187 FERC ¶ 61,069
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

18 CFR Parts 50 and 380

[Docket No. RM22-7-000; Order No. 1977]

Applications for Permits to Site Interstate Electric Transmission Facilities

(Issued May 13, 2024)

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission amends its regulations governing applications for permits to site electric transmission facilities under section 216 of the Federal Power Act, as amended by the Infrastructure Investment and Jobs Act of 2021, and amends its National Environmental Policy Act procedures.

EFFECTIVE DATE: This rule will become effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION:

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FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Allison Clements and Mark C. Christie.

Applications for Permits to Site Interstate Electric Transmission Facilities — Docket No. RM22-7-000

ORDER NO. 1977

FINAL RULE

(Issued May 13, 2024)

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1. On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) became law.[1] The IIJA, among other things, amended section 216 of the Federal Power Act (FPA),[2] which provides for Federal siting of electric transmission facilities under certain circumstances. The Federal Energy Regulatory Commission (Commission) is amending its regulations governing applications for permits to site electric transmission facilities to ensure consistency with the IIJA's amendments to FPA section 216, to modernize certain regulatory requirements, and to incorporate other updates and clarifications to provide for the efficient and timely review of permit applications.

I. Background

A. Energy Policy Act of 2005 and FPA Section 216

2. The authority to site electric transmission facilities has traditionally resided solely with the States; however, the enactment of the Energy Policy Act of 2005 (EPAct 2005)[3] established a limited Federal role in electric transmission siting by adding section 216 to the FPA. Under section 216, Federal siting authority for electric transmission facilities (as defined in that section) is divided between the Department of Energy (DOE) and the Commission. Section 216(a) directs DOE, on a triennial basis, to conduct a study and issue a report on electric transmission congestion and authorizes DOE to designate certain transmission-constrained or congested geographic areas as national interest

[1] Pub. L. 117-58, sec. 40105, 135 Stat. 429 (2021).

[2] 16 U.S.C. 824p.

[3] Pub. L. 109-58, sec. 1221, 119 Stat. 594 (Aug. 8, 2005) (amended 2021).

electric transmission corridors (National Corridors). Section 216(b) authorizes the Commission in certain instances to issue permits for the construction or modification of electric transmission facilities in areas that DOE has designated as National Corridors.

3. As originally enacted in EPAct 2005, section 216(b)(1) authorized the Commission to issue permits to construct or modify electric transmission facilities in a National Corridor if it found that: (A) a State in which such facilities are located lacks the authority to approve the siting of the facilities or consider the interstate benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State;[4] (B) the permit applicant is a transmitting utility but does not qualify to apply for a permit or siting approval in a State because the applicant does not serve end-use customers in the State;[5] or (C) a State commission or entity with siting authority has withheld approval of the facilities for more than one year after an application is filed or one year after the designation of the relevant National Corridor, whichever is later, or the State conditions the construction or modification of the facilities in such a manner that the proposal will not significantly reduce transmission congestion in interstate commerce or is not economically feasible.[6]

4. In addition, sections 216(b)(2) through (6) required the Commission, before issuing a permit, to find that the proposed facilities: (1) will be used for the transmission

[4] 16 U.S.C. 824p(b)(1)(A) (prior to the IIJA amendment in 2021). Instances in this rule citing the statute prior to the IIJA amendment in 2021 are noted by a parenthetical for clarity.

[5] *Id.* 824p(b)(1)(B).

[6] *Id.* 824p(b)(1)(C) (prior to the IIJA amendment in 2021).

of electricity in interstate commerce; (2) are consistent with the public interest; (3) will significantly reduce transmission congestion in interstate commerce and protect or benefit consumers; (4) are consistent with sound national energy policy and will enhance energy independence; and (5) will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures.[7]

5. Section 216(e) authorized a permit holder, if unable to reach agreement with a property owner, to use eminent domain to acquire the necessary right-of-way for the construction or modification of transmission facilities for which the Commission has issued a permit under section 216(b).[8] Federal and State-owned land was expressly excluded from the purview of section 216(e) and thus could not be acquired via eminent domain.[9]

6. Section 216(h)(2) designated DOE as the lead agency for purposes of coordinating all Federal authorizations and related environmental reviews needed to construct proposed electric transmission facilities. To ensure timely and efficient reviews and permit decisions, under section 216(h)(4)(A), DOE was required to establish prompt and binding intermediate milestones and ultimate deadlines for all Federal reviews and authorizations required for a proposed electric transmission facility.[10] Under

[7] *Id.* 824p(b)(2)-(6).

[8] *Id.* 824p(e)(1) (prior to the IIJA amendment in 2021).

[9] *Id.*

[10] Under FPA section 216(h)(6)(A), if any agency has denied a Federal authorization required for a transmission facility or has failed to act by the deadline

section 216(h)(5)(A), DOE, as lead agency, was required to prepare a single environmental review document, in consultation with other affected agencies, that would be used as the basis for all decisions for proposed projects under Federal law.

7. On May 16, 2006, the Secretary of DOE delegated to the Commission authority to implement parts of section 216(h), specifically paragraphs (2), (3), (4)(A)-(B), and (5).[11] Specifically, the Secretary delegated DOE's lead agency responsibilities to the Commission for the purposes of coordinating all applicable Federal authorizations and related environmental reviews and preparing a single environmental review document for proposed facilities under the Commission's siting jurisdiction.[12]

8. In August 2006, DOE issued a Congestion Study pursuant to section 216(a), which identified two critically congested areas in the Mid-Atlantic and Southern California.[13] Based on the results of the Congestion Study, in October 2007, DOE

established by the Secretary of DOE, the applicant or any State in which the facility would be located may file an appeal with the President. 16 U.S.C. 824p(h)(6)(A).

[11] *See* DOE Delegation Order No. S1-DEL-FERC-2006 (previously DOE Delegation Order No. 00-004.00A).

[12] While Congress has provided the authority to establish prompt and binding milestones and deadlines for the review of, and Federal authorization decisions relating to, facilities proposed under section 216, 16 U.S.C. 824p(h)(4)(A), efficient processing of applications will depend upon agencies complying with the established milestones and deadlines.

[13] DOE, National Electric Transmission Congestion Study, 71 FR 45047 (Aug. 8, 2006).

formally designated two National Corridors, the Mid-Atlantic Corridor and the Southwest Area Corridor.[14]

B. Order No. 689

9. Section 216(c)(2) of the FPA required the Commission to issue rules specifying the form of, and the information to be contained in, an application for proposed construction or modification of electric transmission facilities in National Corridors, and the manner of service of notice of the permit application on interested persons. Pursuant to this statutory requirement, on November 16, 2006, the Commission issued Order No. 689, which implemented new regulations for section 216 permit applications by adding part 50 to the Commission's regulations.[15] In addition, Order No. 689 adopted modifications to the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA)[16] in part 380 of the Commission's regulations to ensure that the Commission is provided sufficient information to conduct an environmental analysis of a proposed electric transmission project.

10. In Order No. 689, the Commission addressed a question of statutory interpretation raised by commenters concerning the text of section 216(b)(1)(C), which, at the time, conferred jurisdiction to the Commission whenever a State had withheld approval of a

[14] DOE, National Electric Transmission Congestion Report, 72 FR 56992 (Oct. 5, 2007).

[15] *Regulations for Filing Applications for Permits to Site Interstate Elec. Transmission Facilities*, Order No. 689, 71 FR 69440 (Dec. 1, 2006) 117 FERC ¶ 61,202 (2006), *reh'g denied*, 119 FERC ¶ 61,154 (2007).

[16] 42 U.S.C. 4321 *et seq.* *See also* 18 CFR pt. 380 (2023) (Commission's regulations implementing NEPA).

State siting application for more than one year.[17] The Commission interpreted the phrase "withheld approval" to include any action that resulted in an applicant not receiving State approval within one year, including a State's express denial of an application to site transmission facilities.[18]

C. *Piedmont* & *California Wilderness* Judicial Decisions

11. In 2009, the U.S. Court of Appeals for the Fourth Circuit (Fourth Circuit), in *Piedmont Environmental Council v. FERC*,[19] held that the Commission's interpretation of "withheld approval" was contrary to the plain meaning of the statute, and that the Commission's siting authority does not apply when a State has affirmatively denied a permit application within the one-year deadline.[20] In addition, the Fourth Circuit vacated the Commission's transmission-related amendments to its NEPA regulations, finding that the Commission had failed to consult with the Council on Environmental Quality (CEQ) before adopting the revisions.[21]

12. Two years later, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit), in *California Wilderness Coalition v. DOE*, considered petitions for review challenging

[17] Order No. 689, 117 FERC ¶ 61,202 at PP 24-31, *reh'g denied*, 119 FERC ¶ 61,154 at PP 7-23.

[18] Order No. 689, 117 FERC ¶ 61,202 at P 26, *reh'g denied*, 119 FERC ¶ 61,154 at P 11.

[19] 558 F.3d 304 (4th Cir. 2009), *cert. denied*, 558 U.S. 1147 (2010) (*Piedmont*).

[20] *Id.* at 313.

[21] *Id.* at 319, 320.

DOE's actions following the enactment of section 216.[22] The Ninth Circuit vacated DOE's August 2006 Congestion Study and October 2007 National Corridor designations, finding that the agency: (1) failed to properly consult with affected States in preparing the Congestion Study, as required by section 216; and (2) failed to consider the environmental effects of the National Corridor designations under NEPA.[23]

13. Since the Fourth Circuit and Ninth Circuit decisions, DOE has not designated any National Corridors, and the Commission has not received any applications for permits to site electric transmission facilities.

D. IIJA Amendments to FPA Section 216

14. On November 15, 2021, the IIJA amended section 216 of the FPA. With respect to DOE's authority, the IIJA amended section 216(a)(2) to expand the circumstances in which DOE may designate a National Corridor. In addition to geographic areas currently experiencing transmission capacity constraints or congestion that adversely affects consumers, amended section 216(a)(2) provides that DOE may designate National Corridors in geographic areas expected to experience such constraints or congestion. The IIJA also amended section 216(a)(4) to expand the factors that DOE may consider in determining whether to designate a National Corridor.[24]

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[22] 631 F.3d 1072 (9th Cir. 2011).

[23] *Id.* at 1096, 1106.

[24] DOE may consider the following factors when determining whether to designate a National Corridor under section 216(a)(4): (1) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity; (2) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy and a diversification of supply is warranted; (3) the energy independence or

15. With respect to the Commission's siting authority, the IIJA amended section 216(b)(1)(C) by deleting the phrase "withheld approval" and by incorporating revisions to the statutory text. As amended, section 216(b)(1)(C) provides that the Commission's siting authority is triggered when a State commission or other entity with authority to approve the siting of the transmission facilities: (i) has not made a determination on a siting application by one year after the later of the date on which the application was filed or the date on which the relevant National Corridor was designated; (ii) has conditioned its approval such that the proposed project will not significantly reduce transmission capacity constraints or congestion in interstate commerce or is not economically feasible; or (iii) has denied an application.[25] This statutory amendment resolves the jurisdictional issue at the heart of *Piedmont* by explicitly giving the Commission siting authority when a State has denied an application.[26]

16. Additionally, the IIJA amended section 216(e), which grants a permit holder the right to acquire the necessary right-of-way by eminent domain.[27] As amended,

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energy security of the United States would be served by the designation; (4) the designation would be in the interest of national energy policy; (5) the designation would enhance national defense and homeland security; (6) the designation would enhance the ability of facilities that generate or transmit firm or intermittent energy to connect to the electric grid; (7) the designation maximizes existing rights-of-way and avoids and minimizes, to the maximum extent practicable, and offsets to the extent appropriate and practicable, sensitive environmental areas and cultural heritage sites; and (8) the designation would result in a reduction in the cost to purchase electric energy for consumers.

[25] 16 U.S.C. 824p(b)(1)(C).

[26] *Id.* 824p(b)(1)(C)(iii).

[27] *Id.* 824p(e)(1).

section 216(e)(1) requires the Commission to determine, as a precondition to a permit holder exercising such eminent domain authority, that the permit holder has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process.[28]

E. Notice of Proposed Rulemaking

17. On December 15, 2022, the Commission issued a Notice of Proposed Rulemaking (NOPR), which proposed revisions to its regulations in parts 50 and 380 governing applications for permits to site electric transmission facilities.[29] Among other revisions, the Commission proposed changes to address the IIJA's amendments to section 216 of the FPA.

18. First, the Commission proposed revisions to make clear that the Commission has the authority to issue permits for the construction or modification of electric transmission facilities in a National Corridor if a State has denied a siting application.[30]

19. Second, the Commission announced a proposed policy change that would allow an applicant that is subject to a State siting authority to seek to commence the Commission's pre-filing process once the relevant State siting applications have been filed.[31] The

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[28] *Id.*

[29] *Applications for Permits to Site Interstate Elec. Transmission Facilities*, 88 FR 2770 (Jan. 17, 2023), 181 FERC ¶ 61,205 (2022) (NOPR), *errata notice*, 182 FERC ¶ 61,020 (2023). The Commission's errata notice for the NOPR, issued on January 17, 2023, reflected certain stylistic revisions requested by the *Federal Register* as well as minor, non-substantive editorial revisions.

[30] *Id.* P 18.

[31] *Id.* PP 20-21.

Commission explained that this change, if adopted, would eliminate the Commission's prior policy of waiting one year after the relevant State siting applications have been filed before allowing an applicant to seek to commence the Commission's pre-filing process. The Commission further proposed that, one year after the commencement of the Commission's pre-filing process, if a State has not made a determination on an application before it, the State will have 90 days to provide comments to the Commission on any aspect of the pre-filing process, including any information submitted by the applicant.[32]

20. Third, the Commission proposed to codify an Applicant Code of Conduct.[33] The Commission explained that compliance with the Applicant Code of Conduct is one way an applicant may demonstrate that it has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process as required by section 216(e)(1) of the FPA as a predicate to the use of eminent domain.[34] The Commission also proposed that an applicant may choose an alternative method of demonstrating that it meets the "good faith efforts" standard, so long as it explains how its alternative method is equal to or better than compliance with the Applicant Code of Conduct as a means of ensuring that the statutory standard is met.

21. Fourth, the Commission proposed to add a requirement that applicants develop and file an Environmental Justice Public Engagement Plan as part of their Project

[32] *Id.* P 23.

[33] *Id.* PP 26-27.

[34] *Id.* P 28.

Participation Plan, which is already required early in the pre-filing process.[35] The Commission explained that an Environmental Justice Public Engagement Plan must describe the applicant's completed outreach to environmental justice communities, summarize comments from potentially impacted communities, describe planned outreach, and describe how the applicant will reach out to environmental justice communities about potential mitigation.[36]

22. Finally, the Commission proposed updates to the environmental information that an application must include. In addition to a variety of proposed updates, clarifications, and corrections to existing resource reports, the Commission proposed to require an applicant to provide information regarding a proposed project's impacts on Tribal resources, environmental justice communities, and air quality and environmental noise in three new resource reports.[37]

23. Comments on the NOPR were due by April 17, 2023. In response to a motion filed by the National Association of Regulatory Utility Commissioners (NARUC), the Commission extended the comment deadline to May 17, 2023.

24. In response to the NOPR, 52 comments were filed.[38] These comments have informed our determinations in this final rule.

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[35] *Id.* PP 30-31; 18 CFR § 50.4(a) (requiring Project Participation Plan).

[36] *Id.* P 31.

[37] *Id.* PP 63-71.

[38] Appendix B lists the entities that submitted comments on the NOPR and the abbreviated names used throughout this final rule to describe those entities.

25. Additionally, on February 28, 2024, the Joint Federal-State Task Force on Electric Transmission (Task Force)[39] met to discuss transmission siting.[40] The discussion included topics such as how State and Federal siting reviews should be sequenced and coordinated, what factors the Commission should consider in its siting proceedings under section 216(b), and how the Commission's siting process will interface with transmission planning and cost allocation requirements.

II. Discussion

A. Commission Jurisdiction and State Siting Proceedings

26. As discussed above, section 216(b)(1) of the FPA, as revised by the IIJA, provides the circumstances that trigger the Commission's jurisdiction. As discussed further below, in this final rule, the Commission revises § 50.6 of its regulations to reflect the IIJA's amendments to section 216(b)(1). The Commission also declines to adopt the policy change proposed in the NOPR with respect to when the Commission's pre-filing process may commence.

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[39] *Joint Fed.-State Task Force on Elec. Transmission*, 175 FERC ¶ 61,224 (2021) (establishing Task Force pursuant to FPA section 209(b)).

[40] *Joint Fed.-State Task Force on Elec. Transmission,* Notice of Meeting and Agenda, Docket No. AD21-15-000 (Feb. 13, 2024). The transcript of this meeting can be found in Docket No. AD21-15-000. For context, the Commission established the Task Force in June 2021 to formally explore transmission-related topics such as generator interconnection, grid enhancing technologies, physical security, and regulatory gaps or challenges in oversight. The Task Force was composed of all FERC Commissioners as well as representatives from 10 State commissions nominated by NARUC, with two originating from each NARUC region. The Task Force convened for multiple formal meetings annually, which were open to the public.

1. IIJA Amendments and Commission Jurisdiction under FPA Section 216(b)(1)

a. NOPR Proposal

27. Section 50.6 of the Commission's regulations describes the information that is required in each application filed pursuant to the part 50 regulations. Section 50.6(e) provides that each application must provide evidence demonstrating that one of the bases for the Commission's jurisdiction set forth in section 216(b)(1) applies to the proposed facilities. To ensure consistency with section 216(b)(1)(A), as amended by the IIJA, in the NOPR the Commission proposed to add to § 50.6(e)(1) the phrase "or interregional benefits" to clarify that an application may provide evidence that a State does not have the authority to consider the interstate benefits or interregional benefits expected to be achieved by the proposed facilities.[41]

28. As discussed above, the IIJA also amended FPA section 216(b)(1)(C) to expressly state that the Commission may issue a permit for the construction or modification of electric transmission facilities in National Corridors if a State has denied an application to site such transmission facilities.[42] To reflect this amendment, in the NOPR the Commission proposed corresponding revisions to § 50.6(e)(3) to provide that the

[41] NOPR, 181 FERC ¶ 61,205 at P 43. While the statute, as amended by the IIJA, does not define the term "interregional," the Commission proposed to apply a meaning that is consistent with Order No. 1000, which defines an interregional transmission facility as one that is located in two or more transmission planning regions. *Id.* (citing *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Public Utilities*, Order No. 1000, 76 FR 49842 (Aug. 11, 2011), 136 FERC ¶ 61,051, at P 482 n.374 (2011)).

[42] *See supra* P 15.

applicant is required to submit evidence demonstrating that a State has: (i) not made a determination on an application; (ii) conditioned its approval in such a manner that the proposed facilities would not significantly reduce transmission capacity constraints or congestion in interstate commerce or is not economically feasible; or (iii) denied an application.[43]

b. Comments

29. Several commenters ask the Commission to clarify its jurisdiction under section 216(b)(1) of the FPA. ACEG seeks confirmation that the Commission's regulations will apply in instances where a State does not have authority to approve the siting of facilities or consider a project's expected interstate or interregional benefits, or when an applicant does not qualify for a State permit or siting approval because the applicant does not serve end-use customers in that State.[44] ACEG also urges the Commission to "expand upon the meaning of a State 'lacking authority' to approve the proposed facilities."[45]

30. Commenters ask the Commission to clarify whether specific circumstances would trigger the Commission's siting authority under FPA section 216(b)(1)(C), including when a local government entity with siting authority, such as a county zoning board, has failed to act on, conditionally approved, or denied a permit;[46] when a State has not acted

[43] NOPR, 181 FERC ¶ 61,205 at P 18.

[44] ACEG Comments at 4-5 (citing 16 U.S.C. 824p(b)(1)(A)-(B)).

[45] *Id.* at 7.

[46] *See* ACEG Comments at 6; SEIA Comments at 7; Rail Electrification Council Comments at 13. Rail Electrification Council also asks whether a State transportation authority that owns or controls a railroad right-of-way that is integral to a proposed transmission project would qualify as a "State commission or other entity" under FPA

within a year but no National Corridor has been designated;[47] and when a multistate project is approved by one or more relevant States but denied by another.[48] To clarify when the Commission's authority under section 216(b)(1) would apply, ACEG recommends that the Commission add an applicability section to its regulations.[49]

31. Commenters also request clarification on the Commission's authority to act under section 216(b)(1)(C)(ii) if it determines that a State commission or other entity with siting authority has conditioned its approval in such a manner that the proposed facilities will not significantly reduce transmission capacity constraints or congestion in interstate commerce or is not economically feasible. Several commenters urge the Commission to opine on what it would consider a significant reduction in transmission capacity constraints or congestion and how any such threshold would be quantified.[50] Maryland Commission observes that the statutory phrase "not economically feasible" is broad and undefined and that State conditions that simply impose an economic burden on an applicant should not be deemed sufficient to trigger the Commission's siting jurisdiction.[51] Rather, Maryland Commission states that the Commission should only

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section 216(b)(1)(C)). Rail Electrification Council Comments at 13.

[47] ACEG Comments at 7.

[48] Impacted Landowners Comments at 25.

[49] ACEG Comments at 7.

[50] *See* Michigan Commission Comments at 11; New York Commission Comments at 6-1; OMS Comments at 5-6.

[51] Maryland Commission Comments at 25.

consider asserting its siting authority when confronted by State conditions that are not supported by the record, are contrary to law, or are substantially outweighed by the project's regional benefits and would jeopardize the existence of the project if included.[52]

32. Some commenters urge the Commission either to defer to State siting decisions or to refrain from prematurely exercising its jurisdiction under section 216(b)(1)(C). New Jersey Board states that the Commission should refrain from exercising its section 216 authority and allow a State to reach its own determination, so long as the State has acted in good faith and there is no evidence that it is attempting to delay the process.[53] New Jersey Board suggests that the Commission's final rule recognize good cause for an application to remain in the State's purview.[54] New York Commission states that the Commission should defer to State siting determinations that deny an application because a project is incompatible with public health, safety, and the environment.[55] Noting that the ability to approve or deny transmission siting applications is within States' general police powers, New York Commission argues that the NOPR is too broad, does not respect State siting authority, and is an overreach of the Commission's jurisdiction.[56] For these reasons, New York Commission urges the Commission to identify a limited set of

[52] *Id.*

[53] New Jersey Board Comments at 6.

[54] *Id.*

[55] New York Commission Comments at 7-9.

[56] *Id.* at 8-9.

specific circumstances that would trigger the Commission's jurisdiction if State denial of a permit is unreasonable or inappropriate.[57]

c. Commission Determination

33. We adopt the NOPR proposal's revisions to § 50.6(e), which clarifies the evidence an applicant must provide to demonstrate that one of the jurisdictional bases set forth in section 216(b)(1) applies to the proposed facilities, including the addition in § 50.6(e)(1) of the phrase "interregional benefits" to clarify that an applicant may provide evidence that a State does not have authority to consider the interregional benefits expected to be achieved by the proposed project. We decline to impose additional requirements for the Commission to assert its jurisdiction beyond those required by the statute. We disagree with commenters that, by revising the Commission's regulations to reflect the IIJA's amendments to section 216(b)(1)(C), the Commission does not respect State siting authority, exceeds its statutory authority, or coopts or preempts State processes.

34. As stated previously in Order No. 689, mere consideration of an application by the Commission does not equate to a jurisdictional determination or Commission approval of the proposed project.[58] Once the Commission notices an application in accordance with § 50.9, anyone who questions the Commission's jurisdiction over the proposed project, the timing of the exercise of that jurisdiction, or the merits of the proposal can raise those matters with the Commission by filing comments, an intervention, or a protest in the

[57] *Id.* at 9.

[58] Order No. 689, 117 FERC ¶ 61,202 at P 32.

proceeding. The Commission will make a jurisdictional determination and address comments and protests in an order addressing the proposed project.

35. Section 50.6(e)(1) of the Commission's regulations tracks the statutory language that triggers the Commission's jurisdiction under FPA section 216(b)(1)(A). Thus, in response to ACEG's clarification request, we confirm that the Commission's regulations would apply in instances where a State does not have authority to approve the siting of facilities or consider a project's expected interstate or interregional benefits, and when an applicant does not qualify for a State permit or siting approval because the applicant does not serve end-use customers in that State. We decline ACEG's invitation to expand on the meaning of a State "lacking authority" to approve proposed facilities,[59] as such findings will be State-specific and, perhaps, project-specific and will be considered by the Commission on a case-by-case basis.

36. We also do not find it necessary to further define the scope of circumstances that might trigger the Commission's siting authority under section 216(b)(1). We note that § 50.6(e) of the Commission's the regulations require an applicant to demonstrate that the relevant statutory requirements have been met. The Commission will make such determinations case-by-case, based upon the record in a given proceeding. For this reason, we decline commenters' requests to clarify the applicability of FPA section 216(b)(1) to particular, factual circumstances that are, at this point, hypothetical.

[59] ACEG Comments at 7. While ACEG does not cite a particular statutory provision, we presume that ACEG's comment is in reference to FPA section 216(b)(1)(A)(i), which provides that the Commission may issue a permit if it finds that a State in which the transmission facilities are to be located does not have authority to approve the siting of the facilities.

37. We likewise decline commenters' calls to expound on when a State approval would be conditioned in a manner that meets the statutory threshold under FPA section 216(b)(1)(C)(ii). The Commission addressed similar comments in Order No. 689.[60] As the Commission stated then, these issues cannot be resolved adequately on a generic basis. Consistent with the Commission's prior approach, we decline to outline potential conditions a State might impose that would invoke the Commission's jurisdiction under FPA section 216(b)(1).

2. Commencement of Pre-filing

38. The Commission has recognized that Congress, in enacting section 216 of the FPA, adopted a statutory scheme that allows simultaneous State and Commission siting processes.[61] As the Commission explained in Order No. 689, the statute provides for this potential overlap by allowing the Commission to issue a permit one year after the State siting process has begun and requiring an expeditious pre-application mechanism for all permit decisions under Federal law.[62] Thus, the Commission has recognized that the pre-filing process can occur at the same time as State proceedings.[63]

39. Notwithstanding that the statute allows simultaneous State and Federal proceedings, the Commission in Order No. 689 announced a policy that, in cases where

[60] Order No. 689, 117 FERC ¶ 61,202 at P 34.

[61] *Id.* P 19.

[62] *Id.*

[63] *Id.*

its jurisdiction rests on section 216(b)(1)(C),[64] the pre-filing process would not commence until one year after the relevant State applications have been filed.[65] This approach, the Commission explained, would provide the States one full year to process an application without any overlapping Commission processes, after which time an applicant might seek to commence the Commission's pre-filing process.[66] However, the Commission noted that it would reconsider this issue if it later determined that requiring applicants to wait one year before commencing the Commission's pre-filing process was delaying projects or was otherwise not in the public interest.[67]

a. NOPR Proposal

40. In the NOPR, the Commission proposed to eliminate the one-year delay before the Commission's pre-filing process may commence, thus allowing simultaneous processing of State applications and Commission pre-filing proceedings (referred to herein as simultaneous processing).[68] The Commission proposed to entertain requests to commence pre-filing, and potentially grant such requests, at any time after the relevant State applications have been filed. Additionally, the Commission proposed to provide an opportunity for State input before the Commission would announce the completion of the

[64] In Order No. 689, the Commission explained that in all other instances, the pre-filing process may be commenced at any time. *Id.* P 21 n.14.

[65] *Id.* P 21.

[66] *Id.*

[67] *Id.*

[68] NOPR, 181 FERC ¶ 61,205 at PP19-23.

pre-filing process and allow an application to be filed.[69] Specifically, one year after the commencement of the Commission's pre-filing process, if a State has not made a determination on an application, the Commission proposed to provide a 90-day window for the State to submit comments on any aspect of the pre-filing process, including any information submitted by the applicant. The NOPR also sought comment on the advantages or disadvantages of the Commission entertaining requests to commence the pre-filing process before a State application has been filed.

b. Comments

41. Numerous commenters express support for the NOPR proposal.[70] A number of commenters agree that simultaneous processing would enhance efficiency by streamlining processes and allowing decision-making entities to use pre-existing data to make determinations.[71] For instance, Los Angeles DWP believes that simultaneous processing would enable early engagement and coordination between State and Federal regulators, thereby increasing certainty in permit application outcomes, reducing time and

[69] *Id.* P 23.

[70] Advanced Energy United Comments at 8-9; American Chemistry Council Comments at 5; ACP Comments at 2-7; ACORE Comments at 2-3; ACEG Comments at 5-6, 8-9; CATF Comments at 3-7; Clean Energy Buyers Comments at 6-7; ClearPath Comments at 2; CLF Comments at 2,4; ELCON Comments at 1,3; EDF Comments at 10-11; Los Angeles DWP Comments at 2; Michigan Commission Comments at 4; New Jersey Board Comments at 5; Niskanen Comments at 5-7; Public Interest Organizations Comments at 10-15; Sabin Center Comments at 2-3; SEIA Comments at 2-7; Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe Comments at 3.

[71] Los Angeles DWP Comments at 2; Michigan Commission Comments at 4; New Jersey Board Comments at 5.

costs of environmental reviews, and better aligning projects with State and Federal policy goals.[72] Sabin Center concurs that removing the one-year delay will improve efficiency and ensure more timely decision-making by the Commission by streamlining information collection.[73]

42. Several commenters assert that the NOPR's simultaneous processing proposal affords sufficient deference to States' decision-making involving land-use and permitting decisions.[74] ACEG states that the Commission's proposed approach toward simultaneous processing strikes the correct balance between promoting efficiency and respecting States' primacy in the process.[75]

43. Some commenters agree that simultaneous processing is consistent with the Commission's statutory authority under FPA section 216 and Congress's intent.[76] Advanced Energy United states that the IIJA's amendments to FPA section 216 were meant to expedite the permitting process and that simultaneous processing would meet that goal.[77]

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[72] Los Angeles DWP Comments at 3.

[73] Sabin Center Comments at 3.

[74] *See, e.g.*, SEIA Comments at 5-7; EDF Comments at 11.

[75] ACEG Comments at 5-6.

[76] *See, e.g.*, ClearPath Comments at 2; *see also* Clean Energy Buyers Comments at 5; Public Interest Organizations Comments at 11-12 (interpreting Congress's silence as an implicit grant of authority).

[77] *See, e.g.*, ACP Comments at 8; *see also* Advanced Energy United Comments at 7.

44. Some commenters contend that the NOPR's simultaneous processing proposal would enhance stakeholder participation and communication in both State and Federal transmission siting proceedings.[78] ACP states that conducting concurrent review allows the Commission to hear from stakeholders early in the Federal siting process – and potentially in tandem with States.[79] Niskanen also supports simultaneous processing because it believes that the Commission's implementation of the statute's "good faith" standard for engaging with landowners and other stakeholders from the beginning of the process will standardize practices across the States and decrease the ability of applicants to exhibit bad faith when dealing with only the State commission.[80]

45. Several commenters that otherwise support the NOPR's simultaneous processing proposal explicitly oppose the Commission's pre-filing process commencing prior to the commencement of the State's permitting process or a State application being filed.[81] Several commenters that support simultaneous processing also urge the Commission to take steps to limit stakeholder confusion, for instance, by requiring applicants to specify when they will file their applications with States.[82] The Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian

[78] Los Angeles DWP Comments at 2

[79] ACP Comments at 5.

[80] Niskanen Comments at 7.

[81] ACORE Comments at 3; Yurok Tribe Comments at 24; Clean Energy Buyers Comments at 7.

[82] *See* California Commission Comments at 6; EDF Comments at 11.

Tribe are supportive of simultaneous processing, but warn that the Commission must ensure meaningful stakeholder participation during the pre-filing process.[83]

46. Many commenters oppose the NOPR proposal to allow the Commission's pre-filing process to commence at any time after the relevant State siting applications have been filed but before a State decision is made.[84] Several commenters urge the Commission to retain the existing policy adopted in Order No. 689, where the pre-filing process could not commence until one year after the relevant State applications have been filed.[85] Some commenters argue that the Commission's pre-filing process should not begin until after the relevant State authority determines that a State application is complete[86] or after the relevant State authority's finishes its adjudication.[87] Georgia

[83] Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe Comments at 3.

[84] Alabama Commission Comments at 1-3; Georgia Commission Comments at 1-2; Impacted Landowners Comments at 2-5; Joint Consumer Advocates Comments at 6-11; Kansas Commission Comments at 9-12; Kentucky Commission Comments at 2-4; Louisiana Commission Comments at 5-9; Maryland Commission Comments at 2, 16-21; NESCOE Comments at 4, 6-7; New York Commission Comments at 9-10; North Carolina Commission and Staff Comments at 8, 10-11; North Dakota Commission Comments at 5-6; Pennsylvania Consumer Advocate Comments at 5-7; Pennsylvania Commission Comments at 2, 4-6; Texas Commission Comments at 5-6, 10-11; Southern Comments at 3-8; Farm Bureaus Comments at 3, 6; Chamber of Commerce Comments at 2, 5.

[85] *See, e.g.*, North Dakota Commission Comments at 6; NESCOE Comments at 4-6; Texas Commission Comments at 6.

[86] North Dakota Commission Comments at 5; Joint Consumer Advocates Comments at 6; Maryland Commission Comments at 21 (arguing that the one-year should be tolled if material amendments are filed at the State level).

[87] New York Commission Comments at 9; Maryland Commission Comments at 2, 18-19; Pennsylvania Commission Comments at 7.

Commission is concerned that simultaneous processing would contradict current State statutes and regulations guiding transmission planning, which in Georgia occurs at least every three years.[88]

47. Several commenters argue that simultaneous processing would not adequately respect the States' primacy and would impinge on State jurisdiction.[89] Joint Consumer Advocates caution that the Commission, in implementing its section 216 authority, must ensure State processes are not coopted or preempted, and they assert that the Federal process should be a backstop, rather than an alternative, to the State process.[90] Georgia and Texas Commissions express concerns that the NOPR's proposed simultaneous processing will encroach on their existing permitting schemes.[91] Some commenters argue that simultaneous processing would undermine State proceedings[92] and the public's confidence in State siting authorities.[93] Pennsylvania Commission and North Carolina Commission argue that Congress meant to balance the Commission's process with State

[88] Georgia Commission Comments at 2.

[89] *See, e.g.*, Maryland Commission Comments at 2, 19; North Dakota Commission Comments at 2; Louisiana Commission Comments at 5.

[90] Joint Consumer Advocates Comments at 5.

[91] Georgia Commission Comments at 2,4; Texas Commission Comments at 6-9.

[92] Louisiana Commission Comments at 5.

[93] NESCOE Comments at 6-7.

primacy and that the NOPR's simultaneous processing proposal is inconsistent with that goal.[94]

48. Several commenters argue that simultaneous processing invites potentially duplicative, wasteful procedures, especially in instances where the State ultimately approves the application.[95] Kentucky PSC contends that the one-year delay actually helps the Commission, as some projects will be approved by States in that time, saving the Commission from wasting time and resources on commencing the NEPA process.[96] Chamber of Commerce asserts that simultaneous processing, by virtue of its design, guarantees that one of the processes and the stakeholder efforts will amount to a void and wasted effort.[97] Some commenters express concerns that applicants may seek to recover from ratepayers costs incurred for commencing the Commission's pre-filing process in instances when the State siting commission approves a proposed transmission project.[98]

49. Commenters opposed to simultaneous processing argue that the NOPR proposal would disproportionately burden State agencies charged with processing transmission siting applications. Some commenters assert that simultaneous proceedings would make it challenging for State oversight agencies to concurrently perform their quasi-judicial

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[94] Pennsylvania Commission Comments at 2; North Carolina Commission and Staff Comments at 8.

[95] *See* New York Commission Comments at 9; Alabama Commission Comments at 2 n.3; North Dakota Commission Comments at 6; North Carolina Commission and Staff Comments at 8.

[96] Kentucky Commission Comments at 3-4.

[97] Chamber of Commerce Comments at 5; Impacted Landowners Comments at 3.

[98] Texas Commission Comments at 10-11; Impacted Landowners Comments at 3.

role and act as intervenors in Commission proceedings.[99] Other commenters contend that overlapping hearings and comment deadlines[100] would strain State resources or divide the attention of State experts.[101]

50. Multiple commenters assert that the NOPR's simultaneous processing proposal would have an adverse effect on stakeholder and applicant participation in State proceedings.[102] In particular, some commenters express concerns that multiple hearings and comment deadlines resulting from parallel State and Federal proceedings would confuse stakeholders by requiring interested participants and affected landowners to learn and comply with two sets of procedural rules and substantive permitting requirements.[103] Some commenters argued that the resulting confusion would reduce stakeholder participation.[104]

51. Several of the commenters that oppose the simultaneous processing proposal also oppose the proposed 90-day comment period for States as an inadequate replacement for

[99] *See* Kentucky Commission Comments at 2; Alabama Commission Comments at 1; Pennsylvania Commission Comments at 6.

[100] *See* NESCOE Comments at 5-6.

[101] *See* Kansas Commission Comments at 11-12; New York Commission Comments at 9; Kentucky Commission Comments at 2; Alabama Commission Comments at 1; Pennsylvania Commission Comments at 6.

[102] NESCOE comments at 5-6; Kansas Commission Comments at 11-12.

[103] *See* NESCOE Comments at 6; New York Commission Comments at 9; Kansas Commission Comments at 11-12.

[104] *See* NESCOE Comments at 6.

the one-year delay.[105] Kentucky and Louisiana Commissions argue that the 90-day comment period for States will put them in the position of choosing whether to remain silent in the Commission pre-filing process or to comment in favor of or against a proposed project, essentially "prejudging" the project at the Federal level while trying to maintain impartiality in the ongoing State proceeding.[106] North Carolina Commission and Staff oppose simultaneous processing but support the 90-day comment period in the event that the Commission adopts the proposal, because it would afford the States more time to participate in the Commission's pre-filing process.[107] Although Pennsylvania Commission also opposes simultaneous Federal and State proceedings, it contends that the 90-day comment period is necessary even in the absence of simultaneous processing.[108]

52. Sabin Center and ClearPath both suggest that the 90-day comment period start one year after the start of the State review, not one year after the Commission's pre-filing process has begun.[109] ClearPath suggests that there be no 90-day comment period if a State has already approved or denied an application, as the State will have already stated

[105] *See, e.g.*, Alabama Commission Comments at 2 n.6; Maryland Commission Comments at 19; Kentucky Commission Comments at 2-3; Louisiana Commission Comments at 5; Southern Comments at 8.

[106] Kentucky Commission Comments at 2-3; Louisiana Commission Comments at 5.

[107] North Carolina Commission and Staff Comments at 11-12.

[108] Pennsylvania Commission Comments at 6-7.

[109] Sabin Center comments at 3; ClearPath Comments at 2.

its position on the project.[110] Some entities seek clarity as to whether the 90-day window explicitly applies to every circumstance triggering the Commission's jurisdiction under section 216.[111] ACP points out that the 90-day comment period would serve as a second opportunity for State input, as States will also have the opportunity to provide input during DOE's National Corridor designation process.[112]

c. Commission Determination

53. After further consideration and review of the comments, we decline to adopt the NOPR proposal to allow simultaneous processing. We acknowledge comments that argue that simultaneous processing could result in efficiencies, but given the concerns raised by the States, we find that not allowing simultaneous processing strikes the appropriate balance at this time between an efficient process and respect for States' primacy in siting transmission infrastructure. We continue to believe that the statute allows parallel State and Commission processes.[113] Nevertheless, we make this policy determination to continue the Commission's practice introduced in Order No. 689, based on our review of the record and, in particular, the feedback received from States in their filed comments and at the February 28, 2024 meeting of the Joint Federal-State Task Force on Electric Transmission.[114] Additionally, given this determination, we are not

[110] ClearPath Comments at 2.

[111] Joint Consumer Advocates Comments at 6.

[112] ACP Comments at 6.

[113] Order No. 689, 117 FERC ¶ 61,202 at P 19.

[114] *See supra* note 40, Tr. 79-90.

adopting the NOPR proposal to provide a 90-day period for the State to comment on the pre-filing process.

