MEMORANDUM OF UNDERSTANDING
ON EARLY COORDINATION OF FEDERAL AUTHORIZATIONS AND RELATED ENVIRONMENTAL REVIEWS REQUIRED IN ORDER TO SITE ELECTRIC TRANSMISSION FACILITIES

August 8, 2006

THE DEPARTMENT OF ENERGY
THE DEPARTMENT OF DEFENSE
THE DEPARTMENT OF AGRICULTURE
THE DEPARTMENT OF THE INTERIOR
THE DEPARTMENT OF COMMERCE
THE FEDERAL ENERGY REGULATORY COMMISSION
THE ENVIRONMENTAL PROTECTION AGENCY
THE COUNCIL on ENVIRONMENTAL QUALITY
THE ADVISORY COUNCIL on HISTORIC PRESERVATION

I. PURPOSE

With the signing of this Memorandum of Understanding (MOU), the Department of Energy (DOE), the Department of Agriculture (USDA), the Department of Defense (DOD), the Department of the Interior (DOI), the Department of Commerce (DOC), the Federal Energy Regulatory Commission (FERC), the Environmental Protection Agency (EPA), the Council on Environmental Quality (CEQ), and the Advisory Council on Historic Preservation (ACHP) (hereinafter collectively referred to as the Participating Agencies) commit to work together to meet each Agency's obligations under the Federal Power Act (FPA), as amended by section 1221(a) of the Energy Policy Act of 2005, 119 Stat. 594, 946-951 (2005) (to be codified as amended at 16 U.S.C. § 824p). Recognizing that the Department of Energy and the Federal Energy Regulatory Commission share the responsibility to facilitate implementation of subsection 216(h) of the FPA with the other Participating Agencies, this MOU has been prepared to establish a framework for early cooperation and participation that will enhance coordination of all applicable land use authorizations, related environmental, cultural, and historic preservation reviews, and any other approvals that may be required under Federal law in order to site an electric transmission facility.

II. BACKGROUND

The Energy Policy Act of 2005, signed by President Bush on August 8, 2005, declares that it is a national policy to enhance and, to the extent possible, to increase the coordination and communication among Federal agencies with authority to site electric transmission facilities. The policies set forth by Congress in subsection 216(h) of the FPA reinforce previous Administration policies announced by the President in Executive Order 13212 issued on May 18, 2001, by mandating each agency with authority to issue Federal authorizations to ensure the timely and coordinated review and permitting of electric transmission facilities.

The Department of Energy, pursuant to subsection 216(h) of the FPA, is responsible for "coordinating all applicable Federal authorizations and related environmental reviews" as may be required under Federal law in order to site an electric transmission facility. [216(h)(1)-(2)]. "In consultation with agencies responsible for Federal authorizations and, as appropriate, with Indian tribes, multistate entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews," the Secretary of Energy is directed to establish "binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facility." [216(h)(4)(A)]. In addition, subsection 216(h) of the FPA directs the Secretary of Energy to establish a pre-application mechanism "for prospective applicants to confer with the agencies involved" prior to submitting a complete application and to prepare a single environmental review document in consultation with the Participating Agencies to be "used as the basis for all decisions on the proposed project under Federal law." [216(h)(4)(C), (5)(A)].

The Office of Electricity Delivery and Energy Reliability, within DOE, grants Presidential permits for the construction, operation, maintenance, and connection of electric transmission facilities at the United States international border pursuant to Executive Order 10485, as amended by Executive Order 12038. The DOE issues permits pursuant to this authority if, after obtaining favorable recommendations from the Secretaries of State and Defense, it determines that the project is in the public interest.

The Federal Energy Regulatory Commission is responsible for processing and acting on applications for permits for the construction or modification of electric transmission facilities in National Interest Electric Transmission Corridors designated by the Secretary of Energy. The Secretary of Energy delegated to FERC the authority to act as the lead agency under subsection 216(h), subject to the restrictions contained in the delegation order, in instances when an applicant or a prospective applicant has submitted an application to FERC for the construction or modification of one or more electric transmission facilities pursuant to subsection 216(b) of the FPA. *See* Department of Energy Delegation Order No. 00-004.00A. For purposes of this MOU, the term "DOE" shall be construed to include FERC, with respect to FERC's exercise of these delegated authorities under subsection 216(h) of the FPA.

