

CQ586



Submitted Via Facsimile

September 23, 2002

Council on Environmental Quality
NEPA Task Force
P.O. Box 21150
Salt Lake City, Utah 84112

Re: National Environmental Policy Act (NEPA) Task Force

Dear NEPA Task Force Members:

The Edison Electric Institute (EEI) is pleased to submit comments in response to the Council on Environmental Quality's (CEQ) request for comments on the nature and scope of NEPA Task Force Activities. Specifically, EEI is responding to the CEQ notice published in the *Federal Register* on July 9, 2002 (67 Fed. Reg. 45510).

EEI is the association of the United States' shareholder-owned electric utilities and industry affiliates and associates worldwide. EEI's members own and operate around 70 percent of the transmission grid, generate almost 70 percent of all electricity produced by electric companies in the country, and serve nearly 95 percent of all customers served by the shareholder-owned segment of the industry. A wide range of permits from numerous federal agencies are required to construct and operate electric generation plants and transmission lines. Quite often, these permits trigger NEPA requirements.

EEI and its members support the NEPA Task Force's purpose, as stated in the Federal Register notice, "to seek ways to improve and modernize NEPA analyses and documentation and to foster improved coordination among all levels of government and the public." NEPA is one of the most, if not the most, important environmental statutes enacted in the United States. In order to maintain its effectiveness in guiding environmentally responsible federal decisions, it must be implemented in a manner that minimizes unnecessary bureaucratic process and administrative burdens. In previous comments submitted to CEQ on the scope and activities of the White House Energy Streamlining Task Force (October 31, 2001), EEI stated: "The Task Force must

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facilitate effective coordination among the agencies and more timely action on the issuance of permits for generation plants and transmission lines. As such, as described in more detail in the balance of these comments, EEI strongly encourages the Task Force to:

- Ensure adequate recognition of the nation's electricity needs in federal agency permitting decisions relating to generation and transmission facilities,
- Eliminate duplicative permitting and review processes,
- Streamline environmental review processes,
- Impose reasonable but specific and enforceable timeframes for agency review, and
- Institute procedures to require concurrent and coordinated, rather than sequential, review and approval processes for energy facilities."

While these comments pertained to environmental permits and other federal actions triggering NEPA reviews in general, they apply to the NEPA process in particular.

EEI is very supportive of the efforts of the Energy Projects Streamlining Task Force. We applaud the Task Force for progress achieved to date, and urge CEQ to sustain this effort to identify and remove unnecessary impediments to the expansion and enhancement of critical energy infrastructure. We strongly recommend that the NEPA Task Force work closely with the Energy Projects Streamlining Task Force to address NEPA issues associated with energy facilities, thereby benefiting from the expertise and knowledge acquired by that Task Force throughout the past year. As noted in our October 31 comments, the open-ended nature of many federal, state, and local reviews of energy permits creates a significant barrier to bringing new facilities on line in a timely manner. This is evident in the NEPA process, where there are no maximum time limits for the primary federal agency and the cooperating and consulting agencies to conduct and conclude their reviews. Federal NEPA requirements should be coordinated with the overall federal permitting or decision-making process and with similar state permitting and environmental reviews, to minimize duplication of effort and to ensure that timely decisions are made. Such coordinated, cooperative reviews and decisions could shorten by years the licensing and permitting process for generation plants and transmission lines.

The linear nature of electric transmission facilities pose unique challenges for NEPA analysis and permitting processes. In particular, transmission facilities typically cross more parcels of land than generation facilities, bringing a larger number of landowners and agencies to the table as potential stakeholders than generation facilities located on discrete parcels. This can make it more difficult to achieve consensus among the stakeholders through the public involvement process that accompanies the NEPA and permit reviews. Moreover, because new transmission facilities are almost always improvements to an existing network, alternative routes are often limited, reducing the number of accommodations that can be made to local concerns, and increasing the influence of any one stakeholder objection.

