
Department of Energy Updates Integrated Interagency Pre-Application Process for Electric Transmission Projects

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On Wednesday, September 28, 2016, the Department of Energy (DOE) published in the Federal Register a final rule which revises the agency's regulations governing its Integrated Interagency Pre-Application (IIP) process and which will go into effect on November 28, 2016.¹ The issuance of this final rule is part of the Obama administration's broader initiative to streamline the federal permitting process for electric transmission projects.² The IIP process allows the proponents of certain electric transmission line projects to choose to engage DOE along with other federal agencies; state, local and multistate government entities; and Indian tribes early on in the project planning process to identify potential issues and answer questions related to project siting. The IIP process is strictly voluntary, and the agency itself acknowledges "that a project proponent requesting DOE coordination assistance [will have] made the calculation that the request ... is in the best interests of the project proponent."³ It remains to be seen how frequently that calculation will result in pursuing the IIP process. The primary value of the IIP process will likely be to preview issues that would otherwise first arise during a National Environmental Policy Act (NEPA) review of the project. As a result, the process likely will be used only to the extent project proponents believe they will be able to resolve any issues that have been identified during the IIP process prior to commencing the actual NEPA review process itself.

The IIP Process

Under the final rule, the IIP process would apply to interstate "non-marine high voltage electric transmission line" projects that cross jurisdictions administered by more than one federal agency, or where federal financial assistance would be provided.⁴ The proponent of such a project may, but is not obliged to, invoke the IIP process as established in the new regulations. While proponents of transmission line projects that do not meet these criteria may request that DOE invoke the IIP process, DOE is not required to do so.⁵

To initiate the IIP process, the project proponent must submit an application that provides specific details on the project, including descriptions and maps, that (among other things) outline the project goals and impacts and identify known potential siting conflicts.⁶ This aspect of the IIP process

requires the project proponent to make a significant “upfront” investment, and commenters have suggested that the rigor of the application could discourage proponents from using the voluntary IIP process.⁷ In response to this concern, DOE states that the burden should be minimal, as this information likely will be required as part of a NEPA review or at some other stage of the federal approval process for the project.⁸

Once initiated, the IIP process involves two meetings—an “Initial Meeting” and a “Close-Out Meeting.”⁹ In advance of the initial meeting, DOE will, based on its review of the information submitted by the project proponent, notify other federal agencies; state, local, and multistate government entities; and Indian tribes that DOE identifies “as potentially having an authorization or consultation responsibility or other relevant expertise related to the ... project.”¹⁰ DOE has no ability to compel participation of any of these entities, raising concern from some commenters about the usefulness of the IIP process.¹¹

During the initial meeting, the project proponent describes the project, and the other participants have an opportunity to provide advice and ask questions in order to inform project siting to avoid, for example, environmental impacts, impacts to cultural and historical resources, and conflicts with military installations. Following the initial meeting, the project proponent has an opportunity to update the materials and information and resubmit them as part of the close-out meeting request.¹² At the close-out meeting, the agencies will identify “remaining issues of concern, ... information gaps or data needs, and potential issues or conflicts that could impact” processing time once the project proponent officially applies for the necessary project permits and approvals.¹³ Following the meeting, DOE prepares a “Final IIP Resources Report” to summarize and commemorate the process.¹⁴

Conclusion

Similar to (although far less detailed than) the “pre-filing” process established by the Federal Energy Regulatory Commission for natural gas projects,¹⁵ the primary value of the IIP rule is to avoid unnecessary delays in the NEPA review process. To that end, “[t]he Final IIP Resources Report is purposefully designed in terms of format and substance to be consistent with provisions for early application of NEPA,” and DOE must identify a lead NEPA agency at the conclusion of the IIP process.¹⁶ Because the IIP process is strictly voluntary, project proponents are most likely to invoke it when the effort expended is likely to lead to comparatively greater gains through a more efficient NEPA review. The IIP process should not be used where there is little opportunity to make the NEPA process more efficient through the early collaboration. But where a project proponent has significant questions affecting future required federal approvals, the process provides a tool to efficiently address those questions and allow for the development of a more mature proposal by the time federal NEPA review begins.

¹ Department of Energy, Final Rule, “Coordination of Federal Authorizations for Electric Transmission Facilities,” 81 Fed. Reg. 66,500 (Sept. 28, 2016).

² See “Obama Administration Announces Job-Creating Grid Modernization Pilot Projects” (Oct. 5, 2011).

³ 81 Fed. Reg. at 66,503.

⁴ *Id.* at 66,509.

⁵ *Id.* at 66,507-08.

⁶ *Id.* at 66,509-11.

⁷ *Id.* at 66,502.

⁸ *Id.*

⁹ *Id.* at 66,511-12.

¹⁰ *Id.* at 66,511.

¹¹ *Id.* at 66,504. All DOE could say to address this concern is, “[T]his final rule strongly encourages and establishes a structure by which DOE expects full and timely participation” of the notified agencies and other stakeholders. *Id.*

¹² *Id.* at 66,512.

¹³ *Id.*

¹⁴ *Id.* at 66,512-13.

¹⁵ 18 C.F.R. 157.21.

¹⁶ 81 Fed. Reg. at 66,504; 66,513.