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EDISON ELECTRIC INSTITUTE

THOMAS R. KUHN
President

January 20, 2006

Mr. Michael D. Olsen
Principal Deputy Assistant Secretary--Indian Affairs
Section 1813 ROW Study
Office of Indian Energy and Economic Development
U.S. Department of the Interior
1849 C St., NW
Mail Stop 2749-MIB
Washington, DC 20240

Submitted by e-mail to: IEED@bia.edu

Re: *Notice soliciting comments on proposed work plan for completing study required under Section 1813 of the Energy Policy Act of 2005*
(70 Fed. Reg. 77178, December 29, 2005.)

Dear Deputy Assistant Secretary Olsen:

The Edison Electric Institute (EEI) is submitting these comments in response to your request for comments on the work plan prepared by the Bureau of Indian Affairs (BIA) and the Department of Energy (DOE) to complete the study required by the Energy Policy Act of 2005 (EPAct) on historic and current compensation practices for energy rights-of-way across tribal lands and issues related thereto. Some EEI members with an interest in the fee study are filing separate brief comments on the work plan to secure their participation in the study, but others are relying on EEI's comments as their expression of interest and to secure their opportunity to participate individually.

EEI is the trade association of United States shareholder-owned electric utility companies, international affiliates, and industry associates worldwide. Our U.S. members serve 71 percent of all electric utility customers in the Nation and generate almost 60 percent of the electricity produced by U.S. generators. In providing these services, a number of EEI members have received or are seeking right-of-way grants for transmission and distribution facilities across tribal lands. Furthermore, many existing grants will require renewal over the next decade and beyond. Uncertainties associated with the current process for determining compensation for new grants or

renewals – as well as significant increases in recent years in fees and other requirements related to the rights-of-way – are proving problematic for EEI members.

EEI and its member companies believe the mandated study is important and applaud BIA and DOE for developing a work plan that will facilitate completing the report by the statutory deadline, August 7, 2006. We support the efforts of BIA and DOE to produce a report that is fair, objective and informative through an open, transparent process.

EEI members believe the data collection, analytical work, and dialogue contemplated by the work plan could help facilitate agreement on a framework for compensation decisions that will provide certainty to member companies with respect to the costs associated with rights-of-way across tribal lands. We believe that moving towards such a framework will be important to achieving EPAct objectives of assuring that the national electric grid infrastructure is adequate to assure reliability, accommodate economic growth and the need for fuel diversity, and advance the development of energy resources on tribal lands.

EEI generally supports the work plan as described in the *Federal Register* notice but would like to provide comments with respect to specific elements of the proposal.

Pre-scoping Conference Calls: EEI supports your decision to begin the study with a series of pre-scoping conference calls. EEI, as well as a number of individual EEI members, would like to actively participate in these calls. Towards that end, EEI would be pleased to work with BIA and DOE to facilitate that participation and to help focus the discussion on central issues that need to be addressed during preparation of the study.

Proposal to Contract with a National Lab for Analysis of Compensation Practices: EEI recognizes that BIA and DOE will require outside assistance in data collection and analysis essential for responding to the Congressional inquiry into historic and current compensation practices. While it is understandable that the agencies would consider outsourcing this effort to one of the national labs, EEI does have concerns about whether this is an area within the expertise of the labs. Instead, or in addition, we recommend you consider involving the Appraisal Institute directly in this aspect of the report.

As to the scope of work to be undertaken by the contractor, the Notice indicates that this work will address "historic rates of compensation for pipelines crossing Indian land." While the omission of transmission facilities from this paragraph may have been an oversight, EEI would like to clarify this point and assure that BIA and DOE will also be looking at rights-of-way for transmission and distribution facilities. EEI would also like to assure that when the analytical time frame for "historic rates" is defined, it will include contemporary data to reflect the compensation rates being paid for renewal of existing facilities. Similarly, in order to afford a meaningful picture of compensation practices, the data collection and analysis needs to include

compensation rates on neighboring lands, whether these are state, federal or privately-owned. Finally, in addition to developing information on the rates themselves, EEI believes that developing related information on permit terms, study requirements, the valuation methodologies used, and access or right-of-entry rules should be solicited and analyzed, inasmuch as these are part of the compensation framework or will be useful for other aspects of the mandated report.