54. We confirm that, in cases where the Commission's jurisdiction rests on FPA section 216(b)(1)(C)(i),[115] the applicant should not begin the pre-filing process until one year after the relevant State applications have been filed. This will give the States one full year to process an application without any overlapping Commission processes. Once that year is complete, an applicant may begin the Commission's pre-filing procedures pursuant to § 50.5. We believe that continuing this approach most adequately addresses State concerns. However, as the Commission previously stated in Order No. 689, if we determine in the future that the lack of a Commission pre-filing process prior to the end of the one year is delaying projects or otherwise not in the public interest, we may reexamine this issue.

B. Eminent Domain Authority and Applicant Efforts to Engage with Landowners and Other Stakeholders

55. Section 50.4 requires the applicant to develop and file a Project Participation Plan early in the pre-filing process and to distribute, by mail and newspaper publication, project participation notifications early in both the pre-filing and application review processes. These notifications will provide a range of information about the proposed project and permitting process, including a general description of the property an applicant would need from an affected landowner and a brief summary of the rights an

[115] 16 U.S.C. 824p(b)(1)(C)(i).

affected landowner has at the Commission and in proceedings under the eminent domain rules of the relevant State.

1. NOPR Proposal

56. As described above, the IIJA amended FPA section 216(e)(1) to require the Commission to determine, as a precondition to a permit holder receiving eminent domain authority, that the permit holder has made good faith efforts to engage with landowners and other stakeholders early in the permitting process.[116] Therefore, in the NOPR, the Commission proposed to supplement the existing landowner and stakeholder participation provisions in part 50 of its regulations.[117]

57. To address the IIJA's amendment to section 216(e)(1), in the NOPR the Commission proposed to supplement the regulatory requirements in § 50.4 by adding a new § 50.12.[118] Under proposed § 50.12, an applicant may demonstrate that it has met the statutory good faith efforts standard by complying with an Applicant Code of Conduct in its communications with affected landowners. The Applicant Code of Conduct includes recordkeeping (e.g., maintaining an affected landowner discussion log) and information-sharing requirements for engagement with affected landowners, as well as more general prohibitions against misconduct in such engagement.

58. As the Commission proposed in the NOPR, under § 50.12(b)(1), an applicant that chooses to show good faith by complying with the Applicant Code of Conduct must file,

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[116] 16 U.S.C. 824p(e)(1).

[117] NOPR, 181 FERC ¶ 61,205 at PP 24-29.

[118] *Id.* PP 26-29.

as part of the pre-filing request required under § 50.5(c), an affirmative statement indicating its intent to comply with the Applicant Code of Conduct.[119] Under § 50.12(b)(2), such an applicant must, as part of the monthly status reports required under § 50.5(e), demonstrate compliance by: (i) affirming that the applicant and its representatives have complied with the Applicant Code of Conduct; or (ii) explaining any instances of non-compliance during the relevant month and any remedial actions taken or planned. Under proposed § 50.12(b)(3), an applicant must also identify any known instances of non-compliance that were not disclosed in prior monthly status reports and explain any remedial actions taken to remedy such instances of non-compliance.

59. In the NOPR, the Commission emphasized that compliance with the Applicant Code of Conduct is one way, but not the only way, that an applicant may demonstrate that it has met the good faith efforts standard in section 216(e)(1).[120] Nevertheless, the Commission stated that the Applicant Code of Conduct reflects principles that are broadly relevant to determining whether an applicant has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process. Thus, the Commission proposed to require under § 50.12 that an applicant that chooses not to rely on compliance with the Applicant Code of Conduct must specify its alternative method of demonstrating that it meets the statute's good faith efforts standard and explain for each deviation from the Applicant Code of Conduct why the chosen alternative is an equal or better means to ensure that the good faith efforts standard is met.

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[119] *Id.* P 27.

[120] *Id.* P 28.

2. Comments

60. Public Interest Organizations and the Yurok Tribe generally support the Applicant Code of Conduct.[121] In addition, numerous commenters urge the Commission to make compliance with the Applicant Code of Conduct mandatory for applicants to maximize transparency and meaningfully assist landowners and stakeholders.[122] Public Interest Organizations specifically recommend that the Commission elevate the Applicant Code of Conduct as the sole means of demonstrating compliance with the good faith efforts standard in section 216(e)(1), asserting that allowing alternative methods could result in ambiguity for the applicant and other stakeholders.[123]

61. Impacted Landowners and EDF urge the Commission to create clear standards to guide its good faith efforts determination, including for alternative methods of demonstrating that an applicant meets the good faith efforts standard.[124]

62. In opposition, American Chemistry Council and ClearPath state that the Commission's proposed good faith efforts requirements are overly prescriptive, intrusive, outside the scope of the Commission's statutory mandates, and will turn efforts to engage

[121] Public Interest Organizations Comments at 16-17; Yurok Tribe Comments at 30.

[122] EDF Comments at 13: Farm Bureaus Comments at 11; Public Interest Organizations Comments at 18; NESCOE Comments at 13; Pennsylvania Consumer Advocate Comments at 7.

[123] Public Interest Organizations Comments at 42-44.

[124] Impacted Landowners Reply Comments at 6; EDF Comments at 13.

affected landowners into a box-checking exercise instead of meaningful engagement.[125] American Chemistry Council and ClearPath dispute the Commission's assertion that compliance with the Applicant Code of Conduct is voluntary given that applicants pursuing alternative methods of meeting the good faith efforts requirement must explain how their methods are equal to or better than compliance with the Applicant Code of Conduct.[126] ClearPath also contends that the Applicant Code of Conduct contains redundancies, including the requirement in proposed § 50.12 that applicants provide landowners, upon first contact, with documentation about the project, which, it says, is duplicative of the notification requirements in § 50.4(c).[127] Furthermore, ClearPath contends that the NOPR proposal would create inconsistent requirements for transmission siting applications under the FPA and natural gas pipeline applications under the Natural Gas Act.[128]

63. Impacted Landowners state that merely having an Applicant Code of Conduct will not result in actual good faith efforts by an applicant to engage with landowners and generally that codes of conduct do not work. They assert that there has historically been

[125] American Chemistry Council Comments at 6; ClearPath Comments at 3.

[126] American Chemistry Council Comments at 6; ClearPath Comments at 3. For example, ClearPath notes that the regulations require monthly status reports and questions whether any less frequent reporting would be deemed "equal or better" than monthly reporting.

[127] ClearPath Comments at 3.

[128] *Id.*

no policing or punishment of violations associated with codes of conduct.[129] Further, Impacted Landowners assert that although the proposed Applicant Code of Conduct admonishes applicants to avoid coercive tactics while they engage in negotiations with landowners, there is no way to bring up the possible exercise of eminent domain without it being interpreted by the landowner as coercive.[130]

64. California Commission states that the proposed regulations under § 50.12(b)(2) should be revised to require a demonstration and documentation of compliance with the Applicant Code of Conduct rather than only an "affirmation" to ensure applicant compliance.[131]

65. Several commenters seek clarification regarding the timing and duration of the Commission's good faith efforts determination required by FPA section 216(e)(1). For instance, Impacted Landowners ask the Commission to clarify the point at which the "applicable permitting process" begins, during which applicants must make good faith efforts to engage with landowners and other stakeholders. They also ask when the Commission would determine if good faith efforts have been made and whether applicants will be expected or required to continue to make good faith efforts to engage with landowners and other stakeholders once a permit is issued, asserting that after permit issuance, applicants will likely increase land acquisition efforts and negotiations can

[129] Impacted Landowners Comments at 7-10.

[130] *Id.* at 8.

[131] California Commission Comments at 7.

become more contentious.[132] Several commenters suggest that applicants must make good faith efforts to engage with landowners and other stakeholders throughout the permitting process, including prior to the start of the Commission's pre-filing process.[133] EEI notes that in instances of late project routing changes it may be difficult to comply with the statutory good faith efforts requirement.[134]

66. Similarly, several commenters raise timing concerns with using an alternative method, allowed in proposed § 50.12(c), to demonstrate that the good faith efforts standard has been met. Public Interest Organizations assert that the proposed regulations are ambiguous with respect to how or when the Commission would determine that an applicant's alternative method is equal to or better than the Commission's Applicant Code of Conduct.[135] EEI asks the Commission to avoid any disruption or delay when making that determination.[136]

67. Several commenters offer suggestions with respect to the scope of an applicant's good faith efforts under FPA section 216(e)(1). Public Interest Organizations and SEIA claim that proposed § 50.12, which applies to communications with affected landowners, fails to take into account section 216(e)(1)'s statutory directive to make good faith efforts

[132] Impacted Landowners Reply Comments at 5-6.

[133] Public Interest Organizations Comments at 17 and 21; Niskanen Comments at 7.

[134] EEI Comments at 7.

[135] Public Interest Organizations Comments at 42-44.

[136] EEI Comments at 7.

to engage "landowners and other stakeholders."[137] Public Interest Organizations and SEIA recommend that the regulations in § 50.12 be amended to include conduct with "other stakeholders,"[138] noting that this change would extend the duty of good faith to environmental justice communities.[139] The Yurok Tribe, Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe state that Tribes should be included as a separate stakeholder in the regulations with whom applicants must demonstrate good faith efforts to engage, including in the Applicant Code of Conduct.[140]

68. Impacted Landowners argue that the proposed Applicant Code of Conduct only applies to applicants and would not extend to contracted land agents who negotiate with landowners.[141] Niskanen suggests that the Commission add explicit language to the Applicant Code of Conduct to capture applicability to land agents acting on behalf of applicants.[142]

69. Pennsylvania Consumer Advocate, asserting that improper land agent tactics are the most common cause of complaints during transmission line siting cases, urges

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[137] Public Interest Organizations Comments at 3 and 17.

[138] *Id.* at 18-21.

[139] *Id.* at 78-79; SEIA Comments at 10.

[140] Yurok Tribe Comments at 30; Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe Comments at 2.

[141] Impacted Landowners Comments at 9-10.

[142] Niskanen Comments at 18-20.

Commission staff to oversee interactions between applicants and affected landowners.[143] Several commenters suggest that the Commission establish compliance procedures and communication channels for landowners and stakeholders to provide feedback to the Commission concerning applicants' efforts to engage in good faith and violations of the Applicant Code of Conduct.[144] Public Interest Organizations and Niskanen recommend that the Commission assign its Office of Public Participation to receive from landowners and stakeholders reports of abuse or fraudulent behavior exhibited by the applicant or any representative of the applicant.[145] Additionally, numerous commenters state that the Commission should add language to the Landowner Bill of Rights instructing affected landowners to promptly report to the Commission any instances of abuse or fraudulent behavior exhibited by the applicant or any representative of the applicant.[146] Impacted Landowners recommend that the Commission independently investigate complaints of violations of the Applicant Code of Conduct, and that Commission-verified violations should be punished to prevent recurrence.[147]

70. Similarly, several commenters recommend that the Commission require applicants to include the discussion logs required under proposed § 50.12(a)(1) as part of the

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[143] Pennsylvania Consumer Advocate Comments at 8.

[144] Impacted Landowners Comments at 11; Impacted Landowners Reply Comments at 5-6; Public Interest Organizations Comments at 17; Pennsylvania Consumer Advocate Comments at 7-8.

[145] Public Interest Organizations Comments at 40; Niskanen Comments at 15-17.

[146] Public Interest Organizations Comments at 40; Niskanen Comments at 15-17.

[147] Impacted Landowners Comments at 11.

monthly status reports applicants must submit under § 50.5(e)(11),[148] or, alternatively, provide copies of discussion logs to landowners, stakeholders, and Tribes for the purpose of verifying their accuracy.[149] The Yurok Tribe and Public Interest Organizations ask that the Applicant Code of Conduct include a requirement for applicants to note within their discussion logs who within a Tribe was contacted, a description of the contacted Tribal representative's role, and whether another Tribal representative was suggested to be contacted.[150] The Yurok Tribe states that the applicant must be held accountable to follow up on alternative contact recommendations. The Yurok Tribe also suggests that the discussion logs include the date of any questions posted by a Tribe, the contents and date of any applicant responses to questions, any follow-up after the initial answer, and the method of contact for each interaction (e.g., phone, email, in-person).[151]

71. Specific to the Applicant Code of Conduct, Public Interest Organizations note that proposed § 50.12(a)(2) requires the applicant to provide certain information to each stakeholder at first contact. However, Public Interest Organizations state that the regulations do not include a deadline for the applicant to provide these documents.

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[148] Due to a clarifying edit, in this final rule the Commission has split and redesignated what appeared in the NOPR as § 50.5(e)(7) and (8) into § 50.5(e)(7), (8), and (9). With this change, the NOPR's redesignated § 50.5(e)(9) and (10) are further redesignated to § 50.5(e)(10) and (11). Consequently, this final rule references these regulations according to the final redesignated numbering.

[149] Public Interest Organizations Comments at 22-23; NESCOE Comments at 14, Niskanen Comments at 20, Yurok Tribe Comments at 32 and 34.

[150] Yurok Tribe Comments at 31-32; Public Interest Organizations Comments at 70-71.

[151] Yurok Tribe Comments at 32.

Public Interest Organizations recommend that the Commission set a reasonable deadline for providing this information, such as sending the document within three business days of first contact.[152]

72. Several commenters provide additional recommendations for the Applicant Code of Conduct, including requiring that company representatives: provide landowners with a copy of the Applicant Code of Conduct at first notification;[153] present photo identification;[154] consent to being recorded or photographed,[155] and explain their position and decision-making authority along with providing contact information for decision makers.[156] Impacted Landowners ask that the Applicant Code of Conduct require applicants to notify landowners of their right to have counsel of their choice review the easement agreement before signing and that use of eminent domain to acquire a right-of-way requires payment of just compensation determined by the appropriate court.[157] Other commenters suggest that the Commission require via the Applicant Code of Conduct that applicants must obtain consent from Tribes to enter any form of Tribal land or any area known to have cultural resources and that all individuals who conduct

[152] Public Interest Organizations Comments at 23.

[153] Impacted Landowners Comments at 11.

[154] *Id.*

[155] *Id.*

[156] Yurok Tribe Comments at 31; Public Interest Organizations Comments at 70-71.

[157] Impacted Landowners Comments at 11.

outreach to Tribes have undergone training, including affected Tribes' own programming.[158] ACEG recommends that the Applicant Code of Conduct require applicants to adequately protect landowners' personally identifiable information.[159] Finally, EDF suggests that the Applicant Code of Conduct include provisions for applicants to determine the preferred language of all affected landowners and communicate with affected landowners in their preferred language.[160]

3. Commission Determination

73. To incorporate the IIJA's amendment to section 216(e)(1) requiring a determination by the Commission as to whether the permit holder has made good faith efforts to engage with landowners and other stakeholders, we adopt the NOPR proposal, with modifications. We find that establishing standards via the Applicant Code of Conduct provides clarity on expectations for applicants and will support the Commission in making the required good faith efforts determination. As discussed further below, in response to commenter feedback, we modify the NOPR proposal to: clarify the timing and duration of certain Applicant Code of Conduct provisions, ensure applicant representatives present photo identification and provide the applicant's contact information during discussions with affected landowners, require that applicants explain to affected landowners that they may request copies of discussion log entries that pertain

[158] Yurok Tribe Comments at 33; Public Interest Organizations Comments at 70.

[159] ACEG Comments at 18.

[160] EDF Comments at 13.

to their property, and require applicants to provide affected landowners copies of their discussion log entries upon request.

74. We both decline commenters' requests to make the Applicant Code of Conduct mandatory and disagree with commenters who argue that, by setting minimum requirements, we have *de facto* made the Applicant Code of Conduct mandatory. Given that the IIJA requires, as a prerequisite to the permit holder using eminent domain, that the Commission determine whether a permit holder has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process, we believe it is important for the Commission to identify a means for potential applicants to obtain that determination. At the same time, while the Applicant Code of Conduct reflects the principles, we find to be broadly relevant to determining that an applicant has made good faith efforts to engage with landowners, we will not declare that the specific steps outlined in the Applicant Code of Conduct are the only way those principles can be achieved and demonstrated. Therefore, we will allow applicants to propose for the Commission's consideration alternative methods to demonstrate that the statute's good faith efforts standard will be met. We disagree that this framework would lead to ambiguity as commenters suggest. The scope and complexity of projects that the Commission may receive could significantly vary and we find it appropriate at this point not to forestall alternative options to demonstrate compliance with the good faith efforts standard. We find that the Applicant Code of Conduct and option to comply with an alternative method provides applicants sufficiently clear standards to allow a demonstration of good faith efforts while providing for appropriate flexibility, which may be necessary based on project-specific circumstances.

75. Establishing an Applicant Code of Conduct does not exceed the Commission's authority under FPA section 216. As described above, Congress has directed the Commission to determine, as a prerequisite to the use of eminent domain under FPA section 216(e)(1), that a permit holder has made good faith efforts to engage with landowners and other stakeholders. It is consistent with that directive to set forth in the Commission's regulations a set of actions which we find, if followed, will result in the appropriate engagement expected of applicants in their interactions with landowners and provides guidance as to the standards the Commission will apply in determining whether an applicant has met the statutory requirement.

76. Regarding ClearPath's concerns that the Applicant Code of Conduct contains redundancies, we note that the notification requirements under § 50.12 are structured to specifically address an applicant's demonstration of its good faith efforts to engage affected landowners. The Commission's existing notification requirements in § 50.4 facilitate participation from all landowners and other stakeholders during the Commission's proceeding. Although affected landowners may receive multiple notifications from applicants as a result of these requirements, the Commission does not view this as overly burdensome for applicants.

77. We also are not persuaded by ClearPath's argument that the Commission can only adopt reforms to stakeholder participation requirements if those revisions are applied equally to other Commission infrastructure processes (i.e., to natural gas and hydropower proceedings).[161] Section 216(e)(1) of the FPA requires the Commission to determine, as

[161] The Commission is not obligated to implement changes in a single, sweeping step, and is not barred from implementing process improvements to only one program at

a prerequisite to eminent domain authority, that a permit holder has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process. There is no such requirement under the NGA or Part I of the FPA.

78. In response to questions about the timing of the Commission's good faith efforts determination, we clarify that, regardless of whether the applicant follows the Applicant Code of Conduct or an alternative method, we expect to issue such determinations concurrently with an order on the merits of a permit application under section 216(b), based on the record in the proceeding.

79. Regarding Impacted Landowners' question as to when the "applicable permitting process" and good faith efforts requirements begin and whether applicants must continue to make good faith efforts to engage after permit issuance, we clarify that a good faith efforts demonstration begins with the commencement of the Commission's pre-filing process and continues through the issuance of the Commission's order on the merits of the application. We adopt a revision in the Applicant Code of Conduct to relocate, from § 50.12(a)(1) to the introductory text in paragraph (a) of this section, the phrase "for the duration of the pre-filing and application review processes" to make clear that this duration applies to all Applicant Code of Conduct requirements. We also expect applicants to act in good faith in their dealings with landowners and other stakeholders

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a time. *See, e.g.*, *Transportation Div. of the Int'l Ass'n of Sheet Metal, Air, Rail & Transportation Workers v. Fed. R.R. Admin.,* 10 F.4th 869, 875 (D.C. Cir. 2021) (agencies have great discretion to take one step at a time and do not need to act in "one fell regulatory swoop") (internal citation and quotation omitted).

during any post-authorization engagement related to the exercise of eminent domain, construction of the project, and any post-construction mitigation or other ongoing activities involving landowners and other stakeholders.

80. We also disagree with assertions that merely adopting an Applicant Code of Conduct would not result in actual good faith efforts or could produce contradictory results. Some of these assertions appear premised on the notion that any engagement in which an applicant retains the potential to use eminent domain is not in good faith. However, we believe that an applicant demonstrates good faith efforts by the course of its engagement and efforts to involve landowners and other stakeholders in the process, rather than by whether eminent domain is ultimately necessary or parties are satisfied with the outcome of that engagement. We also disagree with claims that the Applicant Code of Conduct will reduce engagement to a "box checking exercise."[162] We believe compliance with the information-sharing and recordkeeping provisions in the Applicant Code of Conduct will encourage meaningful engagement with landowners and help ensure that engagement meets the good faith efforts standard.

81. We decline to revise proposed § 50.12(b)(2) to require further demonstration beyond affirmation of compliance with the Applicant Code of Conduct. The Applicant Code of Conduct requires thorough documentation of an applicant's discussions with affected landowners, and each month an applicant must either affirm that it has complied with the Applicant Code of Conduct or provide a detailed explanation of any instances of

[162] *See, e.g.*, American Chemistry Council Comments at 6; ClearPath Comments at 3.

non-compliance and any remedial actions taken or planned. As noted above, an applicant must demonstrate good faith efforts for the duration of the Commission's pre-filing and application review processes. In this final rule, we add § 50.12(b)(4) to clarify that an applicant must continue to file monthly status reports describing its efforts to comply with the Applicant Code of Conduct during the application review process.

82. Regarding alternatives to the Applicant Code of Conduct, we clarify that an applicant that uses an alternative method to demonstrate good faith efforts to engage with landowners will bear the burden to explain how its alternative method is equal to or better than compliance with the Applicant Code of Conduct. The Commission would not typically reach a determination that this standard is met until it evaluates the permit application and determines whether to issue a permit. Thus, an applicant who seeks to demonstrate that an alternative method is equal to or better than compliance with the Applicant Code of Conduct will face uncertainty regarding the acceptability of its method until the Commission determines it meets the regulatory standard. We have set forth an Applicant Code of Conduct that reflects principles we find to be broadly relevant to determining whether an applicant has made good faith efforts to engage with landowners and establishes a set of practices we believe are sufficient to achieve those principles. Applicants should propose deviations only where they are confident that their approach is equal to or better than the Applicant Code of Conduct as a means of demonstrating that they have made good faith efforts to engage with landowners as required by the statute.

83. In response to EEI's comment regarding the potential for late-stage route changes, we note that applicants are required to file monthly reports during the pre-filing process detailing the efforts to comply with the Applicant Code of Conduct. To the extent that

project route changes are developed during the pre-filing process, we expect that engagement with landowners and other affected stakeholders who would be newly impacted by the contemplated route change will be documented in monthly reports. In the instance of route changes that occur after an application is filed, § 50.4(c)(3) requires notifications to newly affected landowners when they are identified. We expect applicants to continue to make good faith efforts to engage affected landowners, including those impacted by post-application and post-authorization route changes, throughout the application review process and through construction and restoration and mitigation efforts.

84. In response to comments regarding the scope of proposed § 50.12, we agree with commenters that FPA section 216(e)(1) requires an applicant to demonstrate good faith efforts to engage with "landowners and other stakeholders." We decline to alter the scope of the Applicant Code of Conduct, which specifically provides an applicant a means to demonstrate compliance with the good faith efforts standard in communications with affected landowners. The Applicant Code of Conduct specifies recordkeeping and information-sharing requirements that are tailored to encourage productive and more sustained engagement with affected landowners regarding the use or acquisition of their property, which may not necessarily apply to engagement with other stakeholders. With regard to good faith efforts to engage with other stakeholders, applicants bear the burden to demonstrate good faith efforts at engagement and should strive to incorporate best practices used in engagement with affected landowners in engagement with other stakeholders, as applicable. We also clarify that the Commission will assess case-by-case an applicant's good faith efforts to engage with other stakeholders, based on the record in

a proceeding. We will consider, among other things, an applicant's efforts to engage stakeholders as described in the Project Participation Plan (including engagement with environmental justice communities and Tribes), monthly status reports describing stakeholder communications during pre-filing, and compliance with Commission regulations for project notifications.

85. In response to the requests of several Tribes, we clarify that Tribes meeting the definition of Indian Tribe in § 50.1 qualify as stakeholders for which applicants would be required to make good faith efforts to engage. We conclude that the good faith efforts requirements as discussed herein will ensure appropriate engagement with Tribes. Accordingly, the Commission would consider evidence of engagement with Tribes in its assessment of whether the good faith efforts standard has been met.

86. As to applicability of the Applicant Code of Conduct to land agents, we note that proposed § 50.12(a)(12), adopted in this final rule, explicitly applies the Applicant Code of Conduct to any representative acting on the applicant's behalf, which includes land agents.

87. We decline to adopt additional mechanisms to monitor compliance with the good faith efforts standard. We do not believe that it is an appropriate or practical use of Commission or stakeholder resources to adjudicate good faith efforts issues during the course of a proceeding. We encourage affected landowners and other stakeholders to participate in the pre-filing process and the permit proceeding once an application is filed. Landowners and other stakeholders may file comments in the project-specific proceeding and may contact the Commission's landowner helpline to identify perceived violations of the Applicant Code of Conduct for consideration and to request investigation by the

Commission. Any comments submitted in the record may inform the Commission's deliberation regarding the good faith efforts standard and issuance of the permit. We also note that the Office of Public Participation may be able to provide technical assistance to landowners and other stakeholders regarding how to participate in a proceeding, but will not serve as an advocate for stakeholders.

88. We also decline to make any additional changes to the applicant's duty under § 50.12(a)(1) to develop and maintain a log of discussions because we conclude that the proposed requirements are sufficiently detailed to record engagement with affected landowners, and the Applicant Code of Conduct, as discussed above, is specifically aimed at promoting good faith engagement. We similarly decline to require applicants to file the discussion logs with the applicant's monthly status reports required by § 50.5(e)(11), as such a categorical requirement is not necessary to promote good faith engagement and could result in the public disclosure of information that landowners may not want shared with the general public. With respect to commenters' request that affected landowners be provided with any relevant discussion logs, this final rule modifies § 50.12(a)(2) to require applicants to explain to affected landowners that they may request copies of discussion log entries that pertain to their property and how affected landowners make such requests, and modifies § 50.12(a)(5) to require applicants to provide affected landowners copies of discussion log entries, upon request.

89. Turning to commenter feedback on specific provisions in the Applicant Code of Conduct, we agree with Public Interest Organizations that requiring an applicant to provide to each affected landowner specified documents "immediately" after first contact may be vague and confusing. Therefore, we modify the NOPR proposal in § 50.12(a)(2)

by deleting "immediately" and adding in its place "within three business days" to clarify how soon after the first contact the required document must be provided to the landowner.

90. We decline to require applicants to provide landowners with copies of the Applicant Code of Conduct, as recommended in comments. As stated in the NOPR, the Applicant Code of Conduct reflects principles that are broadly relevant to determining whether an applicant has made good faith efforts to engage with landowners. We do not believe that requiring applicants to provide the Commission's regulatory text to affected landowners is necessary or will assist in our good faith efforts determination. In any event, we note that the Commission's *Electric Transmission Facilities Permit Process* pamphlet—a copy of which applicants must include as part of their Pre-filing Notifications sent by mail—will be updated to reflect the provisions in this final rule, and will include the text of the Applicant Code of Conduct.

91. Regarding requests that applicant representatives present photo identification when engaging with affected landowners, we agree and adopt this requirement in § 50.12(a)(3). We find that a photo identification requirement provides an important protection to an affected landowner in confirming the identity and business association of the applicant representative with whom the landowner is speaking, and such requirement presents a minimal burden on the applicant.

92. Given the protections to affected landowners contained herein, including in the Landowner Bill of Rights and the required sharing of information by the applicant, as well as the photo identification requirement, we decline to also add a requirement that applicant representatives consent to being recorded and photographed.

93. Regarding the request for company representatives to provide contact information for decision makers, we assume commenters are referring to a decision maker within the applicant's company. We agree that it is important to provide affected landowners a way to contact the applicant to obtain more information about a project or report any issues with land agents. Therefore, we modify the NOPR proposal in § 50.12(a)(3) to require an applicant's representative to also provide contact information for the applicant.

94. Regarding Tribal concerns for obtaining consent to enter Tribal lands, we clarify that the Applicant Code of Conduct would apply to land owned in fee by a Tribe or member of a Tribe, so § 50.12(a)(9) would require approval from the Tribe or member of a Tribe under those circumstances.

95. We also decline to adopt a requirement that applicants have specific engagement training that may be provided by Tribes. While such engagement training may constitute a good business practice, we do not find a generic requirement necessary to promote good faith efforts to engage with affected landowners or other stakeholders. We reiterate that the burden is on the applicant to demonstrate that the good faith efforts standard has been met, and we therefore expect that the applicant will take reasonable steps to engage with Tribes.

96. We also disagree that an addition to the Applicant Code of Conduct to protect landowners' personally identifiable information is necessary. We expect applicants to protect sensitive information from public release, however, some personal information (e.g., a landowner's name or mailing address) may be sourced from public databases or applicants may need to share such information with its own contractors or submit it to agencies as part of permitting application submittals. Of course, when filing information

that may contain personal information with the Commission, applicants should use any appropriate filing classification for proper treatment by the Commission.[163]

97. As to the suggestion that applicants should communicate with landowners in their preferred language, we understand the importance of communicating basic information about the project, particularly to landowners who may be subject to eminent domain, in languages other than English where a significant portion of the community has limited English proficiency. As discussed below, in response to comments, we modify proposed § 50.4 to require applicants to identify census block groups that include limited English proficiency households, identify the languages spoken in those census block groups, and, under certain circumstances, provide project notifications in languages other than English. Applicants must also describe in the Environmental Justice Public Engagement Plan how they will identify, engage, and accommodate people with limited English proficiency.

C. Environmental Justice Public Engagement Plan

1. NOPR Proposal

98. In the NOPR, the Commission stated that the existing provisions of § 50.4(a) require applicants to develop and file a Project Participation Plan early in the pre-filing process.[164] The Commission explained that this requirement is intended to facilitate stakeholder communications and the dissemination of public information about the

[163] For example, applicants may request privileged treatment for landowner mailing lists submitted to the Commission by following the procedures specified in § 388.112 of the Commission's regulations.

[164] NOPR, 181 FERC ¶ 61,205 at P 30.

proposed project, including meaningful engagement early in the pre-filing process with potentially affected environmental justice communities. The Commission further explained that engagement with environmental justice communities is consistent with a series of executive orders, the *Promising Practices for EJ Methodologies in NEPA Reviews* (*Promising Practices*) report, and the Commission's Equity Action Plan.[165] Accordingly, the Commission proposed to require, under § 50.4(a)(4) as part of the Project Participation Plan, that applicants develop an Environmental Justice Public Engagement Plan describing the applicant's outreach activities that are targeted to identified environmental justice communities.[166]

[165] *Id.* (citing E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629 (Feb. 11, 1994); E.O. 14008, Tackling the Climate Crises at Home and Abroad, 86 FR 7619 (Jan. 27, 2021); E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 FR 7009 (Jan. 20, 2021); Federal Interagency Working Group on Environmental Justice & NEPA Committee, *Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf.; Commission, Equity Action Plan (2022), https://www.ferc.gov/equity.)

[166] To identify potentially-affected environmental justice communities in individual proceedings, Commission staff uses current U.S. Census American Community Survey data for the race, ethnicity, and poverty data at the State, county, and block group level. As recommended in *Promising Practices*, the Commission currently uses the fifty percent and the meaningfully greater analysis methods to identify minority populations. Specifically, a minority population is present where either: (1) the aggregate minority population of the block groups in the affected area exceeds 50%; or (2) the aggregate minority population in the block group affected is 10% higher than the aggregate minority population percentage in the county. Federal Interagency Working Group on Environmental Justice & NEPA Committee*, Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016), https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf. Using *Promising*

99. The NOPR explained that the proposed Environmental Justice Public Engagement Plan would require applicants to summarize comments received from potentially impacted environmental justice communities during any previous outreach activities, if applicable, and describe planned outreach activities during the permitting process, including efforts to identify, engage, and accommodate non-English speaking groups or linguistically isolated communities.[167] The proposed plan must also describe the manner in which the applicant will reach out to environmental justice communities about potential mitigation.[168]

2. Comments

100. Some commenters question the Commission's authority to require the Environmental Justice Public Engagement Plan, given the reliance on executive orders and guidance. Representatives McMorris Rodgers and Duncan state that the NOPR appears to broadly interpret the Commission's statutory authority and thus request that the Commission specify what statutory authorities it is relying upon.[169] Conversely,

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Practices' low-income threshold criteria method, low-income populations are currently identified as block groups where the percent of a low-income population in the identified block group is equal to or greater than that of the county. *E.g.*, *Transcon. Gas Pipe Line Co. LLC*, 186 FERC 61,209, at PP 34-36 (2024).

[167] NOPR, 181 FERC ¶ 61,205 at P 31.

[168] We note that the proposed *Environmental justice* resource report, discussed further below, would require the applicant to describe any proposed mitigation measures intended to avoid or minimize impacts on environmental justice communities, including any community input received on the proposed mitigation measures and how that input informed such measures. *See infra* Part II.F.4.e.

[169] Representatives McMorris Rodgers and Duncan Comments at 2.

NESCOE argues that the proposed Environmental Justice Public Engagement Plan aligns with the Commission's statutory authority under FPA section 216(b).[170] ClearPath is also concerned that reliance on best practices derived from CEQ, the Environmental Protection Agency (EPA), Census Bureau, and other authoritative sources, introduces uncertainty and delay should applicants have to re-do compliance requirements every time new data or guidance becomes available.[171]

101. American Chemistry Council and ClearPath argue that, although they support community engagement, the proposed Environmental Justice Public Engagement Plan does not advance this goal because the proposal imposes extensive new requirements, as well as specific notice and follow-up actions that are likely to undermine community engagement, redirect effort from engagement to duplicative and excessive paperwork, and foster increased procedural litigation and challenges—leading to delays.[172] American Chemistry Council states that the Commission should limit any new planning mandates to outlining strategic goals, planned communication tools and strategies, and desired outcomes.[173] Representatives McMorris Rodgers and Duncan argue that the Environmental Justice Public Engagement Plan includes vague requirements and asks whether the Commission will issue more specific guidelines.[174] ClearPath argues that the

[170] NESCOE Comments at 15-26

[171] ClearPath Comments at 4.

[172] American Chemistry Council Comments at 7; ClearPath Comments at 4-5.

[173] American Chemistry Council Comments at 7.

[174] Representatives McMorris Rodgers and Duncan Comments at 2.

Commission failed to explain how the current stakeholder participation revisions are deficient for environmental justice communities, but not for the general public; therefore, it recommends that the Commission continue to utilize its existing public participation procedures and not add a separate, duplicative Environmental Justice Public Engagement Plan.[175]

102. On the other hand, several commenters support the requirement for an Environmental Justice Public Engagement Plan. Public Interest Organizations believe that the Commission must take concrete, tangible action to require robust community engagement and partnership.[176] Environmental Law & Policy Center states that this early stakeholder engagement will improve the transmission siting process.[177] Clean Energy Buyers also comment in support but recognize that the success of a plan will depend on the applicant's ability to actually engage with the target communities.[178]

103. Several commenters request clarification and revision to the proposed requirement for an Environmental Justice Public Engagement Plan. EDF states that because the NOPR was drafted before the issuance of Executive Order 14096, the Commission

[175] ClearPath Comments at 4.

[176] Public Interest Organizations Comments at 44, 86-89

[177] Environmental Law & Policy Center Comments at 2.

[178] Clean Energy Buyers Comments at 8-9

should review its proposal in light of renewed and strengthened environmental justice requirements to ensure compliance with updated rules and guidance.[179] It also encourages the Commission to mandate engagement on mitigation, including the discussion of alternatives and community benefit programs. Environmental Law & Policy Center urges the Commission to adopt specific recommendations to ensure that engagement is more than a box-checking exercise for developers.[180] NESCOE states that, under the NOPR proposal, applicants would not be required to comply with any actual standards for engaging with environmental justice communities, including documentation, accountability, and enforcement of consequences for inadequate engagement.[181] EDF requests that the Commission periodically review the results of applicants' Environmental Justice Public Engagement Plans and determine whether they are yielding sufficient engagement with environmental justice communities.[182]

104. Several commenters recommend specific methodology and terminology clarifications.[183] Public Interest Organizations ask the Commission to require applicants to use updated information from CEQ and EPA when identifying environmental justice communities as part of their Environmental Justice Public Engagement Plan or providing

[179] EDF Comments at 9 (referencing E.O. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251 (Apr. 21, 2023)).

[180] Environmental Law & Policy Center Comments at 2.

[181] NESCOE comments at 25; EDF Comments at 9.

[182] EDF Comments at 9.

[183] EDF Comments at 8; Environmental Law & Policy Center Comments at 4.

specificity on the additional sources the Commission expects applicants to use, to ensure consistency and transparency in the methodology selection process.[184] Public Interest Organizations state that the Commission must: prioritize identification methodologies that promote accurate identification of environmental justice communities; provide guardrail language to guide the methodology selection process while creating flexibility; acknowledge the scope and limitations of potential databases and tools, where applicable; and commit to promptly update its methods for identifying environmental justice communities.[185] In addition, they state that the Commission should refine the term "outreach activities" in order to require developers to seek guidance on and then incorporate community-based best practices and methods for both disseminating and requesting information and input from the community.[186] Public Interest Organizations argue that outreach activities should include a reciprocal educational component where developers as well as the community members share and meaningfully engage with each other.[187]

105. EDF and Policy Integrity recommend that the Commission and developers utilize specific tools such as the EPA's EJScreen Tool, CEQ's Climate and Economic Justice Screening Tool (CEJST), and State-developed mapping tools to identify environmental

[184] Public Interest Organizations Comments at 86.

[185] *Id.* at 84-85.

[186] *Id.* at 88.

[187] *Id.*

justice communities.[188] Public Interest Organizations agree on the need for more nuanced and fulsome identification of environmental justice communities, but state that utilization of the EJScreen and CEJST can only be useful first steps in this methodology given that both tools have inherent limitations.[189]

106. Policy Integrity states that the Commission should require incorporation of screening tools that use a combination of environmental and socioeconomic proxies, such as proximity to pollution, because relying upon demographic-only proxies like income and race might not capture localized harms and omit communities that would otherwise satisfy the proposed definition of environmental justice community.[190] It asks the Commission to recognize any historically marginalized community that bears any type of disproportionate environmental burden or faces disparities in access to environmental benefits as an environmental justice community.[191] In addition, Policy Integrity states that the Commission should establish a mechanism for communities to self-identify as environmental justice communities, and then adjudicate whether a community should be considered an environmental justice community in light of submitted evidence.[192]

[188] EDF Comments at 9; Policy Integrity Comments at 24-37; Environmental Law & Policy Center Comments at 4.

[189] Public Interest Organizations Comments at 84-85.

[190] Policy Integrity Comments at 24.

[191] *Id.* at 2.

[192] *Id.* at 37-39.

107. Commenters make additional recommendations in support of transparency and accountability in the process of engaging with environmental justice communities, including requiring notices in languages other than English, maintaining a project website, and using additional notification methods.[193] NESCOE recommends several engagement best practices such as holding in-person meetings "in locations that are accessible by public transportation . . . [and] at times that would allow working individuals to attend," providing childcare during such meetings, designating a community liaison, and disseminating non-technical information that meaningfully explains how one might be impacted by the project.[194] Some commenters recommend that the Commission's Office of Public Participation have a role in the identification of barriers to participation as well as helping foster engagement between the Commission, applicants, and environmental justice communities.[195]

108. NESCOE and Clean Energy Buyers suggest that the Commission should ensure that its public engagement and environmental justice review practices are generally consistent and coordinated with applicable State policies and agencies.[196] Joint Consumer Advocates argue that the Commission's proposed approach only requires applicants to describe outreach activities and summarize comments, which largely places

[193] ClearPath Comments at 5; Public Interest Organizations Comments at 87; NESCOE Comments at 26.

[194] NESCOE Comments at 26.

[195] *Id.* at 25-26; Public Interest Organizations Comments at 89-91.

[196] NESCOE Comments at 26; Clean Energy Buyers Comments at 9.

the burden on disadvantaged populations to describe anticipated impacts to human health or the environment, rather than engaging State agencies like consumer advocate offices.[197]

3. Commission Determination

109. We adopt the NOPR proposal to require an Environmental Justice Public Engagement Plan under § 50.4(a)(4) as a component of the Project Participation Plan, with the following modification. The NOPR proposed that the plan describe an applicant's efforts to identify, engage, and accommodate "non-English speaking groups and linguistically isolated communities;" however, this final rule updates that terminology to "people with limited English proficiency."

110. As an initial matter, we disagree that requiring applicants to include an Environmental Justice Public Engagement Plan as part of its Project Participation Plan exceeds the Commission's statutory authority. NEPA requires the Commission to evaluate the environmental impacts of any major Federal action, such as the issuance of a permit to site electric transmission facilities under section 216 of the FPA.[198] The Commission's obligation to take a "hard look" at such impacts under NEPA requires consideration of impacts on environmental justice communities, much as it requires the Commission to consider impacts on other affected communities.[199] This requirement

[197] Joint Consumer Advocate Comments at 18.

