



October 31, 2001

Mr. James L. Connaughton
Chairman, Council on Environmental Quality
Executive Office of the President
17th and G Streets, NW
Washington, DC 20503

Re: White House Interagency Task Force on Energy Project Streamlining

Dear Jim:

The Edison Electric Institute (EEI) is pleased to submit the attached comments on the activities of the Energy Task Force in response to the CEQ notice published in the Federal Register, August 20, 2001 (66 Fed. Reg. 43586). New power plants and transmission lines are needed to keep the supply of electricity reliable and to keep the U.S. economy strong. The Energy Task Force can facilitate effective coordination among the federal agencies and more timely action on the issuance of permits for energy facilities. As such, 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 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.

EEI and its members are committed to work with the Energy Task Force. Please contact Mr. Rick Loughery, Director, Environmental Activities (202-508-5647, or rloughery@eei.org) if EEI can be of further assistance.

Sincerely,

Quinlan J. Shea, III
Executive Director, Environment

Enclosures

cc: V.A. Stephens

COMMENTS OF THE EDISON ELECTRIC INSTITUTE

REGARDING

COUNCIL ON ENVIRONMENTAL QUALITY NOTICE AND REQUEST FOR COMMENTS AND SUGGESTIONS FOR IMPROVING FEDERAL AGENCY REVIEW OF PERMITS FOR ENERGY-RELATED FACILITIES

The Edison Electric Institute (EEI) is pleased to submit comments in response to the Council on Environmental Quality (CEQ) request for input on the activities of the Energy Task Force established by Executive Order 13212, signed by President Bush on May 18, 2001. Specifically, EEI is responding to the CEQ notice published in the Federal Register on August 20, 2001 (66 Fed. Reg. 43586).

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 the 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.

Overview

The electric industry is undergoing rapid change as it transitions from an industry of vertically integrated companies primarily serving local customers to an emerging industry of vertically disaggregated entities serving regional markets as fostered by federal energy policy and regulation. Many new generation plants and transmission lines are needed, and existing generation and transmission facilities must be retained, to ensure that our nation has an adequate electricity supply and to allow a successful transition to the new marketplace for electricity and related energy services. Retention of existing facilities and expansion of the electricity system also are required to ensure adequate critical electrical infrastructure for national security. Yet obtaining the necessary federal, tribal, state, and local permits to reauthorize existing electric generation and transmission facilities and to site proposed new ones is a daunting, difficult, timely, costly, and at times even insurmountable process.

EEI applauds the establishment of the Energy Task Force under Executive Order 13212. We support the charge given the Task Force in the Executive Order "...to monitor and assist the agencies in their efforts to expedite their review of permits or similar actions, as necessary, to accelerate the completion of energy-related projects, increase energy production and conservation, and improve transmission of energy." Existing and new power plants and transmission lines are needed to keep the supply of electricity reliable and to keep the U.S. economy strong.

Many federal agencies are involved in the permitting of these facilities. The Task Force must 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.

The Need to Retain and Expand the Nation's Transmission System is Great

As we look to the future, America's energy security clearly is a national priority. Ensuring our nation has the electricity to meet its needs is vital to our economic recovery and long-term prosperity, our quality of life, and our national security. Unfortunately, our electricity transmission grid, the infrastructure that moves power from where it is generated to where it is needed, is nearing the limits of its capacity because of growing demand for power and the increasing use of the grid to serve competitive wholesale and retail electricity markets.

To add to this problem, the increased potential for terrorism within our borders presents a frightening new threat to critical infrastructure systems, and particularly to our electric transmission system. Our nation needs to build new transmission facilities and to upgrade existing facilities, not only to meet future demand for electricity, but also to ensure greater reliability and security of the system.

As the limits and vulnerabilities of our current transmission system and infrastructure become clear, demand for electricity continues to grow and will put further strains on the system. Between 1995 and 1999, U.S. electric demand increased by 9.5 percent.¹ The Energy Information Administration (EIA) projects that electricity consumption will increase by 45 percent by the year 2020.²

Transmission grid expansions are expected to be slow over the next ten years, however. The North American Electric Reliability Council (NERC) says that circuit-miles of high voltage transmission will increase a total of just 4.2 percent — an annual rate of less than 0.5 percent — over the next 10 years.

