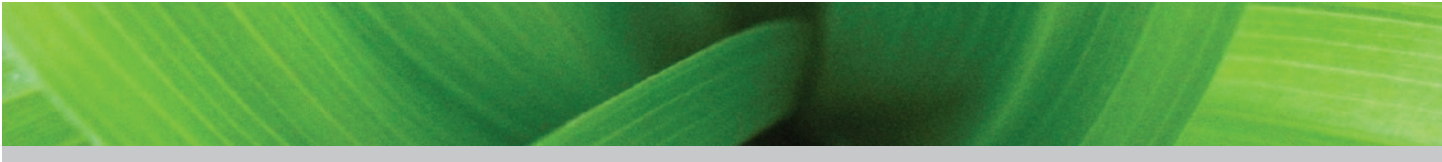


Federal Agencies Execute a New MOU for Coordination on Federal Authorizations for Electric Transmission Infrastructure

On October 28, 2009, nine federal agencies entered into a Memorandum of Understanding (“MOU”) to improve the coordination of federal authorizations and reviews required for electric transmission projects. This MOU is issued pursuant to Section 216 of the Federal Power Act (“FPA”) and supersedes a previous agreement executed in August 2006. As enacted under the Energy Policy Act of 2005 (“EPAct 2005”), FPA Section 216(h) was established to facilitate and streamline the siting of electric transmission facilities. FPA Section 216(h) requires the Department of Energy (“DOE”) to coordinate “to the maximum extent possible” the federal authorization process and the Secretary of Energy to ensure that once an application has been submitted with such information as is deemed necessary, all Federal permit decisions and environmental reviews are completed within one year or otherwise as soon as practicable. Agencies participating in this memorandum are: Department of Agriculture (“USDA”), Department of Commerce, Department of Defense, DOE, Environmental Protection Agency, Council on Environmental Quality, Advisory Council on Historic Preservation, Department of the Interior (“DOI”), and the Federal Energy Regulatory Commission (“FERC”).

The MOU attempts to provide a better coordination framework for federal agency review of high voltage transmission facilities, which includes several elements of note:

- DOE will now have initial responsibility for designating a “Lead Agency” for coordination of the federal agency review process. Such designation must be made within twenty days of a determination that a project qualifies for the expedited procedures. For projects requiring DOI/USDA authorization, however, responsibility for identifying the Lead Agency is jointly exercised by DOI and USDA.
- Projects qualifying for the expedited coordination procedures are high voltage facilities (generally 230 kV and above) or otherwise regionally or nationally significant transmission line projects. Projects excluded from the MOU procedures are projects seeking back-stop siting authorization from FERC; transmission facilities associated with FERC-licensed hydroelectric facilities; transmission lines crossing an international border, federal submerged lands or national marine sanctuaries; and facilities constructed by federal Power Marketing Administrations.
- Lead Agencies will be charged with developing an “efficient project schedule.” While no definitive deadlines are set, the general rule is that for projects involving an Environmental Assessment and Finding of No Significant Impact under NEPA, federal agency reviews will be completed within one year of an accepted application. For projects requiring an Environmental Impact Statement (“EIS”), federal agency reviews must be completed within one year and thirty days after the close of the public comment period for the draft EIS.
- Lead Agencies also will be responsible for compiling a unified environmental review document and administrative record.



- The MOU provides clarification of federal agency coordination activities by defining the role of “Coordinating Agencies” and creating specific coordination protocols and responsibilities.

IMPLICATIONS

With this MOU, the participating federal agencies have taken a further step toward increased and timely coordination of all federal authorizations and reviews required to site high voltage electric transmission facilities. However, a significant amount of leeway is retained by the federal agencies for implementation of the federal review process. Ultimately, achievement of the EPAct 2005 goals for better coordination and timely review of proposed electric transmission facilities remains highly dependent on the priority and efficiency imposed upon the federal review process by the designated Lead Agency.

FOR ADDITIONAL INFORMATION

Van Ness Feldman has extensive experience in advising clients and managing federal land issues and environmental permitting for electric transmission infrastructure projects. For more information on how the MOU affects your project or for assistance with transmission infrastructure projects or regulatory matters, please contact Joe Nelson, Doug Smith, Ashley Garber or any other member of our Electricity Practice Group.

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