[198] 42 U.S.C. 4332(2)(C); *see Sierra Club v. FERC*, 38 F.4th 220, 226 (D.C. Cir. 2022).

[199] *See Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017).

facilitates the development of the record, including the *Environmental justice* resource report, that the Commission needs to assess impacts on environmental justice communities by providing a roadmap for applicants' engagement with environmental justice communities and an opportunity for comment on that engagement. In addition, requiring applicants to describe engagement with identified environmental justice communities will assist the Commission in meeting its statutory obligations under FPA section 216. Because environmental justice communities may experience environmental impacts more acutely than other communities or targeted methods of engagement may be more effective,[200] we appropriately require that an applicant develop a targeted outreach plan for environmental justice communities.[201]

111. Requiring an applicant to describe its outreach targeted to environmental justice communities as part of its Project Participation Plan is also consistent with the Executive Orders that direct Federal agencies to identify and address disproportionate and adverse human health or environmental effects of their actions on minority and low-income populations (i.e. environmental justice communities).[202] In response to EDF's request

[200] For example, targeted methods of engagement may include additional notification to community leaders, religious institutions, and other community resources, and the publishing of project information via community newspapers and radio stations.

[201] *See* E.O. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251, 25252 (Apr. 21, 2023).

[202] *See* E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629 (Feb. 11, 1994); E.O. 14008, Tackling the Climate Crises at Home and Abroad, 86 FR 7619 (Jan. 27, 2021); E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 FR 7009 (Jan. 20, 2021); E.O. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251 (Apr. 21, 2023).

that we review Executive Order 14096, we note that the new Executive Order did not rescind Executive Order 12898. The Commission's current practices as an independent regulatory agency are largely consistent with the principles and goals of Executive Order 14096.[203] This requirement is also consistent with the Commission's 2022 Equity Action Plan, which promotes equitable processes and outcomes for underserved communities, including environmental justice communities, at the Commission.[204]

112. Regarding comments stating that the proposed Environmental Justice Public Engagement Plan does not advance the goal of community engagement and imposes extensive new or duplicative requirements, we disagree. The Commission currently requires a Project Participation Plan in § 50.4(a), which requires applicants to identify specific tools and actions to facilitate stakeholder communications and public information, including those tools and actions used to engage stakeholders.[205] To advance stakeholder participation under § 50.4, we are requiring applicants to plan and target their outreach to ensure appropriate and effective meaningful engagement with potentially affected environmental justice communities.

113. The requirement to address targeted outreach to identified environmental justice communities merely codifies the expectation that engagement with stakeholders in

[203] E.O. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251 (Apr. 21, 2023).

[204] FERC, *Equity Action Plan* (2022), https://www.ferc.gov/equity.

[205] Consistent with the revised definition of "stakeholder" in § 50.1 in this final rule, all stakeholders mean any "Federal, State, interstate, or local agency; any Indian Tribe; any affected landowner; any environmental justice community member; or any other interested person or organization."

differing circumstances will require differing approaches in order to be effective. Therefore, we do not believe this requirement imposes additional administrative burden or delay for applicants. This separate provision aims to ensure that applicants do not use a "one size fits all" approach to outreach, and it fosters the inclusion of outreach techniques that are tailored to communication with environmental justice communities.

114. With regard to potential burdens placed on environmental justice communities in having to communicate potential adverse impacts caused or exacerbated by the project, we acknowledge this concern and require applicants to identify the measures taken to accommodate environmental justice communities who may face barriers to traditional outreach or engagement methods. Additionally, the Commission's Office of Public Participation will continue to engage with the public and act as a liaison to members of the public affected by and interested in Commission proceedings.

115. In response to comments recommending that the Commission require the utilization of specific screening tools to identify environmental justice communities such as CEQ's CEJST, we decline to do so. The Commission currently uses the smallest geographic data area available, census block groups, to identify environmental justice communities in accordance with the identification methodology put forth in *Promising Practices* and described above.[206] In contrast, CEJST uses census tracts, a larger geographic data area, to identify "disadvantaged communities" based on a variety of

[206] *Supra* note 166. *E.g., ANR Pipeline Co.*, 185 FERC ¶ 61,191, at P 96 (2023); s*ee also PennEast Pipeline Co. LLC*, 170 FERC ¶ 61,198, at 62,305 (2020) (upholding staff's reliance on EPA's EJScreen Tool to identify census block groups meeting the definition of an environmental justice community despite the availability of alternative screening tools).

thresholds. We decline to require the use of alternative screening tools that do not provide a localized review of smaller environmental justice communities in block groups. Further, to the extent that commenters argue that the Commission should utilize the tools to expand the definition of environmental justice communities, we decline for the reasons expressed addressing definitions below.[207]

116. We acknowledge the desire expressed by commenters for specific guidance for the Environmental Justice Public Engagement Plan and best practices for engagement with environmental justice communities.[208] But we find that the provisions of § 50.4 are sufficient to establish applicants' obligation to prepare a Project Participation Plan that includes how they will address outreach to environmental justice communities.

117. Likewise, we decline to incorporate policies of States or other agencies. Such specific practices may not be universally or practically applicable across the variety of applications and contexts relevant to this rule. Imposing an overly prescriptive set of requirements mandating specific methodologies could negatively impact flexibility needed to address engagement in the context of a broad spectrum of applications. Instead, we believe such practices may more appropriately be considered as part of future action by the Commission in specific proceedings and/or as guidance, intended to assist applicants to more effectively implement their regulatory obligations.

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[207] *Infra* P 135.

[208] Outside of this final rule, the Commission has received comments on best practices for engagement with environmental justice communities during the Environmental Justice Roundtable and filed in Docket No. AD23-5-000.

118. We also decline to adopt requirements mandating specific levels of engagement as part of this rule. Again, adopting such requirements is impracticable given the variety of applications and related factual contexts we expect to encounter.

D. Revisions to 18 CFR Part 50

1. Section 50.1 – Definitions

119. Section 50.1 sets forth the definitions for part 50 of the Commission's regulations. The Commission proposed in the NOPR to add definitions for "Indian Tribe" and "environmental justice community." The Commission also proposed to revise the definitions of "national interest electric transmission corridor," "permitting entity," and "stakeholder." Although the Commission did not propose to revise the definition of "affected landowners," the NOPR sought comment on whether the Commission should revise the definition to include landowners within a certain geographic distance from the proposed project facilities.

120. This final rule adopts a definition for "Indian Tribe," as proposed in the NOPR, consistent with the Commission's regulations governing other types of energy infrastructure projects.[209] We also adopt the definition of "permitting entity" as proposed in the NOPR. In addition, we modify several proposed definitions as further discussed below.

[209] *See, e.g.*, 18 CFR 4.30(b)(10) (2023) (defining "Indian Tribe" in reference to an application for a license or exemption for a hydropower project) and 18 CFR 157.1 (defining "Indian Tribe" in reference to an application for a certificate of public convenience and necessity for a natural gas pipeline project).

a. Definition of Environmental Justice Community

i. NOPR Proposal

121. The Commission in the NOPR proposed to add a definition for the term "environmental justice community" to assist applicant compliance with the requirement in proposed § 50.4(a)(4) that an applicant develop and file an Environmental Justice Public Engagement Plan.[210] Specifically, the Commission proposed to define the term "environmental justice community" as "any disadvantaged community that has been historically marginalized and overburdened by pollution, including, but not limited to, minority populations, low-income populations, or indigenous peoples."

ii. Comments

122. Farm Bureaus state that at the Federal level there is no clear definition of environmental justice communities.[211] American Chemistry Council and NESCOE agree and encourage the Commission to work with EPA, DOE, and other Federal agencies to develop one consistent definition for environmental justice communities, as the lack of a consistent terminology and definition across government programs creates confusion and uncertainty for all stakeholders.[212] ClearPath questions the legal durability of the Commission's definition, particularly if other agencies adopt different definitions.[213] ClearPath and Chamber of Commerce assert that adding the definition of "environmental

[210] *See* discussion *supra* Part II.C.

[211] Farm Bureaus Comments at 13.

[212] American Chemistry Council Comments at 7; NESCOE Comments at 27.

[213] ClearPath Comments at 4.

justice community" may exceed the Commission's statutory authority and expertise, increasing opportunities for legal challenges.[214]

123. ClearPath and Representatives McMorris Rodgers and Duncan assert that the Commission's definition of "environmental justice community" is standardless, such that the term "overburdened by pollution" has neither a quantitative methodology for applicants to follow nor a threshold for a designation to be made in a legally durable manner.[215] ClearPath states that the Commission makes the definition open-ended when it states it "includes, but may not be limited to minority populations, low-income populations, or indigenous people."[216] Chamber of Commerce states that transmission line infrastructure is not a source of "pollution" as contemplated under the Commission's proposed definition of "environmental justice community."[217]

124. CATF suggests that the proposed definition of "environmental justice community" be modified, specifically to remove the word "disadvantaged," citing a CEQ memorandum which states that some communities and advocates prefer "overburdened and underserved" instead of "disadvantaged."[218]

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[214] ClearPath Comments at 4; Chamber of Commerce Comments at 4.

[215] ClearPath Comments at 4; Representatives McMorris Rodgers and Duncan Comments at 2.

[216] ClearPath Comments at 4.

[217] Chamber of Commerce Comments at 3-4.

[218] CATF Comments at 9.

125. EDF and Policy Integrity state that the Commission's definition for "environmental justice community" is too narrow, risking the omission of communities that bear disproportionate environmental burdens beyond pollution (e.g., flooding) and health impacts resulting from industry and infrastructure, or that lack equal access to environmental benefits (e.g., green space).[219]

126. EDF also states that the Commission's proposed definition could be read as limiting the consideration of communities that can specifically demonstrate that they have been historically marginalized or overburdened by pollution, since it contains an additional requirement that the community be a "disadvantaged community," without a definition of that term.

127. Impacted Landowners state that rural landowners along the center line of a proposed overhead transmission project on a new right-of-way should be considered environmental justice communities because such landowners are disadvantaged and marginalized.[220] Further, Impacted Landowners suggest that identification of environmental justice communities should include religious affiliation, occupation, age, or those who have been historically impacted due to numerous energy infrastructure projects located on their property.[221]

128. Los Angeles DWP proposes defining environmental justice community as "a group of people or a community that is disproportionately affected by environmental

[219] EDF Comments at 8; Policy Integrity Comments at 2.

[220] Impacted Landowners Comments at 20.

[221] Impacted Landowners Comments at 24.

pollution, hazards, or other environmental risks, and that may face social, economic, or political barriers to accessing a healthy and sustainable environment."[222]

129. Public Interest Organizations recommend revising the Commission's proposed definition of environmental justice community to include "any community that is historically marginalized and/or overburdened by pollution, including but not limited to communities with significant representation of communities of Color, low-income communities, or Indian Tribes and Indigenous peoples."[223] Public Interest Organizations also state that using the term "communities with significant representations of communities of Color," rather than "minority populations" reflects the Commission's practice of using the Fifty Percent Analysis and Meaningfully Greater Analysis, as recommended in *Promising Practices*.

130. Public Interest Organizations also request that the Commission include a definition of "overburdened" in § 50.1.[224] They point to the EPA 2020 EJ Glossary for the Commission to model in defining "overburdened communities."[225]

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[222] Los Angeles DWP Comments at 3.

[223] Public Interest Organizations Comments at 81.

[224] Public Interest Organizations Comments at 83.

[225] The EPA 2020 EJ Glossary defines "overburdened communities" as "minority, low-income, tribal, or Indigenous populations or geographic locations in the United States that potentially experience disproportionate environmental harms and risks. This disproportionality can be as a result of greater vulnerability to environmental hazards, lack of opportunity for public participation, or other factors. Increased vulnerability may be attributable to an accumulation of negative or lack of positive environmental, health, economic, or social conditions within these populations or places. The term describes where multiple factors, including both environmental and socio-economic stressors, may act cumulatively to affect health and the environment and contribute to persistent environmental health disparities." EPA, *EJ 2020 Glossary* (Feb. 2024),

131. SEIA recommends revising the Commission's proposed definition of "environmental justice community" to "a geographic location with significant representation of persons of color, low-income persons, indigenous persons, or members of Tribal nations, where such persons experience, or are at risk of experiencing, higher or more adverse human health or environmental outcomes."[226] SEIA states that this definition would be quantifiable based on census data, and can allow all stakeholders to work from a common understanding of what would make an environmental justice community.

iii. Commission Determination

132. The Commission adopts the definition of "environmental justice community" as proposed in the NOPR with one modification, removing "disadvantaged" in the definition, as further discussed herein.

133. As an initial matter, we disagree that defining "environmental justice community" exceeds the Commission's legal authority for the same reasons expressed above.[227] Further, we decline to defer establishing a definition of "environmental justice community" until such time as a universal definition can be agreed upon by multiple agencies because the Commission cannot wait to carry out its statutory responsibilities under NEPA and section 216 of the FPA.

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https://www.epa.gov/system/files/documents/2024-02/ej-2020-glossary.pdf.

[226] SEIA Comments at 12.

[227] *Supra* PP 110-111.

134. We are informed by Executive Order 14008's focus on communities that have been historically and disproportionately marginalized and overburdened by pollution.[228] The term "environmental justice community" includes, but may not be limited to, minority populations, low-income populations, or indigenous peoples.[229] This definition is substantially the same definition the Commission has used in its environmental reviews and orders pertaining to energy infrastructure development applications over the last several years.[230] The definition has allowed the Commission, applicants, and stakeholders to have a general sense of the types of communities that may fall under the term, while the identification methodology noted above[231] and in each of the Commission's NEPA documents and Commission orders provides a common understanding of the steps necessary to identify environmental justice communities. To the extent that the Commission, applicants, or participants identify additional populations with environmental justice concerns, the Commission will address impacts on these communities in the context of specific proceedings.

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[228] E.O. 14008, Tackling the Climate Crises at Home and Abroad, 86 FR 7619 (Jan. 27, 2021); *see also* E.O. 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All, 88 FR 25251 (Apr. 21, 2023).

[229] *See* E.O. 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629 (Feb. 11, 1994); s*ee also* EPA, EJ 2020 Glossary (Feb. 2024), https://www.epa.gov/system/files/documents/2024-02/ej-2020-glossary.pdf.

[230] *See, e.g., Columbia Gas Transmission, LLC,* 186 FERC ¶ 61,048, at P 20 n.36 (2024); *Andrew Peklo III*, 186 FERC P 61,208, at P 23 n.41 (2024).

[231] *Supra* note 166.

135. We define "environmental justice community" with the intent of neither too rigidly limiting nor strictly defining a set list of demographic populations or communities. We are intentionally allowing flexibility in the definition of "environmental justice community," as this acknowledges that there are many environmental or human health qualifiers that may need to be analyzed separately by Commission staff to determine anticipated impacts on potential environmental justice communities. This flexibility is intended to strike a balance between applying an identification methodology that can be used in all proceedings and allowing the identification of other populations, during scoping or in comments filed in the record of individual proceedings, that may fall outside of the categories of minority populations, low-income populations, or indigenous peoples. We do not agree that this flexibility renders the definition practically unworkable, as applicants seeking to develop energy infrastructure in other contexts have been able to use the definition and identification methodology to successfully develop and submit the information that the Commission needs to process applications.[232] Likewise, we do not agree that the definition of "environmental justice community" is so expansive that it cannot be readily understood and applied.

136. Commenters' assertion that transmission line infrastructure is not a source of "pollution" as contemplated under the definition of "environmental justice community" is inapposite. Defining an environmental justice community as one that has been overburdened by pollution acknowledges the historical burdens of disproportionate rates

[232] *E.g., ANR Pipeline Co.*, 185 FERC ¶ 61,191 at P 96 .

of pollution faced by environmental justice communities.[233] We believe that there are many ways in which transmission line infrastructure may result in reasonably foreseeable adverse impacts on environmental justice communities during construction, operation, and maintenance of the project facilities.

137. We acknowledge commenters' concerns regarding use of the word "disadvantaged" in the definition of "environmental justice community." Given that the definition of environmental justice communities adopted in this final rule includes language indicating its applicability to communities that have been historically marginalized and overburdened by pollution, we agree that it is not necessary to include the word "disadvantaged" in the definition and have removed it in this final rule. We also decline to adopt a separate definition for the term "overburdened" or to add "underserved" to the definition. As explained above, the proposed definition has allowed the Commission, applicants, and stakeholders to have a general sense of the types of communities that may fall under the phrase without the need for further definition or including additional terms, while the Commission's identification methodology provides a common understanding of the steps necessary to identify environmental justice communities.

138. We decline to adopt the phrase "communities with significant representations of communities of Color" because we conclude that the definition we are adopting is sufficiently broad to identify communities that have been historically marginalized and

[233] *See* E.O. 14008, Tackling the Climate Crises at Home and Abroad, 86 FR 7619 (Jan. 27, 2021).

overburdened by pollution without that addition. We will continue our practice of defining "environmental justice communities" as including, but not being limited to, minority populations, low-income populations, or indigenous peoples.

b. Definition of National Interest Electric Transmission Corridor

i. NOPR Proposal

139. The Commission proposed in the NOPR to revise the definition of "national interest electric transmission corridor" to include any geographic area that is expected to experience energy transmission capacity constraints or congestion, for consistency with the IIJA's amendments to section 216(a).

ii. Comments

140. While EDF states that the proposed definition of "national interest electric transmission corridor" is appropriate, Farm Bureaus and Kentucky Commission state that the definition is too broad, as a National Corridor could include any geographic area that has any amount of congestion.[234] Kentucky Commission requests that the Commission modify the definition to include a threshold for congestion, while Farm Bureaus request that the Commission reopen public comment on this proposal after DOE has identified National Corridors.[235] EDF notes that the Commission and DOE should coordinate to ensure consistent definitions.

[234] EDF Comments at 5; Farm Bureaus Comments at 2; Kentucky Commission Comments at 3.

[235] Kentucky Commission Comments at 3; Farm Bureaus Comments at 2.

iii. Commission Determination

141. We adopt the definition of "national interest electric transmission corridor" proposed in the NOPR in this final rule. As stated in the NOPR, the Commission proposed changes to the definition of "national interest electric transmission corridor" strictly to incorporate the revisions to the term in the IIJA's amendment to section 216(a) of the FPA, and we continue to find it appropriate to define this term based on the statute. Section 216(a) of the FPA designates the Secretary of DOE as the sole authority to determine whether a geographic area is experiencing, or expected to experience, sufficient capacity constraints or congestion to warrant the designation of a "national interest electric transmission corridor," and the Commission will defer to DOE's interpretation of the statute for those purposes. Additionally, as the proposed definition is derived directly from the statute, it is unnecessary to wait to finalize this regulation until DOE has identified a National Corridor.[236]

c. Definition of Stakeholder

i. NOPR Proposal

142. The Commission in the NOPR proposed to revise the definition of "stakeholder" for clarity and to ensure that environmental justice community members and other

[236] In DOE's recent Guidance on section 216(a), DOE's definition of a National Corridor closely matches the Commission's proposed definition. DOE defined a National Corridor as "… a geographic area where, based on the Needs Study or other relevant information, DOE has identified… present or expected transmission capacity constraints or congestion that adversely affects consumers, and which has been designated by the Secretary as a [National Corridor]." DOE Grid Deployment Office, Guidance on Implementing Section 216(a) of the Federal Power Act, at 16 (Dec. 19, 2023).

interested persons or organizations are covered by the definition. As proposed, § 50.1 defines "stakeholder" as any Federal, State, interstate, or local agency; any Tribal government; any affected landowner; any environmental justice community member; or any other interested person or organization.

ii. Comments

143. Impacted Landowners state that grouping severely impacted landowners with individuals who have generalized environmental concerns, or project advocates who will profit from the project, and considering them all equal "stakeholders" is unfair and unjust. Impacted Landowners suggest that a stakeholder should be defined as a person or entity with an interest in a project but who will experience no impacts.[237] Niskanen states that the definition of stakeholder is too broad and suggests the definition be modified to include any Federal, State, interstate, Tribal, or local agency or Tribal government involved with approving or whose interests may be affected by the proposed transmission facilities, and any environmental justice community that could be potentially impacted in some way by a proposed project.[238]

144. Public Interest Organizations recommend that the Commission amend the definition of stakeholder to replace "Tribal government" with "Indian Tribe," and that the Commission should add "Indigenous peoples" to the definition of stakeholders.[239] Public Interest Organizations explain that the distinction between Indian Tribes and any Tribal

[237] Impacted Landowners Comments at 22.

[238] Niskanen Comments at 9-11.

[239] Public Interest Organizations Comments at 53-54.

community member will preserve the government-to-government relationship between the Federal government and Indian Tribes. Niskanen also notes that the proposed definition for stakeholder as it relates to "any Tribal government" is inconsistent with the definition given in § 50.1 of "Indian Tribe."

iii. Commission Determination

145. We adopt the definition of "stakeholder" proposed in the NOPR, with one modification. We agree with Public Interest Organizations and Niskanen that the definition of "stakeholder" should include the term "Indian Tribe" instead of "Tribal government," for consistent use of defined terms in the Commission's regulations. Therefore, this final rule adopts usage of "Indian Tribe" in the definition of "stakeholder." Similarly, the use of "Tribal government" in applicant notification requirements in § 50.4(c)(1) is replaced with "Indian Tribe."

146. We also decline to limit the definition of stakeholders to entities that may be interested but would experience no impacts from a project, or to only agencies or governments that would be affected by a project. The extent of project-related effects is evaluated and refined throughout the review process and may not be well understood early in the review process when engagement with stakeholders should begin. Further, impacts from a project can vary from direct environmental effects to indirect effects on users of public spaces to non-environmental effects for individuals who will experience less congestion, increased reliability of their electric grid, or rate changes. Further, Niskanen's suggested definition would remove from consideration landowners or other individuals who do not meet the definition of affected landowner and are not members of

an environmental justice community, but who may be affected by a project. As such, we find it appropriate to allow any interested party to be considered a stakeholder.

147. With respect to Public Interest Organizations' request to add "Indigenous peoples" to the definition of "stakeholder," we note that Indigenous peoples are considered stakeholders under the definition proposed and adopted in this final rule.

d. Definition of Affected Landowner

i. NOPR Proposal

148. In the NOPR, the Commission did not propose any revisions to the existing definition of "affected landowners" in § 50.1, which defines "affected landowners" as owners of property interests, as noted in the most recent county/city tax records as receiving the tax notice, whose property: (1) is directly affected (i.e., crossed or used) by the proposed activity including all facility sites, rights-of-way, access roads, staging areas, and temporary workspace; or (2) abuts either side of an existing right-of-way or facility site owned in fee by any utility company, or abuts the edge of a proposed facility site or right-of-way which runs along a property line in the area in which the facilities would be constructed, or contains a residence within 50 feet of a proposed construction work area. Nevertheless, the NOPR sought comment on whether the Commission should revise the definition to include landowners located within a certain geographic distance from the proposed project facilities to address effects on visual (or other) resources, and, if so, what geographic distance should be used and why.

ii. Comments

149. ClearPath opposes any revisions to the existing definition of "affected landowners," arguing that the Commission has not provided evidence that the definition

is deficient or that Congress directed the Commission to revise the definition.[240] ClearPath also states that the NOPR fails to address whether expanding the definition of "affected landowners" would qualify the additional affected landowners for compensation under eminent domain, which may make projects economically unviable.[241]

150. Several commenters note that property tax bills do not list more than one person even if there are multiple owners of property, and do not list tenants with possessory interests. These commenters request that the Commission revise the definition of "affected landowners" to include any person with a legal right or interest in the property (e.g., a landowner, a contract purchaser of record, a person possessing the property under a lease, a record lienholder, a record encumbrancer of the property, and conservation easement holders).[242] EDF and Public Interest Organizations ask that the Commission clarify the definition of "affected landowners" as it relates to Tribal lands, particularly whether individual Tribal members residing on trust land satisfy the definition, and request that Tribes be included in the definition due to trust responsibilities.[243]

151. EDF, Niskanen, Public Interest Organizations, and SEIA state that the Commission should use DOE's definition of "affected landowners" from its then-current

[240] ClearPath Comments at 5.

[241] *Id.*

[242] EDF Comments at 5; Farm Bureaus Comments at 2-3; Land Trust Alliance Comments at 2-3.

[243] EDF Comments at 5; Public Interest Organizations Comments at 26-27.

regulations implementing section 216(h) of the FPA (i.e., landowners located within either 0.25 miles of a proposed study corridor or route of a qualifying project or at a minimum distance specified by State law, as well as those with a residence within 3,000 feet of a proposed construction work area for a qualifying project),[244] because it is broader than the Commission's definition and will provide for regulatory consistency between the Commission and DOE.[245] Public Interest Organizations argue that limiting affected landowners to those within 50 feet of proposed facilities fails to provide surrounding residents and communities the opportunity to meaningfully participate in the permitting process, and may cause landowners beyond this distance to feel marginalized, which may add unnecessarily high regulatory and litigation risks.[246]

152. Impacted Landowners request that the Commission use the term "impacted landowners" instead of "affected landowners," noting that it is the degree of impact, not an arbitrary distance, that creates an impacted landowner.[247] Niskanen indicates that the current definition does not adequately consider visual impacts or light pollution and

[244] 10 CFR 900.3 (2023). On May 1, 2024, DOE issued a final rule revising its regulations implementing section 216(h) of the FPA that, among other things, revises this definition and removes the distance criteria. *See* DOE, *Coordination of Federal Authorizations for Electric Transmission Facilities*, 89 FR 35312 (May 1, 2024). Regarding the revised definition to be codified at 10 CFR 900.2, DOE provides that a "potentially affected landowner" is one whose real property interest is potentially affected directly or indirectly by a proposed project. 89 FR 35340. DOE's final rule is effective on May 31, 2024.

[245] EDF Comments at 6; Niskanen Comments at 6-9; Public Interest Organizations Comments at 25-26.

[246] Public Interest Organizations Comments at 25-26.

[247] Impacted Landowners Comments at 21.

subsequent devaluation of property.[248] EDF and Land Trust Alliance suggest that the Commission use the results of a visual impact assessment to identify affected landowners, and define "affected landowners" as any landowner whose viewshed or ecosystem services may be affected.[249] Conversely, ClearPath argues that broadly expanding the affected landowner definition to anyone whose viewshed is affected could include properties up to 17 miles away and that the resource report addressing visual impacts in an application requires evaluating visual effects without the need to increase the affected landowner definition.[250]

iii. Commission Determination

153. We continue to find the definition of affected landowner in our existing regulations appropriate and adopt no changes.

154. In response to ClearPath's concern that changing the definition might mean additional landowners would be entitled to compensation, we note that section 216(f) of the FPA provides that any right-of-way acquired for construction or modification of transmission facilities through the use of eminent domain is considered a taking of private project for which just compensation is due. Whether a landowner is entitled to just compensation under section 216(f) is in no way connected to how the Commission's regulations define an affected landowner.

[248] Niskanen Comments at 6-9.

[249] EDF Comments at 6; Land Trust Alliance Comments at 3.

[250] ClearPath Comments at 5.

155. As part of the Commission's review process, we seek to ensure that landowners are given an opportunity to submit comments and participate in the Commission proceeding. Therefore, the definition of "affected landowners" is meant to encompass owners of property that: are proposed to be crossed by the project, are most likely to be affected by minor route adjustments or variations that may occur to avoid or minimize impacts to sensitive resources based on environmental survey results, or may be impacted by construction activities conducted in close proximity. The definition of "stakeholder" is then intended to capture other landowners and parties who may have an interest in a project or may be otherwise affected by a project and can inform the Commission's review of an application.

156. We acknowledge the numerous requests for a broader and more inclusive definition of an affected landowner (e.g., to include lessees, multiple property owners, conservation easement holders) but decline to adopt such a definition. The definition of "affected landowners" sets forth the scope of other regulatory obligations, including specific notification requirements, and applicants must have a practicable means of determining which entities fall within the scope of the definition. We find that there are not sufficient means for an applicant to readily identify a broader set of entities, as proposed by commenters, particularly for lengthy proposed transmission lines. The existing definition of "affected landowners" is practicable and likely to identify most entities with interests in the property. While a Tribe or member of a Tribe would not be an affected landowner if they occupy lands held in trust by the United States, a Tribe or

member of a Tribe may qualify as an affected landowner if they occupy land that is not held in trust by the United States and otherwise meet the definition.[251]

157. While there are numerous requests for larger geographic bounds to be used in the definition, we decline to modify the definition in this manner. Commenters suggest such a modification is necessary to ensure a broader group of stakeholders who may be impacted by a proposed project are aware of and have an opportunity to share their views on the proposal. We note, however, that the applicant must also notify all landowners with a residence within a quarter mile of the edge of the construction right-of-way under the notification requirements in § 50.4(c)(1). Moreover, stakeholders do not need to be an affected landowner or live in a residence within a quarter mile of the proposed site to participate in the Commission's proceedings. Under the definition of "stakeholder" in § 50.1, any interested entity or person may file comments as a stakeholder and participate in the Commission's pre-filing and application processes. We believe that the existing definition of "affected landowners" and existing quarter mile notification requirement provides individuals with appropriate notification of a proposed project to allow an opportunity to participate in Commission proceedings.

[251] We note that with regard to the Commission's trust responsibilities, Tribes are afforded additional outreach and consultations consistent with the Commission's consultation practices under its Tribal Consultation Policy, as well as the Commission's trust responsibilities and government-to-government relationships with Tribes. *Pol'y Statement on Consultation with Indian Tribes in Comm'n Procs.*, Order No. 635, 68 FR 46452 (Sept. 5, 2033), 104 FERC ¶ 61,108 (2003), *revised*, Order No. 863, 84 FR 56940 (Oct. 24, 2019) 169 FERC ¶ 61,036 (2019). The policy statement is codified at 18 CFR 2.1c (2023). These activities do not depend on whether Tribal members are "affected landowners."

158. Although some commenters argue that the definition of affected landowners should include landowners who may be impacted by visual or other project effects, the geographic extent of impacts will vary by region and project, and it is therefore difficult to identify a bright-line definition that could be used by an applicant to identify landowners who may experience visual impacts shortly after the commencement of the pre-filing process (when initial notifications to affected landowners must occur). Proposed transmission projects will be subject to NEPA, and the environmental effects of a project (including visual impacts) will be analyzed and addressed through the NEPA process. The NEPA and FPA processes include opportunities for landowners and other stakeholders to participate in the review process and comment on anticipated effects of a project, including visual impacts.

2. Section 50.3 – Filing and Formatting Requirements

159. Section 50.3 establishes the filing and formatting requirements for submissions in the Commission's pre-filing and application processes. In the NOPR, the Commission proposed to revise § 50.3(b) to eliminate the requirement that applications, amendments, and all exhibits and other submissions must be submitted in an original and seven conformed copies. Instead, to reduce waste, the Commission proposed that applicants only be required to make these submissions in electronic format. We received no comments regarding this proposed change. This final rule adopts § 50.3 as proposed.

3. Section 50.4 – Stakeholder Participation

a. Project Participation Plan

i. NOPR Proposal

160. The Commission explained in the NOPR that § 50.4(a) requires each applicant to develop and file a Project Participation Plan for use during the pre-filing and application processes to ensure that stakeholders have access to timely and accurate information about the proposed project and permitting process. The Project Participation Plan must, among other things, identify specific tools and actions to facilitate stakeholder communications and public information, including a regularly updated website. In the NOPR, the Commission proposed to revise § 50.4(a)(1) to incorporate minor clarifying language and specify that an applicant's website must include an interactive mapping component to provide users with the ability to locate the proposed facilities in relation to specific properties and other features. Additionally, as discussed above, the Commission proposed to require an applicant to develop and file an Environmental Justice Public Engagement Plan as part of its Project Participation Plan under § 50.4(a) early in the pre-filing process.[252]

ii. Comments

161. Arizona Game and Fish recommends that § 50.4's Project Participation Plan include a requirement for applicants to consult or coordinate with specific entities, such as State wildlife or natural resource agencies.[253] Maryland Commission urges that county

[252] *See* discussion *supra* Part II.C.

[253] Arizona Game and Fish Comments at 2-3.

and municipal governments affected by a proposed transmission line be given the opportunity to participate fully in the Commission's proceeding and provide recommendations.[254]

162. The Yurok Tribe requests that the Commission require applicants to develop a Tribal Participation Engagement Plan in the pre-filing process, similar to the Environmental Justice Public Engagement Plan.[255]

iii. Commission Determination

163. We adopt the NOPR proposal to revise the Project Participation Plan requirements to incorporate minor clarifications, specify that an applicant's website must include an interactive mapping component, and include an Environmental Justice Public Engagement Plan and a Tribal Engagement Plan.

164. Regarding requests to include coordination and consultation requirements for State, county and local agencies or governments in the Project Participation Plan, we do not believe such changes are needed. As further discussed below, the § 50.4(c) project notification requirements adopted in this final rule extend to, among others, permitting entities and other local, State, and Federal governments and agencies involved in the project, which include the entities that Arizona Game and Fish and Maryland Commission suggest. The project notification requirements inform recipients how to participate in the Commission's proceeding, including opportunities to provide recommendations to the Commission and how to contact the applicant. Local agencies

[254] Maryland Commission Comments at 8.

[255] Yurok Tribe Comments at 27-28.

and governments are typically included on project stakeholder mailing lists, as they are stakeholders as defined by § 50.1, who receive Commission notices regarding opportunities to submit comments, attend meetings and site visits, and participate in the pre-filing and application phases; and we encourage their participation. The Commission will consider comments submitted by any State, county, or local agencies during the processing of an application.

165. We adopt the Yurok Tribe's suggestion to require applicants to address outreach targeted to Indian Tribes, similar to the requirement to include an Environmental Justice Public Engagement Plan in an applicant's Project Participation Plan. Requiring applicants to develop a plan to identify and engage Tribal communities will facilitate the development of the record, including the *Tribal resources* resource report as discussed below, which the Commission needs to assess impacts on Indian Tribes. Therefore, new § 50.4(a)(5) requires an applicant to include a Tribal Engagement Plan as a component of the Project Participation Plan that addresses all outreach that is targeted to identified Tribes, including a summary of comments from potentially affected Tribes in previous outreach, a description of planned Tribal outreach activities, and a description of how the applicant will engage Tribes about potential mitigation measures.[256]

[256] We note that this new provision of the Project Participation Plan does not affect and is separate from the Commission's consultation practices under its Tribal Consultation Policy, as well as existing trust responsibilities and government-to-government relationships with Tribes. Order No. 635, 104 FERC ¶ 61,108, *revised*, Order No. 863, 169 FERC ¶ 61,036. The policy statement is codified at 18 CFR 2.1c (2023).

b. Project Notification Requirements

i. NOPR Proposal

166. Section 50.4(c) sets forth the project notification requirements for applicants. Section 50.4(c)(1) requires applicants to distribute, by mail and newspaper publication, project notifications within specified time periods, first, following commencement of the pre-filing process and, second, after an application has been filed. Section 50.4(c)(1) directs the applicant to notify, among others, all affected landowners and landowners with a residence within a quarter mile from the edge of the construction right-of-way for the proposed project. In the NOPR, the Commission proposed to revise § 50.4(c)(1) for clarity and to ensure that applicants provide notification of the proposed project to all interested individuals and organizations. The NOPR also sought comment on whether a quarter-mile limit is sufficient and, if not, what geographic distance should be used and why.

167. Section 50.4(c)(2)(i) describes the required contents of the Pre-filing Notification. For clarity, in the NOPR, the Commission proposed organizational changes in the regulations to distinguish the requirements that pertain to any Pre-filing Notification that is sent by mail or published in a newspaper (proposed § 50.4(c)(2)(i)) from the requirements that pertain to any Pre-filing Notification that is sent by mail specifically to an affected landowner (proposed § 50.4(c)(2)(ii)).

168. The Commission in the NOPR proposed to add a requirement that any Pre-filing Notification mailed to an affected landowner also include a copy of a Commission document titled "*Landowner Bill of Rights in Federal Energy Regulatory Commission Electric Transmission Proceedings*" (Landowner Bill of Rights). The Commission also

proposed in the NOPR to require that any Pre-filing Notification sent by mail or published in the newspaper include information clarifying that the Commission's pre-filing and application processes are separate from any simultaneous State siting proceeding and explaining how to participate in any such State siting proceeding.

169. In the NOPR, the Commission explained that it expects applicants to make a good faith effort to ensure that individuals and organizations entitled to receive project notifications can comprehend the contents of such notifications. Accordingly, the NOPR directed applicants to consider the need for project notifications in languages other than English as part of the Environmental Justice Public Engagement Plan, as described above. The NOPR also sought comment on what methods of notification beyond mail and newspaper publication might be utilized in order to effectively reach the largest possible number of stakeholders.

ii. Comments

170. Public Interest Organizations and Niskanen suggest that the Commission require the two applicant project notifications in § 50.4(c) to include information on how to become an intervenor in a Commission proceeding and the consequences of failing to intervene, namely, lacking standing to petition for rehearing and pursue judicial review of an order issued by the Commission.[257] Public Interest Organizations also request that § 50.4(c)(2)(iii) of the Commission's regulations be modified to require inclusion of the Landowner Bill of Rights in the Application Notification required under

[257] Public Interest Organizations Comments at 18; Niskanen Comments at 17-18.

§ 50.4(c)(1)(i)(B), [258] and further urge the Commission to consider changes to § 50.4(c)(2)(i) to require that the pre-filing notice clearly state how affected landowners and other stakeholders can participate in the pre-filing process in order to make the communities feel heard, support the applicant in meeting landowner needs, and reduce legal risks.[259]

171. The existing regulations in § 50.4(c)(1)(ii) require applicants to publish a notification of the pre-filing request and application filings in newspapers of general circulation. Some commenters suggest that the Commission modify this requirement to include other methods of notice, such as social media, popular internet sites, local digital newspapers, online-only publications that serve a local interest, neighborhood listservs and community webpages, utility webpages, and including a QR code on notices that directs the reader to an appropriate webpage.[260] CLF and EDF encourage requiring the notices be posted in a range of locations in the community (e.g., churches, mosques, temples, community centers, public parks, post offices, and schools) where transmission projects are proposed.[261]

172. Public Interest Organizations recommend that the Commission's newspaper notification requirements in § 50.4(c)(2)(i)(B) be modified to include the website address

[258] Public Interest Organizations Comments at 32 and 38.

[259] *Id.* at 13-14.

[260] CLF Comments at 7; ELCON Comments at 4; Michigan PSC Comments at 10; SEIA Comments at 11; Los Angeles DWP Comments at 5.

[261] CLF comments at 7; EDF Comments at 12.

for the Commission's pamphlet *Electric Transmission Facilities Permit Process*.[262] Niskanen states that the Commission should create accessible online and paper versions of the pamphlet, written in layperson's terms and should include: the scope of the Commission's transmission siting authority; what findings the Commission must make to approve a project; an explanation as to how to obtain ongoing, accurate project information from the Commission; clear contact information for the Office of Public Participation; basic, step-by-step descriptions of the Commission's pre-filing and application processes; and a description of how to participate in these processes, including clear, bolded instructions on when, why, and how to become an intervenor in the relevant proceeding.[263]

173. Impacted Landowners and SEIA request that § 50.4(c)(2) require the notices be written in plain language.[264] Several commenters suggest that notices be provided in multiple languages.[265] Impacted Landowners and ACEG request that the notices contain a summary of rights a landowner has in reference to the Federal eminent domain laws that would be applicable, instead of just the State laws proposed for reference in the NOPR.[266]

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[262] Public Interest Organizations Comments at 33.

[263] Niskanen Comments at 14.

[264] Impacted Landowners Comments at 23; SEIA Comments at 11.

[265] SEIA Comments at 11; NESCOE Comments at 28-29; Impacted Landowners Comments at 23; Public Interest Organizations Comments at 30.

[266] Impacted Landowners Comments at 23; ACEG Comments at 17-18.

174. Public Interest Organizations and the Yurok Tribe state that the Commission should develop standardized language that all applicants must include in each notice under § 50.4(c) that clearly explains the Commission's processes, all necessary deadlines, and the purpose and consequences of intervening or seeking rehearing.[267] Public Interest Organizations and the Yurok Tribe also suggest that these standard notices explain the roles of the Commission's Office of Public Participation, Tribal Liaison, and the Environmental Justice Liaison,[268] and how to contact each of them.[269] Finally, Public Interest Organizations ask that the Commission revise its standard notice to clarify the different ways interested persons may participate in the pre-filing process, in which restrictions on off-the-record (ex parte) communications do not apply.