The Bureau of Land Management (BLM), within the Department of the Interior, is responsible for managing approximately 260 million acres of public lands. The BLM is responsible for issuing right-of-way grants authorizing electric transmission facilities on these lands. Title V of the Federal Land Policy and Management Act of 1976, as amended, provides the BLM the authority to issue right-of-way grants on the public lands for the generation, transmission, and distribution of electric energy.

The National Park Service (NPS), within DOI, is responsible for managing nearly 84 million acres in 390 units of the National Park System. The NPS mission is to preserve unimpaired the natural and cultural resources and values of the National Park System for the enjoyment, education, and inspiration of this and future generations. In addition to the National Park System, the NPS has some management responsibility over other areas, including the National Wild and Scenic Rivers System, National Trails System, National Heritage Areas, and the NPS Affiliated Areas, which are closely linked in importance and purpose to those areas directly managed by the NPS. The NPS may issue right-of-way permits only if the uses or activities are specifically authorized by Congress. One such authorization, the Act of March 4, 1911, provides the NPS the general authority to issue right-of-way permits on national park lands for electrical poles and lines for the transmission and distribution of electrical power.

The Bureau of Reclamation (BOR), within DOI, is responsible for managing, developing, and protecting water and related resources in an environmentally and economically sound manner in the interest of the public. The BOR may grant rights-of-way for electric transmission facilities and other uses where compatible with reclamation or power project purposes as authorized in Section 10 of the Act of August 4, 1939, as amended.

The Bureau of Indian Affairs (BIA), within DOI, is charged with the administration of Federal Indian policy and the implementation of the Federal trust responsibility for American Indians and American Indian Tribes. The BIA is responsible for, among other things, granting rights-of-way across lands held in trust for American Indians or American Indian Tribes. In addition, the BIA and other Federal agencies must consult with any Tribe that may be affected by a proposed right-of-way, as provided by Executive Order 13175, 65 Fed. Reg. 67,249 (Nov. 9, 2000).

The Fish and Wildlife Service (FWS), within DOI, is responsible for the conservation, protection, and enhancement of fish, wildlife, plants, and their habitats. The FWS has principal trust responsibility to protect and conserve migratory birds, threatened and endangered species, certain marine mammals, and jurisdictional fish. Applicants for electric transmission facility rights-of-way are required to consult with the FWS on projects potentially affecting any of these resources. The FWS manages the National Wildlife Refuge System and authorizes use by permit for lands within this System.

The Minerals Management Service (MMS), within DOI, is responsible for issuing and enforcing regulations to promote safe operations, environmental protection, and resource conservation on the

Outer Continental Shelf (OCS). The MMS is responsible for granting leases, easements, or rights-of-way for electric transmission facilities pursuant to section 388 of the Energy Policy Act of 2005, through submerged lands of the OCS.

The Forest Service (USFS), within the Department of Agriculture, is responsible for the management of 193 million acres of National Forest System (NFS) lands. The USFS is responsible for issuing special use authorizations for electric transmission facilities on NFS lands. Title V of the Federal Land Policy and Management Act of 1976, as amended, provides the FS the authority to issue authorizations on NFS lands for the generation, transmission, and distribution of electric energy.

The Department of Defense is responsible for providing the military forces needed to deter war and protect the security of the United States. The major elements of these forces are the Army, Navy, Air Force, and Marine Corps. Under the President, who is also Commander-in-Chief, the Secretary of Defense exercises authority, direction, and control over the Department, which includes the Office of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, three Military Departments, nine Unified Combatant Commands, the DoD Inspector General, 15 Defense Agencies, and seven DoD Field Activities.

The Army Corps of Engineers (USACE), within DoD, is responsible for administering laws for the protection and preservation of waters of the United States, pursuant to the requirements of section 10 of the Rivers and Harbors Act (RHA) of 1899, section 404 of the Clean Water Act (CWA) of 1972, and section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972. Under the RHA, the USACE may authorize work and/or structures in or affecting the course, condition, location, or capacity of navigable waters of the United States. Under the CWA, the USACE may authorize the discharge of dredged or fill material into waters of the United States, including wetlands, where the USACE determines the proposed action is the least environmentally damaging practicable alternative. Under the MPRSA, the USACE may authorize the transportation of dredged material excavated from navigable waters of the United States for the purpose of dumping it in ocean waters. The USACE shall be considered a Participating Agency, where relevant, for purposes of this MOU.