¹ See, Testimony of Dr. Peter S. Fox-Penner, Principal, The Battle Group, Inc., before the Senate Committee on Energy and Natural Resources, January 31, 2001.

² See, Energy Information Administration, *Annual Energy Outlook 2001*, DOE/EIA-0383 (2001), December 2000.

Competitive wholesale and retail electricity markets have placed enormous strains on the transmission system, and the number of transactions on the grid has grown significantly. The grid, which originally was built as a series of local networks, has now become a virtual electricity "superhighway." But most of today's transmission system was not designed to deliver the large amounts of power now needed over the long distances involved in serving regional markets.

As a result, the amount of congestion on the transmission network has grown significantly over recent years. Between August 1999 and August 2000, congestion grew by more than 200 percent. In the first quarter of 2001 alone, transmission congestion was already three times the level experienced during the same period in 2000, according to NERC.³ Congestion greatly increases the potential for harmful bottlenecks and even possible outages at times of peak demand.

Although usage is increasing, transmission investments have been declining for almost 25 years. Transmission investment in 1999 was less than half of what it was 20 years ago. According to the United States Energy Association, "annual investment in new transmission has declined by about \$100 million a year during the last two decades."⁴

We have enclosed "Expanding Our Transmission Network: Consumers Have an Interest at Stake" to describe in greater detail the decline in transmission investment and the need for an expanded system. The report was prepared for EEI in 2001 by Robert W. Gee of the Gee Strategies Group.

What is the source of this declining investment? One problem is that current rates of return on transmission investment are too low to attract the significant amount of capital needed to finance and build new transmission facilities.

A second problem is the complex and often lengthy regulatory approval process at the federal, state, and local levels required for siting new transmission lines. This will only grow worse as increasing numbers of states are asked to approve transmission projects that benefit the region, but do not primarily benefit their own consumers.

It is clear that the U.S. bulk power transmission system is under increased stress due to changes in the wholesale and retail electricity markets. At the same time, a frightening new threat has emerged as a result of the terrorist attacks of September 11th. What is the connection? Simply this: sufficient transmission system capacity and adequate redundancy must be considered as much a component of security as physical protection. A transmission system without adequate capacity and redundancy simply may not be able to withstand intentional damage without significant impacts to service. Worse yet, this vulnerability could actually make the system an even more tempting target.

³ See, *Transmission Loading Relief Procedure Logs*, NERC, <http://www.nerc.com/filez/logs.html>, May 2001.

⁴ See, United States Energy Association, *Toward a National Energy Strategy*, February 2001.

EEl is aware that CEQ and the Task Force are working with groups such as the Western Governors Association and the Western Interstate Energy Board to address many of the issues that hinder the expansion of needed transmission facilities. However, it is imperative that the Task Force take administrative action now to remove federal barriers to expansion of the transmission system.

Similarly, the Nation Needs to Retain and Expand Its Electric Generation Resources

With few minor exceptions, the nation's demand for electricity has increased annually in recent decades, typically in lockstep with growth of the nation's economy. Furthermore, as mentioned above, EIA predicts further growth in electricity consumption on the order of 45 percent by the year 2020. Meeting this demand requires retention of existing generation facilities and investment in new facilities. Unlike some other forms of energy, electricity generally cannot be stored but must be delivered when needed, so the generation capacity must be available to meet peak demands, which often are driven by weather events and economic activity. In addition, to ensure the reliability of the electricity system, utilities and other generators must provide adequate reserve capacity to cover unexpected outages due to natural disasters and other factors as well as anticipated outages necessary to maintain and repair generating facilities. Yet nationally, especially in certain regions of the country, these reserve capacity margins are quite small, in particular when compared with historic margins. National capacity margins based on information reported by the North American Electric Reliability Council were 10.3 percent in 1999, a drop from more traditional reserves of more than 20 percent until the early 1990s,⁵ and these figures do not reflect far tighter margins in some areas of the country such as the West coast.

As with transmission facilities, the siting of new generation facilities and the reauthorization of existing ones can involve a variety of federal, tribal, state, and local permitting. For example, siting a new hydroelectric power project, and even the periodic reauthorization of each existing project, involves an elaborate, lengthy, and costly licensing process overseen by the Federal Energy Regulatory Commission (FERC) with substantial, often direct inputs by other federal and state agencies other than FERC. That licensing process typically takes more than five years and can cost hundreds of thousands to millions of dollars. Approval of existing and new nuclear facilities by the Nuclear Regulatory Commission involves a similarly complex process. On the fossil-fuel side of the generation equation, air and water permitting and the related requirement to meet a continually evolving array of new standards can pose significant challenges.