175. Public Interest Organizations and the Yurok Tribe suggest that the Commission change its requirement under § 50.4(c)(1)(i)(A) for mailing notification of the pre-filing process. Specifically, they ask that the Pre-filing Notifications be mailed within 3 business days after the Director of the Commission's Office of Energy Projects notifies the applicant of the commencement of the pre-filing process, instead of within 14 days as

[267] Public Interest Organizations Comments at 17-18; Yurok Tribe Comments at 25.

[268] Public Interest Organizations recommend that the Commission establish Environmental Justice Liaisons as non-decisional staff within the Office of Public Participation. Public Interest Organizations Comments at 89-90. While the Commission has a Senior Counsel for Environmental Justice and Equity and an Environmental Justice and Equity Group within the Office of General Counsel, it does not currently have an Environmental Justice Liaison.

[269] Public Interest Organizations Comments at 30; Yurok Tribe Comments at 26.

currently required.[270] The Yurok Tribe states that there is no justification for the existing 14-day period and that Tribes and stakeholders should be given as much time as possible to prepare and participate through an earlier notification.

176. CLF and NESCOE assert that not all residents own the property in which they reside and request that project notifications under § 50.4(c)(1) be sent to residents (e.g., renters/lessees) in addition to the landowners.[271]

177. The Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe state that Tribes should be included in the Stakeholder Participation section of the proposed regulations regardless of whether the Tribes are already involved in a project and should be addressed separately from, or as a required element of, the Environmental Justice Public Engagement Plan.[272] Specifically, the Tribes, as well as the Yurok Tribe, state that proposed § 50.4(c)(1) appears to limit the requirement to notify Tribes to those who are already involved in a project, and they suggest that the Commission should amend its regulations to require that project notifications are sent to all Tribes with ancestral or current-day lands that may experience impacts from the project.[273]

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[270] Public Interest Organizations Comments at 28-29; Yurok Tribe Comments at 26.

[271] CLF Comments at 6-7; NESCOE Comments at 28.

[272] Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe Comments at 2.

[273] Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe Comments at 3; Yurok Tribe Comments at 26.

178. Conversely, ClearPath suggests that § 50.4(c)(1) should remove the word, "all," which immediately precedes the entities that an applicant is required to notify, asserting that requiring applicants to notify "all" listed entities would put the applicant at risk for unnecessary litigation and may incur unnecessary delay.[274] Similarly, Niskanen suggests removing the word "any" from the § 50.4(c)(1) requirement that applicants notify "*any* known individuals or organizations that have expressed an interest in the State siting proceeding; and *any* other individuals or organizations that have expressed to the applicant, or its representatives, an interest in the proposed project (emphasis added)."[275] Niskanen argues that requiring applicants to notify "any" individual or organization that has merely expressed an interest in a proposed project may invite protracted legal challenges to any given project.[276] Niskanen also asserts that the Commission should be responsible for ensuring that all stakeholders are properly accounted for and sent notice through the applicant, and should create an accountability mechanism for applicants to follow up on undeliverable notifications.[277]

179. ACP and ACEG question how the Commission will consider notification requirements in the instances of route changes, particularly ones that occur relatively late in the Commission's proceeding.[278] ACP states that applicants would have complied

[274] ClearPath Comments at 6.

[275] Niskanen Comments at 12.

[276] *Id.*

[277] *Id.* at 13.

[278] ACP Comments at 14; ACEG Comments at 15.

with the Applicant Code of Conduct and conducted early outreach, and, therefore, should not be required to restart the notice and comment periods in instances of reroutes. ACEG suggests notifying landowners along alternative routes earlier in the process or allowing for an expedited notice and comment process if newly impacted parties are identified.

iii. Commission Determination

180. To support the Commission's good faith efforts determinations under the IIJA's amendment to section 216(e)(1) and make needed clarifications to the Commission's existing project notification requirements under § 50.4(c), we adopt the NOPR proposal, with modifications. Specifically, we revise § 50.4(c) to address confusion over the use of the terms "notice" and "notification." We also revise § 50.4(c)(1)(ii) to expand newspaper publication requirements to reach a broader audience and revise § 50.4(c)(2)(i)(B) to require applicants to include the website address for the Commission's pamphlet *Electric Transmission Facilities Permit Process* in newspaper publications to improve accessibility of information regarding the Commission's processes. We revise § 50.4(c)(1)(i)(C) to include a new requirement for applicants to mail project notifications in other languages under certain circumstances. Finally, to reflect that we are not adopting the NOPR's proposal to allow simultaneous processing, we adjust the required contents of the participation notification concerning information about State siting proceeding(s) in § 50.4(c)(2)(i)(H).

181. As an initial matter, we recognize that § 50.4(c)'s interchangeable and intermittent use of "notice" and "notification" may have created confusion for commenters, some of whom conflated § 50.4(c)'s notification requirements for applicants with the Commission's notice requirements as described in § 50.9. Accordingly, we make minor

consistency edits throughout § 50.4(c) to consistently use the term "notification" to apply exclusively to applicants' obligation to provide certain information, and the term "notice" to apply exclusively to Commission-issued notices. Additionally, we clarify which provisions in § 50.4(c) apply to Pre-filing Notifications versus Application Notifications.

182. We decline commenters' requests to revise § 50.4(c) to require additional information in Applicant Notifications concerning intervening in Commission proceedings. We find that the proposed revisions to § 50.4(c), as modified in this final rule, will adequately inform those affected landowners and other stakeholders interested in becoming parties to a Commission proceeding of the Commission's processes and timing for filing motions to intervene. Although there is no intervention period during the pre-filing process, as no application is before the Commission, the regulations in § 50.4(c)(2)(i)(G) already require an applicant's Pre-filing Notifications to include information explaining the Commission's pre-filing and application processes and when and how to intervene in application proceedings. Following the commencement of the pre-filing process, applicants will be required under § 50.4(c)(2)(ii)(B) – as adopted herein – to include a copy of the Landowner Bill of Rights, which notifies recipients of their right to intervene in any open Commission proceeding, within the Pre-filing Notification mailed to affected landowners.

183. We decline Public Interest Organizations' request to require that the Landowner Bill of Rights be provided in the Application Notification required by § 50.4(c)(1)(i)(B) to be distributed within 3 business days after the Commission publishes notice of the application under § 50.9. As discussed above, under proposed § 50.4(c)(2)(ii)(B), as adopted herein, the Landowner Bill of Rights must be included in an applicant's mailed

Pre-filing Notification. Proposed § 50.4(c)(3) also requires applicants to provide the Landowner Bill of Rights in instances where affected landowners are identified after the initial notifications are mailed. Therefore, we find that all affected landowners will be provided a copy of the Landowner Bill of Rights and, as such, it is not necessary to provide it again with the Application Notification.

184. We agree with commenters' recommendations that the Commission include additional requirements in § 50.4(c) for the publication of notifications in media beyond newspapers of general circulation. There are accessibility limitations inherent in relying solely on any single media platform, whether print publications or electronic, for notification of Commission proceedings, and no single media platform is reasonably assured of reaching a general audience across varying geographical locations. Therefore, we revise § 50.4(c)(1)(ii) to expand the publication requirements for applicant notifications beyond newspaper print publications. Specifically, we require that in addition to newspaper print publications, applicant notifications be published in other online or hard copy periodicals of general circulation serving the affected area, as appropriate. These notifications must also be submitted to any available county and municipal government online bulletin boards and other similar community resources.

185. We also agree with Public Interest Organizations that the applicant's Pre-filing Notifications should include the website address for the Commission's *Electric Transmission Facilities Permit Process* pamphlet. Thus, we revise § 50.4(c)(2)(i)(B) to adopt this requirement. However, we decline at this time to adopt Niskanen's recommendations to include certain information in the pamphlet. The pamphlet will be

updated to reflect the requirements of this final rule and will be posted to the Commission's public website when available.

186. We agree with Impacted Landowners and SEIA that applicant notifications should be written to be readily understood by the public. We also agree with commenters that notifications should be provided in multiple languages. Therefore, we add a new provision in § 50.4(c)(1)(i)(C) to require applicants to mail project notifications in languages other than English under certain circumstances. Our approach is intended to ensure that applicants provide meaningful notification to people with limited English proficiency who are affected landowners or landowners within a quarter mile of the right-of-way.

187. Under this new notification requirement in § 50.4(c)(1)(i)(C), applicants may be required to include written translations of the applicant's notifications to affected landowners and landowners with residences located within a quarter mile from the edge of the construction right-of-way for a proposed project. To determine whether written translations are required, applicants must identify the landowners' census block groups, ascertain whether any of the census block groups include people with limited English proficiency, and, for each census block group, identify the languages spoken by people with limited English proficiency. For each language identified in the census block group that accounts for five percent of households or 1,000 persons,[279] whichever is less, applicants must include written translation of the applicant's notifications with the

[279] The number of people with limited English proficiency within the census block group level may be estimated using the census tract's average household size.

applicant's mailed notifications to all landowners entitled to notification within that census block group. The U.S. Census American Community Survey's 5-year estimates include the information needed to identify the number of limited English proficiency households, similar to the information collected for identifying environmental justice communities.

188. We retain the existing requirement that any Pre-filing Notification mailed to an affected landowner include a brief summary of the specific rights the landowner has in proceedings under the eminent domain laws of the relevant State. We decline commenters' suggestion that this notification should instead include a summary of Federal eminent domain law. Section 216(e)(1) of the FPA allows permit holders to bring an eminent domain proceeding in the appropriate court in the Federal district or the State in which the property is located.[280] Section 216(e)(3) provides that the practice and procedure in any eminent domain proceeding in Federal district court must conform as nearly as practicable to the practice and procedure in a similar proceeding in the applicable State court.[281] Thus, if an eminent domain proceeding is initiated in Federal district court, the court will determine the appropriate procedures for individual proceedings. For this reason, and because the rules governing eminent domain proceedings may vary by State, we find it most helpful for the Pre-filing Notification required to be sent by the applicant to contain a brief summary of the landowner's rights under the eminent domain laws of the relevant State.

[280] 16 U.S.C. 824p(e)(1).

[281] *Id.* 824p(e)(3).

189. We decline commenters' requests to adopt standardized language in applicant notifications under § 50.4(c). Commission-issued notices in the pre-filing and application review processes will convey standardized information about the Commission's processes and identify applicable deadlines for comments and intervention. In addition, much of the information that Public Interest Organizations request be included in the standard notifications will be addressed via guidance or informational brochures, like in the *Electric Transmission Facilities Permit Process* pamphlet that applicants must provide with their notification of commencing the pre-filing process.

190. We also note that Commission notices typically explain the role of and provide contact information for the Office of Public Participation, which can be a helpful resource for stakeholders who need assistance understanding how to participate in Commission matters, including stakeholders with environmental justice concerns. In addition, Commission staff issue separate letters to engage Indian Tribes, which typically contain the contact information for the Commission's Tribal Liaison, project manager, and assigned project archaeologist who will be most familiar with the project and able to address Tribal questions. These Commission notices and letters sufficiently provide landowners, Tribes, and stakeholders with opportunities and support for engagement.

191. We decline Public Interest Organizations' and the Yurok Tribe's suggestions to modify § 50.4(c)'s timing requirements with respect to mailing project notifications. The Commission carefully considered the timing and coordination for each notification in the Order No. 689 rulemaking proceeding and proposed no changes to the deadline for applicants to mail required notifications in the NOPR. We continue to find no changes

are necessary. The Director's notice under § 50.5(d) commences the pre-filing process for a project and triggers numerous additional applicant requirements (e.g., finalizing a Project Participation Plan, refining the mailing list for the Pre-filing Notification, finalizing a contract with the selected third-party contractor, and notifying permitting entities). Given the numerous obligations triggered by the commencement of the pre-filing process, we find it appropriate to allow applicants 14 calendar days from the Director's notice date to send the Pre-filing Notification. We believe that this will result in more accurate notifications.

192. We decline CLF's and NESCOE's requests to modify § 50.4(c)(1) to require that project notifications must be mailed to "residents." As explained above in our discussion of the definition of "affected landowner," we find that there are insufficient means to readily identify residents (e.g., renters/lessees), particularly across potentially hundreds of miles of transmission line. Accordingly, we will continue to require notifications based on the landowner identified in tax records. However, under § 50.4(c)(1) as adopted herein, residents who are not identified in tax records may express interest in a project to be added to the applicant's mailing list as stakeholders so that they can receive project notifications.

193. We agree with the Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe, as well as the Yurok Tribe, that applicants should include Tribes whose ancestral or current-day lands may be affected by a project in their required notifications, regardless of whether the Tribes are already involved in a project. Within the notification requirements of § 50.4(c)(1), we adopt a minor revision to the placement of "Indian Tribe" within the list of entities to be

notified to remove applicability of the qualifier "involved in the project" to Indian Tribes. With this modification, applicants must notify Indian Tribes regardless of any prior involvement in the project.

194. We disagree with ClearPath's and Niskanen's recommendations to modify § 50.4(c)(1) to remove reference to the terms "all" and "any," respectively. Although § 50.4(c)(1) requires the applicant to make a good faith effort to notify all listed entities,[282] it is generally understood that project mailing lists will evolve throughout the pre-filing process as additional entities learn about a project and express interest. During the pre-filing process, we expect applicants to make all reasonable efforts to ensure that interested stakeholders have been made aware of the proposed project. In addition, § 50.4(c)(4), as proposed in the NOPR and adopted herein, requires applicants to make reasonable attempts to find the correct address and re-send the notification if it is returned as undeliverable.

195. Regarding questions from ACP and ACEG about how the Commission will consider notification requirements in the instances of late route changes, we note that § 50.4(c)(3), as proposed in the NOPR and adopted herein, provides that if, for any reason, a person or entity entitled to receive these project notifications has not yet been identified when the notifications are sent or published, the applicant must provide the required information at the time the person or entity is identified. This provision applies where new landowners are identified as "affected landowners" subject to route changes. The Commission addresses reopening of comment periods due to reroutes on a project-

[282] 18 CFR 50.4(c)(1).

specific basis, generally to account for numerous factors (e.g., if new landowners are involved in the reroute, whether those landowners have been involved in the project to date, whether landowners requested the reroute on their property, where in the process a project is, and upcoming opportunities for landowner input). The Commission will issue revised notices with applicable comment periods when appropriate for a given reroute on a project.

c. Landowner Bill of Rights

i. NOPR Proposal

196. As part of the Project Notification requirements, in the NOPR, the Commission proposed to add a requirement that any Pre-filing Notification mailed to an affected landowner also include a copy of a Commission document titled "*Landowner Bill of Rights in Federal Energy Regulatory Commission Electric Transmission Proceedings*" (Landowner Bill of Rights). The NOPR sought comment on a draft version of the Landowner Bill of Rights provided in the Appendix to the NOPR. The Commission explained that requiring the applicant to provide this document at the outset of the permitting process would help ensure that affected landowners are informed of their rights in dealings with the applicant, in Commission proceedings, and in eminent domain proceedings.

ii. Comments

197. Pennsylvania Commission states that, regardless of whether simultaneous or consecutive review processes at the State and Commission occur, landowners are likely to be overwhelmed and confused about where and when to participate, particularly after receiving multiple notices for each process and, in some cases, State versions of a

Landowner Bill of Rights in addition to the Commission's.[283] Thus, instead of mandating mailing specifically the Commission's Landowner Bill of Rights, Pennsylvania Commission suggests establishing the Landowner Bill of Rights as a recommended framework and allowing applicants to adapt and modify the Landowner Bill of Rights, with encouraged coordination with the State, to have a single Landowner Bill of Rights for a project.[284]

198. Public Interest Organizations and Niskanen suggest that the Commission amend the Landowner Bill of Rights to require applicants to negotiate with landowners in good faith early in the permitting process as a prerequisite for receiving eminent domain authority.[285] Public Interest Organizations also ask that the Commission add language to the Landowner Bill of Rights stating that the applicant may also not misrepresent the status of discussions or negotiations between itself and landowners or any other party and must communicate respectfully, avoiding harassing, coercive, manipulative, or intimidating communications or high-pressure tactics.[286]

199. Farm Bureaus note that the Landowner Bill of Rights does not require applicants to provide any information, but instead informs landowners of the "right to access" certain information concerning the applicant and project. Farm Bureaus state that the

[283] Pennsylvania Commission Comments at 8-10.

[284] *Id.* at 9-10.

[285] Public Interest Organizations Comments at 40; Niskanen Comments at 15.

[286] Public Interest Organizations Comments at 40.

Landowner Bill of Rights should require the applicant to furnish this information rather than burden landowners with seeking it themselves.[287]

200. In addition, several commenters recommend changes to the Landowner Bill of Rights to better inform landowners about specific rights. Specifically, Public Interest Organizations and NESCOE suggest adding language explaining why compensation may be required, what eminent domain is, and how the Federal eminent domain process works.[288] Impacted Landowners request the Commission add plain language to the Landowner Bill of Rights explaining that landowners are not required to negotiate easement agreements written by transmission line owners without advice from counsel.[289] Public Interest Organizations and Farm Bureaus ask that the Landowner Bill of Rights clarify the difference between participation in the Commission's pre-filing versus application phase and how landowners can participate in each process.[290]

201. Public Interest Organizations and Niskanen ask that the Commission grant intervenor status to all landowners that comment in a proceeding or, in the alternative, explain in the Landowner Bill of Rights that affected landowners lose their right to

[287] Farm Bureaus Comments at 10.

[288] Public Interest Organizations Comments at 39; NESCOE Comments at 29-30.

[289] Impacted Landowners Comments at 22-23.

[290] Public Interest Organizations Comments at 40; Farm Bureaus Comments at 10.

challenge any Commission order or authorization of the project if they do not intervene in the Commission docket and become a party to the proceeding.[291]

iii. Commission Determination

202. In this final rule, we adopt the NOPR proposal to require applicants to provide a copy of the Commission's Landowner Bill of Rights to affected landowners with their Pre-filing Notification. A final version of the Landowner Bill of Rights is attached to this final rule, with no changes from the draft version included in the NOPR except for the addition of a toll-free telephone number for the Commission's Office of Public Participation, and we will include an electronic copy on the Commission's public website for reference.

203. We decline commenter suggestions to afford applicants flexibility to modify the Landowner Bill of Rights. The purpose of the Landowner Bill of Rights is to ensure that affected landowners are informed in a consistent manner of their rights in dealings with the applicant and in Commission proceedings. Allowing applicants to develop their own document, as the Pennsylvania Commission suggests, could produce the uncertainty and confusion that the Landowner Bill of Rights seeks to avoid.

204. We decline to amend the Landowner Bill of Rights to include requirements for applicants in their negotiations and interactions with landowners because we find such revisions unnecessary. The Landowner Bill of Rights is intended to inform landowners, in plain language, about landowner rights and about actions landowners can take in a

[291] Public Interest Organizations Comments at 33 and 41; Niskanen Comments at 15-16.

Commission proceeding, but it does not establish requirements for applicants to follow. Refraining from certain misconduct in communications with landowners, avoiding misrepresenting the status of discussions or negotiations, and avoiding harassing, coercive, manipulative, or intimidating communications are factors the Commission may consider as part of its good faith efforts determinations.

205. We disagree with Farm Bureaus' assumption that the Landowner Bill of Rights requires landowners to seek information. The Pre-filing and Application Notification requirements in § 50.4(c) require the applicant to provide information to landowners, including about the location and schedule of the project and their rights. We believe that these requirements afford landowners ready access to central information about a project.

206. We decline to modify the Landowner Bill of Rights to incorporate a summary of the eminent domain process. The eminent domain process may vary State to State and including generic language in the Landowner Bill of Rights that would be applicable across all States would be less useful than the summary of the eminent domain laws of the relevant State that applicants must include in the Pre-filing Notification that is sent by mail to affected landowners under § 50.4(c)(2)(ii)(C). Further, the Landowner Bill of Rights explains that landowners have the right to receive compensation if their land is necessary for construction of a proposed project and that the amount of compensation would be determined through a negotiated easement agreement or through an eminent domain proceeding in the appropriate Federal or State court.

207. With respect to commenters' request that the Commission include language about landowners' rights in negotiating easements and hiring legal counsel, we note that the Landowner Bill of Rights already informs landowners of their rights to negotiate

easement agreements, hire legal counsel, and hire their own appraiser or other professional to assist in any easement negotiations. Therefore, we find no need to modify the Landowner Bill of Rights on these topics.

208. We also decline to include provisions distinguishing the pre-filing and application review processes in the Landowner Bill of Rights. With the exception of filing a motion to intervene, which is clearly identified as an activity that may only occur after an application is filed, none of the other rights listed in the Landowner Bill of Rights are contingent on the project's phase.

209. Finally, we decline to grant intervenor status to all landowners that comment in a proceeding. A landowner may not wish to intervene or become a party to the proceeding. Additionally, we find that our project notification requirements at § 50.4(c)(2)(i), which require applicants to provide access to the Commission's *Electric Transmission Facilities Permit Process* pamphlet and information explaining when and how to intervene in a proceeding, will afford sufficient information about the steps to participate in a Commission proceeding and become an intervenor.

d. Office of Public Participation Involvement

i. NOPR Proposal

210. In the NOPR, the Commission did not propose any changes to the role, function, or duties of the Commission's Office of Public Participation.

ii. Comments

211. Environmental Law and Policy Center and CLF ask that the Commission direct its Office of Public Participation, Tribal Liaison, and Environmental Justice Liaison[292] to develop best practices for facilitating stakeholder engagement that, at a minimum, would ensure notification to environmental justice communities affected by proposed projects; provide meaningful opportunities to participate, including opportunities for the public to provide written and oral comments to the Commission; provide resources and technical assistance, including plain language summaries and translated materials as needed; and provide environmental justice engagement recommendations on a project-by-project basis that are tailored based on affected communities and anticipated environmental justice impacts.[293] CLF also suggests that applicants be required to consult with the Office of Public Participation when developing both the Environmental Justice Public Engagement Plans and the *Environmental justice* resource report to help ensure that applicants adequately consider any impacts on environmental justice communities and conduct comprehensive outreach to environmental justice communities.[294]

212. Public Interest Organizations recommend that the Office of Public Participation engage with any stakeholder that submits comments in a State proceeding to explain the

[292] As explained above, Environmental Justice Liaison is a position that does not currently exist at the Commission. *See supra* note 268.

[293] Environmental Law and Policy Center Comments at 5; CLF Comments at 11.

[294] CLF Comments at 7-8.

Commission's pre-filing process and siting process.[295] Additionally, Public Interest Organizations and the Yurok Tribe request that the Commission require applicants to file with the Commission any comments received in State-level proceedings.[296] The Yurok Tribe also suggests that the Commission require applicants to provide the State commissions with copies of any comments submitted in the Commission's proceeding.

iii. Commission Determination

213. We do not find it is necessary to have a requirement for applicants to engage with the Office of Public Participation when developing the Environmental Justice Public Engagement Plan or the *Environmental justice* resource report. The Office of Public Participation is able to engage with applicants regarding best practices for stakeholder communications and outreach activities, in general, including meaningful early engagement with potentially affected environmental justice communities. However, the Office of Public Participation can neither review nor comment on applicant drafts or documents in contested proceedings.

214. With respect to the Office of Public Participation creating best practices on environmental justice engagement, we find that the Pre-filing and Application Notification requirements in § 50.4(c) and Project Participation Plan requirements in § 50.4(a), which would include the Environmental Justice Public Engagement Plan filing requirement we are adopting in this final rule, afford adequate notification of key information about the project, information about opportunities to participate in the pre-

[295] Public Interest Organizations Comments at 15.

[296] *Id.* at 14; Yurok Tribe Comments at 27.

filing process and any Commission proceeding, and address how applicants plan to accommodate people with limited English proficiency. These notifications and plans are tailored to the specific project and unique circumstances of any environmental justice communities that may be affected by a project and are the more appropriate means for Commission staff to provide feedback or support to an applicant in developing outreach efforts.

215. We decline to adopt commenters' recommendations requiring the Office of Public Participation's involvement in State-level proceedings. The Office of Public Participation's role is to support stakeholders that have expressed interest in engaging in the Commission's processes, not other agency or State processes. Additionally, requiring the Office of Public Participation to engage with all stakeholders that provide comments in a State proceeding would be infeasible. Project notifications required in § 50.4(c) and the Project Participation Plan required in § 50.4(a) ensure that stakeholders have sufficient notification of the proposed project and opportunities to provide their views on the project during the pre-filing and application review processes.

216. We also decline to require that an applicant file with the Commission the comments submitted in a State-level proceeding or file with the relevant State commissions comments placed in the Commission's record. We do not presume that commenters intend to have their comment filed with the Federal and State entities without their permission.

e. Tribal Consultation Policy

i. NOPR Proposal

217. In the NOPR, the Commission did not propose any changes to the Commission's Tribal consultation policy.[297]

ii. Comments

218. The Yurok Tribe and Public Interest Organizations state that the Commission must adopt a stronger Tribal consultation policy.[298] The Yurok Tribe also believes that the Commission should provide dedicated resources within the Office of Public Participation to support consultation with and enable participation by Tribes. The Yurok Tribe and Public Interest Organizations suggest that the Commission provide funding to support Tribal participation and intervenor compensation.[299] The Yurok Tribe notes that the Inflation Reduction Act allocated $100 million to the Commission to assist in environmental reviews, including stakeholder engagement, and that these funds should go to support Tribal participation.

219. To more fully meet the Commission's trust obligations, commenters urge the Commission to create a Tribal Advisory Committee to advise on all Commission interactions with Tribes and to recommend changes to Commission policies and establish

[297] Order No. 635, 104 FERC ¶ 61,108, *revised*, Order No. 863, 169 FERC ¶ 61,036. The policy statement is codified at 18 CFR 2.1c (2023).

[298] Yurok Tribe Comments at 6-7 and 14-15; Public Interest Organizations Comments at 55-58.

[299] Yurok Tribe Comments at 19-20 and 37; Public Interest Organizations Comments at 58-60.

a better relationship with Tribes.[300] Similarly, these commenters ask that the Commission clarify and revise the role of the Commission's Tribal Liaison to be non-decisional, help facilitate the process to receive Tribal funds, support Tribal consultation and participation, and be located within the Commission's Office of Public Participation.[301]

220. The Yurok Tribe suggests several changes to Commission Tribal consultation practices and recommends the adoption of a new Tribal Consultation Policy with opportunity for Tribes to review and comment on a draft of the policy.[302] The Yurok Tribe states that Tribes should have an opportunity to comment on whether an action requires consultation and be allowed to initiate consultation if the Commission fails to begin consultation. The Yurok Tribe also recommends that Tribes be afforded an opportunity to have a pre-meeting with Commission staff prior to a consultation meeting to allow for clarifying questions. After a consultation meeting, the Yurok Tribe suggests that the Commission follow up with Tribes to confirm next steps, schedule additional meetings, and advise the Tribe of the results of consultation.

iii. Commission Determination

221. While we appreciate Public Interest Organizations' and the Yurok Tribe's comments on the distribution of dedicated resources to enable Tribal participation, the

[300] Yurok Tribe Comments at 20-21; Public Interest Organizations Comments at 63-64.

[301] Yurok Tribe Comments at 20-23; Public Interest Organizations Comments at 60-63.

[302] Yurok Tribe Comments at 15-17.

creation of a Tribal Advisory Committee, the role of the Commission's Tribal Liaison, and proposed revisions to the Commission's Tribal Consultation Policy are all related to broader Commission consultation practices across all project types, rather than requirements that would apply to an applicant under FPA section 216, and are therefore beyond the scope of this final rule.

222. We also note that applicants are required to send a Pre-filing Notification to all Indian Tribes whose interest may be affected by the proposed project with initial project information and how to participate in the Commission's process. Commission staff also reaches out to potentially affected Tribes, initiates government-to-government consultation, and opens public comment periods as part of the review process. Tribes may use any of the available opportunities to comment on whether an action requires consultation and may request to initiate consultation at any time. As such, we find no changes to the Commission's regulations are necessary.

4. Section 50.5 – Pre-filing Procedures

a. Congestion-related Information

i. NOPR Proposal

223. Section 50.5 describes the required pre-filing procedures for applicants seeking a permit under FPA section 216. Section 50.5(c) describes the information that an applicant must provide in the pre-filing request. In the NOPR, the Commission proposed to require that any pre-filing request include a detailed description of how the proposed project will reduce capacity constraints and congestion on the transmission system (proposed § 50.5(c)(8)) and, as described above, a statement indicating whether an applicant intends to comply with the Applicant Code of Conduct (proposed § 50.5(c)(9)).

224. Section 50.5(e) describes the information that an applicant must provide once the Director of the Office of Energy Projects has issued a notice commencing the pre-filing process, and the respective deadlines for filing such information. In the NOPR, the Commission proposed clarifications to § 50.5(e)(3) and (4) to ensure consistency with the project notification requirements in § 50.4(c). The Commission also proposed to require an applicant to file congestion-related information earlier in the Commission's permitting process to provide sufficient time for Commission staff to evaluate the adequacy of information needed to conduct the required analyses under FPA section 216(b)(4).[303] Specifically, within 30 days of the notice commencing the pre-filing process, the Commission proposed to require an applicant to file a draft version of Exhibit H, *System analysis data*, required by § 50.7 (proposed § 50.5(e)(9)). In addition to a draft version of Exhibit H, the Commission also proposed to require an applicant to file additional supporting information showing how the proposed project will reduce capacity constraints and congestion on the transmission system, such as system impact study reports, relevant regional transmission plans, and, if applicable, expert witness testimony and other relevant information submitted with the State application(s) (proposed § 50.5(e)(7) and (8)).

[303] FPA section 216(b)(4) requires the Commission to find that the proposed construction or modification of transmission facilities will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers. 16 U.S.C. 824p(b)(4).

ii. Comments

225. ACEG suggests that the requirement to submit a full system impact report early in the pre-filing process is unnecessary and unreasonable.[304] It argues that the system impact study can take more than a year to complete and that the level of detail required may not be available at the early pre-filing stage.[305] Accordingly, ACEG recommends that the Commission revise this requirement so that an applicant need only provide a status report on the system impact study during pre-filing, as opposed to the study itself.[306] ACEG believes this would likely achieve the Commission's goal of ensuring appropriate consideration of the proposed project's impact on the safety and reliability of the transmission system while also avoiding unnecessary delays.[307] Additionally, ACEG states that the proposed requirements that an applicant file, early in the pre-filing process, a full system impact study report (§ 50.5(e)(8)) and a draft version of Exhibit H (§ 50.5(e)(9)) are duplicative. ACEG recommends deleting paragraph (e)(9) and specifying in paragraph (e)(8) that a status report, rather than a full report of the system impact study, is sufficient.[308]

226. Likewise, Impacted Landowners state that it is unclear who is responsible for preparing the detailed description of how the proposed project will reduce capacity

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[304] ACEG Comments at 10.

[305] *Id.* at 10.

[306] *Id.* at 11.

[307] *Id.*

[308] *Id.* at 11-12.

constraints and congestion on the transmission system that, as proposed in the NOPR, would be submitted as part of an application (proposed Exhibit H in § 50.7(h)(3)).[309] Impacted Landowners recommend that this information be verified by independent, impartial entities with expertise in transmission planning, such as Regional Transmission Organizations/Independent System Operators (RTO/ISO).[310] They urge the Commission to "make a clear determination of who has authority to determine these factors [for transmission capacity and congestion determinations] and apply them evenly across the board."[311]

iii. Commission Determination

227. We adopt the NOPR proposal for § 50.5 in this final rule, with the following modifications in response to commenter feedback. With regard specifically to the congestion supporting information requirements detailed in proposed § 50.5(e)(8) and (e)(9), we are modifying the timeline associated with the submission of this information so that applicants will have a greater degree of flexibility as they navigate the pre-filing process.

228. We disagree with ACEG that the requirement that an applicant submit a full system impact study report during pre-filing is unnecessary and unreasonable. Upon entry into the Commission's pre-filing process, we expect that most applicants will have already completed a system impact study for the proposed project to identify the

[309] Impacted Landowners Comments at 11-13.

[310] *Id.* at 11-12.

[311] *Id.* at 13.

constraints, mitigation, and transmission upgrades that will significantly reduce transmission congestion. However, the Commission does not intend for completion of the study report to be a barrier to applicants that otherwise would be ready to enter into and benefit from the pre-filing process. Therefore, applicants who have already completed a full system impact study are required to submit the full system impact study report at initiation of pre-filing; however, applicants who have not completed the study report can submit a status report of the system impact study instead of the full report. Commission staff will review this status report and communicate with the applicant to establish a submission deadline for the full system impact study report during the pre-filing process.

229. Additionally, the draft version of Exhibit H is not duplicative of the system impact study report, but rather complementary and essential to contextualizing and verifying the report's findings. The system impact study report contains the narrative approach to the modeling and conclusions, while draft Exhibit H requires the actual power flow cases utilized as inputs into the report. Draft Exhibit H also includes system analysis data, such as model input files and the assumptions, criteria, and guidelines upon which the models are based and which take into consideration transmission facility loading (planned and forecasted forced outages). Commission staff can use draft Exhibit H data to replicate and validate the models and assumptions in the applicant-provided system impact study report. However, as draft Exhibit H is not useful to the Commission until the full system impact study report is submitted, an applicant must submit draft Exhibit H within 30 days of submission of the full system impact study report and not within 30 days of the notice commencing the pre-filing process. The pre-filing process will not be concluded until the

full system impact study report and draft Exhibit H is submitted and staff has had sufficient time to review and validate the report and data.

230. In response to requests for clarification regarding which entity may prepare information under § 50.7(h)(3), we clarify that applicants are responsible for submitting to the Commission the requisite pre-filing materials, including the detailed description of how the proposed project will address transmission capacity constraints and congestion. We decline to limit the information that may be submitted to support a finding under FPA section 216(b)(4) based upon who prepared the information, as a wide range of information from different sources may be relevant depending on the factual circumstances. Commission staff will review all submitted information and request additional information, as necessary, to ensure that any filed application is complete and contains sufficient information for the Commission to determine whether the proposed project will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers, as required by FPA section 216(b)(4).

b. Regional Transmission Planning Information

i. NOPR Proposal

231. Proposed § 50.5(c)(8) would require an applicant to include in its pre-filing request a detailed description of how the proposed project will reduce capacity constraints and congestion on the transmission system. In addition, within 30 days of the notice commencing the pre-filing process, proposed § 50.5(e)(7)(i) would require an applicant to submit the most recent regional transmission plan for each transmission planning region that would be crossed by the proposed project. Finally, under proposed Exhibit H in § 50.7, any application must include an analysis of how the project will:

improve system reliability over the long and short-term; impact long-term regional transmission expansion plans; impact congestion on the applicant's entire system and neighboring systems; and incorporate any advanced technology design features, if applicable.[312]

ii. Comments

232. Joint Consumer Advocates request that the Commission require an applicant to explain in its pre-filing consultation whether an RTO or ISO has identified the project as necessary to address a need identified through a regional transmission planning process, arguing that this will ensure projects submitted through the FPA section 216 process are limited to those necessary to address congestion issues.[313] Joint Consumer Advocates also ask the Commission to revise § 50.5(c) to require that an applicant's pre-filing request address the proposed project's cost effectiveness (i.e., the project's benefits and costs to the consumer).[314]

233. Relatedly, EEI states that the Commission should require applicants to demonstrate during pre-filing that the project meets a clear need and is not duplicative of other proposed or existing transmission projects.[315] EEI further recommends that the

[312] NOPR, 181 FERC ¶ 61,205 at PP 41, 45.

[313] Joint Consumer Advocates Comments at 13.

[314] *Id.* at 13.

[315] EEI Comments at 8.

Commission consult with the relevant transmission planning entities to ensure that the proposed project supports system reliability.[316]

iii. Commission Determination

234. We adopt the NOPR proposal concerning regional transmission planning information in § 50.5(e)(7) and § 50.5(c), with minor terminology clarifications, given that the relative benefits and costs of a project can take a variety of forms. Further, we clarify that the requested analysis in Exhibit H in § 50.7 of how the proposed project will impact congestion on the system where it will be located as well as neighboring systems will apply to neighboring systems only when relevant to the individual proposed project.

235. We decline commenters' requests to require an applicant to explain in the pre-filing consultation whether an RTO or ISO has identified the project as necessary to address a need identified in a regional transmission planning process. While we expect that, in many cases, an applicant may indicate in its pre-filing submissions whether the proposed transmission project has or has not been identified as necessary to meet a need identified by a regional transmission planning process, we do not find it necessary to revise the regulations to specify that an applicant must provide this information during the initial consultation. Additionally, § 50.5(e)(7)(i) requires an applicant to submit regional transmission plans, and this information will likely provide insight into whether a project was deemed necessary to meet a regional need. We further note that a proposed transmission project may not always be identified by an RTO or ISO through its regional transmission planning process, or included in a regional transmission plan, such as a

[316] *Id.* at 8.

merchant transmission project. In such circumstances, the applicant must nevertheless demonstrate early in the pre-filing process how the proposed project will reduce capacity constraints and congestion on the transmission system, as required under § 50.5(c)(8) and (e)(7).

236. We similarly decline a request to require under § 50.5(c) submission of specific information regarding the proposed project's cost-effectiveness. Under § 50.6(f), an applicant is required to include a demonstration that the proposed facility meets each of the statutory standards under section FPA section 216(b)(2)-(6) for the Commission to issue a permit, including the requirement under section 216(b)(4) that a proposed project "protects or benefits consumers." While evidence related to the project's cost-effectiveness would be relevant to the Commission's consideration of the statutory standards under FPA section 216(b), information about the relative benefits and costs of a project could take a variety of forms. Accordingly, we decline to modify § 50.5 to require submission of particularized information, and assessment of the adequacy of information to demonstrate the statutory standards under section FPA 216(b) will occur on a case-by-case basis.

237. We do not find it necessary to codify a process for consulting with relevant transmission planning entities to ensure that a proposed project supports system reliability. As previously stated, we agree that determinations of an independent entity, such as an RTO or ISO, should be afforded due weight in the Commission's assessment of whether a particular project is needed to protect or benefit consumers.[317] Therefore,

[317] Order No. 689, 117 FERC ¶ 61,202 at P 44.

we will consider any such independent determinations as a factor, along with all other relevant factors, in determining whether the statutory criteria have been met.

c. Existing Rights-of-Way Information

i. NOPR Proposal

238. The Commission did not propose any requirements related to rights-of-way data or analysis under § 50.5.

ii. Comments

239. Rail Electrification Council and Impacted Landowners request that, as part of the pre-filing submittals required by § 50.5, applicants be required to provide information related to the consideration, availability, and use of railroad rights-of-way or any other relevant existing rights-of-way to site all or a portion of a project.[318]

iii. Commission Determination

240. We decline to modify § 50.5 to require submission of additional information about the consideration and availability of existing rights-of-way. An applicant is already required to identify certain information about the use of existing-rights-of-way as part of the resource reports that applicants must submit in draft form during the pre-filing process. Specifically, in the *Land use, recreation, and aesthetics* resource report discussed further below, applicants must identify where construction or permanent rights-of-way will be adjacent or overlap existing rights-of-way (proposed § 380.16(l)(1)). Additionally, in the *Alternatives* resource report discussed further below, applicants must

[318] Rail Electrification Council Comments at 9-12; Impacted Landowners Reply Comments at 8.

submit information on the consideration of alternatives to the proposed project, including their relationship to existing rights-of-way.

d. State Permitting Information

i. NOPR Proposal

241. The Commission's existing regulations in § 50.5(e)(3)(iii) require applicants to notify permitting entities[319] and request information on material not required by the Commission's resource reports under § 380.16 that permitting entities may require to reach a decision on the proposed project. The NOPR proposed to redesignate paragraph (e)(3)(iii) as (e)(3)(ii) but made no changes to the substance of this existing requirement.

ii. Comments

242. Joint Consumer Advocates request that applicants be required, as part of the initial consultation meeting under § 50.5(b), to identify any differences between the filing requirements for the Commission and applicable States, and then provide any additional information required in the State process during the pre-filing process.[320]

243. Joint Consumer Advocates also request that the monthly status reports required under § 50.5(e)(11) include details on the associated State(s) permitting proceeding(s) and that stakeholders be allowed to review the monthly status reports and, if necessary,

[319] As proposed in the NOPR and adopted herein, the term permitting entity means any Federal or State agency, Indian Tribe, or multistate entity that is responsible for issuing separate authorizations under Federal law that are required to construct electric transmission facilities in a National Corridor.