The Environmental Protection Agency is responsible for administering a wide range of environmental laws. The EPA responsibilities relevant to the siting of electric transmission facilities include, but are not limited to, commenting on an Environmental Impact Statement (EIS) under section 309 of the Clean Air Act (CAA), the authority to participate in the section 404 Clean Water Act (CWA) permit process and to restrict in certain circumstances the use of specific disposal sites for dredged or fill material pursuant to section 404 (c) and the authority to issue, and/or review state- and tribe-issued permits under the CAA or for activities that involve discharges of pollutants subject to the requirements of the CWA National Pollutant Discharge Elimination System.

The National Oceanic and Atmospheric Administration (NOAA), within the DOC, is responsible for addressing a variety of impacts to marine and coastal ecosystems as mandated by several statutes and authorities. The siting of electric transmission lines in coastal and/or ocean areas may overlap with several NOAA responsibilities depending on the location and type of project proposed.

The NOAA's National Marine Fisheries Service (NMFS), within DOC, is responsible for activities that include managing protected species, managing commercial and recreational fisheries, and protecting marine and coastal habitats. These activities are conducted pursuant to a number of environmental laws including the Endangered Species Act, Marine Mammal Protection Act, Magnuson-Stevens Fishery Conservation and Management Act, and the Fish and Wildlife Coordination Act. Federal agencies authorizing activities may be required to consult with NMFS regarding adverse effects to these resources and the habitats upon which they depend.

The NOAA's National Ocean Service (NOS), also within DOC, is responsible for various coastal and ocean programs that may be relevant to obtaining federal licenses or permits for the siting of electric transmission lines. The NOS administers the Coastal Zone Management Act (CZMA) and approves, periodically reviews, and provides grants and technical assistance to states for purposes of implementing comprehensive Coastal Management Programs and National Estuarine Research Reserves. The NOS also mediates certain disputes regarding CZMA issues. Under CZMA section 307(c)(3)(A), applicable states must concur with consistency certifications submitted with linear right-of-way applications and any other required applications for federal permits or licenses before Federal agencies can issue their approvals. The NOS also manages designated National Marine Sanctuaries (NMS) and coastal protection and restoration activities. Pursuant to section 304(d) of the National Marine Sanctuaries Act, Federal actions in or near NMS may require consultation with the Secretary of Commerce. The NOS may also be able to provide technical assistance related to nautical charts, coastal observing stations, geographic information system (GIS) capabilities, and tide and current information.

The Council on Environmental Quality was established within the Executive Office of the President in 1969 by act of Congress as part of the National Environmental Policy Act (NEPA). Its principal purpose is to formulate and recommend national policies to promote the improvement of the quality of the environment. The CEQ has issued regulations applicable to Federal agencies implementing NEPA (40 C.F.R. Parts 1500 through 1508).

The Advisory Council on Historic Preservation, an independent Federal agency, was created by Title II of the National Historic Preservation Act of 1966 (NHPA), to advise the President and Congress on historic preservation matters and to administer the review process established by Section 106 of the Act. Under Section 106, Federal agencies are obligated to consider how their actions may affect historic properties included in or eligible for inclusion in the National Register of Historic Places and to afford the ACHP an opportunity to comment. These obligations are met by following the implementing regulations issued by the ACHP, "Protection of Historic Properties" (36 C.F.R. Part 800).

III. PARTICIPATING AGENCY COMMITMENTS

The Participating Agencies hereby commit, to the extent practicable, to early involvement and cooperation to ensure that timely decisions are made and that the responsibilities of each Participating Agency are met. The Participating Agencies commit to working together and, as appropriate, with Indian tribes, multistate entities, State agencies, and other interested persons in carrying out the provisions of subsection 216(h). In particular, the Participating Agencies agree to:

A. Communicate and Coordinate Early. Within one week from the date a prospective applicant or an applicant submits a proposal to a Participating Agency that the Participating Agency believes is likely to require a Federal authorization, as that term is defined in FPA subsection 216(h)(1), the Agency will assess its potential role in authorizing the proposed project and initiate contact with DOE and the other affected Participating Agencies if the project is (1) equal to or greater than 230 kV; (2) reasonably likely to require an EIS; or (3) reasonably likely to require more than one Federal authorization. Once notified, DOE will consult with each relevant Participating Agency with a potential role in authorizing the proposed project to determine the appropriate level of coordination required for the proposed project. Those Participating Agencies contacted by DOE agree to cooperate with DOE to:

1. Coordinate their applicable Federal authorizations and environmental reviews relating to a proposed or existing facility. This coordination requires consultation, "as appropriate with Indian tribes, multistate entities, and State agencies that are willing to coordinate their own separate permitting and environmental reviews with the Federal authorization and environmental reviews." [216(h)(4)(A)].