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In the context of siting a new electricity generation or transmission facility that involves one or more federal permits or approvals, the applicant for those permits or approvals should have the Option to request designation of a lead federal agency to help manage the overall permitting process, including any associated NEPA review. This option should be at the applicant's choice rather than a mandate in all cases or without an applicant's consent, so it can be invoked only in cases where the applicant wants such a lead-agency process. That would be a way of ensuring that limited federal agency resources are best called into play for coordinated permitting and environmental review in only those cases where the applicant believes such coordination is needed. Further, the applicant should have some say in the selection of the lead agency, given that the applicant will be most familiar with the array of federal permits or approvals needed for each proposed facility.

Once an applicant has requested a lead agency for its project, clear authorities need to be delineated for that agency and any other agencies involved in the NEPA process. A single environmental document that can form the basis of all necessary permit decisions is a must. Coordinated deadlines for agencies' inputs and permit decisions also must be established and adhered to. EEI believes that the lead agency should be given the authority and the responsibility to develop that single document and set deadlines, with the direction to do so as much as possible jointly or in parallel with state processes. If CEQ believes that such authority is currently beyond its statutory authority, it should request such authority be granted by Congress. CEQ in revising any guidelines should acknowledge the unique issues affecting linear facilities and tailor a NEPA review process that addresses them.

EEI and its members share a common interest in improving how the government collects, manages, uses and disseminates environmental, health, and safety information. EEI therefore recommends that any information disseminated and used as part of the NEPA process comply with the "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies" published by the Office of Management and Budget (OMB) in the *Federal Register* on Friday, September 28, 2001 at 66 Fed. Reg. 49718, updated on Thursday, January 3, 2002 at 67 Fed. Reg. 369, and corrected on February 22, 2002 at 67 Fed. Reg. 8452. These guidelines provide guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies.

In light of limited federal agency personnel and budget resources, EEI supports allowing applicants to prepare draft environmental impact statements (EISs) in addition to the current practice of allowing applicants to prepare draft environmental assessments (EAs) and third party contractors to prepare draft EISs. 40 C.F.R. § 1506.5. The decision on whether an EA or a full blown EIS is required needs to be made in a timely fashion. In addition, clear guidance on types of activity that qualify for categorical exclusions can help avoid the need for unnecessary analyses. The factors to be considered in making the EA v. EIS decision do not provide adequate guidance and agencies make that decision

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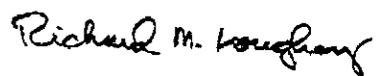
differently, often taking more time than is warranted. EEI would be pleased to work with CEQ on the kinds of factors that should facilitate a timely decision on whether to do an EA or EIS.

Wherever practicable, prior surveys, studies, analyses, and decisions conducted for previous NEPA analyses or as part of earlier reviews of the proposed project or a part of it should be used as long as the studies were based on sound science, remain timely, and are appropriate to the study area of the federal action triggering the new NEPA review. For example, if a facility has already been federally authorized and is up for reauthorization, the prior permit and NEPA reviews should be built upon, not repeated. Furthermore, the fact that the facility being reauthorized is part of the electricity system and is now relied on, and that it has reached equilibrium with its current environment, both need to be recognized in the reauthorization process, including any associated NEPA review. Similarly, if a transmission corridor has been designated under the Federal Land Policy and Management Act or as part of the federal land planning process, and a particular line is being sited within such a designated corridor, the permitting reviews, including review under NEPA, should be tailored to reflect the decision-making process that already has occurred in designating the corridor.

In conclusion, improvements in federal permitting processes are needed to retain our nation's existing electricity generation and transmission facilities and to increase investment in the nation's electric infrastructure. These improvements cannot wait. The security and reliability of the electric system are dependent on expanding capacity and redundancy. Modernization of the NEPA process can go a long way towards achieving these improvements.

Thank you for the opportunity to submit these comments. If you have any questions regarding them, please contact me at 202/ 508-5647 or rloughery@eei.org.

Sincerely,



Richard M. Loughery
Director, Environmental Activities

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Fax

To: CEQ NEPA Task Force

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From: Rick Loughery *Rml* Date: September 23, 2002

Pages: 5, including this cover sheet

Subject: NEPA Task Force Comments