[320] Joint Consumer Advocates Comments at 10-11.

file comments with the Commission.[321] Joint Consumer Advocates believe this would allow the Commission to determine if an applicant is fully engaged in the State permitting proceeding.

iii. Commission Determination

244. We decline to modify § 50.5 to require submission of information required under State law. The initial consultation meeting and pre-filing request are initial steps to enter the pre-filing process and are intended to introduce a project to Commission staff and ensure applicants have sufficient information or project development to begin engaging with Commission staff. We do not find it necessary to modify § 50.5 to require submission of information that is unnecessary for that purpose, and which may or may not be relevant to Commission determinations under FPA section 216(b). Any entity, including a State, may file copies of information considered in a related State proceeding for consideration in the Commission's proceeding.

245. Similarly, we decline to modify the monthly status report requirements in § 50.5(e)(11) because we find the requested changes unnecessary. The monthly status reports already require applicants to detail the applicant's project activities, agency and Tribal meetings, and updates on the status of other required permits or authorizations. The regulations also require that the monthly status reports be filed with the Commission, and therefore will be available for stakeholders to review.

[321] *Id.* at 10.

5. Section 50.6 – General Content of Applications

a. NOPR Proposal

246. Section 50.6 describes the information that must be provided as part of an application for a permit under FPA section 216. In the NOPR, the Commission proposed to revise § 50.6(c) to update certain terminology for clarity (e.g., deleting origin and termination points and replacing those terms with point of receipt and point of delivery, respectively). The Commission also proposed to revise § 50.6(d) to specify that verification that the proposed route lies within a DOE-designated National Corridor must include the date of designation.

247. Under existing § 50.6(e), each application must also demonstrate that one of the jurisdictional bases set forth in FPA section 216(b)(1) applies to the proposed facilities. As discussed above, the NOPR proposed revisions to §§ 50.6(e)(1) and (3) to ensure that the Commission's regulatory text tracks the IIJA's amendments to FPA sections 216(b)(1)(A) and (C), respectively.[322]

248. In addition, existing § 50.6(f) provides that each application must demonstrate that the proposed facilities meet the statutory criteria in FPA sections 216(b)(2) through (6), including, as relevant here, that the proposed construction or modification is consistent with the public interest. The NOPR did not propose any changes to § 50.6(f).

b. Comments

249. Several commenters ask the Commission to clarify how it would determine whether the proposed facilities are consistent with the public interest, as required by FPA

[322] *Supra* P 15.

section 216(b)(3).[323] North Carolina Commission and Staff urge the Commission to explicitly require applicants to demonstrate, either in pre-filing or in the application, that the proposed project serves the public interest.[324] For example, North Carolina Commission and Staff provide a list of public interest criteria that, in its view, applicants should be required to demonstrate, including that the project's expected benefits to ratepayers are roughly commensurate with its costs; that consumers are protected from risks of project abandonment; that the project is consistent with system needs as demonstrated in Commission-mandated planning processes and, if applicable, State integrated resource plans; that the project is preferable to reasonably available alternatives that would reduce congestion (e.g., additional generation, non-wires alternatives, and other less-intrusive or less-costly transmission projects); and that the project will enhance reliability.[325]

250. The Yurok Tribe states that the public interest standard under FPA section 216(b)(3) requires the Commission to consider, minimize, and mitigate impacts on Tribal resources.[326] The Yurok Tribe urges the Commission to adopt a presumption

[323] *E.g.*, North Carolina Commission and Staff Comments at 12-15; Sabin Center Comments at 2, 5; Yurok Tribe Comments at 9-13.

[324] North Carolina Commission and Staff Comments at 13.

[325] *Id.* at 14.

[326] Yurok Tribe Comments at 9-12.

that projects denied by States on the basis of adverse Tribal impacts are not in the public interest.[327]

251. Texas Commission states that there is no requirement that a Federal application include a State's final order denying an application and argues that it would be inefficient and burdensome for the States to have to recapitulate the entirety of its reasoning for denying an application in its comments in the Federal proceeding. Therefore, Texas Commission requests that the Commission expressly require that an application filed under FPA section 216(b)(1)(C)(iii) include a copy of the State's final and non-appealable order denying approval of the application.[328] Further, Texas Commission requests that the Commission adopt a policy that, upon request of a State commission or the applicant, the record in the Commission's proceeding include the record in the State proceeding.[329]

c. Commission Determination

252. This final rule adopts the revisions to § 50.6 as proposed in the NOPR. We decline to further revise this section based on commenters' suggestions, as discussed below.

253. Consistent with the Commission's position in Order No. 689, we decline to adopt an exclusive list of factors or a bright-line test to determine whether a project meets the statutory criteria for issuing a permit in FPA sections 216(b)(2) through (6), including the

[327] *Id.* at 12-13.

[328] Texas Commission Comments at 13.

[329] Texas Commission Comments at 14.

requirement to demonstrate that a proposed project is consistent with the public interest.[330] As the Commission explained in Order No. 689, in reviewing a proposed project, the Commission will consider all relevant factors presented on a case-by-case basis and balance the public benefits against the potential adverse consequences. The Commission will also conduct an independent environmental analysis of the project as required by NEPA, including reasonable alternatives to the proposed project. The Commission will review the proposed project and determine if it reduces transmission congestion and if it will protect or benefit consumers. The Commission will also consider the impact that the proposed facility will have on the existing transmission grid and the reliability of the system.

254. The Commission will also consider the adverse effects the proposed facilities will have on Tribes, landowners, and local communities. After evaluating the entire record of the proceeding and due consideration of the issues raised, the Commission will determine if the proposed project meets the criteria in FPA section 216(b). The Commission's review of a proposed project will be a flexible balancing during which it will weigh the factors presented in the project proceeding. The Commission will also impose appropriate conditions necessary to mitigate adverse effects on the relevant interests from the construction and operation of a proposed project and will approve the project only where the public benefits to be achieved from the project outweigh the adverse effects.

255. Regarding Texas Commission's request that an application filed under FPA section 216(b)(1)(C)(iii) include a copy of the State's final and non-appealable denial

[330] Order No. 689, 117 FERC ¶ 61,202 at P 41.

order, the Commission, in revised § 50.6(e)(3)(iii), requires an applicant to provide evidence that a State commission, or other entity that has the authority to approve the siting of facilities, has denied an application. In circumstances where a State denial triggers the Commission's jurisdiction, we expect that most applicants would file a copy of the State's denial order as this would likely be the best evidence that the State had denied the applicant's siting application. If an applicant does not submit to the Commission a copy of the State's denial order, the State may choose to file a copy as part of its comments on the application or Commission staff may direct the applicant to file it. Therefore, we do not believe that the requested change to the Commission's regulations is necessary.

256. We also decline to adopt a policy that the State record be incorporated into the record of the Commission's siting proceeding upon a State commission's or applicant's request. To the extent that the Commission may find certain elements of the State siting proceeding useful in its decision-making process, it will request this information, as needed, on a case-by-case basis. We do not believe that incorporating the State record in its entirety into the Commission's record as a general rule is necessary as it would require the submission and review of information that may not be relevant.

6. Section 50.7 – Application Exhibits

a. NOPR Proposal

257. Section 50.7 identifies the exhibits that applicants must file with an application and describes the technical data that must be provided in each exhibit. Section 50.7(g) requires each applicant to submit Exhibit G—*Engineering data*, which must include a detailed project description. In the NOPR, the Commission proposed revisions to ensure

that the project description includes points of receipt and delivery (§ 50.7(g)(1)(i)), line design features that minimize audible corona noise during rain or fog (§ 50.7(g)(1)(vi)), and overhead and underground structures (§ 50.7(g)(2)(ii)).

258. The Commission also proposed revisions to § 50.7(h), which describes the requirements for Exhibit H—*System analysis data*. Specifically, in the NOPR, the Commission proposed to: (1) require the analysis to include project impacts on transmission capacity constraints (§ 50.7(h)(1)); (2) clarify that the analysis must include steady-state, short-circuit, and dynamic power flow cases, as applicable, and consider planned and forecasted forced outage rate for generation and transmission and generation dispatch scenarios (§ 50.7(h)(2)); and (3) require the analysis to identify how the proposed project will affect congestion on neighboring transmission systems (§ 50.7(h)(3)).

b. Comments

259. ACEG recommends that the Commission modify § 50.7(g)(8) to clarify that the relevant information "may be provided through the state filing process," i.e., through the filing of an application with the State.[331]

c. Commission Determination

260. This final rule adopts the revisions to § 50.7 as proposed in the NOPR. This information will enable Commission staff to evaluate whether the proposed facilities would significantly reduce transmission congestion and protect or benefit consumers, as required by section 216(b)(4). We note that applicants may also file additional

[331] ACEG Comments at 13.

information to contextualize the required analyses. We decline to revise § 50.7(g), as ACEG suggests, to clarify that the information required under § 50.7(g)(8) may be provided through the State filing process. Section 50.7(g)(8) directs an applicant to include any other engineering data or information identified as a minimum requirement for the siting of a transmission line in the State in which the facility will be located as part of its Exhibit G filing. We interpret ACEG's recommendation to mean that the Commission rely on information provided by an applicant through a separate State filing process rather than requiring the applicant to identify and file with the Commission any other information identified by the State as a minimum siting requirement. While in many cases an application filed with the State would likely include the necessary information to satisfy § 50.7(g)(8), this may not always be the case. Moreover, we find it is necessary that any additional engineering information that the State identifies as a minimum siting requirement be identified in Exhibit G and filed as part of the Commission record.

7. Section 50.11 – General Permit Conditions

a. NOPR Proposal

261. Section 50.11 lists the general conditions that would apply to any permit issued under part 50 of the Commission's regulations. In the NOPR, the Commission proposed to clarify § 50.11(a) and (b) and proposed to add language to § 50.11(d) that would, under certain circumstances and for a limited time, preclude the issuance of authorizations to proceed with construction of transmission facilities authorized under FPA section 216 while requests for rehearing of orders issuing permits remain pending

before the Commission.[332] The Commission explained that the proposed addition, which mirrors a regulation that the Commission previously adopted in the natural gas pipeline context,[333] would ensure that construction of approved transmission facilities does not begin during the 30-day rehearing period and, if a qualifying rehearing request is filed, until that request is no longer pending before the Commission, the record of the proceeding is filed with the court of appeals, or 90 days has elapsed since the rehearing request was deemed denied by operation of law.[334] The Commission stated that this revision is intended to balance the Commission's commitment to expeditiously respond to parties' concerns in comprehensive orders on rehearing and the serious concerns posed by the possibility of construction proceeding prior to the completion of Commission review.[335]

b. Comments

262. Chamber of Commerce, American Chemistry Council, and ClearPath disagree with the proposed revisions to § 50.11. American Chemistry Council states that the provision would delay action on needed investment.[336] Similarly, ClearPath argues that

[332] NOPR, 181 FERC ¶ 61,205 at PP 46-47.

[333] *See Limiting Authorizations to Proceed with Construction Activities Pending Rehearing*, Order No. 871, 85 FR 40113 (July 6, 2020), 171 FERC ¶ 61,201 (2020), *order on reh'g*, Order No. 871-B, 86 FR 26150 (May 5, 2021), 175 FERC ¶ 61,098, *order on reh'g*, Order No. 871-C, 176 FERC ¶ 61,062 (2021).

[334] NOPR, 181 FERC ¶ 61,205 at P 47.

[335] *Id.*

[336] American Chemistry Council Comments at 4.

projects with a likelihood of approval following a rehearing process should be timely developed and project developers should bear the risk of commencing construction while a rehearing request is pending.[337] Chamber of Commerce asserts that delaying the effectiveness of a final Commission order pending rehearing is inconsistent with the FPA's provision stating that the filing of an application for rehearing does not operate as a stay of the Commission's order.[338]

263. On the other hand, CATF, EDF, and Public Interest Organizations support the proposed addition to § 50.11(d).[339] CATF believes that holding construction pending rehearing to resolve challenges to project construction and need builds trust in the permitting process.[340] While Public Interest Organizations agree with the requirement in § 50.11(d), they recommend that the Commission clarify that, before issuing a permit, the Commission will ensure that the applicant has obtained all necessary Federal and State permits and not authorize any activities that would take private property or alter the environment.[341]

[337] ClearPath Comments at 6.

[338] Chamber of Commerce Comments at 6 (citing 16 U.S.C. 825l(c)).

[339] CATF Comments at 12; EDF Comments at 15; Public Interest Organizations Comments at 139.

[340] CATF Comments at 12.

[341] Public Interest Organizations Comments at 139.

c. Commission Determination

264. We adopt the revisions to § 50.11 as proposed in the NOPR. We are not persuaded by arguments that precluding issuance of authorizations to proceed with construction of transmission facilities during certain limited periods of time would result in undue delay of needed infrastructure development. We are committed to encouraging the development of needed transmission infrastructure and to minimizing the risk of delays. Nonetheless, we also consider the interest in expeditiously responding to parties' concerns on rehearing and the serious concerns posed by the possibility of construction commencing prior to the completion of agency review, including the potential for irreparable harm to property interests or the environment.[342] The purpose of the revision is to preclude construction during the period the Commission may act on rehearing under the defined circumstances and for a limited period of time, such that construction does not commence before the Commission has completed its decision-making process. The rehearing process serves as a mechanism for the Commission to carefully consider the arguments presented, in order to resolve disputes or bring its expertise to bear on complex, technical matters before they are potentially presented to the courts.[343] Further, it is correct that section 313(c) of the FPA states that the filing of a rehearing request does not stay a Commission order. We believe by exercising our discretion to add language to § 50.11(d), we are addressing the significant fairness and due process concerns that could arise if the Commission authorized a developer to commence construction before the

[342] *See* Order No. 871, 171 FERC ¶ 61,201 at P 11.

[343] *Id.* P 9.

Commission has finalized its proceeding and an aggrieved party can seek court review of a Commission decision.[344] Any incremental delay or uncertainty created by this provision is acceptable given the benefits that it provides. Moreover, we note that the Commission has previously implemented this policy in the context of natural gas pipeline authorizations, with no deleterious effects of which we are aware.

8. Clarifying Revisions to 18 CFR Part 50

265. In addition to the revisions discussed above, the Commission proposed minor, non-substantive edits throughout part 50 of the regulations. This final rule adopts the proposed revisions and makes additional minor edits, which are intended to clarify or streamline existing requirements, to correct grammatical errors and cross-references, and to maintain consistency. In addition, this final rule revises § 50.5(c)(6) to require that an applicant include as part of its pre-filing request proposals for all prospective third-party contractors instead of at least three proposals. This change is consistent with the Commission's current practice for the review of third-party contractors to assist Commission staff with preparing environmental documents for natural gas and hydropower proceedings.[345]

E. Additional Considerations Raised by Commenters

266. The Commission received a number of comments on topics that were not directly implicated by the NOPR's proposed changes to part 50 of the Commission's regulations.

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[344] *See* Order No. 871-B, 175 FERC ¶ 61,098 at P 49.

[345] *See* FERC, *Handbook for Using Third-Party Contractors to Prepare Environmental Documents* (July 2022), https://www.ferc.gov/media/handbook-using-third-party-contractors-prepare-environmental-documents.

Those comments and our determinations are discussed in this section. We find no need to modify the final rule in response to these comments, as further discussed below.

1. Grid-Enhancing Technologies

a. Comments

267. California Commission states that the Commission's siting process should consider non-wire alternatives that are cost effective, noting that these types of analyses are required in California prior to the issuance of Certificates of Public Convenience and Necessity.[346] Environmental Law & Policy Center agrees, contending that requiring the consideration of grid-enhancing technologies and other advanced technologies in the transmission planning and siting processes would remedy a deficiency in the NOPR of an arbitrary line drawn between wires and non-wires solutions.[347] Further, Environmental Law & Policy Center suggests that consideration of grid-enhancing technologies and advanced transmission technologies would help address stakeholder concerns commonly associated with large infrastructure development (i.e., siting conflicts, visual impacts, habitat loss, and environmental justice concerns) because it can reduce the footprint of a transmission project.[348]

[346] California Commission Comments at 4.

[347] Environmental Law & Policy Center Reply Comments at 6-7 (citing California Commission Comments at 4).

[348] Environmental Law & Policy Center Reply Comments at 6-7.

b. Commission Determination

268. We find that no modification of the regulations is required to allow for consideration of grid-enhancing or other advanced technologies. As proposed in the NOPR and adopted herein, § 50.7(h)(3)(iv) requires an applicant to include, as part of the Exhibit H system analysis data, an analysis of how the proposed project will incorporate any advanced technology design features, if applicable. Accordingly, the Commission will consider any proposed advanced technology design features submitted by an applicant as part of its Exhibit H system analysis data, on a case-by-case basis. The Commission will also consider on a project-specific basis information submitted regarding non-wires alternatives. As discussed further below, an applicant is required to address a variety of alternatives in the environmental resource reports, including, where appropriate, alternatives other than new transmission lines.[349]

2. Use of Existing Rights-of-Way

a. Comments

269. Some commenters assert that the Commission should use its authority under FPA section 216(b) to promote the use of existing rights-of-way to site new transmission projects, including using highway and railroad corridors, as well as burying transmission projects in existing rights-of-way.[350] Rail Electrification Council states that section 216 allows the Commission to consider whether utilizing existing rights-of-way for proposed

[349] *See* Resource Report 12—*Alternatives* discussion *infra* Part II.F.4.h.

[350] *See* Impacted Landowners Comments at 2; Rail Electrification Council Comments at 7-9; Impacted Landowners Reply Comments at 3-4.

transmission lines would promote efficient use of resources, advance regional plans, and avert or minimize undue harm to communities and the environment.[351] Further, Rail Electrification Council asserts that the Commission should promote the use of best practices in siting transmission facilities, one of which is the use of existing rights-of-way where financially and operationally feasible and where beneficial to developers, property owners, and local economies.[352]

270. Rail Electrification Council also asks the Commission to opine on whether specific railroad rights-of-way could be designated as National Corridors and whether such designation would facilitate transmission development by reducing project impacts and by authorizing the use of eminent domain, including in instances where State law might prevent access to privately held rights-of-way.[353]

b. Commission Determination

271. Under FPA section 216(a), one of the factors that DOE may consider in determining whether to designate a National Corridor is whether the designation maximizes existing rights-of-way.[354] Section 216(b), however, does not include a comparable provision that the Commission consider whether proposed transmission

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[351] Rail Electrification Council Comments at 8 (referencing https://nextgenhighways.org/; ACEG, Recommended Siting Practices for Electric Transmission Developers, Sec. 4 "Co-Location in Existing Rights-of-Way" (Feb. 2023), https://cleanenergygrid.org/portfolio/recommended-siting-practices-electric-transmission-developers/).

[352] *Id.* at 7-9.

[353] *Id.* at 13.

[354] 16 U.S.C. 824p(a)(4)(G).

facilities maximize use of existing rights-of-way for transmission siting. Although we agree that co-location in existing rights-of-way may benefit landowners, reduce costs and environmental impacts, and shorten construction time,[355] co-location in existing rights-of-way may not always be feasible. The Commission will consider whether and to what degree a project may be able to use existing rights-of-way on a case-by-case basis. Because an applicant is already required to submit information to the Commission regarding a project's use of existing rights-of-way, no further changes are needed to the regulations.

272. Regarding the suitability and benefits of designating specific railroad rights-of-way as National Corridors, DOE, not the Commission, is responsible for designating National Corridors under section 216(a) of the FPA. Thus, this is a matter for DOE to consider, and is beyond the scope of this final rule.

3. Project Costs

a. Comments

273. Several commenters contend that the NOPR does not address how the costs of projects subject to the Commission's siting authority will be evaluated, allocated, or recovered.[356]

[355] *See* ACEG, *Recommended Siting Practices for Electric Transmission Developers* 8 (Feb. 2023), https://cleanenergygrid.org/portfolio/recommended-siting-practices-electric-transmission-developers/.

[356] California Commission Comments at 4; Louisiana Commission Comments at 8-9; North Carolina Commission and Staff Comments at 14; Senator Barrasso Comments at 5.

b. Commission Determination

274. We find that no modification of the regulations is necessary in response to commenters' concerns that the NOPR did not address cost considerations. Such issues are outside of the scope of this final rule. Nothing in this final rule is intended to modify existing Commission processes governing the evaluation, allocation, and cost recovery of a transmission project.

4. Miscellaneous

a. Comments

275. Farm Bureaus argue that the proposed rule is unclear as to whether a non-incumbent transmission developer could apply for a Federal permit at the same time that an incumbent transmission developer is obtaining a State permit, which they state would create a major conflict between State and Federal law.[357]

276. Farm Bureaus also note that ISOs and RTOs are responsible for identifying current priority transmission corridors and state that it is unclear how National Corridors relate to projects and "multi-value priority areas" that have already been identified by ISOs and RTOs.[358]

b. Commission Determination

277. We find that no modification of the regulations is necessary in response to Farm Bureaus' comments. This rulemaking proceeding is not the appropriate forum to address individual hypothetical scenarios. As we have stated elsewhere in this final rule, we will

[357] Farm Bureaus Comments at 5.

[358] *Id.* at 7.

take into account information specific to each application, including information regarding the jurisdictional basis to support the submission of an application with the Commission.[359]

278. In response to the request that the final rule explain how National Corridors relate to RTO/ISO-identified projects and priority areas, we reiterate that the designation of National Corridors is within DOE's exclusive authority under FPA section 216(a). For that reason, we find that Farm Bureaus' requested clarification is outside the scope of this final rule.

F. Regulations Implementing NEPA

279. In Order No. 689, the Commission also amended its regulations implementing NEPA to incorporate environmental review procedures for electric transmission facilities. These amendments included revisions or additions to: § 380.3(c) (adding electric transmission projects to the list of project types for which applicants must provide environmental information), § 380.5(b)(14) (adding electric transmission facilities to the list of project types for which the Commission will prepare an environmental assessment (EA)), § 380.6(a)(5) (adding major electric transmission facilities using right-of-way in which there is no existing facility to the list of project types for which the Commission will prepare an environmental impact statement (EIS)), § 380.8 (designating the Office of Energy Projects as responsible for the preparation of environmental documents for electric transmission facilities), § 380.10(a)(2)(iii) (clarifying that pre-filing proceedings for electric transmission facilities are not open to motions to intervene), and § 380.15

[359] *See supra* P 34.

(stating that electric transmission project sponsors must comply with the National Electric Safety Code and transmission rights-of-way are subject to the same construction and maintenance requirements as natural gas pipelines). The Commission also added § 380.16, which describes the specific environmental information that applications for permits to site transmission facilities under section 216 must include. The applicant must submit this information in an environmental report, consisting of resource-specific reports, described further below.

280. As explained above, the Fourth Circuit's 2009 *Piedmont* decision vacated Order No. 689's amendments to the Commission's NEPA regulations because the court found that the Commission had failed to consult with CEQ prior to issuing the revised regulations.[360] Despite the Fourth Circuit's vacatur, the amendments to the Commission's NEPA regulations set forth in Order No. 689 are still reflected in 18 CFR Part 380 although they are not currently effective.[361]

1. Consultation with CEQ

a. NOPR Proposal

281. In the NOPR, the Commission sought comment on the whole of the Commission's NEPA regulations pertaining to electric transmission facilities, as well as the specific proposed changes to those regulations described further below. The Commission also

[360] *See supra* P 11.

[361] Notwithstanding that these regulations are not currently effective, for ease of reference, the term "existing" is used in Part II.F. to denote Order No. 689's amendments to the Commission's NEPA regulations in 18 CFR Part 380.

committed to consulting with CEQ on the proposed changes to its NEPA regulations described below as well as those originally implemented by Order No. 689.

b. Comments

282. Commenters including Public Interest Organizations, EEI, and ClearPath note that the Commission must consult with CEQ when updating its NEPA regulations and that the Commission must take CEQ's input seriously and incorporate CEQ's proposed alterations.[362] Public Interest Organizations also explain that CEQ is in the process of updating its NEPA regulations and that the Commission's NEPA implementing regulations may need to be updated based on CEQ's forthcoming updates.[363]

c. Commission Determination

283. On March 2, 2023, a letter was sent to CEQ requesting consultation related to the proposed NEPA regulations.[364] Following discussion of the proposed regulations among CEQ and Commission staff, CEQ provided its comments on the proposal on August 24, 2023.

284. On June 3, 2023, Congress enacted the Fiscal Responsibility Act.[365] A section titled "Builder Act" amended NEPA in several ways.[366] We have reviewed the Builder

[362] Public Interest Organizations Comments at 101-102; EEI Comments at 9; ClearPath Comments at 6-7.

[363] Public Interest Organizations Comments at 101-102.

[364] Commission General Counsel March 2, 2023 Letter to CEQ Requesting Consultation (filed Mar. 21, 2023).

[365] Fiscal Responsibility Act of 2023, Pub. L. 118-5, 137 Stat 10.

[366] *Id.* § 321 (providing the "Builder Act").

Act amendments and have determined that no changes are needed to the Commission's regulations to implement NEPA. We are also reviewing CEQ's Phase 2 rulemaking to determine whether any of the Commission's NEPA implementing regulations need to be revised.[367] If so, the Commission will follow the appropriate rulemaking procedures in a separate proceeding.

2. DOE Coordination

a. NOPR Proposal

285. The Commission did not propose any specific process regarding coordination with DOE in the NOPR.

b. Comments

286. Multiple commenters urge the Commission to clarify how it will coordinate with DOE to avoid unnecessarily lengthy and duplicative Federal environmental review processes for National Corridor designation and transmission permitting.[368] Specifically, commenters state that the Commission should tier its NEPA analysis for its permit decision off DOE's NEPA analysis for the National Corridor designation, and only focus on elements that DOE did not address or that have changed since DOE's review.[369]

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[367] On May 1, 2024, CEQ published its Phase 2 final rule revising its regulations implementing NEPA, including to implement the Builder Act amendments. CEQ, *National Environmental Policy Act Implementing Regulations Revisions Phase 2*, 89 FR 35442 (May 1, 2024). CEQ's Phase 2 final rule is effective on July 1, 2024, and agencies will have 12 months from the effective date to develop or revise proposed procedures to implement CEQ's revised regulations.

[368] ACP Comments at 7-13 and 15; ACORE Comments at 4-5; EDF Comments at 11; Public Interest Organizations Comments at 105.

[369] ACP Comments at 7-9, 11-13 (explaining that a tiering approach would better align with Congress's intent under FPA section 216(h)(5)); CATF Comments at 18-22

287. EEI recommends that the Commission conduct programmatic NEPA reviews that encompass all potential transmission development projects at a regional scale, instead of each one individually.[370] EEI suggests that individual project NEPA reviews could be tiered from the programmatic NEPA document.

288. Several commenters ask that the Commission serve as a cooperating agency during DOE's environmental review process for designating National Corridors but also independently assess that analysis before relying on its use.[371] EEI states that the Commission should adopt categorical exclusions that match DOE's existing categorical exclusions for electric transmission facilities.[372]

289. ACORE states that, although the Commission is not a signatory to the May 2023 interagency Memorandum of Understanding (MOU) with other Federal agencies to expedite electric transmission infrastructure under section 216(h) of the FPA, the

(recommending that tiering and adopting existing NEPA analyses is a best practice for infrastructure permitting as per the March 2023 Guidance from the Federal Permitting Improvement Steering Council, Office of Management and Budget, and the CEQ, encouraging agencies to "rely on, adopt, or incorporate by reference components of any high quality NEPA… analyses."); Public Interest Organizations Comments at 103-105; ACEG Comments at 18-19. *See generally*, Off. of Mgmt. and Budget, M-23-14, Memorandum for the Heads of Executive Departments and Agencies, Implementation Guidance for the Biden-Harris Permitting Action Plan, at 5 (Mar. 6, 2023).

[370] EEI Comments at 10-12.

[371] Public Interest Organizations Comments at 105; CATF Comments at 20-21.

[372] EEI Comments at 9.

Commission should work with DOE to clarify whether the provisions of that MOU can be used for non-qualifying projects where the Commission is the lead agency.[373]

290. ACEG and SEIA ask that the Commission clarify how the Commission's siting process timing would align with a project voluntarily complying with DOE's regulations in 10 CFR Part 900 for early coordination, information sharing, and environmental reviews, particularly where DOE serves as the lead agency.[374]

c. Commission Determination

291. The Commission will coordinate with DOE to the maximum extent practicable to minimize redundancy and promote efficiency in the Federal environmental review processes under section 216 of the FPA. However, the framework for the Commission's coordination with DOE in exercising DOE's separate authority to designate National Corridors under section 216(a) of the FPA is beyond the scope of this final rule. Accordingly, the Commission will consider each request it receives from DOE to be a cooperating agency individually based on the specific circumstances. Further, the Commission will coordinate with other agencies throughout the Commission's review process to comply with the requirements of section 216(h) of the FPA, as delegated to the Commission by the Secretary of DOE, and to promote timely and efficient Federal reviews and permit decisions.

292. The Commission will consider tiering on a case-by-case basis, as appropriate. Tiering allows a Federal agency to avoid duplicating previous environmental analysis by

[373] ACORE Comments at 3-4.

[374] ACEG Comments at 10; SEIA Comments at 7-8.

referring to another NEPA document containing the necessary analysis.[375] The appropriateness of tiering is dependent on numerous factors, including the scope and timing of the original NEPA document, the underlying assumptions used in the original analysis, and changes to the affected environment since the original analysis.[376] We recognize that the new NEPA provisions established in the Builder Act support the development of a single NEPA document for use, to the extent practicable, by multiple agencies[377] and continue to allow the use of programmatic NEPA documents.[378]

293. Regarding ACEG's and SEIA's questions about how the Commission's siting process would align with projects complying with DOE's regulations implementing section 216(h) of the FPA in 10 CFR Part 900, the Commission notes that recently revised § 900.1(f) specifies that part 900 applies only to qualifying projects which, as defined in § 900.2, excludes projects seeking a construction or modification permit from the Commission under section 216(b) of the FPA.[379] However, in the event that an applicant originally complying with 10 CFR Part 900 decides to seek a permit from the Commission under section 216(b) of the FPA, nothing in this final rule precludes the

[375] *Rio Grande LNG, LLC*, 182 FERC ¶ 61,027 (2023) (citing 40 CFR 1501.11).

[376] *See* 42 U.S.C. 4336b (describing circumstances where an agency can rely on a higher-tier programmatic environmental document); 40 CFR 1501.11(c) (describing circumstances when tiering is appropriate).

[377] 42 U.S.C. 4336a(b).

[378] 42 U.S.C. 4336b.

[379] As noted above, DOE recently issued a final rule revising its regulations implementing section 216(h) of the FPA. DOE, *Coordination of Federal Authorizations for Electric Transmission Facilities*, 89 FR 35312 (May 1, 2024).

reuse of materials submitted to DOE. The Commission will coordinate, to the maximum extent practicable, with the applicant and DOE in order to facilitate an efficient transition.

294. As to EEI's request for the Commission to adopt categorical exclusions that match DOE's existing categorical exclusions, the Commission will establish any categorical exclusions related to our siting authority that appear appropriate after the Commission has gained experience reviewing applications, which is consistent with CEQ guidance.[380]

3. NEPA Document Procedures

i. NOPR Proposal

295. In the NOPR, the Commission did not propose any changes to the types of facilities or actions that require each type of NEPA document or how the Commission prepares, distributes, and receives comments on its NEPA documents as described in §§ 380.4 through 380.9 of the Commission's regulations.

ii. Comments

296. Public Interest Organizations assert that existing § 380.9 makes NEPA documents available to the public pursuant to the Freedom of Information Act and via the Commission's physical reading room "at a fee." They request that the Commission specify in its regulations that it will also make NEPA documents publicly available online at no charge.[381]

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[380] CEQ, *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act*, at 4 (2010), https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf.

[381] Public Interest Organizations Comments at 135-136.

297. Public Interest Organizations express concern that under the existing §§ 380.5 and 380.6, only those transmission projects sited in existing rights-of-way are potentially subject to an EA instead of the lengthier EIS, which creates an incentive to site in existing rights-of-way and may diminish the rigor of the assessment of a project's impacts.[382]

298. Public Interest Organizations and the Yurok Tribe request that the Commission's regulations be revised to clearly state that the public will have an opportunity to comment on any draft NEPA document that the Commission issues.[383] The Yurok Tribe states that although agencies frequently provide 30-day comment periods on NEPA documents, the Commission should provide Tribes with at least 60 days to provide input, noting this longer comment period is appropriate in light of Tribes' sovereign status and limited resources.[384]

iii. Commission Determination

299. We decline to modify our regulations regarding the availability of Commission NEPA documents. Existing § 380.9 states that the Commission will make NEPA documents available to the public, and the Commission does so, at no charge, through the Commission's eLibrary system.[385] The reference to obtaining materials "at a fee" in the

[382] Public Interest Organizations Comments at 126-131.

[383] Public Interest Organizations Comments at 126-131; Yurok Tribe Comments at 38-39.

[384] Yurok Tribe Comments at 38-39.

[385] 18 CFR 380.9 (2023).

regulations refers to obtaining copies of records already available through the Commission's website or for obtaining records subject to Freedom of Information Act or Critical Energy Infrastructure Information requests.

300. With respect to commenters' concerns regarding the development of an EA or EIS for a particular project affecting the rigor of the Commission's reviews and the appropriate length of time for comment periods, the Commission will make such determinations on a case-by-case basis because the appropriate approach is likely to vary based on the factual circumstances. Existing §§ 380.5 and 380.6 also include provisions to allow flexibility for Commission staff to prepare an EA or EIS based on project-specific circumstances. We note that Commission proceedings, whether involving either an EA or an EIS, typically include numerous opportunities for public comment (and, in the case of Tribes, government-to-government consultation).

4. Revisions to 18 CFR 380.16

a. Addition of New Resource Reports and General Revisions to Existing Reports

i. NOPR Proposal

301. In the NOPR, the Commission proposed to add to § 380.16 three new resource reports (*Tribal resources*, *Environmental justice* and *Air quality and environmental noise*). For this reason, the Commission proposed to redesignate all resource reports after Resource Report 5—*Socioeconomics* as follows: Resource Report 6—*Tribal resources* (§ 380.16(h)); Resource Report 7—*Environmental justice* (§ 380.16(i)); Resource Report 8—*Geological resources* (§ 380.16(j)); Resource Report 9—*Soils* (§ 380.16(k)); Resource Report 10—*Land use, recreation, and aesthetics* (§ 380.16(l)); Resource

Report 11—*Air quality and environmental noise* (§ 380.16(m)); Resource Report 12—*Alternatives* (§ 380.16(n)); Resource Report 13—*Reliability and safety* (§ 380.16(o)); and Resource Report 14—*Design and engineering* (§ 380.16(p)). The Commission also proposed minor, non-substantive edits throughout § 380.16 intended to clarify or streamline existing requirements, to correct grammatical errors and cross-references, and to maintain consistency.

302. The Commission proposed to revise the *General project description* resource report to more clearly identify the types of facilities that must be depicted on the topographic maps and aerial images or photo-based alignment sheets. The Commission also proposed to add requirements to describe any proposed horizontal directional drilling and pile driving that may be necessary, indicate the days of the week and times of the day during which construction activities would occur, and describe any proposed nighttime construction activities.

303. The Commission proposed to add a requirement that the *Water use and quality* resource report describe the impact of proposed land clearing and vegetation management practices on water resources. The Commission also proposed to add a requirement that the *Soils* resource report describe any proposed mitigation measures intended to reduce the potential for adverse impacts to soils or agricultural productivity. In addition, the Commission proposed only minor, clarifying edits to the *Socioeconomics*, *Geologic resources*, and *Design and engineering* resource reports.

304. The discussion that follows this section focuses on the individual resource reports for which we received substantive comments.[386] For each of those resource reports, we describe the NOPR proposal, comments received, and the Commission's determination.

ii. Comments

305. No comments were received on the proposed revisions to the *General project description*, *Water use and quality*, *Socioeconomic*, *Geologic resources*, *Soils*, and *Design and engineering* resource reports.

306. Several commenters argue that the three new resource reports expand the Commission's authority beyond the scope of section 216 of the FPA, opening the door to future legal challenges.[387] Chamber of Commerce further states that the *Tribal resources* and *Environmental justice* resource reports appear to impede rather than facilitate efficient siting and construction of necessary transmission facilities. American Chemistry Council questions whether the three new resource reports or any expansions to existing resource reports are needed as the information is already required by State partners and there is little justification for increased resources and burden.

iii. Commission Determination

307. We adopt the NOPR's proposed revisions to the *General project description*, *Water use and quality*, *Socioeconomic*, *Geologic resources*, *Soils*, and *Design and engineering* resource reports in this final rule. We continue to find that the NOPR's

[386] *See* discussion *infra* Parts II.F.4.b. through II.F.4.j.

[387] American Chemistry Council Comments at 7-8; Chamber of Commerce Comments at 3; ClearPath Comments at 6-7; ELCON Comments at 5-6; North Dakota Commission Comments at 7-8.

revisions to these reports will clarify information needed to support the Commission's NEPA analyses. In addition, this final rule adopts the proposed minor, non-substantive edits throughout § 380.16 and makes additional minor edits to clarify or streamline existing requirements, to correct grammatical errors and cross-references, and to maintain consistency.

308. We also adopt the NOPR's three new resource reports (*Tribal resources*, *Environmental justice* and *Air quality and environmental noise*). We disagree with commenters that the designation of three new resource reports alters the scope of the Commission's legal authority, or in some way impedes the Commission's consideration of applications under FPA section 216. The required information in these resource reports is necessary for the Commission to fully evaluate the effects of a proposed project and meet its statutory obligations under the FPA and NEPA. Additionally, the Commission routinely requests this type of information from applicants for natural gas and hydroelectric projects through existing regulatory requirements or data requests.

309. Regarding American Chemistry Council's concerns that information in the new resource reports is already required by State partners, we note that not all States require the same information for their respective reviews of electric infrastructure. Regardless of the relevant State filing requirements, this information should be filed on the record for the Commission to use it in its proceeding. In the instances where information is already developed for a State review process, applicants can provide that same information to the Commission to support the Commission's NEPA review.

b. Resource Report 3—Fish, Wildlife, and Vegetation

i. NOPR Proposal

310. The *Fish, wildlife, and vegetation* resource report requires the applicant to describe aquatic life, wildlife, and vegetation in the vicinity of the proposed project; the expected impacts on these resources; and proposed mitigation measures.[388] In the NOPR, the Commission proposed to modify existing § 380.16(e)(3) and (4) to include additional requirements in the *Fish, wildlife, and vegetation* resource report. Specifically, the Commission proposed to require that applicants describe the potential impact on interior forest (in § 380.16(e)(3)), as well as the impact of proposed land clearing and vegetation management practices on fish, wildlife, and vegetation (in § 380.16(e)(4)).

ii. Comments

311. Arizona Game and Fish requests that the Commission include additional requirements in the *Fish, wildlife, and vegetation* resource report beyond the NOPR proposal. Specifically, Arizona Game and Fish recommends that applicants identify, analyze, and develop mitigation measures to address potential impacts on wildlife connectivity and movement corridors, habitat loss and fragmentation, and the introduction and spread of noxious weeds and non-native species.[389]

312. Arizona Game and Fish also calls for revisions to existing § 380.16(e)(4) to require the resource report to include information from State Wildlife Action Plans and a

[388] 18 CFR 380.16(e).

[389] Arizona Game and Fish Comments at 1-2.

description of potential impacts on species listed under State Species of Greatest Conservation Need.[390]

313. Interior supports the NOPR proposal.[391] In addition, Interior recommends that the *Fish, wildlife, and vegetation* resource report require applicants to identify all known and potential bald and golden eagle nesting and roosting sites, migratory bird flyways, and any sites important to migratory bird breeding, feeding, and sheltering.[392] Interior further requests that the resource report require commitments from applicants to implement avoidance and minimization measures to reduce the likelihood of incidental take of eagles and migratory birds. Finally, Arizona Game and Fish recommends incorporating standards established by the Avian Power Line Interaction Committee into the resource report to address the vulnerability of birds of prey to powerline strikes and electrocution.[393]

iii. Commission Determination

314. To support the Commission's NEPA analyses, we adopt the NOPR's proposal, with additional modifications, to revise the *Fish, wildlife, and vegetation* resource report in existing § 380.16(e) to require the applicant to describe potential impacts on interior forest as well as the impact of proposed land clearing and vegetation management practices on fish, wildlife, and vegetation. In response to comments, we modify existing

[390] *Id.* at 2.