EEI would also like to clarify whether BIA and DOE intend to confine the scope of its data collection and analysis to tribal lands or to the broader category of Indian lands. Section 1813 requires the study to address tribal lands as defined by the Energy Policy Act of 1992, as amended by the EPAct. The notice appears to contemplate expanding the scope of the study beyond that required by the EPAct to include allotted lands as well. EEI encourages BIA and DOE to remain focused on the subset of lands identified by Congress.

Data collection on compensation rates for rights-of-way presents significant competitive and confidential business information issues. The work plan does not raise these issues and therefore does not attempt to lay out a process for addressing them. EEI firmly believes that, in advance of the data collection effort, agreement needs to be reached regarding how this information will be handled and protected, and all parties must have a common understanding of the legal framework that might result in its disclosure. The data collection effort needs to be conducted so as to minimize or eliminate disclosure of the information in a way that could be harmful to the parties involved in providing data. EEI, in tandem with its member companies, would be pleased to work through this difficult problem with BIA, DOE, and the tribes to assure that the data necessary for a good, solid study are available to the agencies in a form and with protections that will avoid harm to individual right-of-way holders or tribes.

Finally, EEI does not see in the work plan a process for stakeholder participation or input into the data collection and analysis aspect of the report. Whether it occurs during pre-scoping conference calls or as part of the 2-day national scoping session, EEI believes that BIA and DOE – and its contractor – would receive benefit from outside input beyond the data confidentiality issues. Transparency with respect to how the data collection and analysis will be done to achieve an accurate picture for the Executive Branch and Congress on compensation rates will be crucial to the credibility of the final product.

<u>Two-day Nation-wide Scoping Meeting</u>: EEI supports the decision to hold the nation-wide scoping meeting. EEI and individual EEI member companies would like to actively participate in such a meeting and, again, EEI would be pleased to help facilitate that participation. EEI notes that the work plan does not identify how the scoping meeting will be structured and encourages BIA and DOE to consider segregating the meeting by topic (including those identified in the notice), to be discussed one after the other, so as to allow for more focused presentations and comment by participants. If not adequately addressed by other means to the

satisfaction of stakeholders, the data collection and analysis on compensation rates should be added to the three topics already identified for the scoping meeting.

The work plan indicates that work groups for each topic will be established at the national scoping meeting. It does not elaborate on how this is to be done. EEI encourages BIA and DOE to work through the mechanics of establishing the work groups during the pre-scoping conference calls so as to facilitate their formal establishment during the national scoping meeting. EEI would be pleased to work with BIA and DOE to facilitate the participation of member companies and EEI in the various work groups.

EEI further recommends that BIA and DOE approach state regulators to participate in the scoping sessions. Inasmuch as state regulators determine whether and the amount our members may recover the costs incurred for siting across tribal lands, their perspective would provide value to the development of the report. EEI would also be pleased to recommend others with expertise and value to bring to the discussions, including those in the individual work groups.

Preparation and Release of the Draft Report: EEI recommends that BIA and DOE consider providing a forum in which the work product of the various work groups is presented to a larger stakeholder group for comment in advance of preparing their report. Also, EEI notes that once the BIA/DOE draft report is completed, the work plan provides an opportunity for both oral and written comments by the tribes through three regional tribal consultation meetings. No similar opportunity for written and oral comments by industry and other stakeholders is provided. EEI requests that BIA and DOE provide a forum for both written and oral comments from industry stakeholders comparable to that being provided to the tribes.

In conclusion, EEI would like to commend BIA and DOE for developing a work plan intended to achieve a final report to Congress that gives a fair, accurate and unbiased treatment of the issues within the scope of the mandated study and to do so within the statutory deadline. EEI appreciates the complex and sensitive nature of the issues involved and the challenges presented by the short timeframe provided by the EPAct for completing the report. EEI and its member companies look forward to working with you to meet the objectives and the timetable specified by the EPAct. Please contact either Meg Hunt (202-508-5634, mhunt@eei.org), or Rick Loughery (202-508-5647, rloughery@eei.org) if you have questions or would like to follow-up with EEI on the issue.

Sincerely,

Thomas R. Kuhn