The Task Force Should Address the Need for Improvements to Federal Permitting

Throughout the United States, the siting, construction, and continued operation of electric generation and transmission facilities invoke a myriad of approval processes and the involvement of dozens of federal, state, tribal, local and other jurisdictions that often impose conflicting or contradictory requirements. The cumulative negative impact to energy development in the U.S. from inconsistent, duplicative, or untimely, federal, state,

⁵ "Statistical Yearbook of the Electric Utility Industry, 2000 Edition," EEl, page 14, Table 7.

tribal, and/or local processes is substantial, with little if any discernible value added for resource conservation or environmental protection.

EEI recommends that – upon request by an applicant for federal permits needed for a proposed new or existing generation or transmission facility – a lead federal agency be designated to coordinate federal environmental review and permitting of the facility. Federal agency input into energy facilities permitting can be most useful if it is coordinated and consistent. The lead agency would generate a single comprehensive record with specific inputs from other federal agencies, states, local governments, and the public. Several states have such a “one-stop” program to identify all necessary permits to site, construct, and operate energy facilities. All relevant agencies are part of the process and may comment on the permits. Similarly, designating a lead federal agency to issue or at least to coordinate issuance of applicable federal permits upon request by an applicant would minimize going back and forth between the agencies and effectively streamline the process. The lead federal agency concept should be applied only at the applicant’s request, however, to avoid unnecessarily complicating projects that the applicants feel do not require such a central agency role.

The open-ended nature of many federal, state, and local reviews of energy permits is an issue also cited by many EEI members as a significant barrier to bringing new facilities online in a timely manner. This is evident in the National Environmental Policy Act (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 state environmental review requirements. These reviews should be coordinated so that they are completed cooperatively among the federal and state agencies in parallel rather than in series. This could shorten by years the licensing process for generation plants and transmission lines.

The “open ended” problem also is experienced beyond NEPA, in hydropower project relicensing, wetlands reviews, Section 404 permitting, cultural resource reviews, and the various reviews conducted pursuant to the Endangered Species Act. Prompt timeframes for the various agencies to conduct their reviews should be imposed, and again upon request by an applicant a central federal agency office should be established to monitor and enforce the deadlines.

Several other improvements that EEI has identified in past comments to agencies and to Congress also could improve federal permitting. Agencies should provide applicants with clear feedback as early as possible on concerns the agencies may have or issues the agencies would like addressed as part of the permitting process. The agencies should identify proposed permit terms and conditions as soon as possible, and should afford the applicants an opportunity to suggest alternatives that would achieve similar resource goals at lower economic or energy cost. They also should provide necessary authority for the permittees to maintain and operate their facilities in a reasonable way, to ensure reliable electricity supply. Agencies should ensure availability to applicants of an on-the-record, impartial, speedy, and affordable administrative review process for permit decisions, including as to permit terms and conditions. Agencies also should promote the

use of applicant and third-party prepared environmental review documents, and should allow applicants the option to fund permit processing either directly to the agency or through use of a third party permit processor, as a means of expediting the process.

The Task Force Also Should Address the Siting of Transmission Lines on Federal Lands

The Secretary of each agency with management authority over federal lands, including the Secretary of Agriculture as to national forest lands and the Secretary of Interior as to public lands, should establish a working group comprised of a senior political appointee from each of their offices to confer with one another on ways to coordinate, streamline and facilitate the review of and decisions on applications for electric transmission rights-of-way across federal lands. After the establishment of the working group, the Secretary of Interior should issue a joint memorandum of agreement (MOA) and supporting regulations to codify those improvements. In undertaking this project, the working group and the Secretary of Interior should work closely with representatives of the electric utility industry, in particular EEI and our members.