[391] Interior Comments at 1.

[392] *Id.*

[393] Arizona Game and Fish Comments at 2.

§ 380.16(e)(2) to include wildlife corridors and we modify existing § 380.16(e)(3) to include noxious weeds and non-native species.[394] To support the Commission in assessments under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act, we add a new provision in § 380.16(e)(7)[395] to address migratory birds and bald and golden eagles.[396]

315. We agree with Arizona Game and Fish that requiring the applicant to identify and analyze potential impacts on wildlife corridors would help ensure that this specific habitat is adequately identified in support of the Commission's NEPA analyses. Therefore, we modify existing § 380.16(e)(2) to include a requirement to describe wildlife corridors. We also agree with Arizona Game and Fish that requiring the applicant to identify and

[394] Commission staff routinely asks applicants in natural gas and hydropower proceedings to provide information about noxious weeds and invasive species. *See, e.g.*, Commission staff, Environmental Information Request, Docket No. CP23-536, at 4 (issued Nov. 3, 2023) (Question No. 9); Commission staff, Deficiency of License Application and Additional Information Request, Project No. 14851-003, at B-14 (issued Apr. 28, 2023) (Question No. 42(b)); *see also* FERC, *Guidance Manual for Environmental Report Preparation – Volume 1*, at 4-65 and 4-66 (Feb. 2017), https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf.

[395] Because of the addition of this new requirement, the requirements in the *Fish, wildlife, and vegetation* resource report after existing § 380.16(e)(6) are redesignated from paragraphs (e)(7) and (e)(8) to paragraphs (e)(8) and (e)(9), respectively.

[396] Commission staff routinely asks applicants in natural gas and hydropower proceedings to provide information about migratory bird species and bald and golden eagles. *See, e.g.*, Commission staff, Environmental Information Request, Docket No. CP23-536, at 5 (issued Nov. 3, 2023) (Question Nos. 14-16); Commission staff, Deficiency of License Application and Additional Information Request, Project No. 14851-003, at B-14 through B-19 (issued Apr. 28, 2023) (Question Nos. 42(d)-(f), 43, 44(j), 45, and 47-50); *see also* FERC, *Guidance Manual for Environmental Report Preparation – Volume 1*, at 4-62 and 4-63 (Feb. 2017), https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf.

analyze noxious weeds and non-native species would establish a baseline of known areas where noxious weeds and non-native species occur. Therefore, we modify existing § 380.16(e)(3) to require the resource report to describe any areas of noxious weeds and non-native species. This change will support the Commission's NEPA analysis by identifying areas that may require different restoration methods or additional vegetation management during construction, operation, and maintenance.

316. We decline to modify the requirements in the *Fish, wildlife, and vegetation* resource report to require the applicant to identify conservation or mitigation measures. We find that the existing regulations already require the applicant to address the disclosure of potential project impacts, specifically, § 380.16(e)(4) directs that the *Fish, wildlife, and vegetation* resource report describe the possibility of a major alteration to ecosystems or biodiversity.[397] Further, a description of site-specific mitigation measures is required in redesignated § 380.16(e)(8) of this final rule. These existing regulations adequately address the potential impacts and mitigation measures.

317. Similarly, we decline Arizona Game and Fish's request to modify existing § 380.16(e)(4) to require that the *Fish, wildlife, and vegetation* resource report include State Species of Greatest Conservation Need and incorporate information from State Wildlife Action Plans. We find that the species of concern to States are already addressed. Section 380.16(e)(4) requires the applicant to describe potential impacts on all plant and animal wildlife, including species of special concern and State-listed

[397] 18 CFR 380.16(e)(4).

endangered or threatened species. Therefore, we do not believe that the suggested revisions are necessary.

318. We decline Arizona Game and Fish's request to prescribe the standards established by the Avian Power Line Interaction Committee into the Commission's regulations. The Commission supports practices to protect birds; however, in the event the referenced standards are subsequently revised based on new scientific data, the Commission's regulations could become outdated or inaccurate. Commission staff will consider applicable Avian Power Line Interaction Committee standards on a project-specific basis.

319. We agree with Interior's comments that the *Fish, wildlife, and vegetation* resource report should require the identification of all known and potential bald and golden eagle nesting and roosting sites, migratory bird flyways, and any sites important to migratory bird breeding, feeding, and sheltering. We find that this information may assist the Commission in its assessments under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Accordingly, this final rule adds a new requirement in § 380.16(e)(7) to identify migratory birds and bald and golden eagles in the project area. This final rule also adopts corresponding changes in existing § 380.16(e)(4), redesignated (e)(8), and redesignated (e)(9) to include impacts, mitigation, and correspondence on migratory birds and bald and golden eagles.

c. Resource Report 4—Cultural Resources

i. NOPR Proposal

320. The *Cultural resources* resource report requires the applicant to provide information necessary for the Commission to consider the effect of a proposed project on

cultural resources in furtherance of the Commission's obligations under section 106 of the National Historic Preservation Act of 1966 (NHPA).[398] In the NOPR, the Commission proposed only minor clarifying edits to this resource report.

ii. Comments

321. Commenters suggest that Tribes be allowed to choose the assessors that will study land with the Tribes' cultural resources, and that assessors must follow all Tribal rules and guidelines for land surveys and assessments.[399]

iii. Commission Determination

322. We adopt the minor changes to the *Cultural resources* resource report as proposed in the NOPR. We decline to modify the regulations to require that Tribes choose the assessors used by an applicant to study cultural resources. To complete cultural resources surveys, we encourage applicants to consider Tribal input, including recommendations on survey methodology or accessor selection. With respect to the request to specify the rules and guidelines for cultural resources surveys and assessments, applicants and consultants should follow the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation,[400] and they would have to follow the appropriate State laws on private lands and the requirements of Federal land-managing agencies on

[398] 18 CFR. 380.16(f).

[399] Yurok Tribe Comments at 33; Public Interest Organizations Comments at 70 and 72.

[400] Department of the Interior, National Park Service, Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines, 48 FR 44716 (Sept. 29, 1983).

Federal lands. If a proposed project would affect Tribal land, the applicant must adhere to any Tribal requirements for conducting cultural resources studies on Tribal lands.[401]

d. Resource Report 6—Tribal Resources

i. NOPR Proposal

323. In the NOPR, the Commission stated that it recognizes the unique relationship between the United States and Indian Tribes, acknowledges its trust responsibility to Indian Tribes, and endeavors to work with Tribes on a government-to-government basis, seeking to address the effects of proposed projects on Tribal rights and resources through consultation.[402] To help the Commission evaluate the effects of proposed transmission facilities on Tribal rights and resources, the Commission's existing regulations require an applicant to submit information describing the project's effects on Tribes, Tribal lands, and Tribal resources as part of the *Land use, recreation, and aesthetics* resource report.[403] Specifically, the applicant must identify Tribes that may attach religious and cultural significance to historic properties within the right-of-way or in the project vicinity;[404] provide available information on traditional cultural and religious properties;[405] and

[401] 18 CFR 380.14(a)(2).

[402] 18 CFR 2.1c (2023).

[403] *See* 18 CFR § 380.16(j)(5).

[404] *Id.* § 380.16(j)(5)(i).

[405] *Id.*

ensure that specific site or location information is not disclosed, because disclosure will create a risk of harm, theft, or destruction or violate Federal law.[406]

324. In the NOPR, the Commission proposed to relocate the existing Tribal resource-related information requirements to a new, standalone resource report, Resource Report 6—*Tribal resources*, in § 380.16(h). In addition to consolidating the existing requirements in a new resource report,[407] the Commission also proposed to require an applicant to identify potentially-affected Tribes; describe the impacts of project construction, operation, and maintenance on Tribes and Tribal interests, including impacts related to enumerated resource areas; and describe project impacts that may affect Tribal interests that are not necessarily associated with particular resource areas (e.g., treaties, Tribal practices, or agreements). The NOPR explained that the Commission believes this information is necessary to allow it to fully evaluate the effects of a proposed project in furtherance of the Commission's trust responsibility and the Commission's statutory obligations under the FPA and NEPA.

ii. Comments

325. CLF asks that the final rule explain how the *Tribal resources* resource report and *Cultural resources* resource report relate and interact and clarify that the *Tribal Resources* resource report is not duplicative of the *Cultural Resources* resource report,

[406] *Id.* § 380.16(j)(5)(ii).

[407] *See id.* § 380.16(h)(4)-(5).

but instead addresses Tribal interests and resources that may not be considered under the NHPA.[408]

326. The Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe support the new *Tribal Resources* resource report but request the Commission require better supported and more detailed information than is required for a cultural resources background literature discussion.[409] For example, the Tribes ask that the report be prepared using consultants with a proven track record of considering research by members of the Tribes, with the Commission evaluating the resource report considering the expertise and sufficiency of the consultant.[410] The Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe also suggest that applicants be required to engage with Tribes in identifying sacred areas and other culturally significant regions and to develop Tribal history. Public Interest Organizations state that the Commission must accept Indigenous Knowledge as relevant and reliable data in all resource reports, but especially in the *Tribal Resources* resource report.[411]

[408] CLF Comments at 15.

[409] Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe Comments at 1.

[410] *Id.* at 2.

[411] Public Interest Organizations Comments at 66-69.

327. Public Interest Organizations state that the Commission's regulations should require applicants to protect from public disclosure, to the maximum extent practicable, Tribal information, including sacred sites, locations, and Indigenous Knowledge.[412]

328. CLF and the Yurok Tribe also recommend that the *Tribal resources* resource report describe any proposed mitigation measures intended to avoid or minimize impacts on Tribes, or explain why such mitigation measures were not pursued.[413]

iii. Commission Determination

329. We adopt the NOPR's proposal to add Resource Report 6—*Tribal resources* with one modification to require a description of any proposed mitigation measures. These requirements will ensure that an application contains information that helps the Commission assess a project's impacts on Tribal rights and resources.

330. In response to CLF's request that we clarify the relationship between the *Tribal resources* and *Cultural resources* resource reports, we explain that the latter is intended to elicit information regarding efforts to identify and determine effects on historic properties in furtherance of the Commission's obligations under section 106 of the NHPA. The *Tribal Resources* resource report is intended to elicit information that will enable the Commission to fully evaluate the effects of a proposed project on Tribal resources in furtherance of the Commission's trust responsibility and the Commission's statutory obligations under the FPA and NEPA. It is possible that some, but not all, of the information filed in the two reports may be duplicative, but the *Tribal Resources*

[412] Public Interest Organizations Comments at 73-74.

[413] CLF Comments at 15; Yurok Tribe Comments at 34-35.

resource report will note Tribal interests in resources that may not be historic properties, including but not limited to treaty rights.

331. As to Tribes' comments on the qualifications of consultants that prepare the *Tribal resources* resource report, applicants should use qualified consultants that meet the expected standards, for example the National Park Service's Archeology and Historic Preservation, Secretary of the Interior's Standards and Guidelines, and any other applicable standards. We encourage applicants to engage with Tribes to identify sacred areas and other culturally significant regions and to develop Tribal history. Any information filed on the record by Tribes on a project, including Indigenous Knowledge, would be reviewed and considered by the Commission.

332. Regarding public disclosure concerns, pursuant to proposed § 380.16(h)(5), applicants must ensure that the *Tribal resources* resource report does not include sensitive Tribal information—such as specific site or property locations—the disclosure of which could create a risk of harm, theft, or destruction of archaeological or Tribal cultural resources or to the site at which the resources are located, or which would violate any Federal law, including the NHPA and the Archaeological Resources Protection Act.[414]

333. Finally, in response to commenters' feedback, we modify the proposed resource report to require a description of any proposed mitigation measures to avoid or minimize

[414] *See also* 18 CFR 380.16(f)(4) (directing applicants to request privileged treatment for all material filed with the Commission containing cultural resource location, character, and ownership information in accordance with the Commission's procedures in § 388.112).

impacts on Tribal resources, including any input received from Indian Tribes regarding the proposed measures and how the input informed the proposed measures. This addition is consistent with a comparable requirement in the *Environmental justice* resource report adopted herein.[415]

e. Resource Report 7—Environmental Justice

i. NOPR Proposal

334. In the NOPR, the Commission proposed to add new Resource Report 7—*Environmental justice*, in § 380.16(i). Specifically, the resource report would require the applicant to identify environmental justice communities within the project's area of potential impacts;[416] describe the impacts of project construction, operation, and maintenance on environmental justice communities, including whether any impacts would be disproportionate and adverse; discuss cumulative impacts on environmental justice communities, including whether any cumulative impacts would be disproportionate and adverse; and describe any proposed mitigation measures intended to avoid or minimize impacts on environmental justice communities, including any community input received on the proposed measures and how the input informed the proposed measures.

[415] *See* proposed § 380.16(i)(4).

[416] As discussed, to identify environmental justice communities, Commission staff currently reviews U.S. Census Bureau population data for the applicable location, relevant guidance, and agency best practices. *See supra* note 166.

335. The Commission also proposed a corresponding addition to § 380.2, which sets forth the definitions for the Commission's NEPA regulations, to define the term "environmental justice community."

ii. Comments

336. Several commenters support the addition of the *Environmental justice* resource report to ensure that the Commission complies with its NEPA obligations.[417] Other commenters object to the inclusion of the new resource report.[418]

337. ClearPath and North Dakota Commission oppose the proposed addition of the *Environmental justice* resource report because the Commission proposes to rely on executive orders (including executive orders that do not specify the Commission as a participant), guidance, and poorly defined criteria rather than laws, statutes, and regulations, thus threatening to introduce challenges and legal vulnerabilities. [419]

338. ClearPath states that the Commission has failed to set clear and predictable procedures for applicants to follow should updates to data and guidance be made during the pre-filing and application processes, created duplicative requirements and paperwork for applicants, and ClearPath claims that the Commission has instituted a hierarchy of treatment and consideration of project impacts across population segments that could

[417] *See, e.g.*, ACEG Comments at 16; CATF Comments at 15-16.

[418] *See, e.g.*, ClearPath Comments at 7; ELCON Comments at 7-8; North Dakota Commission Comments at 7-8.

[419] ClearPath Comments at 7; North Dakota Commission Comments at 7-8.

have equal protection concerns under the Constitution.[420] Similarly, ELCON objects to including a new resource report specific to one stakeholder type, environmental justice communities, with identification and mitigation-measure requirements when other similarly situated stakeholders do not receive such treatment.[421]

339. CLF states that the Commission must commit to a policy of ensuring that environmental justice communities are not more adversely impacted by the Commission's siting authority (including when accounting for the impacts of other, existing energy projects) than non-environmental justice communities, and to the extent that impacts are unavoidable, impacted communities should receive benefits that mitigate or compensate for those impacts.[422]

340. Public Interest Organizations state that proposed § 380.16(i)(3) must require an integrated cumulative impacts analysis of environmental and non-environmental stressors, independently reviewed by Commission staff.[423] They also ask that the Commission ensure that flexibility in data sets and factors is not harmful to impacted communities and prevent the cherry-picking of analytical tools and methods to fit a desired outcome.[424] Likewise, Policy Integrity requests that the Commission provide applicants with additional guidance on how to analyze cumulative impacts on

[420] ClearPath Comments at 7.

[421] ELCON Comments at 8.

[422] CLF Comments at 11-12.

[423] Public Interest Organizations Comments at 91-92.

[424] *Id.* at 93.

environmental justice communities.[425] It states that this guidance should define key terms and describe authoritative resources for how to perform such an analysis.

iii. Commission Determination

341. We adopt the NOPR's proposal to add Resource Report 7—*Environmental Justice.* As an initial matter, as discussed above, the Commission's authority to require submission of information to assess the potential for impacts to communities due to development of an energy infrastructure project is well-established under law, and necessary for the Commission to achieve its statutory obligations under the FPA and NEPA.[426] Accordingly, commenters incorrectly presume that consideration of such impacts, when gathered in the form of a separate resource report, is a novel practice or treads new legal ground. These concerns are unfounded.

342. We also disagree with commenters' concerns that we have inappropriately based the addition of the *Environmental justice* resource report solely on Executive Orders and guidance. While we use Executive Orders and guidance to help establish the information Commission staff needs to perform its analysis, the Commission has a responsibility under NEPA to evaluate project-related impacts on the quality of the human environment, which include impacts on environmental justice communities.

343. We disagree with comments asserting that we have failed to set clear procedures given the potential for updates to data and guidance. As with all resource reports, applicants are expected to use the best available data and follow guidance in place at the

[425] Policy Integrity Comments at 2, 39-45.

[426] *Supra* P 110.

time they submit their application. By requiring an environmental justice-specific resource report, we are setting a clear expectation regarding the information Commission staff will need to adequately assess project-related impacts on environmental justice communities. Commenters provide no examples or explanation of how the new resource report creates duplicative requirements and paperwork.

344. We do not believe that the requirements institute a hierarchy of treatment and consideration of project impacts across population segments. Analyses of impacts are conducted in a manner consistent with the requirements of NEPA. NEPA requires a "hard look" at all the environmental consequences of a proposed action and consideration of whether there are steps that could be taken to mitigate any adverse environmental consequences, without mandating specific substantive outcomes.[427] These requirements ensure the Commission has information necessary to assess the potential impacts of the project but do not dictate an approach for weighing such potential impacts or determining whether mitigation may be appropriate.

345. We decline to adopt precise methodologies to assess cumulative impacts, but instead will allow flexibility in the scope and level of analysis needed. Cumulative impacts on environmental justice communities will vary based on project- and site-specific conditions. Commission staff will use the pre-filing process to review all information filed on the record and provide feedback to applicants to assist applicants in identifying cumulative projects and resources to be addressed in this analysis. We expect

[427] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350-351 (1989).

applicants to follow the latest rules, guidance, and data from the Commission, CEQ, the Census Bureau, and other authoritative sources when performing this analysis.

346. Finally, we agree with Public Interest Organizations that the Commission should perform its own independent assessment of cumulative impacts on environmental justice communities. Commission-issued NEPA documents reflect Commission staff's independent analysis of all environmental effects of a project.

f. Resource Report 10—Land Use, Recreation, and Aesthetics

i. NOPR Proposal

347. The existing *Land use, recreation, and aesthetics* resource report requires the applicant to provide information concerning the uses of land in the project area and proposed mitigation measures to protect and enhance existing land use.[428] In the NOPR, the Commission proposed to add a requirement to this resource report to identify the area of direct effect of the proposed facilities on interior forest. We also proposed to: (1) clarify the scope of facilities (e.g., buildings, electronic installations, airstrips, airports, and heliports) in the project vicinity that must be identified; (2) clarify the corresponding requirements to depict such facilities on the maps and photographs in *General project description* resource report; and (3) require copies of any consultation with the Federal Aviation Administration.

348. The existing *Land use, recreation, and aesthetics* resource report requires applicants to describe the visual characteristics of the lands and waters affected by the

[428] 18 CFR 380.16(j).

project, including how the transmission line facilities will impact the visual character of the project right-of-way and surrounding vicinity and related mitigation measures. The Commission's existing regulations encourage, but do not require, applicants to supplement this description with visual aids.

349. In the NOPR, the Commission explained that more specific information is needed to evaluate the effects of the proposed project facilities on visual resources. Additionally, to assess visual impacts of infrastructure projects, including high-voltage transmission lines, staff has, in some cases, used the Bureau of Land Management's Visual Resource Management methodology,[429] and other agencies have used the Federal Highway Administration's Visual Impact Assessment for Highway Projects.[430] Therefore, the NOPR sought comment on whether either of these tools, or any other tool, is appropriate for our analysis. In the NOPR, the Commission also proposed to revise the *Land use, recreation, and aesthetics* resource report to require that the applicant identify the area of potential visual effects from the proposed project; describe any visually sensitive areas, visual classifications, and key viewpoints in the project vicinity; and provide visual aids to support the evaluation of visual impacts from the proposed project.

[429] *See, e.g.*, Final Environmental Impact Statement for the Swan Lake North Pumped Storage Project (P-13318-003).

[430] *See, e.g.,* Final Environmental Impact Statement for the Susquehanna to Roseland 500kv Transmission Line Right-of-Way and Special Use Permit at 588, https://parkplanning.nps.gov/document.cfm?documentID=49285&parkID=220&projectID=25147.

ii. Comments

350. Arizona Game and Fish recommends including coordination with State natural resource agencies and other local stakeholders to identify potential impacts on recreation and opportunities to maintain public access.[431]

351. Interior requests that § 380.16(l)(4), as revised and redesignated in the NOPR, be further modified to require the applicant to identify, by milepost and length of crossing, any National Park System units and program lands within 0.25 mile of a proposed facility.[432]

352. Impacted Landowners state that the *Land use, recreation, and aesthetics* resource report must identify agricultural land by acreage and use, and describe permanent and temporary impacts on agritourism, crops, yields, irrigation, drainage, soil quality, livestock, aerial application of seed, fertilizer, and pesticides.[433] Impacted Landowners also ask that this resource report include estimates of financial impacts on the impacted agricultural businesses from the construction and operation of the project over its expected life and identify farmlands designated as prime, unique, or farmlands of statewide or local importance, including an explanation of how the construction of a transmission project on working farmland complies with the Farmland Protection Policy Act. [434]

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[431] Arizona Game and Fish Comments at 3.

[432] Interior Comments at 2.

[433] Impacted Landowners Comments at 17.

[434] 7 U.S.C. 4201 - 4209.

353. Impacted Landowners request that the *Land use, recreation, and aesthetics* resource report require applicants to investigate transmission line interference with farm equipment electronics and GPS systems that are essential to modern precision agriculture.[435] They further state that different positions of the transmission line in relation to the field may also produce different effects.

354. Interior recommends including National Park System units and program lands in the described areas of potential visual effects by adding the following to redesignated § 380.16(l)(6): the National Park System (54 U.S.C. 100101), National Historic Landmarks, National Natural Landmarks, Land and Water Conservation Fund State Assistance Program sites, and the Federal Lands to Parks program lands. [436]

355. In response to the Commission seeking comment in the NOPR on whether any specific tools are appropriate for our visual analysis, commenters provide various recommendations.

356. First, ACEG recommends that the Commission and other Federal agencies involved in assessing impacts from transmission facilities consistently apply the same methodologies for reviewing visual impacts (e.g., Bureau of Land Management or Federal Highway Administration visual impact assessment tools).[437] ACEG states that consistently applying the same methodology will allow the Commission to further develop expertise with that particular methodology.

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[435] Impacted Landowners Comments at 17.

[436] Interior Comments at 2.

[437] ACEG Comments at 19.

357. Interior recommends that applicants use the National Park Service Visual Impact Assessment Methodology and Guidelines when describing visually sensitive areas within the viewsheds of National Park System units.[438]

358. The Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe support the proposed requirement in the *Land use, recreation, and aesthetics* resource report that visual aids be prepared to evaluate visual impacts. The Tribes state that the regulations should expressly provide that Tribes be consulted in identifying visually sensitive areas and key viewpoints. The Tribes suggest using a combination of the Bureau of Land Management's Visual Resource Management methodology to guide on-the-ground work and the National Park Service's Visual Impact Assessment Evaluation Guide for Renewable Energy Projects to set the methodological framework to conduct the visual impacts analysis.[439]

iii. Commission Determination

359. We adopt the NOPR's proposal to revise the *Land use, recreation, and aesthetics* resource report to include interior forest, clarify the scope of structures and facilities to be identified and depicted on maps, require copies of any consultation with the Federal Aviation Administration, and identify the area of potential visual effects and visual characteristics of the affected lands and waters, including use of visual aids. Based on commenter feedback regarding appropriate tools for performing visual analyses, we also

[438] Interior Comments at 2.

[439] Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe Comments at 4.

adopt one modification to redesignated § 380.16(l)(10) to require the applicant to identify, and justify the selection of, the tools or methodologies it uses to develop the required information on visual effects. We find that adopting this modification and the changes proposed in the NOPR will assist the Commission's analysis of effects on land use and aesthetics under NEPA.

360. In response to Arizona Game and Fish's request to require coordination with State natural resource agency and other local stakeholders, under § 50.4(c), applicants are required to provide project notifications to stakeholders upon entering the pre-filing process and submitting an application to the Commission, which includes State natural resource agencies and other local stakeholders, as applicable. In addition, the Commission would include such stakeholders on project mailing lists to receive Commission notices throughout the project's review. Thus, State agencies and local stakeholders will be invited to participate in the process.

361. Regarding Interior's request for National Park System units and program lands to be identified in the *Land use, recreation, and aesthetics* resource report, the existing regulations in redesignated § 380.16(l)(4) already require applicants to identify national parks that would be directly affected or are within 0.25 mile of any proposed facility.

362. In response to Impacted Landowners' requested additions regarding agricultural lands and qualities, the *Land use, recreation, and aesthetics* resource report already requires the applicant to identify agricultural land by acreage and use (redesignated § 380.16(l)(2)) and describe permanent and temporary impacts on agricultural land use (redesignated § 380.16(l)(8)). In addition, the *Soils* resource report requires the applicant to identify prime and unique farmlands (redesignated § 380.16(k)(3)) and address soil

quality/characteristics, including drainage, potential impacts on soils, and mitigation measures (redesignated §§ 380.16(k)(1) through 380.16(k)(4)). The financial impacts from crop loss are highly specific, based on the type of crop, duration of impact, and local market conditions. Thus, these impacts are more appropriately addressed through easement negotiations or through an eminent domain proceeding.

363. As to compliance with the Farmland Protection Policy Act, this law applies to Federal programs that may permanently convert farmland to nonagricultural use, where Federal programs are activities that "involve undertaking, financing, or assisting construction or improvement projects or acquiring, managing, or disposing of Federal lands and facilities."[440] Further, the regulations implementing the Farmland Protection Policy Act specifically exclude Federal permitting and licensing programs for activities on private or non-Federal lands.[441] Accordingly, the Farmland Protection Policy Act does not apply to the Commission's review of electric transmission projects.

364. Regarding transmission line interference with farm equipment electronics and GPS systems, § 50.7(g)(1)(v) already requires applicants to describe line design features for minimizing radio interference caused by operation of proposed facilities. In addition, redesignated §§ 380.16(o)(6) through (o)(8) under the *Reliability and safety* resource report, as proposed in the NOPR and adopted herein, include requirements to: describe the electromagnetic fields to be generated by proposed transmission lines, including strength and extent; discuss the potential for electrical noise from electric and magnetic

[440] 7 U.S.C. 4201(c)(4)

[441] 7 CFR 658.2(c) (2023).

fields as they may affect communication systems; and discuss the potential for induced or conducted currents along the transmission right-of-way from electric and magnetic fields. Therefore, the requested update to the *Land use, recreation, and aesthetics* resource report is unnecessary.

365. In response to Interior's requested additions to redesignated § 380.16(l)(6) to describe areas of potential visual effects, we note that the referenced regulation is not applicable to visual effects, but simply requires the applicant to identify National Wild and Scenic Rivers Systems, National Trails Systems, and Wilderness Act areas that would be crossed by, or within 0.25 mile of, a project. However, the *Land use, recreation, and aesthetics* resource report requires applicants to identify the area of potential visual effects, including visually sensitive areas and key viewpoints, under the NOPR's revised and redesignated § 380.16(l)(10). Further, the National Park System would be included on the Commission's stakeholder mailing list, if lands are in close proximity to a proposed project, and the Commission would work with the applicant during pre-filing to identify any visually sensitive areas that need to be evaluated, including any National Park System lands.

366. Considering the comments received on whether any specific tools are appropriate for our visual analysis, and additional research, we recognize that a number of Federal agencies have developed their own visual impact assessment tools or methodologies for purposes of assessing proposed infrastructure projects.[442]

[442] *See* Bureau of Land Management's Visual Resource Management methodology, Federal Highway Administration's Visual Impact Assessment for Highway Projects, National Park Service's Visual Impact Assessment Methodology and

367. Based on the comments received, there is no consensus on the appropriate methodology or tool that the Commission or applicants should use to assess the visual effects of proposed transmission projects. Further, proposed projects under the Commission's jurisdiction could be within the viewshed of any number of Federal lands, where relevant land management agencies may employ different methodologies. We also recognize that new or revised methodologies and tools may become available in the future. Therefore, we decline to mandate the use of a specific tool or methodology in the Commission's regulations. Instead, this final rule revises § 380.16(l)(10) to require the applicant to identify, and justify the selection of, the tools or methodologies it uses to develop the required information on visual effects. We recognize that there may be efficiency gains if applicants use the applicable Federal agency guidance, methodology, or tool for assessing visual impacts on corresponding Federal agency land (e.g., applicants use the National Park Service Visual Impact Assessment Methodology and Guidelines when analyzing visual impacts on the viewsheds of National Park System units) and we support allowing for such flexibility in the Commission's regulations.

368. Regarding Tribes' requests that Tribes be consulted in identifying visually sensitive areas and key viewpoints, we encourage applicants to seek to engage Tribes when identifying visually sensitive areas and key viewpoints. Tribes may provide comments on visually sensitive areas and key viewpoints during the applicant's efforts to engage Tribes early in the permitting process, during government-to-government

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Guidelines, and U.S. Army Corps of Engineers' Visual Resources Assessment Procedure.

consultation with the Commission, or during any of the comment periods that occur during the Commission's pre-filing and application processes.

g. Resource Report 11—Air Quality and Environmental Noise

i. NOPR Proposal

369. The Commission explained in the NOPR that the existing *Reliability and safety* resource report requires applicants to indicate the noise level generated by the proposed transmission line and compare the noise level to any known noise ordinances for the zoning districts through which the line will pass. The NOPR further explained that the Commission's regulations do not currently require applicants to submit information on proposed project emissions and the corresponding effects on air quality and the environment.

370. The Commission stated in the NOPR that, to fully evaluate the effects of a proposed project in furtherance of the Commission's obligations under NEPA,[443] additional information on emissions, air quality, and environmental noise is necessary. Therefore, the Commission proposed to add a new resource report, Resource Report 11—*Air quality and environmental noise*, in § 380.16(m). As proposed, the report would require the applicant to estimate emissions from the proposed project and the corresponding impacts on air quality and the environment, estimate the impact of the proposed project on the noise environment, and describe proposed measures to mitigate

[443] NEPA requires the Commission to take a "hard look" at the environmental impacts of a proposed action. *See* 42 U.S.C. 4332(2)(C); *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983).

the impacts. Consistent with the Commission's requirements for natural gas compressor stations,[444] the NOPR also proposed to establish a noise limit for proposed substations and appurtenant facilities as experienced at pre-existing noise-sensitive areas, such as schools, hospitals, or residences.

371. Under proposed § 380.16(m)(1), the *Air quality and environmental noise* resource report must describe the existing air quality in the project area, indicate if any project facilities are located within a designated nonattainment or maintenance area under the Clean Air Act,[445] and provide the distance from the project facilities to any Class I area in the project vicinity. Under proposed § 380.16(m)(3), the resource report must estimate emissions from the proposed project and the corresponding impacts on air quality and the environment. Specifically, the applicant must provide the reasonably foreseeable emissions from construction, operation, and maintenance of the project facilities; provide a comparison of emissions with applicable General Conformity thresholds (40 CFR part 93) for each designated nonattainment or maintenance area; identify the corresponding impacts on communities and the environment in the project area; and describe any proposed mitigation measures to control emissions.

372. Under proposed § 380.16(m)(2), the resource report must, for proposed substations and appurtenant facilities, quantitatively describe existing noise levels at nearby noise-sensitive areas. Under proposed § 380.16(m)(4), the resource report must provide a quantitative estimate of project operation (including proposed transmission

[444] 18 CFR 380.12(k)(4)(v)(A) (2023).

[445] 42 U.S.C. 7401 *et seq*.

lines, substations, and other appurtenant facilities) on noise levels. The operational noise estimates must demonstrate that the proposed project will comply with applicable State and local noise regulations and that noise attributable to any proposed substation or appurtenant facility does not exceed a day-night sound level of 55 decibels on the A-weighted scale at any pre-existing noise-sensitive area.[446] Additionally, the resource report must describe the impact of proposed construction activities on the noise environment and any proposed mitigation measures to reduce noise impacts.

ii. Comments

373. Multiple commenters express support for the inclusion of the new *Air quality and environmental noise* resource report, stating that the Commission is well within its statutory authority to adopt NEPA regulations that include information needed to perform air quality analyses.[447] Conversely, Chamber of Commerce states that the Commission should remove the *Air quality and environmental noise* resource report because it is unclear what emissions result from the direct operation of a transmission line, and the focus on any such emissions lacks congressional direction.[448]

[446] The EPA has indicated that a day-night noise level of 55 decibels on the A-weighted scale protects the public from indoor and outdoor activity interference. The Commission has adopted this criterion and uses it to evaluate the potential noise impact from operation of natural gas compressor facilities. *Elba Express Co., L.L.C.*, 141 FERC ¶ 61,027, at P 21 n.12 (2012). We think it is appropriate to use this same criterion to evaluate the potential noise impact from operation of substations and appurtenant facilities.

[447] Arizona Game and Fish Comments at 2; Public Interest Organizations Comments at 108-114; CATF Comments at 14; Los Angeles DWP Comments at 4-5.

[448] Chamber of Commerce Comments at 3.

374. ClearPath opposes the proposal to estimate emissions from the project, including reasonably foreseeable emissions, because the requirements are too vague to be met or understood by applicants[449] and ELCON recommends that the Commission remove the mitigation requirements.[450] ACORE and ACEG recommend that the Commission apply the "rule of reason and the concept of proportionality" to emissions requirements so as not to require an in-depth disclosure of emissions for small projects.[451]

375. Policy Integrity requests that the Commission clarify that the analysis of alternatives under NEPA include upstream emissions from changes to power-system operations as these changes are reasonably foreseeable and essential to the Commission's public interest determination under the FPA.[452] Similarly, Sabin Center and Policy Integrity recommend requiring that applicants provide an estimate of both direct and indirect emissions, including upstream emissions associated with upstream electric generation facilities.[453] Conversely, Representatives McMorris Rodgers and Duncan question what specific statutory authority the Commission is relying upon to require the estimation of upstream emissions.[454]

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[449] ClearPath Comments at 7-8.

[450] ELCON Comments at 9-10.

[451] ACORE Comments at 5 (citing CEQ's Interim Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 FR 1196 (Jan. 9, 2023) (CEQ's Interim GHG Guidance)); ACEG Comments at 19-20 (same).

[452] Policy Integrity Comments at 2 and 4-17.

[453] Sabin Center Comments at 2 and 6-8; Policy Integrity Comments at 12-17.

[454] Representatives McMorris Rodgers and Duncan Comments at 2.

376. Several commenters request that the Commission consider a transmission project's effect on greenhouse gas (GHG) emissions or climate change as part of its NEPA reviews.[455] ACEG also recommends that along with the "rule of reason" for emissions disclosure, the Commission should consider the air quality benefits from a project due to connection of renewable energy projects onto the grid.[456] Several commenters state that the Commission or the applicant should include information on how a transmission project would impact the climate due to upstream GHG emissions from the generation of electricity—and the Commission's FPA determination should consider this analysis.[457] The commenters indicate that data and models exist to estimate these changes and constitute a reasonably foreseeable impact. Conversely, Senator Barrasso states that the Commission should not apply CEQ's Interim GHG Guidance to electric transmission facility reviews, questioning its applicability to the Commission as an independent agency.[458]

377. Policy Integrity states that the Commission should explicitly require that cumulative impacts analyses include increased exposure to criteria pollutants even when the overall modeled impacts remain below the Clear Air Act's National Ambient Air

[455] Sabin Center Comments at 2 and 5-8; Public Interest Organizations Comments at 108-114; CATF Comments at 16 (recommending that the Commission follow the CEQ's Interim GHG Guidance).

[456] ACEG Comments at 19-20.

[457] Sabin Center Comments at 2 and 5; Public Interest Organizations Comments at 108-114; Policy Integrity Comments at 2 and 4-17.

[458] Senator Barrasso Comments at 2 and 6.

Quality Standards (NAAQS).[459] It notes that the NAAQS are not set at a level of zero risk, and that sub-NAAQS impacts can be especially significant in environmental justice communities with certain sensitive receptors. Additionally, Policy Integrity requests that the Commission consider the health impacts that environmental justice communities face under higher levels of criteria pollutants, including from power-system impacts, even when the NAAQS are not exceeded.[460]

378. Interior and Arizona Game and Fish recommend considering the effect of noise from the proposed project on wildlife and habitat.[461] In regard to the effects of noise in sensitive wildlife habitats on threatened and endangered species, Interior recommends that the Commission require applicants to address wildlife-specific noise thresholds, like those specific to sage grouse and other avian species that may be relevant in significant wildlife areas.

iii. Commission Determination

379. We adopt the NOPR's proposal to add Resource Report 11—*Air quality and environmental noise* with one modification to clarify noise compliance standards. We agree with commenters that the Commission's authority to require submission of information to assess the potential for air quality and environmental noise impacts from the development of an energy infrastructure project is well-established under law, and

[459] Policy Integrity Comments at 43-44.

[460] Policy Integrity Comments at 44.

[461] Interior Comments at 1; Arizona Game and Fish Comments at 2.

necessary for the Commission to achieve its statutory obligations under the FPA, NEPA, and the Clean Air Act.

380. In response to the Chamber of Commerce's comments, we clarify that the Commission is required under NEPA to consider impacts from the proposed project that are reasonably foreseeable.[462] While the scope of project impacts that are reasonably foreseeable is a fact-specific determination, we note that such impacts may include emissions due to construction, operation, and maintenance of proposed transmission facilities.

381. In addition to NEPA, the Commission has further responsibilities under the Clean Air Act.[463] Specifically, under EPA's General Conformity regulations,[464] the Commission must address whether an action will result in construction or operation emissions that exceed de minimis thresholds in areas designated as having poor or recovering air quality.

382. We are adopting the proposed requirement for applicants to provide an estimate of reasonably foreseeable emissions from construction, operation, and maintenance of the project facilities to ensure that the Commission meets its NEPA obligation to take a "hard look" at environmental impacts and so that the Commission can satisfy its Clean Air Act obligations. In response to ELCON's comments, we clarify that the *Air quality and environmental noise* resource report does not require an applicant to mitigate impacts, but

[462] 42 U.S.C. 4332(2)(C).

[463] 42 U.S.C. 7506(c).

[464] 40 CFR 93.150 – 93.165 (2023).

rather requires the applicant to submit information about any proposed mitigation of impacts. We also clarify, in response to ACORE's and ACEG's comments, that the necessary analysis of emissions impacts will vary based on the factual circumstances, including whether such impacts are reasonably foreseeable.[465]

383. We disagree that upstream emissions, including GHGs, from a proposed project should always be provided by the applicant. As noted above, the proposed *Air quality and environmental noise* resource report requires applicants to estimate the reasonably foreseeable emissions from the proposed project, and the scope of project effects that are reasonably foreseeable is a fact-specific determination made on a case-by-case basis. We find that the NOPR's proposed regulations are sufficient to afford the flexibility needed for applicants to include the appropriate scope of emissions to support the Commission's NEPA analysis, which will use relevant and applicable guidance at the time of each analysis. If upstream emissions are determined, based on the factual circumstances, to be reasonably foreseeable and caused by the proposed project, the Commission may request any needed information and assess those emissions under NEPA.

384. We decline Policy Integrity's request to specify the content of cumulative impacts analyses because Policy Integrity's comments appear to focus on the Commission's cumulative impact analyses under NEPA and not the information that applicants must file in the resource report. The proposed *Air quality and environmental noise* resource report requires sufficient information for Commission staff to review the magnitude and nature

[465] We will not opine on the applicability of CEQ's Interim GHG Guidance in this final rule, which relates to the Commission's own evaluation of GHG emissions and not the information that applicants must file in the resource report.

of emissions on a project-by-project basis to determine whether those emissions will have an impact on, among other things, local and regional air quality and environmental justice communities. If case-specific circumstances require more information to address cumulative air quality impacts, Commission staff may request supplemental information from the applicant.