2. Adhere to "intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed [electric transmission] facility" as established by DOE in consultation with the relevant Participating Agencies and in accordance with applicable laws. [216(h)(4)(A)].

3. Conduct timely reviews of applications for proposed transmission facilities within corridors designated under section 503 of the Federal Land Policy and Management Act (43 U.S.C § 1763 et seq.) by fully taking into account prior analyses and decisions relating to the corridors. [216(h)(5)(B)].

4. Provide, as appropriate and available, to the applicant or the prospective applicant relevant studies, data (such as maps showing features over which the Agency may have jurisdiction), and any other information concerning the status of matters the Participating Agency considers relevant, including matters that may be under consideration, such as proposing a species for listing as endangered or threatened, or proposing an area for wilderness status.

5. Identify the applicable statutory, regulatory, and policy responsibilities of that Agency, and communicate that information to the applicant or the prospective applicant.

B. Participate During Application Discussions. Not later than 60 days after receipt of a request for such information by an applicant, a prospective applicant, or DOE, each Participating Agency with a potential role in authorizing the proposed project will coordinate with DOE to provide information concerning:

1. The "key issues of concern to the [Participating] agencies and the public" that need to be addressed in order for that Agency to meet its obligations, and communicate those issues and concerns to the applicant or the prospective applicant. [216(h)(4)(C)(ii)].

2. The likelihood of approval for a potential facility. [216(h)(4)(C)(i)].

C. Communicate Informally. The Participating Agencies and principal contacts set forth in section VIII agree to informally communicate early and throughout the process to ensure that issues are raised as soon as possible and shared among all Agencies. Each Participating Agency will identify one or more lead points of contact for a project if other than the principal contact. This point of contact will notify DOE at least 60 days prior to expiration of an intermediate or final deadline established by DOE pursuant to subsection 216(h)(4)(A) and/or (B).

D. Share Information and Data. To the extent permitted by law and regulation, the Participating Agencies will share the information gathered, considered, and relied upon by each of them with all other relevant Participating Agencies. Specifically, the Participating Agencies, if determined to have potential roles in authorizing the proposed project, agree to:

1. Establish, maintain, and utilize, to the extent applicable, a single electronic source to store and display information pertaining to one or more authorizations potentially required to site an electric transmission facility. The FERC's E-library is an example of one such source.

2. Cooperate and coordinate in the preparation of requests for studies or data, avoid duplicative requests, and compile consistent information on which all of the Participating Agencies will rely.

3. Cooperate in identifying and developing the information at the level of detail required to complete environmental and cultural resource project reviews.

4. Consult early and as often as needed with DOE and other applicable Participating Agencies and, as appropriate, Indian tribes, multistate entities, and State agencies regarding preparation of a single environmental review document to be "used as the basis for all decisions on the proposed [electric transmission] project." The single environmental review document shall "include consideration by the relevant agencies of any applicable criteria or other matters as required under applicable law." [216(h)(5)(A), (C)].

5. Consult early and as often as needed with DOE and other applicable participating Federal and State agencies regarding the sufficiency and data requirements of applications and pre-applications. [216(h)(4)(B)].

6. Notify the principal contact listed in section VIII for the relevant Participating Agencies and CEQ once any Participating Agency learns of an applicant or State's intent to appeal any matter under subsection 216(h)(6).

IV. SCOPE OF THE MOU

A. This MOU cannot be used to obligate or commit funds or as the basis for the transfer of funds. Nothing in this MOU, in and of itself, requires any signatory agency to enter into any contract, grant, or interagency agreement. All provisions in this MOU are subject to the availability of funds.

B. This MOU shall be modified or amended upon written request of any party hereto and the subsequent written concurrence of all parties.

C. This MOU is to be construed in a manner consistent with all existing laws.

D. This MOU neither expands nor is in derogation of those powers and authorities vested in the parties by applicable law.

E. The Participating Agencies intend to fully carry out the terms of this MOU. All provisions in this MOU, however, are subject to available appropriations and agency resources.

F. This MOU is strictly for internal management purposes of the parties. It is not a contract for acquisition of supplies or services, is not legally enforceable, and shall not be construed to create any legal obligation on the part of any of the parties, or any private right or cause of action for or by any person or entity.

G. Participation in this MOU may be terminated 60 days after providing written notice of such termination to the other Participating Agencies. Upon one party's unilateral withdrawal, this MOU shall remain in effect for other Participating Agencies unless all of the Participating Agencies unanimously agree to withdraw.