The joint MOA and regulations should focus in particular on providing :

1. Uniform, streamlined procedures for processing transmission right-of-way applications;
2. Necessary resources and expertise within each agency to facilitate the review of and action on the applications;
3. A central point of contact with the Secretary's office at each agency to facilitate the review and decision process, including the ability of that central point of contact to act on applications involving multiple units of the federal lands at an applicant's request;
4. A lead agency among the land agencies to conduct a single consolidated environmental review under NEPA and to establish deadlines for other agency reviews and decisions, when an application involves lands within the jurisdiction of multiple agencies and a lead federal agency has not already been designated as discussed in the preceding section of these comments, again at the applicant's request;
5. Improved use of the designated corridor concept now contained in the Federal Land Management Policy Act (FLPMA) section 503;
6. Protections for existing rights-of-way when federal lands are transferred or redesignated;
7. Recognition of the continuing need for the facilities when rights-of-way expire and come up for reauthorization;
8. Increased use of long-term easements for transmission rights-of-way; and
9. Reasonable land use fees for all linear facilities covered by Title V of FLPMA based on the incremental impacts of the facilities on the lands involved and recognizing their public benefit.

There is a Better Way to Achieve Air Quality Goals

Another aspect of permitting that should be reviewed is providing regulatory certainty to existing electric generation facilities and new entrants into the market. Environmental requirements (emission control devices, thermal discharge studies, etc.) are a significant portion of the capital costs of any generation facility, and the prospect of additional requirements being added shortly after operations begin slows the implementation of new projects, expansion of existing projects, and transfer of facilities ownership.

For example, over the past several years the U.S. Environmental Protection Agency (EPA) has revised its interpretation of the New Source Review (NSR) rules governing operational changes at existing facilities. This has led to enforcement actions, including the filing of numerous lawsuits against utilities by the EPA/Department of Justice. Taken together, these changes have significantly and unnecessarily increased the uncertainty and regulatory risk that companies face in trying to do basic maintenance work as well as efficiency improvements at their generation facilities.

Such public policies – particularly uncoordinated, inconsistent air quality regulations – can greatly reduce any individual fuel's use for electricity generation, restrict fuel generation options, and compromise the ability of power suppliers to deliver affordable and reliable electricity to consumers. However, if designed properly, a comprehensive or multi-emission approach that includes NSR reform, provides certainty for generators, and takes into account the unique interests of western plants, could meet important environmental, energy, and economic goals. Instead of multiple, overlapping regulations of a series of individual air pollutants, such a multi-emissions strategy would streamline the regulatory process, accomplishing the same air quality results at a lower cost, while protecting electric reliability.

A well-designed multi-emissions approach that reasonably regulates NO_x, SO₂, and mercury and provides certainty for generators would accomplish important air quality objectives, maintain fuel diversity, and replace the current uncoordinated regulatory approach. It also would provide business certainty by establishing specific and reasonable emission reduction requirements that remain unchanged for a definite time, allow flexible, market-based approaches to emissions reductions, and substantially reduce compliance costs.

The Task Force Should Assist with Native American Coordination

Coordination with Native American tribes has been identified as an issue by a number of EEI member companies. Participation of Native American tribes is an important and overlooked piece of the permitting process in several regions of the nation. Tribal entities do not recognize jurisdictional authority over their lands or resources by federal, state, or local governmental entities. In some areas, non-tribal lands are interspersed with Indian lands, creating a "checkerboard" land use/management pattern and providing for interesting jurisdictional conflicts and formidable permitting barriers for entities wishing to site and re-permit electrical generation and transmission projects in these areas. These issues are potentially intractable, particularly due to the sovereignty considerations.

EEI recommends that the Task Force address the issue of tribal permitting and environmental review processes to ensure that tribal requirements and conflicts between varying Indian jurisdictions, as well as between Indian and non-Indian entities, can be timely and effectively resolved, and that enforceable and binding agreements can be made between Indian and non-Indian parties as to the issuance of permits. Time frames and other requirements for tribal comments on projects located off reservation properties must be consistent with the time frames and requirements for other public commenters.

Conclusion: The Energy Task Force Can Make a Difference

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, and these improvements cannot wait. The security and reliability of the electric system are dependent on expanding capacity and redundancy. It is critical for America's economic prosperity and energy security that the Task Force remove the barriers that currently stand in the way of much-needed expansion. Through the issuance of Executive Order 13212, President Bush has given the Task Force the authority to remove these barriers. EEI and its members are committed to work with the Task Force to accomplish this shared and important objective.

EEI thanks CEQ for the opportunity to submit these comments.