385. We decline to adopt specific requirements in the *Air quality and environmental noise* resource report to address wildlife-specific noise impacts. We note that Commission staff consults with relevant resource agencies to identify potential impacts, including noise impacts, on sensitive habitats and federally listed threatened or endangered species during the NEPA review process and the consultation process under section 7 of the Endangered Species Act[466] for a proposed project. Accordingly, impacts on wildlife and wildlife-specific noise thresholds are best considered on a case-by-case basis while working with applicable agencies.

386. Finally, this final rule modifies proposed § 380.16(m)(4)(i)(D) to clarify the applicant's responsibilities regarding operational noise estimates and applicable State and local noise regulations, consistent with the Commission's noise analyses in natural gas proceedings.[467] Specifically, we clarify that the applicant must demonstrate that noise

[466] 16 U.S.C. 1536(a)(2).

[467] Commission staff routinely asks applicants in natural gas proceedings to provide information about State and local noise regulations. *See, e.g.,* Commission staff, Environmental Data Request, Docket No. CP16-486, at 7 (issued Oct. 7, 2016) (Question No. 6); Commission staff, Environmental Data Request, Docket No. CP18-548, at 15 (issued Dec. 18, 2018) (Question No. 60); *see also* FERC, *Guidance Manual for Environmental Report Preparation – Volume. 1*, at 4-130 (Feb. 2017), https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf.

attributable to any proposed substation or appurtenant facility does not exceed a day-night sound level of 55 decibels on the A-weighted scale at any pre-existing noise sensitive area and compare the proposed project's operational noise estimates with applicable State and local noise regulations.

h. Resource Report 12—Alternatives

i. NOPR Proposal

387. This resource report requires the applicant to describe alternatives to the project, including the "no action" alternative, and to compare the environmental impacts of such alternatives. In the NOPR, the Commission proposed only minor, clarifying edits to this resource report.

ii. Comments

388. California Commission states that the Commission should consider non-wire alternatives.[468] Similarly, North Carolina Commission and Staff urge the Commission to require applicants to demonstrate that the project is preferable to reasonably available alternatives to reduce congestion, including additional generation, non-wire alternatives, and other less-intrusive or less-costly transmission projects.[469]

389. Public Interest Organizations advocate for a robust consideration of alternatives, and request that the Commission amend its regulations to require the consideration of accomplishing the proposed objectives of a transmission project through the use of other systems or energy conservation, and require an analysis of alternative routes, similar to

[468] California Commission Comments at 4.

[469] North Carolina Commission and Staff Comments at 14.

the Commission's requirement for natural gas pipeline projects.[470] Commenters further state that although the Commission may only approve transmission projects within National Corridors, considering alternative routes outside of National Corridors is still necessary, and that the Commission should ensure that alternatives proposed by the public during the NEPA process and those developed within the State siting process are considered.[471] Noting that many States require the consideration of multiple routes, OMS seeks clarity on whether the Commission will evaluate multiple routes and how the Commission defines alternatives.[472]

390. The Yurok Tribe states that the Commission must require consideration of alternatives that do not negatively affect Tribes, including alternative routes or significant mitigation measures.[473] The Yurok Tribe further requests the Commission require among the alternatives at least one alternative that includes mitigation measures for which Tribes have communicated explicit support.[474] The Yurok Tribe states that a robust study of alternatives is critical not only to NEPA compliance, but also to implement the FPA's mandate that approved projects be "sound national energy policy" and "consistent with

[470] Public Interest Organizations Comments at 123-125.

[471] California Commission Comments at 7; Public Interest Organizations Comments at 123-125.

[472] OMS Comments at 5.

[473] Yurok Tribe Comments at 40-42.

[474] *Id.*

the public interest."[475] The Yurok Tribe states that consideration of alternatives put forth by Tribes is a fundamental part of the NEPA process, the Tribal consultation process, and the Federal trust duty. Finally, the Yurok Tribe states that it would be antithetical to the rulemaking for the Commission to not incorporate a requirement to consider any alternatives put forth by Tribes and not provide in-depth explanation if that alternative is not pursued.[476]

391. Impacted Landowners and Rail Electrification Council state that the Commission should require at least one alternative exploring the use of existing road or rail rights-of-way, including the consideration of buried transmission lines to reduce environmental and economic impacts, and reliability and safety hazards.[477] Rail Electrification Council argues that the consideration of proposed transmission lines within or alongside existing rights-of-way serves as a means of mitigating or avoiding altogether potentially adverse environmental, socio-economic, reliability, or other impacts of a project; promotes an efficient use of resources; advances regional plans; and averts or minimizes undue harm to communities.[478]

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[475] *Id.* at 41.

[476] *Id.* at 41-42.

[477] Impacted Landowners Comments at 18; Rail Electrification Council Comments at 7-9.

[478] Rail Electrification Council Comments at 8 (referencing https://nextgenhighways.org/; *see also* ACEG, *Report: Recommended Siting Practices for Electric Transmission Developers*, Sec. 4 "Co-Location in Existing Rights-of-Way" (Feb. 2023), https://cleanenergygrid.org/portfolio/recommended-siting-practices-electric-transmission-developers/).

392. Conversely, Public Interest Organizations state that the Commission's regulations should clarify how the requirement to consider using existing rights-of-way can be rendered more equitable through the consideration of alternatives that mitigate impacts to communities and habitats that already bear burdens from existing infrastructure.[479] Public Interest Organizations notes that, when facilities are located in existing rights-of-way, the NEPA analysis must include alternatives that reduce cumulative impacts in these rights-of-way.

iii. Commission Determination

393. We adopt the NOPR's proposal to make minor, clarifying edits to the *Alternatives* resource report. As discussed below, we find it unnecessary to add new requirements to this report as suggested by commenters.

394. In response to comments regarding non-wire, system, and energy conservation alternatives; multiple route alternatives; alternatives that use existing rights-of-way; alternatives outside of National Corridors; and alternatives put forth by Tribes and other stakeholders, NEPA requires the Commission to consider and discuss only reasonable alternatives.[480] Based on the Commission's experience in hydropower and natural gas pipeline proceedings, the range of reasonable alternatives can best be determined based upon the facts of a specific siting proposal. Under NEPA, an alternative that the Commission considers must be able to meet the action's purpose and need and must be technically and economically feasible (i.e., not merely speculative), both which vary

[479] Public Interest Organizations Comments at 130-131.

[480] *See American Rivers v. FERC*, 201 F.3d 1186, 1200 (9th Cir. 2000).

based on the circumstances.[481] We therefore decline requests to determine, on a generic basis, reasonable alternatives that must be analyzed in every case.

395. In response to comments requesting that the Commission's regulations include information and findings regarding alternatives as developed within the State siting process, we again note that the Commission will consider all reasonable alternatives raised in a Commission proceeding.

i. Resource Report 13—Reliability and Safety

i. NOPR Proposal

396. This resource report requires the applicant to address reliability and safety considerations, including the potential hazard to the public from the proposed facilities resulting from accidents or natural catastrophes; how these events would affect reliability; and the procedures and design features employed to reduce potential hazards.[482]

397. In the NOPR, the Commission proposed to add a requirement that the *Reliability and safety* resource report include a discussion of any proposed measures intended to ensure that the facilities proposed by the applicant would be resilient with respect to future climate change impacts. The Commission also proposed to clarify the existing requirement that the *Reliability and safety* resource report discuss contingency plans for maintaining service or reducing downtime by adding that such contingency plans should ensure that the proposed facilities would not adversely affect the bulk electric system in

[481] *See* 42 U.S.C. 4332(C)(iii) (as amended by the Builder Act).

[482] 18 CFR 380.16(l).

accordance with applicable North American Electric Reliability Corporation reliability standards. Finally, given the proposed addition of a new *Air quality and environmental noise* resource report, the NOPR also proposed to eliminate a redundant requirement from the *Reliability and safety* resource report that the applicant must indicate the noise level generated by the transmission line.

ii. Comments

398. Sabin Center recommends that the Commission require applicants to submit information on expected future climate change impacts and the proposed project's risk from and resilience to future climate change impacts.[483]

399. Impacted Landowners express concern about the impact on workers and farmers from exposure to the electromagnetic fields from proposed transmission lines, which would be greater than the sporadic exposure to the public, and request that this additional hazard be considered.[484]

400. Impacted Landowners state that this resource report should be expanded to address the applicant's efforts to prevent intentional physical acts to destroy electric infrastructure.[485] Additionally, Impacted Landowners recommend that this resource

[483] Sabin Center Comments at 2, 9-10; National Wildlife Federation Action Fund Comments at 1; National Wildlife Federation Outdoors Comments at 1.

[484] Impacted Landowners Comments at 18.

[485] *Id.* at 18-19.

report explore the potential for the increased reliability and safety of transmission lines when buried on existing linear rights-of-way or installed under bodies of water.[486]

iii. Commission Determination

401. We adopt the NOPR's proposed changes to the *Reliability and safety* resource report. No commenter raised concerns with the proposed changes, and we find that requiring this additional information will support the evaluation of the reliability and safety of proposed projects. As discussed below, we find it unnecessary to add new requirements to this report in response to comments.

402. In response to comments regarding future climate change impacts, no additional changes to the regulations are needed because § 380.16(o)(3), as proposed and adopted herein, requires applicants to disclose any proposed measures to ensure that the project facilities would be resilient against future impacts—such as subsidence, slope slumping, wildfires, flooding, and storms—that could be exacerbated by climate change. As part of the NEPA analysis, Commission staff would evaluate the site-specific risks of the existing and future environment on the proposed facilities.

403. As to Impacted Landowners' comments urging consideration of impacts from situational exposure to electromagnetic fields, we decline to adopt specific requirements in the resource reports. The EPA[487] and the National Institute of Environmental Health Sciences[488] have concluded that studies have not consistently shown that exposure to

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[486] *Id.*

[487] EPA, *Electric and Magnetic Fields from Power Lines*, https://www.epa.gov/radtown/electric-and-magnetic-fields-power-lines.

[488] National Institute of Environmental Health Sciences, *EMF Electric and*

electromagnetic fields, even for workers over a typical workday, constitutes a carcinogenic risk. Therefore, we find it more appropriate to address related concerns as they are raised on a project-specific basis.

404. Similarly, regarding intentional physical attacks on infrastructure, we decline to adopt additional requirements in the resource report. Based on our experience in natural gas and hydroelectric proceedings, the risk and potential impact of intentional physical attacks are more appropriately analyzed on a project-specific basis. As part of the NEPA analysis for a particular project, Commission staff would identify the impact of the proposed facilities on public safety risk. Additionally, staff would analyze reasonable project-specific alternatives, such as undergrounding transmission lines. During this analysis, each alternative's impact on public safety would be considered.

j. Cumulative Impacts

i. NOPR Proposal

405. In addition to the substance of the individual resource reports described above, existing § 380.16 includes general requirements that apply to each resource report. In the NOPR, the Commission proposed a revision to § 380.16(b)(3) to clarify the scope of cumulative effects that must be identified in each resource report for consistency with the definition of cumulative effects in CEQ's NEPA regulations.[489]

Magnetic Fields Associated with the Use of Electric Power (June 2002), https://www.niehs.nih.gov/health/topics/agents/emf.

[489] *See* 40 CFR 1508.1(g)(3) (2023).

ii. Comments

406. Several commenters request that the Commission apply a robust cumulative impacts analysis when reviewing transmission proposals and minimize and mitigate impacts on wildlife, with clear evaluation methodologies informed by the most updated data and best available science, including Indigenous Knowledge and information from local communities.[490] Arizona Game and Fish encourages the Commission to further clarify that the cumulative effects identified under 380.16(b)(3) consider all known or potential projects that could occur within the vicinity of the transmission line and potential impacts on natural resources, including wildlife habitat and fragmentation.[491]

407. The Yurok Tribe states that the Commission must recognize a broad range of cumulative impacts.[492] The Tribe indicates that fragmented lands are a form of cumulative environmental injustice often experienced by Tribes; therefore, the cumulative effects analyses must also consider the cumulative disruption that projects can cause to cultural resources, cultural landscapes, and sacred sites.[493] The Tribe further claims that the Commission must evaluate a transmission project's impacts in the context of all prior harms that Tribes' lands, cultural resources, and cultural landscapes have sustained, and that to properly study cumulative effects, the Commission must build in

[490] National Wildlife Federation Comments at 2; National Wildlife Federation Action Fund Comments at 1; National Wildlife Federation Outdoors Comments at 1.

[491] Arizona Game and Fish Comments at 2.

[492] Yurok Tribe Comments at 39-40.

[493] *Id.* at 39.

time for Tribal feedback in the development and review of NEPA documents.[494] Public Interest Organizations also indicate that placing new infrastructure in existing rights-of-way can exacerbate existing impacts on habitats and communities, which may already bear disproportionate burdens.[495]

iii. Commission Determination

408. We adopt the revision to § 380.16(b)(3) as proposed in the NOPR. As proposed and adopted herein, § 380.16(b)(3) requires each resource report to identify the effects of construction, operation, and maintenance, as well as cumulative effects resulting from the incremental effects of the project when added to the effects of other past, present, and reasonably foreseeable actions. We find this language appropriately defines the scope of cumulative impact analyses, as is defined in CEQ's NEPA regulations.

409. We acknowledge the Commission's responsibility to conduct a cumulative impact analysis independent from the applicant's input, consistent with the Commission's responsibilities under NEPA and CEQ's regulations. The scope of each cumulative impact analysis, including other projects to consider, past Tribal harms, and the specific resources that may be impacted, will vary on a case-by-case basis.

410. In response to comments, we note that concerns regarding fragmented lands and siting new infrastructure in existing rights-of-way as potential forms of cumulative environmental injustice and disproportionate burdens will be addressed in project-

[494] *Id.* at 39-40.

[495] Public Interest Organizations Comments at 126-131.

specific proceedings. Commission staff would evaluate these concerns, as appropriate, in its cumulative impacts analysis pursuant to NEPA.

5. Revisions to 18 CFR 380.13 and 380.14

411. We adopt the NOPR's proposed amendments to §§ 380.13 (Compliance with the Endangered Species Act) and 380.14 (Compliance with the NHPA) to add cross-references to the appropriate paragraphs of § 380.16. As the Commission explained in the NOPR, the prior omission of these cross-references appears to be an oversight. We also adopt the NOPR's proposed revision to § 380.14 to correct the legal citation for section 106 of the NHPA,[496] following the act's recodification in title 54 of the U.S. Code.

III. Information Collection Statement

412. The Paperwork Reduction Act[497] requires each Federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contained in final rules published in the *Federal Register*.[498] Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be

[496] 54 U.S.C. 306108.

[497] 44 U.S.C. 3501-3521.

[498] *See* 5 CFR 1320.12 (2023).

penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

413. **Public Reporting Burden:** The Commission is revising its regulations governing applications for permits to site transmission facilities under section 216 of the FPA. This final rule modifies certain reporting and recordkeeping requirements included in FERC-729 (OMB Control No. 1902-0238).[499]

414. The revisions to the Commission's regulations associated with the FERC-729 information collection are intended to ensure consistency with section 216 of the FPA, as amended by the IIJA. The revisions are also intended to modernize certain regulatory requirements and to incorporate other updates and clarifications to provide for the efficient and timely review of permit applications. Several of the revisions have information collection implications. For example, the final rule requires an applicant to:

- maintain an affected landowner contact log, provide certain information to affected landowners, file an affirmative statement with the Commission indicating the applicant's intent to comply with the Applicant Code of Conduct, and submit monthly compliance updates during the pre-filing and application review processes;[500]
- provide additional congestion and system analysis information during the pre-filing process and as part of the application;

[499] FERC-729 includes the reporting and recordkeeping requirements for "Electric Transmission Facilities."

[500] These requirements would only apply to applicants who elect to comply with the Applicant Code of Conduct set forth in proposed § 50.12.

- develop and file, as part of the Project Participation Plan, an Environmental Justice Public Engagement Plan describing completed and planned targeted outreach to environmental justice communities;
- Develop and file, as part of the Project Participation Plan, a Tribal Engagement Plan describing completed and planned targeted outreach to identified Indian Tribes;
- include in mailed notifications to landowners written translations under certain circumstances, publish project notifications in online or hard copy periodicals and submit the same to available county and municipal government online bulletin boards, and provide the Commission with proof of publication;
- develop and file a new resource report describing the proposed project's impacts on Tribal resources;
- develop and file a new resource report describing the proposed project's impacts on environmental justice communities;
- develop and file a new resource report describing the proposed project's impact on air quality and environmental noise;
- provide additional information describing the proposed project's visual impacts; and
- provide additional information as part of the following existing resource reports: *General project description*; *Water use and quality*; *Fish, wildlife, and vegetation*; *Soils*; *Land use, recreation, and aesthetics*; and *Reliability and safety*.

These revisions represent an increase in information collection requirements and burden for FERC-729.

415. The Commission recognizes that some of the information collection activities proposed in the NOPR and updated in this final rule are novel. Therefore, the Commission sought comments on the burden hours and costs associated with the requirements contained in the NOPR.

416. The estimated burden and cost for the requirements contained in this final rule follow.

Annual Changes Resulting from the Final Rule in Docket No. RM22-7-000					
	No. of Respondents (1)	**No. of Responses[501] per Respondent (2)**	**Total No. of Responses (1)X(2)=(3)**	**Avg. Burden Hrs. & Cost Per Response[502] (4)**	**Total Annual Burden Hours & Total Annual Cost (3)X(4)=5**
Current FERC 729 Collection					
FERC-729	1	1	1	9,600 hrs. $960,000	9,600 hrs. $960,000
Revisions in RM22-7-000					
Applicant Code of Conduct[503]	1[504]	1	1	160 hrs; $16,000	160 hrs.; $16,000

[501] We consider the filing of an application, including the mandatory pre-filing information, to be a "response."

[502] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $100 per Hour = Average Cost per Response. The hourly cost figure is the FY2024 FERC average annual salary plus benefits ($207,786/year or $100/hour). Commission staff estimates that industry costs for salary plus benefits are similar to Commission costs. We note that the NOPR provided cost estimates in 2022 dollars.

[503] Notwithstanding that compliance with the Applicant Code of Conduct is voluntary, we are providing the estimated burden hours associated with such compliance.

[504] After implementation of this final rule, we estimate one application for a permit to site electric transmission facilities will be filed per year.

Annual Changes Resulting from the Final Rule in Docket No. RM22-7-000					
	No. of Respondents (1)	**No. of Responses[501] per Respondent (2)**	**Total No. of Responses (1)X(2)=(3)**	**Avg. Burden Hrs. & Cost Per Response[502] (4)**	**Total Annual Burden Hours & Total Annual Cost (3)X(4)=5**
Environmental Justice Public Engagement Plan	1	1	1	24 hrs.; $2,400	24 hrs.; $2,400
Tribal Engagement Plan	1	1	1	24 hrs.; $2,400	24 hrs.; $2,400
Project Notification Requirements[505]	1	1	1	144 hrs.; $14,400	144 hrs.; $14,400
Congestion and System Analysis Data[506]	1	1	1	165 hrs.; $16,500	165 hrs.; $16,500
Other Updates to 18 CFR pt. 50[507]	1	1	1	20 hrs.; $2,000	20 hrs.; $2,000
Resource Report: Tribal Resources	1	1	1	43 hrs.; $4,300	43 hrs.; $4,300
Resource Report: Environmental Justice	1	1	1	80 hrs.; $8,000	80 hrs.; $8,000

[505] This category covers the updates to the project notification requirements in § 50.4(c) that require an applicant to provide written translation under certain circumstances, publish project notifications in other appropriate print and digital media outlets in addition to newspaper publication, submit proof of publication, and include additional material in the project notifications mailed to affected landowners (e.g., the Landowner Bill of Rights).

[506] This category covers the updates to the congestion and system analysis data that an applicant must provide during the pre-filing process and as part of the application in Exhibit H, *System analysis data*.

[507] This category covers additional updates to part 50 of the Commission's regulations that involve minor increases in burden (e.g., adding an interactive mapping feature to an applicant's project website), a reduction in burden (eliminating the requirement that an applicant provide seven paper copies of an application, exhibits, and other submittals), and no change in burden (revising the requirement to provide proposals for prospective third-party contractors). We note that eight burden hours that the NOPR reported in this category have been relocated to "Project Notification Requirements," a new category added to reflect several project notification requirements adopted in this final rule.

Annual Changes Resulting from the Final Rule in Docket No. RM22-7-000					
	No. of Respondents (1)	**No. of Responses[501] per Respondent (2)**	**Total No. of Responses (1)X(2)=(3)**	**Avg. Burden Hrs. & Cost Per Response[502] (4)**	**Total Annual Burden Hours & Total Annual Cost (3)X(4)=5**
Resource Report: Air Quality & Environmental Noise	1	1	1	296 hrs.; $29,600	296 hrs.; $29,600
Information on Visual Impacts	1	1	1	104 hrs.; $10,400	104 hrs.; $10,400
Other Updates to 18 CFR pt. 380[508]	1	1	1	182 hrs.; $18,200	182 hrs.; $18,200
REQUESTED TOTAL			11		1,242 hrs.; $124,200
PREVIOUSLY APPROVED PLUS REQUESTED TOTAL			12		10,842 hrs.; $1,084,200

417. **Titles:** FERC-729 - *Electric Transmission Facilities*.

418. **Action:** Revisions to information collection FERC-729.

419. **OMB Control Nos.:** 1902-0238 (FERC-729).

420. **Respondents:** Entities proposing to construct electric transmission facilities pursuant to the Commission's authority under section 216 of the FPA.

421. **Frequency of Information:** Ongoing.

422. **Necessity of Information:** The new information collection requirements are necessary for the Commission to carry out its responsibilities under the FPA, as amended

[508] This category covers a variety of updates to § 380.16 of the Commission's regulations that require an applicant to develop and submit additional information as part of the following existing resource reports: *General project description*; *Water use and quality*; *Fish, wildlife, and vegetation*; *Soils*; *Land use, recreation, and aesthetics*; and *Reliability and safety*.

by the IIJA, and NEPA. The required information would enable the Commission to review the features of the proposed project and determine whether the proposed project meets the statutory criteria enumerated in section 216(b) of the FPA. In addition, the revisions to the Commission's mandatory pre-filing process that would require certain information to be filed earlier in the process would help ensure that an application can be acted on no later than one year after the date of filing in compliance with section 216(h)(4)(B). The revised regulations would affect only the number of entities that would pursue a permit to site electric transmission facilities.

423. **Internal Review:** The Commission has reviewed the revisions and has determined that they are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

424. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 [Attention: Jean Sonneman, Office of the Executive Director], by email to DataClearance@ferc.gov or by phone (202) 502-8663.

425. Comments concerning the collections of information and the associated burden estimates may also be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. Due to security concerns, comments should be sent electronically to the following email address:

oira_submission@omb.eop.gov. Comments submitted to OMB should refer to FERC-729 (OMB Control No. 1902-0238).

IV. Environmental Analysis

426. The Commission is required to prepare an EA or an EIS for any action that may have a significant effect on the human environment.[509] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment, including the promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or the regulations being amended.[510] Because the final rule falls within this categorical exclusion, preparation of an EA or an EIS is not required.

V. Regulatory Flexibility Act

427. The Regulatory Flexibility Act of 1980 (RFA)[511] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of applicable statutes and minimize any significant economic impact on small entities.[512] In lieu of preparing a regulatory flexibility

[509] *Regs. Implementing the Nat'l Env'l Pol'y Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 10, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

[510] 18 CFR 380.4(a)(2)(ii) (2023).

[511] 5 U.S.C. 601-612.

[512] *Id*. 603(c).

analysis, an agency may certify that a final rule will not have a significant economic impact on a substantial number of small entities.[513]

428. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[514] The SBA size standard for electric utilities is based on the number of employees, including affiliates.[515] Under SBA's size standards, a transmission owner covered under the category of Electric Bulk Power Transmission and Control (NAICS code 221121)[516] is small if, including its affiliates, it employs 500 or fewer people.[517]

429. In Order No. 689, the Commission expected that entities seeking approval for transmission siting projects under FPA section 216 would be major transmission utilities capable of financing complex and costly transmission projects.[518] At that time, the Commission anticipated that the high cost of constructing transmission facilities would preclude entry into this field by small entities as defined by the RFA.[519] Though the SBA

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[513] *Id*. 605(b).

[514] 13 CFR 121.101 (2023).

[515] *Id.* 121.201.

[516] The North American Industry Classification System (NAICS) is an industry classification system that Federal statistical agencies use to categorize businesses for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. economy. United States Census Bureau, *North American Industry Classification System*, https://www.census.gov/eos/www/naics/.

[517] 13 CFR 121.201 (Sector 22 - Utilities).

[518] Order No. 689, 117 FERC ¶ 61,202 at P 73.

[519] *Id*.

size standard for electric utilities has changed from megawatt hours to number of employees since Order No. 689 was issued, we continue to find it unlikely that small entities in any number, let alone a substantial number, will pursue the permitting of transmission projects before the Commission. Since Order No. 689, only Southern California Edison, which would not qualify as a small entity under the SBA's current size standards, has participated in the Commission's pre-filing process for applications to site transmission facilities under section 216. To date, the Commission has not received any applications for permits to site transmission facilities under section 216.

430. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

VI. Document Availability

431. In addition to publishing the full text of this document in the Federal Register, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (http://www.ferc.gov).

432. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

433. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-

3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at public.referenceroom@ferc.gov.

VII. Effective Date and Congressional Notification

434. These regulations are effective **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a major rule as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[520] This rule is being submitted to the Senate, House, Government Accountability Office, and Small Business Administration.

By the Commission.
(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

[520] 5 U.S.C. 804(2).

List of Subjects

18 CFR Part 50

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 380

Environmental impact statements, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 50 and 380, Chapter I, Title 18, Code of Federal Regulations, as follows.

PART 50 – APPLICATIONS FOR PERMITS TO SITE INTERSTATE ELECTRIC TRANSMISSION FACILITIES

1. The authority citation for part 50 is revised to read as follows:

Authority: 16 U.S.C. 824p; DOE Delegation Order No. S1-DEL-FERC-2006.

2. Amend § 50.1 as follows:

a. Add a definition in alphabetical order for "Environmental justice community";

b. Remove the words "special use authorization" in the definition of "Federal authorization" and add in its place the words "special use authorizations";

c. Add a definition in alphabetical order for "Indian Tribe"; and

d. Revise the definitions of "National interest electric transmission corridor", "Permitting entity", and "Stakeholder".

The additions and revisions read as follows:

§ 50.1 Definitions.

* * * * *

Environmental justice community means any community that has been historically marginalized and overburdened by pollution. Environmental justice communities include, but may not be limited to, minority populations, low-income populations, or indigenous peoples.

* * * * *

Indian Tribe means an Indian Tribe that is recognized by treaty with the United States, by Federal statute, or by the U.S. Department of the Interior in its periodic listing of Tribal entities in the Federal Register in accordance with 25 CFR 83.6(a), and whose Tribal interests may be affected by the development and operation of the proposed transmission facilities.

National interest electric transmission corridor means any geographic area that is experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers or is expected to experience such energy transmission capacity constraints or congestion, as designated by the Secretary of Energy.

Permitting entity means any Federal or State agency, Indian Tribe, or multistate entity that is responsible for issuing separate authorizations pursuant to Federal law that are required to construct electric transmission facilities in a national interest electric transmission corridor.

Stakeholder means any Federal, State, interstate, or local agency; any Indian Tribe; any affected landowner; any environmental justice community member; or any other interested person or organization.

* * * * *

§ 50.2 [Amended]

3. Amend § 50.2 as follows:

a. Remove the word “tribes” in the third sentence of paragraph (a) and add in its place the word “Tribes”; and

b. Remove the word “which” in paragraph (c) and add in its place the word “that”.

4. Amend § 50.3 by revising paragraph (b) to read as follows:

§ 50.3 Applications/pre-filing; rules and format.

* * * * *

(b) Applications, amendments, and all exhibits and other submissions required to be furnished by an applicant to the Commission under this part must be submitted in electronic format.

* * * * *

5. Amend § 50.4 as follows:

a. Revise paragraphs (a)(1) through (3);

b. Add paragraphs (a)(4) and (5); and

c. Revise paragraphs (b)(1)(ii) and (c)(1) through (4).

The revisions and addition read as follows:

§ 50.4 Stakeholder participation.

* * * * *

(a) * * *

(1) Identifies specific tools and actions to facilitate stakeholder communications and public information, including an up-to-date project website with an interactive mapping component, and a readily accessible, single point of contact for the applicant;

(2) Lists all central locations in each county throughout the project area where the applicant will provide copies of all its filings related to the proposed project;

(3) Includes a description and schedule explaining how the applicant intends to respond to requests for information from the public, permitting entities, and other legal entities with local authorization requirements; and

(4) Includes an Environmental Justice Public Engagement Plan that addresses all

targeted outreach to identified environmental justice communities. This plan must summarize comments received from potentially impacted environmental justice communities during any previous outreach activities and describe planned targeted outreach activities with such communities during the pre-filing process and after the filing of an application, including efforts to identify, engage, and accommodate people with limited English proficiency. This plan must also describe how the applicant will conduct outreach to environmental justice communities about any potential mitigation measures.

(5) Includes a Tribal Engagement Plan that addresses all targeted outreach to identified Indian Tribes. This plan must summarize comments received from potentially affected Indian Tribes during any previous outreach activities and describe planned targeted outreach activities with such communities during the pre-filing process and after the filing of an application. This plan must also describe how the applicant will engage Indian Tribes about any potential mitigation measures.

(b) * * *

(1) * * *

(ii) Complete copies of all filed materials are available on the project website.

* * * * *

(c) * * *

(1) The applicant must make a good faith effort to notify all: affected landowners; landowners with a residence within a quarter mile of the edge of the construction right-of-way of the proposed project; municipalities in the project area; permitting entities; other local, State, and Federal governments and agencies involved in the project; Indian

Tribes; electric utilities and transmission owners and operators that are, or may be, connected to the proposed transmission facilities; any known individuals or organizations that have expressed an interest in the State siting proceeding; and any other individuals or organizations that have expressed to the applicant, or its representatives, an interest in the proposed project. Notification must be made:

(i) By certified or first class mail, sent:

(A) Within 14 days after the Director notifies the applicant of the commencement of the pre-filing process under § 50.5(d) (Pre-filing Notification);

(B) Within 3 business days after the Commission notices the application under § 50.9 (Application Notification); and

(C) With written translations in the applicable language(s) to all affected landowners and landowners with a residence within a quarter mile of the edge of the construction right-of-way of the proposed project in a census block group in which the number of limited English proficiency households that speak the same language constitutes at least five percent of the census block group or 1,000 people, whichever is less.

(ii) By twice publishing a Pre-filing Notification and Application Notification, in a daily or weekly newspaper of general circulation in each county in which the project is located and, as appropriate, Tribal newspapers and other online or hard copy periodicals of general circulation serving the affected area. These notifications must also be submitted to any available county and municipal government online bulletin boards and other similar community resources. All such publications and submittals should occur no later than 14 days after the date that a docket number is assigned for the pre-filing process

or to the application. The applicant must promptly provide the Commission with proof of any publication.

(2) *Contents of project notifications*.

(i) Any Pre-filing Notification sent by mail or published in a newspaper, periodical, or county/municipal online bulletin board or community resource must, at a minimum, include:

(A) The docket number assigned to the proceeding;

(B) The most recent edition of the Commission's pamphlet *Electric Transmission Facilities Permit Process.* The newspaper notification need only refer to the pamphlet and indicate the website address where it is available on the Commission's website;

(C) A description of the applicant and a description of the proposed project, its location (including a general location map), its purpose, and the proposed project schedule;

(D) Contact information for the applicant, including a local or toll-free telephone number, the name of a specific contact person who is knowledgeable about the project, and information on how to access the project website;

(E) Information on how to get a copy of the pre-filing information from the applicant and the location(s) where copies of the pre-filing information may be found as specified in paragraph (b) of this section;

(F) A copy of the Director's notification of commencement of the pre-filing process, the Commission's Internet address, and contact information for the Commission's Office of Public Participation;

(G) Information explaining the pre-filing and application processes and when and

how to intervene in the application proceedings; and

(H) Information explaining that the Commission's pre-filing and application processes are separate from any ongoing State siting proceeding(s) and describing the status of any such State siting proceeding(s).

(ii) In addition to the requirements of paragraph (c)(2)(i) of this section, any Pre-filing Notification sent by mail to an affected landowner must also include:

(A) A general description of the property the applicant will need from an affected landowner if the project is approved;

(B) The most recent edition of the document entitled "*Landowner Bill of Rights in Federal Energy Regulatory Commission Electric Transmission Proceedings*," on its own page(s) in at least 12-point font, legible, and contained within the first 10 pages of the notification; and

(C) A brief summary of what specific rights the affected landowner has in proceedings under the eminent domain rules of the relevant State.

(iii) The Application Notification must include the Commission's notice issued under § 50.9 and restate, or clearly identify the location of, the comment and intervention instructions provided in the Commission's notice.

(3) If, for any reason, a person or entity entitled to these notifications has not yet been identified when the notifications under this paragraph (c) are sent or published, the applicant must supply the information required under paragraphs (c)(2)(i) through (iii) of this section, as applicable, when the person or entity is identified.

(4) If the notification is returned as undeliverable, the applicant must make a reasonable attempt to find the correct address and re-send the notification.

* * * * *

6. Amend § 50.5 as follows:

a. Revise paragraph (c) introductory text, the first sentence of paragraph (c)(3) introductory text, paragraph (c)(3)(i), the first sentence of paragraph (c)(5), and paragraph (c)(6);

b. Add paragraphs (c)(8) and (9);

c. Revise paragraphs (d)(1)(i) and (e)(3)(i);

d. Remove paragraph (e)(3)(ii);

e. Redesignate paragraph (e)(3)(iii) as (e)(3)(ii);

f. Revise the first sentence of paragraph (e)(4);

g. Redesignate paragraphs (e)(7) and (8) as paragraphs (e)(10) and (11), respectively;

h. Add new paragraphs (e)(7), (8) and (9); and

i. Revise the first sentence of newly redesignated paragraph (e)(10).

The revisions and additions read as follows:

§ 50.5 Pre-filing procedures.

* * * * *

(c) *Contents of the initial filing.* An applicant's pre-filing request cannot be filed prior to the initial consultation and must include the following information:

* * * * *

(3) A list of the permitting entities responsible for conducting separate Federal permitting and environmental reviews and authorizations for the project, including contact names and telephone numbers, and a list of Tribal, State, and local entities with

authorization requirements. * * *

(i) How the applicant intends to account for each of the relevant entity's permitting and environmental review schedules, including its progress in the Department of Energy's pre-application process; and

* * * * *

(5) A description of completed work, including engagement with Federal, State, and local agencies, Indian Tribes, and stakeholders; project engineering; route planning; environmental and engineering contractor engagement; environmental surveys/studies; open houses; and any work completed or actions taken in conjunction with a State proceeding. * * *

(6) Proposals for all prospective third-party contractors from which Commission staff may make a selection to assist in the preparation of the requisite NEPA document, if the Director determined a third-party contractor would be necessary in the Initial Consultation meeting.

* * * * *

(8) A detailed description of how the proposed project will reduce capacity constraints and congestion on the transmission system.

(9) A statement indicating whether the applicant intends to comply with the Applicant Code of Conduct described in § 50.12, and, if not, how the applicant intends to ensure good faith dealings with affected landowners.

(d) * * *

(1) * * *

(i) The notification will designate the third-party contractor, if applicable, and

* * * * *

(e) * * *

(3) * * *

(i) Provide project notification in compliance with the requirements of § 50.4(c); and

* * * * *

(4) Within 30 days, submit a mailing list of all notifications made under paragraph (e)(3) of this section, including the names of the Federal, State, Tribal, and local jurisdictions' representatives. * * *

* * * * *

(7) Within 30 days, file supporting information showing how the proposed project will reduce capacity constraints and congestion on the transmission system, including:

(i) For each transmission planning region that would be crossed by the proposed project, the most recent regional transmission plan; and

(ii) Expert witness testimony and other relevant information submitted with the State siting application(s), where applicable.

(8) Within 30 days, file the full reports of the System Impact Study for the proposed project if the reports are already completed. If the reports are not already completed at this time, the applicant must alternatively submit a status report that includes when during the pre-filing process the full reports will be submitted.

(9) Within 30 days of submission of the full System Impact Study reports, file a draft Exhibit H – System analysis data required in § 50.7. The pre-filing process will not be concluded until all submittals required in paragraphs (e)(8) and (e)(9) of this section

are submitted.

* * * * *

(11) On a monthly basis, file status reports detailing the applicant's project activities, including surveys, stakeholder communications, agency and Tribal meetings, and updates on the status of other required permits or authorizations. * * *

* * * * *

7. Amend § 50.6 as follows:

a. Revise paragraph (b), the second sentence of paragraph (c), and paragraphs (d), (e)(1), and (e)(3)(i) and (ii);

b. Add paragraph (e)(3)(iii); and

c. Revise paragraph (i).

The revisions and addition read as follows:

§ 50.6 Applications: general content.

* * * * *

(b) A concise description of applicant's existing operations, if applicable.

(c) * * * The description must, at a minimum: identify the proposed geographic location of the principal project features and the planned routing of the transmission line; contain the general characteristics of the transmission line, including voltage, types of towers, point of receipt and point of delivery, and the geographic character of the area traversed by the line; and be accompanied by an overview map of sufficient scale to show the entire transmission route on one (or a few) 8.5 by 11-inch sheets.

(d) Verification that the proposed route lies within a national interest electric transmission corridor designated by the Secretary of the Department of Energy under

section 216 of the Federal Power Act, including the date on which the relevant corridor was designated.

(e) * * *

(1) A State in which the transmission facilities are to be constructed or modified does not have the authority to approve the siting of the facilities or consider the interstate benefits or interregional benefits expected to be achieved by the proposed construction or modification of transmission facilities in the State;

* * * * *

(3) * * *

(i) Not made a determination on an application seeking approval pursuant to applicable law;

(ii) Conditioned its approval in such a manner that the proposed construction or modification will not significantly reduce transmission capacity constraints or congestion in interstate commerce or is not economically feasible; or

(iii) Denied an application seeking approval pursuant to applicable law.

* * * * *

(i) A full statement as to whether any other application to supplement or effectuate the applicant's proposal must be (or is to be) filed by the applicant, any of the applicant's customers, or any other person with any other Federal, State, Tribal, or other regulatory body; and if so, the nature and status of each such application.

* * * * *

8. Amend § 50.7 as follows:

a. Revise the introductory text and paragraphs (g)(1)(i) and (vi), (g)(2)(ii) and (vi), (g)(3)(iii), (g)(4)(iii), (g)(5) introductory text, (g)(6) introductory text, (g)(6)(ii), (g)(8), (h)(1), the first sentence of paragraph (h)(2) introductory text, and paragraph (h)(2)(ii);

b. Remove paragraphs (h)(3) and (4);

c. Redesignate paragraphs (h)(5) and (6) as paragraphs (h)(3) and (4); and

d. Revise newly redesignated paragraphs (h)(3) and (4) and paragraphs (i)(2) and (j).

The revisions read as follows:

§ 50.7 Applications: exhibits.

Each exhibit must contain a title page showing the applicant's name, the title of the exhibit, and the proper letter designation of the exhibit. If an exhibit is 10 or more pages in length, it must include a table of contents citing (by page, section number, or subdivision) the component elements or matters contained in the exhibit.

* * * * *

(g) * * *

(1) * * *

(i) Name, point of receipt, and point of delivery of the project;

* * * * *

(vi) Line design features that minimize audible corona noise during fog/rain caused by operation of the proposed facilities.

(2) * * *

(ii) Type of structures, including overhead and underground structures;

* * * * *

(vi) A list of the names of all new (and existing, if applicable) substations or switching stations that will be associated with the proposed transmission line.

(3) * * *

(iii) Width of the right-of-way; and

* * * * *

(4) * * *

(iii) Conductor size, conductor type, and number of conductors per phase.

(5) If the proposed project includes an overhead transmission line, the following additional information also must be provided:

* * * * *

(6) If an underground or underwater transmission line is proposed, the following additional information also must be provided:

* * * * *

(ii) Type of cable and a description of any required supporting equipment, such as pressurizing plants;

* * * * *

(8) Any other data or information identified as a minimum requirement for the siting of a transmission line in the State in which the facility will be located.