H. The Participating Agencies will review this MOU every 5 years from the date the MOU takes effect and revise it as necessary.

V. DISPUTE RESOLUTION

If a dispute arises among the Participating Agencies regarding the terms or the implementation of this MOU, the following steps will be taken:

A. The Participating Agency (through its principal contact(s) and/or points of contact(s) identified in section III(C) for projects) that seeks resolution will immediately (or within five working days) provide a written statement of the dispute, along with any rationale or supporting documents, to other relevant Participating Agencies and DOE in an attempt to arrive at a consensus and resolve the dispute.

B. If no resolution is reached within 10 working days of notification of the dispute, it will be elevated in writing, along with any rationale or supporting documents, to the principal contacts set forth in section VIII at the headquarters-level for the relevant Participating Agencies and CEQ.

C. If resolution is not reached by the headquarters-level officials within 15 working days of their receipt of the written statement of the dispute, the relevant Participating Agencies will promptly elevate the matter to their principal policy makers and the CEQ Chairman who will resolve the matter within 20 working days.

D. The time limits in the preceding paragraphs may be extended on the mutual agreement of the Participating Agencies that the period should be extended. Disputes will be resolved within sufficient time to enable completion of any environmental reviews by the deadlines established by DOE in consultation with the relevant Participating Agencies.

VI. SECURITY AND CLASSIFICATION

All applicable security classifications and guidelines shall apply. Before any classified work under this MOU is initiated, the Participating Agencies' representatives will establish appropriate security requirements/procedures.

All work undertaken pursuant to this MOU shall be coordinated among the Participating Agencies, and, when applicable, shall be subject to confidentiality requirements and exemptions from disclosure under the Freedom of Information Act, 5 U.S.C. § 552.

VII. AUTHORITIES

The Participating Agencies enter into this MOU under subsection 216(h) of the Federal Power Act, sec. 1221(a), § 216(h)(7)(B)(i), 119 Stat. 594, 946-951 (2005) (to be codified as amended at 16 U.S.C. § 824p).

VIII. PRINCIPAL CONTACTS

Each party hereby designates contacts as the initial principal contacts for the agency. [216(h)(7)(C)]. These contacts may be changed at the Participating Agency's discretion upon written notice to the other Participating Agencies. The following are the initial principal contacts for each agency:

DOE:	Director of the Office of Electricity Delivery and Energy Reliability
FERC:	Director of the Office of Energy Projects
DOC/NOAA:	Assistant Secretary of Commerce, Oceans and Atmosphere
DOC/NOAA/NMFS	Assistant Administrator, National Marine Fisheries Service
DOC/NOAA/NOS:	Assistant Administrator, National Ocean Service
DOD:	Director, Installations Requirements and Management
DOD/USACE:	Assistant Secretary of the Army for Civil Works
EPA:	Director of the Office of Federal Activities
DOI:	Principal Deputy Assistant Secretary, Land and Minerals Management
CEQ:	Associate Director for NEPA
USDA/FS:	Assistant Director of Lands, Forest Service
ACHP:	Director of the Office of Federal Agency Programs

IX. DATE EFFECTIVE

This MOU shall take effect on the date of the last approving signature specified in section X.

X. SIGNATORIES

By: Samuel W Bodman
SAMUEL W. BODMAN
SECRETARY OF ENERGY

Date: 7 Aug 06

By: _____ Date: 8/4/06

KENNETH J. KRIEG
UNDER SECRETARY OF DEFENSE
ACQUISITION, TECHNOLOGY & LOGISTICS

By: _____ Date: AUG 3 2006

MIKE JOHANNS
SECRETARY OF AGRICULTURE

By: _____ Date: AUG 04 2006

DIRK KEMPTHORNE
SECRETARY OF THE INTERIOR

By: _____ Date: 8/8/06

CARLOS M. GUTIERREZ
SECRETARY OF COMMERCE

By: _____ Date: 7/17/06

JOSEPH T. KELLIHER
CHAIRMAN, FEDERAL ENERGY REGULATORY COMMISSION

By: _____ Date: JUL 18 2006

STEPHEN L. JOHNSON
ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: 7/21/06

JAMES L. CONNAUGHTON
CHAIRMAN, COUNCIL ON ENVIRONMENTAL QUALITY

By: _____ Date: July 14, 2006

JOHN L. NAU III
CHAIRMAN, ADVISORY COUNCIL ON HISTORIC PRESERVATION