regulators should also be encouraged to attend all meetings and participate throughout the IIP process. There are often inconsistencies among state and federal siting processes and thus coordination throughout the IIP among these stakeholders is essential. By declining to participate in the review of intermediate milestones, there is a risk that important obstacles or concerns would be left until the Final Meeting when the proposed project has reached the final stages of conceptual design. Applicants would have spent significant time, effort and investment in developing viable siting options only to have potential new impacts raised at the last minute, which could negate all previous work. The goal of the IIP is to streamline the permitting process and allow for open collaboration early in the process. Such late disruptions erase any and all efficiencies gained during the IIP.

Frequently, federal agencies cannot anticipate planning for major infrastructure projects or do not have resources needed to support an application or in this case a pre-application process. As recognized in the RFI, WEST is aware that agencies' budgetary constraints might limit participation in coordination efforts among agencies. WEST suggests considering a mechanism for federal agency cost recovery giving agencies the ability to provide the resources needed to complete the pre-application process. Thus, WEST suggests that DOE explore mechanisms through which federal agencies could obtain the funding necessary to enable their participation in the proposed IIP process, such as through Cost Recovery Agreements (CRAs). Another approach would be for DOE to administer a single CRA for all of the agencies participating in the IIP Process for a given project, as this will enhance administrative efficiency. Lack of funding also is a significant hurdle to getting early agency participation, thus DOE mechanisms are needed to increase funding for early agency participation.

Furthermore, WEST is very supportive of the provision in the RFI that DOE will use "information technologies" to ensure that all federal agencies that are unable to attend

a meeting in person can still participate. This could certainly reduce financial and staff burdens for already constrained federal participants and other interested stakeholders. Finally, the IIP should be designed in a manner that encourages participation from Non-Government Organizations (NGOs). Beyond general public outreach efforts, actual participation by NGOs can help ensure that all stakeholders provide input as early as feasible in the IIP process.

4. The Proposed IIP Process Must Itself Not Be Overly Burdensome.

The process does not indicate what the cross-agency coordination will deliver other than early communication and coordination. Promoting cross-agency cooperation and interaction on large-scale transmission projects is always beneficial, but the IIP process should also endeavor to produce tangible benefits to project proponents. In line with DOE's goal for the IIP process to "ultimately reduce the time required to reach a decision to approve or deny a project," WEST supports DOE's proposed fixed response times for federal agencies at various steps in the IIP process. However, to ensure the process actually reduces the amount of time it takes to obtain federal permits, DOE should address other portions of the overall federal permitting and siting process -- such as pre-scoping work, siting studies, and etcetera -- that the IIP process could replace or shorten. For instance, there is some concern that the deliverable requirements may be duplicative and overly specific. It is anticipated from the time frames provided in the RFI that pre-application process would be conducted over an approximately 615-day period under optimal project conditions.

Considering most projects undergo National Environmental Policy Act (NEPA) evaluations that generally begin after an application has been filed with a federal agency, it would be important to try to combine the steps required within both the IIP and NEPA processes. Some developers may have identified a chosen route early in the process, even before the Initial Meeting. In this case, the subsequent corridor scoping meetings required under NEPA and state routing meetings would be unnecessary and duplicative of work already performed, wasting time and resources and incurring additional expense. This is in direct conflict with the IIP goal of creating a more efficient process.

WEST is also concerned about the lack of recognition regarding the level of engineering design detail needed to conduct an adequate and appropriate level of environmental due diligence and review for a project. In order to conserve time and drive project sequencing, final design details should not be necessary for an agency to make recommendations during the pre-application process. Additionally, requiring such detailed information prior to having conducted a NEPA evaluation of alternatives may not be the intent of policies developed by the Council of Environmental Quality specifically for NEPA evaluations. For an extremely large study area bisecting multiple states, only high-level land use planning data should be needed. For example, it has been WEST member recent experience that once an application is submitted, Bureau of Land Management project managers initiate an internal agency pre-scoping process that identifies gaps in available resource data from the Federal agencies, such that it effectively narrows the set of reasonable alternatives to be considered in NEPA. The IIP process should utilize the best available data and not expect the transmission project proponent to conduct specific field surveys on an unlimited set of potential corridors and

routes. The IIP process should also adequately inform any NEPA action that should streamline the process for the Lead agency to conduct public scoping.

Finally, DOE must ensure that participating agencies act within the specified timetable and that such timetable actually creates time and process efficiencies. There is some concern that the quarterly reporting requirement indicates that the IIP process could drag on for some time.

5. The Proposed IIP Process Should Be Codified.

Although DOE was unsure in the RFI how the IIP process would be implemented, WEST strongly encourages the IIP process be codified in conjunction with the 216(h) coordinated permitting process. This will ensure a concise and consistent application of coordination efforts and will create certainty for transmission developers pursuing projects as to what forums are available for obtaining federal permits. Codifying the IIP Process also will create certainty for DOE and other federal agencies that conduct and participate in this process in regards to budgeting and staffing needs going forward.

IV. RECOMMENDATION - Improve the NEPA Process Execution between Application and Scoping

NEPA requires that the Notice of Intent (NOI) be issued as soon as possible after acceptance of an application (40 CFR 1501.2(d)(3)), but it does not have to be issued immediately upon acceptance (40 CFR 1507.3(e)). If the Federal Lead Agency and cooperating agencies have additional work for preparing initiation of their functions associated with planning, environmental review, permitting, and decision making, then the public notification per FLPMA can identify a proposed schedule for issuance of the NOI. The NOI, which initiates the formal public processes of NEPA including public scoping, can be issued “as soon as practicable after its decision to prepare an environmental impact statement...” (40 CFR 1501.7).

The intended outcomes of the IIP can be accomplished within the established NEPA process. Once the SF299 application for a transmission project is filed, the NOI may be published as much as a year later. During that one year timeframe, significant activities may be undertaken by both the federal agencies and the project proponent to ensure a robust, effective public scoping process. Key activities may include:

- Bureau of Land Management conducts pre-scoping meetings with each field office and forest to review the study area, opportunities and constraints, obtain pertinent available environmental data. The company and the third-party environmental contractor may actively participate in these meetings.
- The project proponent conducts enhanced early stakeholder outreach and elected official briefings encouraging counties to sign on as cooperating agencies.
- The project proponent establishes community working groups which included elected officials and staff, Tribal representatives, land owners, and NGOs.

- A range of reasonable alternative routes are developed based on input from the pre-scoping agency meetings and the stakeholder outreach.
- The project proponent identifies all land owners within all of the alternative, 2-mile wide study corridors and mails a project newsletter inviting them to a series of land owner meetings.
- The project proponent conducts landowner meetings across the project ahead of formal scoping meetings
- Bureau of Land Management conducts public scoping meetings with an informed and engaged public.

The result of a post application, pre-scoping process can result in a draft EIS that includes an agency preferred alternative route. After the close of the DEIS comment period, the project proponent should have enough certainty and public acceptance of the route to submit applications for all local and state permits, while also mitigating potential public opposition.

V. CONCLUSION

WEST appreciates the opportunity to provide these comments in the interest of improving the Federal siting and permitting of transmission facilities in the Western U.S. If you have any questions or need additional information, please do not hesitate to contact me at ebakken@tep.com or by telephone at (520) 918-8351. Thank you for your consideration.

Sincerely,



Erik Bakken, President of the Board
WEST Associates