(h) * * *

(1) An analysis of the existing and expected capacity constraints and congestion on the electric transmission system.

(2) Steady-state, short-circuit, and dynamic power flow cases, as applicable, used to analyze the existing transmission system, proposed project, and future transmission

system under anticipated load growth, operating conditions, variations in power import and export levels, generation additions and retirements, and additional transmission facilities required for system reliability. * * *

* * * * *

(ii) State the assumptions, criteria, and guidelines upon which the models are based and take into consideration transmission facility loading, planned and forecasted forced outage rate for generation and transmission, generation dispatch scenarios, system protection, and system stability.

(3) A concise analysis of how the proposed project will:

(i) Improve system reliability over the long and short term;

(ii) Impact long-term regional transmission expansion plans;

(iii) Impact congestion on the system where the proposed project will be located and, as relevant, the neighboring systems; and

(iv) Incorporate any advanced technology design features, if applicable.

(4) Single-line diagrams, including existing system facilities identified by name and circuit number, that show system transmission elements, in relation to the project and other principal interconnected system elements, as well as power flow and loss data that represent system operating conditions.

(i) * * *

(2) The estimated capital cost and estimated annual operations and maintenance expense of each proposed mitigation measure.

* * * * *

(j) *Exhibit J - Construction, operation, and management*. A concise statement

providing arrangements for supervision, management, engineering, accounting, legal, or other similar services to be rendered in connection with the construction, operation, and maintenance of the project, if not to be performed by employees of the applicant, including reference to any existing or contemplated agreements, together with a statement showing any affiliation between the applicant and any parties to the agreements or arrangements.

§ 50.8 [Amended]

9. Amend § 50.8 as follows:

a. Remove the word "applicant's" in the second sentence of paragraph (b) and add in its place the word "applicant"; and

b. Remove the comma directly following the word "rejected" in paragraph (c).

10. Amend § 50.9 by revising paragraph (b) to read as follows:

§ 50.9 Notice of Application

* * * * *

(b) The notice will establish prompt and binding intermediate milestones and ultimate deadlines for the review of, and Federal authorization decisions relating to, the proposed facilities.

§ 50.11 [Amended]

11. Amend § 50.11 as follows:

a. Revise paragraph (a) and the second sentence of paragraph (b);

b. Add a sentence at the end of paragraph (d) introductory text and add paragraphs (d)(1) and (2);

c. Remove the word “permitee” in the first sentence of paragraph (e) and add in its place the word “permittee”;

d. Remove the word “Order” in the first sentence of paragraph (g) introductory text and add in its place the word “order”; and

e. Remove the word “Orders” in paragraph (g)(2) and add in its place the word “orders”.

The revisions and addition read as follows:

§ 50.11 General conditions applicable to permits.

(a) The following terms and conditions, along with others that the Commission finds are required by the public interest, will attach to the issuance of each permit and to the exercise of the rights granted under the permit.

(b) * * * *Provided that*, when an applicant files for rehearing of the order in accordance with FPA section 313(a), the acceptance must be filed within 30 days after final disposition of the request for rehearing. * * *

* * * * *

(d) * * * *Provided that*, no authorization to proceed with construction activities will be issued:

(1) Until the time for the filing of a request for rehearing under 16 U.S.C. 825*l*(a) has expired with no such request being filed, or

(2) If a timely request for rehearing raising issues reflecting opposition to project construction, operation, or need is filed, until:

(i) The request is no longer pending before the Commission;

(ii) The record of the proceeding is filed with the court of appeals; or

(iii) 90 days has passed after the date that the request for rehearing may be deemed to have been denied under 16 U.S.C. 825*l*(a).

* * * * *

12. Add § 50.12 to read as follows:

§ 50.12 Applicant code of conduct for landowner engagement.

Under section 216(e)(1) of the Federal Power Act, any applicant that may, upon receipt of a permit, seek to acquire the necessary right-of-way by the exercise of the right of eminent domain must demonstrate to the Commission that it has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process. An applicant's commitment to and compliance with the Applicant Code of Conduct during the permitting process is one way to demonstrate to the Commission that such good faith efforts have been made with respect to affected landowners.

(a) *Applicant code of conduct.* To promote good faith engagement with affected landowners, applicants committing to comply with the Applicant Code of Conduct must for the duration of the pre-filing and application review processes:

(1) Develop and maintain a log of discussions with affected landowners, organized by name and property address, that includes:

(i) The name of the affected landowner;

(ii) The substance of the items discussed;

(iii) The nature of the contact (such as in-person, virtual meeting, telephone, electronic mail);

(iv) The date of the contact; and

(v) The status of discussions with the affected landowner following the contact, including any permissions granted, negotiations, or future meetings scheduled.

(2) In addition to the Pre-filing Notification required by § 50.4(c)(1)(i) and (ii), provide to each affected landowner, prior to, during, or within 3 business days of the first contact, a document that, at a minimum, includes: a description of the project, a description of the Commission and its role, a map of the project route, an explanation that affected landowners may request from applicants copies of discussion log entries that pertain to their property and how to make such requests, and the Landowner Bill of Rights in the form described in § 50.4(c)(2)(ii)(B). If the first contact with the affected landowner is in-person, the applicant must offer to provide the affected landowner at least one paper copy of the document. If the first contact with the affected landowner is by telephone, text, or electronic mail, the applicant may provide the affected landowner with a copy of the document by electronic means or by first class mail, at the affected landowner's preference. The applicant must review the provisions of the document with the affected landowner upon request.

(3) Ensure that any representative acting on the applicant's behalf states their full name, title, and employer, as well as the name of the applicant that they represent, and presents a photo identification badge at the beginning of any discussion with an affected landowner, and provides the representative's and applicant's contact information, including mailing address, telephone number, and electronic mail address, prior to the end of the discussion.

(4) Ensure that all communications with affected landowners are factually correct. The applicant must correct any statements made by it or any representative acting on its behalf that it becomes aware were:

(i) Inaccurate when made; or

(ii) Have been rendered inaccurate based on subsequent events, within three business days of discovery of any such inaccuracy.

(5) Ensure that communications with affected landowners do not misrepresent the status of the discussions or negotiations between the parties. Provide an affected landowner upon request a copy of any discussion log entries that pertain to that affected landowner's property.

(6) Provide affected landowners with updated contact information whenever an applicant's contact information changes.

(7) Communicate respectfully with affected landowners and avoid harassing, coercive, manipulative, or intimidating communications or high-pressure tactics.

(8) Except as otherwise provided by State, Tribal, or local law, abide by an affected landowner's request to end the communication or for the applicant or its representative to leave the affected landowner's property.

(9) Except as otherwise provided by State, Tribal, or local law, obtain an affected landowner's permission prior to entering the property, including for survey or environmental assessment, and leave the property without argument or delay if the affected landowner revokes permission.

(10) Refrain from discussing an affected landowner's communications or negotiations status with any other affected landowner.

(11) Provide the affected landowner with a copy of any appraisal that has been prepared by, or on behalf of, the applicant for that affected landowner's property, if any, before discussing the value of the property in question.

(12) Ensure that any representative acting on the applicant's behalf complies with all provisions of the Applicant Code of Conduct described in this paragraph (a).

(b) *Compliance with Applicant Code of Conduct*. Applicants committing to comply with the Applicant Code of Conduct must:

(1) File, as part of the pre-filing request required by § 50.5(c), an affirmative statement that the applicant intends to comply with the Applicant Code of Conduct.

(2) Include, as part of the monthly status reports required by § 50.5(e)(11):

(i) An affirmation that the applicant and its representatives have, to the best of their knowledge, complied with the Applicant Code of Conduct during the month in question; or

(ii) A detailed explanation of any instances of non-compliance with the Applicant Code of Conduct during the month in question and any remedial actions taken or planned.

(3) Identify, in a filing with the Commission or as part of the monthly status reports required by § 50.5(e)(11), any known instances of non-compliance that were not disclosed in prior monthly status reports and explain any remedial actions taken in the current month to address instances of non-compliance occurring in prior months.

(4) File monthly status reports providing the information required in paragraphs (b)(2) and (b)(3) of this section, for the duration of the application review process.

(c) *Compliance with an alternative method*. Applicants not committing to comply with the Applicant Code of Conduct must:

(1) File, as part of the pre-filing request required by § 50.5(c):

(i) An affirmative statement that the applicant intends to rely on an alternative method of demonstrating that it meets the good faith efforts standard;

(ii) A detailed explanation of the alternative method of demonstrating that it meets the good faith efforts standard, including any commitments to recordkeeping, information-sharing, or other conduct;

(iii) An explanation of how the alternative method is equal to or better than compliance with the Applicant Code of Conduct as a means to ensure the good faith efforts standard is met;

(iv) An explanation, for each component of the Applicant Code of Conduct with which it does not comply, why it did not follow that component; and

(v) An explanation, for each component of the Applicant Code of Conduct with which it does not comply, why the alternative method is an equal or better means to ensure the good faith standard is met notwithstanding that deviation from the Applicant Code of Conduct.

PART 380 – REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

13. The authority citation for part 380 continues to read as follows:

Authority: 42 U.S.C. 4321-4370h, 7101-7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

14. Amend § 380.2 by redesignating paragraphs (f) and (g) as paragraphs (g) and

(h) and adding new paragraph (f).

The addition reads as follows:

§ 380.2 Definitions and terminology.

* * * * *

(f) *Environmental justice community* means any community that has been historically marginalized and overburdened by pollution. Environmental justice communities include, but may not be limited to, minority populations, low-income populations, or indigenous peoples.

* * * * *

§ 380.13 [Amended]

15. Amend § 380.13 in paragraph (b)(2)(i) by adding "or § 380.16, as applicable" directly after the reference to "§ 380.12".

§ 380.14 [Amended]

16. Amend § 380.14 in paragraph (a) introductory text as follows:

a. Remove the parenthetical reference to "16 U.S.C. 470(f)" in the first sentence and add, in its place, a parenthetical reference to "54 U.S.C. 306108"; and

b. Add "or § 380.16(f), as applicable" directly after the reference to "380.12(f)" in the second sentence.

17. Amend § 380.16 as follows:

a. Revise the second sentence of paragraph (a)(1), revise paragraph (b)(3), revise the first sentence of paragraph (c) introductory text and the first sentence of paragraph (c)(1), and revise paragraphs (c)(2)(i) through (iii) and (c)(3) and (4);

b. Revise paragraph (d)(6) and the second sentence of paragraph (d)(7);

c. Revise paragraphs (e)(2) and (e)(3), the first two sentences of paragraph (e)(4), the first and third sentences of paragraph (e)(5), and paragraph (e)(6);

d. Redesignate paragraphs (e)(7) and (e)(8) as paragraphs (e)(8) and (e)(9);

e. Add new paragraph (e)(7);

f. Revise newly redesignated paragraphs (e)(8) and (e)(9);

g. Revise paragraphs (f)(1)(i), (iii), (iv), and (v), (f)(2) introductory text, and the first sentence of paragraph (f)(4);

h. Revise the first sentence of paragraph (g) introductory text and paragraphs (g)(2), (3) and (6);

i. Redesignate paragraphs (k) through (m) as paragraphs (n) through (p);

j. Redesignate paragraphs (h) through (j) as paragraphs (j) through (l);

k. Add new paragraphs (h) and (i);

l. Revise the heading and the second sentence of newly redesignated paragraph (j) introductory text and revise newly redesignated paragraph (j)(3);

m. Revise the newly redesignated paragraph (k) heading and paragraphs (k) introductory text and (k)(2) and (3);

n. Add paragraph (k)(4);

o. Revise newly redesignated paragraph (l);

p. Add new paragraph (m);

q. Revise the newly redesignated paragraph (n) heading and introductory text, the second sentence of newly redesignated paragraph (n)(2)(i), and the second sentence of newly redesignated paragraph (n)(2)(ii);

r. Revise the newly redesignated paragraph (o) heading and introductory text, newly redesignated paragraphs (o)(1) through (4), the first sentence of newly redesignated paragraph (o)(5), and newly redesignated paragraph (o)(7); and

s. Revise the newly redesignated paragraph (p) heading, the second sentence of newly redesignated paragraph (p) introductory text, the third sentence of newly redesignated paragraph (p)(2), and newly redesignated paragraphs (p)(3)(i) and (iii) and (p)(4).

The revisions and additions read as follows:

§ 380.16 Environmental reports for Section 216 Federal Power Act Permits.

(a) * * *

(1) * * * The environmental report must include the 14 resource reports and related material described in this section.

* * * * *

(b) * * *

(3) Identify the effects of construction, operation (including malfunctions), and maintenance, as well as cumulative effects resulting from the incremental effects of the project when added to the effects of other past, present, and reasonably foreseeable actions;

* * * * *

(c) * * * This report must describe facilities associated with the project; special construction, operation, and maintenance procedures; construction timetables; future plans for related construction; compliance with regulations and codes; and permits that

must be obtained. * * *

(1) Describe and provide location maps of all project facilities (such as transmission line towers, substations, and any appurtenant facilities) to be constructed, modified, replaced, or removed, and related construction and operational support activities and areas, such as maintenance bases, staging areas, communications towers, power lines, and new access roads (roads to be built or modified). * * *

(2) * * *

(i) Current, original United States Geological Survey (USGS) 7.5–minute series topographic maps, or maps of equivalent detail, covering at least a 0.5–mile-wide corridor centered on the electric transmission facility centerline, with integer mileposts identified, showing the location of rights-of-way, new access roads, other linear construction areas, substations, and construction materials storage areas. Nonlinear construction areas must be shown on maps at a scale of 1:3,600, or larger, keyed graphically and by milepost to the right-of-way maps. The topographic maps must depict the facilities identified under paragraph (l)(5) of this section, including any facilities located outside of the 0.5-mile-wide corridor.

(ii) Original aerial images or photographs or photo-based alignment sheets based on these sources, not more than one year old (unless older ones accurately depict current land use and development) and with a scale of 1:6,000, or larger, showing the proposed transmission line route and location of transmission line towers, substations and appurtenant facilities, covering at least a 0.5-mile-wide corridor, and including mileposts. The aerial images or photographs or photo-based alignment sheets must show all existing transmission facilities located in the area of the proposed facilities and the facilities

identified under paragraph (l)(5) of this section, including any facilities located outside of the 0.5-mile-wide corridor. Older images/photographs/alignment sheets must be modified to show any facilities not depicted in the original. Alternative formats (e.g., blue-line prints of acceptable resolution) need prior approval by the environmental staff of the Commission's Office of Energy Projects.

(iii) In addition to the requirements under § 50.3(b) of this chapter, the applicant must contact the environmental staff of the Office of Energy Projects regarding the need for any additional copies of topographic maps and aerial images/photographs.

(3) Describe and identify, by milepost, proposed general construction and restoration methods, and any special methods to be used in areas of rugged topography, residential areas, active croplands, and sites where explosives are likely to be used. Describe any proposed horizontal directional drilling and pile driving that may be necessary.

(4) Identify the number of construction spreads, average workforce requirements for each construction spread and estimated duration of construction from initial clearing to final restoration. Indicate the days of the week and times of the day that proposed construction activities would occur and describe any proposed nighttime construction activities.

* * * * *

(d) * * *

(6) Discuss proposed mitigation measures to reduce the potential for adverse impacts to surface water, wetlands, or groundwater quality. Discuss the potential for blasting or contamination/spills to affect water wells, springs, and wetlands, and

measures to be taken to detect and remedy such effects. Describe the impact of proposed land clearing and vegetation management practices, including herbicide treatment, in the project area on water resources.

(7) * * * Identify locations of Environmental Protection Agency or State-designated, sole-source aquifers and wellhead protection areas crossed by the proposed transmission line facilities.

(e) * * *

(2) Describe terrestrial habitats, including wetlands, typical wildlife habitats and corridors, and rare, unique, or otherwise significant habitats that might be affected by the proposed action. Describe typical species that have commercial, recreational, or aesthetic value.

(3) Describe and provide the acreage of vegetation cover types that would be affected, including unique ecosystems or communities, such as remnant prairie, interior forest, or old-growth forest, or significant individual plants, such as old-growth specimen trees. Describe any areas of noxious weeds and non-native species in the project area.

(4) Describe the impact of construction, operation, and maintenance on aquatic and terrestrial species and their habitats, including the possibility of a major alteration to ecosystems or biodiversity, and any potential impact on State-listed endangered or threatened species. Describe the impact of proposed land clearing and vegetation management practices, including herbicide treatment, in the project area on fish; wildlife, including migratory birds and bald and golden eagles; and vegetation. * * *

(5) Identify all federally listed or proposed threatened or endangered species and critical habitat that potentially occur in the vicinity of the project. * * * The application

must include the results of any required surveys unless seasonal considerations make this impractical. * * *

(6) Identify all federally listed essential fish habitat (EFH) that potentially occurs in the vicinity of the project. Provide information on all EFH, as identified by the pertinent Federal fishery management plans, that may be adversely affected by the project and the results of abbreviated consultations with the National Marine Fisheries Service, and any resulting EFH assessments.

(7) Identify migratory bird species and bald and golden eagles that potentially occur in the vicinity of the project, including bald and golden eagle nesting and roosting sites, migratory bird flyways, and any habitat/sites important to migratory bird breeding, feeding, and sheltering.

(8) Describe proposed, site-specific mitigation measures to minimize impacts on fisheries; wildlife, including migratory birds and bald and golden eagles; and vegetation.

(9) Include copies of correspondence not provided under paragraph (e)(5) of this section, containing recommendations from appropriate Federal and State fish and wildlife agencies to avoid or limit impacts on wildlife, including migratory birds and bald and golden eagles; fisheries; and vegetation, and the applicant's response to the recommendations.

(f) * * *

(1) * * *

(i) Documentation of the applicant's initial cultural resource consultations, including engagement with Indian Tribes and other interested persons (if appropriate);

* * * * *

(iii) An Evaluation Report, as appropriate;

(iv) A Treatment Plan, as appropriate; and

(v) Written comments from State Historic Preservation Officer(s) (SHPO), Tribal Historic Preservation Officers (THPO), as appropriate, and applicable land-management agencies on the reports in paragraphs (f)(1)(i) through (iv) of this section.

(2) The application or pre-filing documents, as applicable, must include the documentation of initial cultural resource consultation(s), the Overview and Survey Reports, if required, and written comments from SHPOs, THPOs, and land-management agencies, if available. The initial cultural resource consultations should establish the need for surveys. If surveys are deemed necessary by the consultation with the SHPO/THPO, the survey reports must be filed with the application or pre-filing documents.

* * * * *

(4) The applicant must request privileged treatment for all material filed with the Commission containing location, character, and ownership information about cultural resources in accordance with § 388.112 of this chapter. * * *

* * * * *

(g) * * * This report must identify and quantify the impacts of project construction, operation, and maintenance on factors affecting municipalities and counties in the vicinity of the project. * * *

* * * * *

(2) Evaluate the impact of any substantial migration of people on governmental facilities and services and plans to reduce the impact on the local infrastructure.

(3) Describe on-site manpower requirements and payroll during construction,

operation, and maintenance, including the number of construction personnel who currently reside within the impact area, will commute daily to the site from outside the impact area, or will relocate temporarily within the impact area.

* * * * *

(6) Conduct a fiscal impact analysis evaluating incremental local government expenditures in relation to incremental local government revenues that will result from the project. Incremental expenditures include, but are not limited to, school operation, road maintenance and repair, public safety, and public utilities.

(h) *Resource Report 6—Tribal resources.* This report must describe Indian Tribes, Tribal lands, and Tribal interests that may be affected by the proposed project. Resource Report 6 must:

(1) Identify Indian Tribes that may be affected by the construction, operation, and maintenance of the proposed transmission facilities.

(2) Describe the impacts of construction, operation, and maintenance of the project on Indian Tribes and Tribal interests, including those related to: water use and quality; wildlife and vegetation; cultural and historic resources; socioeconomics; geological resources; soils; land use, recreation, and aesthetics; air quality and environmental noise; traffic; and health.

(3) Identify project impacts that may affect Tribal interests not necessarily associated with resources specified in paragraph (h)(2) of this section, *e.g.,* treaties, Tribal practices, or agreements between the Indian Tribe and entities other than the applicant.

(4) Identify Indian Tribes that may attach religious and cultural significance to

historic properties within the proposed project right-of-way or in the project vicinity, as well as available information on Tribal traditional cultural and religious properties, whether on or off of any Indian reservation.

(5) Ensure that information made available under this section does not include specific site or property locations, the disclosure of which will create a risk of harm, theft, or destruction of archaeological or Tribal cultural resources or to the site at which the resources are located, or which would violate any Federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470hh, and the National Historic Preservation Act of 1966, 54 U.S.C. 307103.

(6) Describe any proposed mitigation measures to avoid or minimize impacts on Tribal resources, including any input received from Indian Tribes on the proposed measures and how the input informed the proposed measures.

(i) *Resource Report 7—Environmental justice*. This report must address the effects of the proposed project on environmental justice communities, as defined in § 380.2 of this chapter. Resource Report 7 must:

(1) Identify environmental justice communities within the area of potential project impacts using current guidance and data, including localized data, from the Environmental Protection Agency, the Council, the Census Bureau, and other authoritative sources. Provide maps depicting identified environmental justice communities in relation to the proposed project facilities using localized data.

(2) Describe the impacts of construction, operation, and maintenance of the project on environmental justice communities, including those related to: water use and quality; wildlife and vegetation; cultural and historic resources; socioeconomics; geological

resources; soils; land use, recreation, and aesthetics; air quality and environmental noise; traffic; and health. Identify any disproportionate and adverse impacts on environmental justice communities.

(3) Discuss any cumulative impacts on environmental justice communities, regarding resources affected by the project, including whether any cumulative impacts would be disproportionate and adverse. Describe the proposed project's impacts in relation to the aggregation of past, present, and reasonably foreseeable actions taken by Federal or non-Federal entities, and the environmental justice communities' capacity to tolerate additional impacts.

(4) Describe any proposed mitigation measures to avoid or minimize impacts on environmental justice communities, including any community input received on the proposed measures and how the input informed the proposed measures.

(j) *Resource Report 8—Geological resources*. * * * Resource Report 8 must:

* * * * *

(3) Describe how the project will be located or designed to avoid or minimize adverse effects to geological resources or risk to itself. Describe any geotechnical investigations and monitoring that would be conducted before, during, and after construction. Discuss the potential for blasting to affect structures and the proposed measures to be taken to remedy such effects.

* * * * *

(k) *Resource Report 9—Soils*. This report must describe the soils that will be affected by the proposed project, the effect on those soils, and measures proposed to minimize or avoid impacts. Resource Report 9 must:

* * * * *

(2) Identify, by milepost, potential impacts from: soil erosion due to water, wind, or loss of vegetation; soil compaction and damage to soil structure resulting from movement of construction vehicles; wet soils and soils with poor drainage that are especially prone to structural damage; damage to drainage tile systems due to movement of construction vehicles and excavating activities; and interference with the operation of agricultural equipment due to the possibility of large stones or blasted rock occurring on or near the surface as a result of construction.

(3) Identify, by milepost, cropland and residential areas where project construction may result in the loss of soil fertility, including any land classified as prime or unique farmland by the U.S. Department of Agriculture, Natural Resources Conservation Service.

(4) Describe any proposed mitigation measures to reduce the potential for adverse impacts to soils or agricultural productivity.

(l) *Resource Report 10—Land use, recreation, and aesthetics*. This report must describe the existing uses of land in the project vicinity and changes to those land uses that will occur if the project is approved. The report must discuss proposed mitigation measures, including the protection and enhancement of existing land use. Resource Report 10 must:

(1) Describe the width and acreage requirements of all construction and permanent rights-of-way for project construction, operation and maintenance.

(i) List, by milepost, locations where the proposed construction or permanent rights-of-way would be adjacent to existing rights-of-way of any kind.

(ii) Identify, preferably by diagrams, existing rights-of-way that will be used for a portion of the construction or permanent rights-of-way, the overlap and how much additional width will be required.

(iii) Identify the total amount of land to be purchased or leased for each project facility; the amount of land that would be disturbed for construction, operation, and maintenance of the facility; and the proposed use of the remaining land not required for project operation and maintenance, if any.

(iv) Identify the size of typical staging areas and expanded work areas, such as those at railroad, road, and waterbody crossings, and the size and location of all construction materials storage yards and access roads.

(2) Identify, by milepost, the existing use of lands crossed by, or adjacent to, the proposed project facilities or rights-of-way.

(3) Describe planned development on land crossed by, or within 0.25 mile of, the proposed facilities, the time frame (if available) for such development, and proposed coordination to minimize impacts on land use. Planned development means development that is included in a master plan or is on file with the local planning board or the county.

(4) Identify, by milepost and length of crossing, the area of direct effect of each proposed facility and operational site on sugar maple stands; orchards and nurseries; landfills; operating mines; hazardous waste sites; State wild and scenic rivers; State or local designated trails; nature preserves; game management areas; remnant prairie; old-growth forest; interior forest; national or State forests or parks; golf courses; designated natural, recreational or scenic areas; registered natural landmarks; Native American religious sites and traditional cultural properties (to the extent they are known to the

public at large) and reservations; lands identified under the Special Area Management Plan of the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration; and lands owned or controlled by Federal or State agencies or private preservation groups. Also identify if any of those areas are located within 0.25 mile of any proposed facility.

(5) Identify and describe buildings, electronic installations, airstrips, airports, and heliports in the project vicinity. The facilities identified under this paragraph must be depicted on the maps and photographs in Resource Report 1, as required by paragraph (c)(2) of this section.

(i) *Buildings*: List all single-family and multi-family dwellings and related structures, mobile homes, apartment buildings, commercial structures, industrial structures, business structures, churches, hospitals, nursing homes, schools, or other structures normally inhabited by humans or intended to be inhabited by humans on a daily or regular basis within a 0.5–mile-wide corridor centered on the proposed transmission line alignment. Provide a general description of each habitable structure and its distance from the centerline of the proposed project. In cities, towns, or rural subdivisions, houses can be identified in groups. Provide the number of habitable structures in each group and list the distance from the centerline to the closest habitable structure in the group. Provide a list of all habitable structures within 200 feet of a proposed construction work area for all proposed project facilities, including transmission line towers, substations, access roads, and appurtenant facilities; a general description of each habitable structure; and the distance of each habitable structure from the proposed construction work area.

(ii) *Electronic installations*: List all commercial AM radio transmitters located within 10,000 feet of the centerline of the proposed project and all FM radio transmitters, microwave relay stations, or other similar electronic installations located within 2,000 feet of the centerline of the proposed project. Provide a general description of each installation and its distance from the centerline of the proposed project.

(iii) *Airstrips, Airports, and Heliports*: List all known private airstrips within 10,000 feet of the centerline of the project. List all airports registered with the Federal Aviation Administration (FAA), with at least one runway more than 3,200 feet in length, that are located within 20,000 feet of the centerline of the proposed project. Indicate whether any transmission structures will exceed a 100:1 horizontal slope (one foot in height for each 100 feet in distance) from the closest point of the closest runway. List all airports registered with the FAA having no runway more than 3,200 feet in length that are located within 10,000 feet of the centerline of the proposed project. Indicate whether any transmission structures will exceed a 50:1 horizontal slope from the closest point of the closest runway. List all heliports located within 5,000 feet of the centerline of the proposed project. Indicate whether any transmission structures will exceed a 25:1 horizontal slope from the closest point of the closest landing and takeoff area of the heliport. Provide a general description of each private airstrip, registered airport, and registered heliport, and state the distance of each from the centerline of the proposed transmission line. Include copies of any consultation with the FAA.

(6) Describe any areas crossed by, or within 0.25 mile of, the proposed transmission project facilities that are included in, or are designated for study for inclusion in: the National Wild and Scenic Rivers System (16 U.S.C. 1271), the National

Trails System (16 U.S.C. 1241), or a wilderness area designated under the Wilderness Act (16 U.S.C. 1132).

(7) For facilities within a designated coastal zone management area, provide a consistency determination or evidence that the applicant has requested a consistency determination from the State's coastal zone management program.

(8) Describe the impact the project will have on present uses of the affected areas as identified above, including commercial uses, mineral resources, recreational areas, public health and safety, and the aesthetic value of the land and its features. Describe any temporary or permanent restrictions on land use resulting from the project.

(9) Describe proposed mitigation measures intended for all special use areas identified under this section.

(10) Identify the area of potential visual effects from the proposed project. Describe the visual characteristics of the lands and waters affected by the project, including any visually sensitive areas, visual classifications, and key viewpoints in the project vicinity. Describe how the transmission line project facilities will impact the visual character and scenic quality of the landscape and proposed mitigation measures to lessen these impacts. Provide visual aids to support the textual descriptions required by this paragraph. Identify, and justify the selection of, the tools or methodologies used to develop the information required in this paragraph.

(11) Demonstrate that applications for rights-of-way authorizations or other proposed land uses have been, or soon will be, filed with Federal land-management agencies with jurisdiction over land that would be affected by the project.

(m) *Resource Report 11—Air quality and environmental noise*. This report must

estimate emissions from the proposed project and the corresponding impacts on air quality and the environment, estimate the impact of the proposed project on the noise environment, and describe proposed measures to mitigate the impacts. Resource Report 11 must:

(1) Describe the existing air quality in the project area, indicate if any project facilities are located within a designated nonattainment or maintenance area under the Clean Air Act (42 U.S.C. 7401 et seq.), and provide the distance from the project facilities to any Class I area in the project vicinity.

(2) For proposed substations and appurtenant facilities, quantitatively describe existing noise levels at nearby noise-sensitive areas, such as schools, hospitals, or residences.

(i) Report existing noise levels as the Leq (day), Leq (night), and Ldn (day-night) and include the basis for the data or estimates.

(ii) Include a plot plan that identifies the locations and duration of noise measurements, time of day, weather conditions, wind speed and direction, engine load, and other noise sources present during each measurement.

(iii) Identify any State or local noise regulations that may be applicable to the project facilities.

(3) Estimate emissions from the proposed project and the corresponding impacts on air quality and the environment.

(i) Estimate the reasonably foreseeable emissions from construction, operation, and maintenance of the project facilities (such as emissions from tailpipes, equipment, fugitive dust, open burning, and substations) expressed in tons per year. Include

supporting calculations, emissions factors, fuel consumption rates, and annual hours of operation.

(ii) For each designated nonattainment or maintenance area, provide a comparison of the emissions from construction, operation, and maintenance of the project facilities with the applicable General Conformity thresholds (40 CFR part 93).

(iii) Identify the corresponding impacts on communities and the environment in the project area from the estimated emissions.

(iv) Describe any proposed mitigation measures to control emissions identified under this section.

(4) Estimate the impact of the proposed project on the noise environment.

(i) Provide a quantitative estimate of the impact of transmission line operation on noise levels at the edge of the proposed right-of-way, including corona, insulator, and Aeolian noise. For proposed substations and appurtenant facilities, provide a quantitative estimate of the impact of operations on noise levels at nearby noise-sensitive areas, including discrete tones.

(A) Include step-by-step supporting calculations or identify the computer program used to model the noise levels, input and raw output data and all assumptions made when running the model, far-field sound level data for maximum facility operation, and source of the data.

(B) Include sound pressure levels for project facilities, dynamic insertion loss for structures, and sound attenuation from the project facilities to the edge of the right-of-way or to nearby noise-sensitive areas (as applicable).

(C) Far-field sound level data measured from similar project facilities in service

elsewhere, when available, may be substituted for manufacturer's far-field sound level data.

(D) The operational noise estimates must demonstrate that noise attributable to any proposed substation or appurtenant facility does not exceed a day-night sound level (Ldn) of 55 decibels on the A-weighted scale (dBA) at any pre-existing noise-sensitive area. Compare the proposed project's operational noise estimates with applicable State and local noise regulations.

(ii) Describe the impact of proposed construction activities, including any nighttime construction, on the noise environment. Estimate the impact of any horizontal directional drilling, pile driving, or blasting on noise levels at nearby noise-sensitive areas and include supporting assumptions and calculations.

(iii) Describe any proposed mitigation measures to reduce noise impacts identified under this section.

(n) *Resource Report 12—Alternatives*. This report must describe alternatives to the project and compare the environmental impacts (as identified in Resource Reports 1 through 11 of this section) of such alternatives to those of the proposal. * * * Resource Report 12 must:

* * * * *

(2) * * *

(i) * * * Where applicable, identify the location of such alternatives on maps of sufficient scale to depict their relationship to the proposed action and existing rights-of-way; and

(ii) * * * Provide comparative tables showing the differences in environmental

characteristics for the alternatives and proposed action. * * *

(o) *Resource Report 13—Reliability and safety*. This report must address the potential hazards to the public from failure of facility components resulting from, among other things, accidents or natural catastrophes; how these events would affect reliability; and proposed procedures and design features to reduce potential hazards. Resource Report 13 must:

(1) Discuss hazards, environmental impacts, and service interruptions that could reasonably ensue from failure of the proposed facilities.

(2) Describe proposed measures to protect the public from failure of the proposed facilities (including coordination with local agencies).

(3) Discuss proposed design and operational measures to avoid or reduce risk, including any measures to ensure that the proposed project facilities would be resilient against future climate change impacts in the project area.

(4) Discuss proposed contingency plans for maintaining service or reducing downtime to ensure that the proposed facilities would not adversely affect the bulk electric system in accordance with applicable North American Electric Reliability Corporation reliability standards.

(5) Describe proposed measures to exclude the public from hazardous areas. * * *

* * * * *

(7) Discuss the potential for electrical noise from electric and magnetic fields, including shadowing and reradiation, as they may affect health or communication systems along the transmission right-of-way.

* * * * *

(p) *Resource Report 14—Design and engineering*. * * * If the version of this report submitted with the application is preliminary in nature, the applicant must state that in the application. * * *

* * * * *

(2) * * * If a permit is granted on the basis of preliminary designs, the applicant must submit final design drawings for written approval by the Director of the Office of Energy Projects prior to commencement of any construction of the project.

(3) * * *

(i) An assessment of the suitability of the locations of proposed transmission line towers, substations, and appurtenant structures based on geological and subsurface investigations, including investigations of soils and rock borings and tests evaluating all foundations and construction materials;

* * * * *

(iii) An identification of all borrow areas and quarry sites and an estimate of required quantities of suitable construction material; and

* * * * *

(4) The applicant must submit the supporting design report described in paragraph (p)(3) of this section at the time preliminary and final design drawings are filed. If the report contains preliminary drawings, it must be designated as a “Preliminary Supporting Design Report.”

NOTE: The following appendices will not appear in the Code of Federal Regulations.

Appendix A

Landowner Bill of Rights in Federal Energy Regulatory Commission Electric Transmission Proceedings

1. You have the right to receive compensation if your property is necessary for the construction or modification of an authorized project. The amount of such compensation would be determined through a negotiated easement agreement between you and the entity applying to the Federal Energy Regulatory Commission (Commission) for authorization to construct a transmission line (applicant) or through an eminent domain proceeding in the appropriate Federal or State court. The applicant cannot seek to take a property by eminent domain unless and until the Commission approves the application, unless otherwise provided by State or local law.
2. You have the right to request the full name, title, contact information including e-mail address and phone number, and employer of every representative of the applicant that contacts you about your property.
3. You have the right to access information about the proposed project through a variety of methods, including by accessing the project website that the applicant must maintain and keep current, by visiting a central location in your county designated by the applicant for review of project documents, or by accessing the Commission's eLibrary online document information system at www.ferc.gov.
4. You have the right to participate, including by filing comments and, after an application is filed, by intervening in any open Commission proceedings regarding the proposed transmission project in your area. Deadlines for making these filings may apply. For more information about how to participate and any relevant deadlines, contact the Commission's Office of Public Participation by phone (202-502-6595 or toll free at 1-866-208-3372) or by email (OPP@ferc.gov).
5. When contacted by the applicant or a representative of the applicant either in person, by phone, or in writing, you have the right to communicate or not to communicate. You also have the right to hire counsel to represent you in your dealings with the applicant and to direct the applicant and its representatives to communicate with you only through your counsel.
6. The applicant may seek to negotiate a written easement agreement with you that would govern the applicant's and your rights to access and use the property that is at issue and describe other rights and responsibilities. You have the right to negotiate or to decline to negotiate an easement agreement with the applicant; however, if the Commission approves the proposed project and negotiations fail or

you chose not to engage in negotiations, there is a possibility that your property could be taken through an eminent domain proceeding, in which case the appropriate Federal or State court would determine fair compensation.

7. You have the right to hire your own appraiser or other professional to appraise the value of your property or to assist you in any easement negotiations with the applicant or in an eminent domain proceeding before a court.

8. Except as otherwise provided by State or local law, you have the right to grant or deny access to your property by the applicant or its representatives for preliminary survey work or environmental assessments, and to limit any such grant in time and scope.

9. In addition to the above rights, you may have additional rights under Federal, State, or local laws.

Appendix B: Abbreviated Names of Commenters

Advanced Energy United	Advanced Energy United
Alabama Public Service Commission	Alabama Commission
American Chemistry Council	American Chemistry Council
American Clean Power Association	ACP
American Council on Renewable Energy	ACORE
American Farm Bureau Federation, Illinois Farm Bureau, Iowa Farm Bureau, Kansas Farm Bureau, Missouri Farm Bureau Federation, and other State Farm Bureaus	Farm Bureaus
Americans for a Clean Energy Grid	ACEG
Arizona Game and Fish Department	Arizona Game and Fish
California Public Utilities Commission	California Commission
Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe	Chickahominy Indian Tribe, Nansemond Indian Nation, Rappahannock Indian Tribe, and Upper Mattaponi Indian Tribe
Clean Air Task Force	CATF
Clean Energy Buyers Association	Clean Energy Buyers
ClearPath, Inc.	ClearPath
Conservation Law Foundation	CLF
Earthjustice, National Wildlife Federation, Natural Resources Defense Council, NW Energy Coalition, Sierra Club, Sustainable FERC Project, Union of Concerned Scientists, and WE ACT for Environmental Justice	Public Interest Organizations
Edison Electric Institute and WIRES	EEI
Electricity Consumers Resource Council	ELCON
Environmental Defense Fund	EDF
Environmental Law and Policy Center, National Audubon Society, and Vote Solar	Environmental Law & Policy Center
Georgia Public Service Commission	Georgia Commission
Impacted Landowners	Impacted Landowners
Institute for Policy Integrity at New York University School of Law	Policy Integrity
Kansas Corporation Commission	Kansas Commission
Kentucky Public Service Commission	Kentucky Commission
Land Trust Alliance	Land Trust Alliance
Los Angeles Department of Water & Power	Los Angeles DWP
Louisiana Public Service Commission	Louisiana Commission
Maryland Public Service Commission	Maryland Commission
Michigan Public Service Commission	Michigan Commission
National Wildlife Federation Action Fund	National Wildlife Federation

(submitting 10,753 comments by fund supporters) and National Wildlife Federation Outdoors (submitting 332 comments by hunter and angler members)	Members
National Wildlife Federation, Environmental League of Massachusetts, Montana Wildlife Federation, and Nevada Wildlife Federation	National Wildlife Federation
New England States Committee on Electricity	NESCOE
New Jersey Board of Public Utilities	New Jersey Board
New Jersey Division of Rate Counsel, Maryland Office of the People's Counsel, and Delaware Division of the Public Advocate	Joint Consumer Advocates
New York State Public Service Commission	New York Commission
Niskanen Center	Niskanen
North Carolina Utilities Commission and North Carolina Utilities Commission Public Staff	North Carolina Commission and Staff
North Dakota Public Service Commission	North Dakota Commission
Organization of MISO States, Inc.	OMS
Pennsylvania Office of Consumer Advocate	Pennsylvania Consumer Advocate
Pennsylvania Public Utility Commission	Pennsylvania Commission
Public Utility Commission of Texas	Texas Commission
Rail Electrification Council	Rail Electrification Council
Sabin Center for Climate Change Law, Columbia Law School	Sabin Center
Solar Energy Industries Association	SEIA
Southern Company Services, Inc.	Southern
U.S. Chamber of Commerce, Global Energy Institute	Chamber of Commerce
U.S. Department of the Interior	Interior
U.S. Representatives Cathy McMorris Rodgers and Jeff Duncan	Representatives McMorris Rodgers and Duncan
U.S. Senator Charles Schumer	Senator Schumer
U.S. Senator John Barrasso	Senator Barrasso
Yurok Tribe	Yurok Tribe