

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Applications for Permits to Site) RM22-7-000
Interstate Electric Transmission Facilities)

COMMENTS OF THE AMERICAN COUNCIL ON RENEWABLE ENERGY

The American Council on Renewable Energy (“ACORE”), a national nonprofit organization dedicated to advancing the critical importance of renewable energy and to advocating for the market structures, policies and financial innovations designed to advance renewable energy deployment, hereby submits these comments in response to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Proposed Rule on Applications for Permits to Site Interstate Electric Transmission Facilities (“Proposed Rule”).¹

I. INTRODUCTION AND SUPPORT FOR PROPOSED RULE

ACORE supports the Proposed Rule as an important step to accelerate and streamline the use of the Commission’s authority to issue permits to construct or modify electric transmission facilities under Section 216 of the Federal Power Act (“FPA”). The proposed provisions balance an enhancement and streamlining of the Commission’s authority with the necessary involvement of States, Tribes and affected communities in the process. The key provisions of this rulemaking and their benefits are summarized below:

- Codifying the Infrastructure Investment and Jobs Act (“IIJA”) amendments to Section 216(b)(1)(C) of the FPA appropriately expands the full scope of scenarios where the Commission may use its Section 216 permitting authority.

¹ 88 Fed. Reg. 2770 (Jan. 17, 2023).

- Eliminating the one-year delay after a State application has been filed before the Commission’s pre-filing process may commence will improve the overall efficiency of the process and avoids duplications of effort by the applicants.
- Providing an additional opportunity for State input before completion of the pre-filing process recognizes the importance of State engagement.
- Establishing a Code of Conduct as one means to demonstrate compliance with the statutory requirement for good faith efforts to communicate with landowners and stakeholders early in the process will provide greater certainty for applicants, while also giving applicants the flexibility to use alternative means to comply.
- Requiring applicants to develop and file an Environmental Justice Public Engagement Plan is essential for fully engaging Environmental Justice Communities² in the siting process.
- Consolidating and expanding Tribal engagement requirements through a new Tribal Resources Report will also ensure engagement with Tribal communities.

While affirming this support, ACORE also identified several areas that warrant additional clarity, especially given recent developments that occurred following the issuance of the Proposed Rule, as described in the next section.

II. RECOMMENDATIONS

A. Pre-Filing Process

ACORE agrees with the comments of Americans for Clean Energy Grid (ACEG) and the Public Interest Organizations (PIOs) that the Commission should not allow the pre-filing process

² Defined in the Proposed Rule as any disadvantaged community that has been historically marginalized and overburdened by pollution.

to begin prior to the State permitting process. In addition, ACORE supports the PIO recommendation to use the applicant’s notice of pre-filing to inform landowners and other stakeholders of how to participate in the pre-filing process, which is a time period when there are opportunities to communicate with the Commission before *ex parte* rules are applicable.

B. Applicability of Inter-Agency Memorandum of Understanding on Transmission Authorizations

As discussed in the Proposed Rule, section 216(h) of the FPA requires the Department of Energy (“DOE”) to establish prompt and binding intermediate milestones and deadlines for the environmental reviews and authorizations required for electric transmission facilities and to prepare a single environmental review document.³ The Commission also explains that the Secretary of Energy “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.”⁴ Finally, the Commission states that “efficient processing of applications will depend upon agencies complying with the established milestones and deadlines.”⁵

Full implementation of Section 216(h) can greatly improve the permitting process for electric transmission lines. Earlier this month, a group of federal agencies entered into a Memorandum of Understanding (“MOU”) to “expedite the siting, permitting, and construction of electric transmission infrastructure in the United States” under FPA section 216(h).⁶

³ Proposed Rule at P 6.

⁴ Proposed Rule at P 7.

⁵ Proposed Rule at Footnote 11.

⁶ Memorandum of Understanding among the U.S. Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, the Environmental Protection Agency, the Council on

The Commission is not a signatory to the MOU, and the definition of a Qualifying Project in the MOU specifically excludes “transmission projects granted a construction permit from the Federal Energy Regulatory Commission pursuant to section 216(b) of the FPA.”⁷ The MOU also notes that DOE previously delegated its section 216(h) authority to the Commission.

ACORE therefore recommends that the Commission work with DOE to clarify whether the provisions of the MOU can be used for non-Qualifying Projects where the Commission is the lead agency. Such provisions could include prompt and binding intermediate milestones and deadlines for decisions, inclusive of engagement with potentially affected Tribal Nations, communities, and other stakeholders;⁸ the use of an environmental impact statement that can be relied on by other Participating Agencies;⁹ an appeals process that could result in a Presidential authorization for the project;¹⁰ and the possible provision of technical assistance, expertise, personnel or financial resources to State, Tribal, and local governments.¹¹

C. Coordination with NIETC Designation Process

On May 9, DOE released a Notice of Intent and Request for Information to establish an applicant-driven, route-specific process to designate National Interest Electric Transmission Corridors (“NIETCs”).¹² Within the Notice of Intent, DOE states that “with respect to NEPA

Environmental Quality, the Federal Permitting Improvement Steering Council, Department of the Interior, and the Office of Management and Budget Regarding Facilitating Federal Authorizations for Electric Transmission Facilities (May 4, 2023), available at: <https://www.whitehouse.gov/wp-content/uploads/2023/05/Final-Transmission-MOU-with-signatures-5-04-2023.pdf>

⁷ MOU at 3-4.

⁸ MOU at 4-6.

⁹ MOU at 6.

¹⁰ MOU at 7-8.

¹¹ MOU at 8.

¹² Grid Deployment Office, Department of Energy, *Notice of Intent and Request for Information on the Designation of National Interest Electric Transmission Corridors*, (May 9, 2023) available at <https://www.energy.gov/sites/default/files/2023-05/Designation-of-National-Interest-Electric->

reviews, to promote efficiency and timeliness DOE intends to coordinate to the maximum extent practicable with FERC in cases where an Applicant also intends to seek permits from FERC under section 216(b) of the FPA.”

ACORE advises that the Commission also work with DOE on the further details of such coordination and also seek to minimize duplications of effort for federal agencies, applicants and stakeholders among the three processes– the NIETC designation; Commission determination; and the State project application review.

D. Use of Rule of Reason for Air Emissions Analysis

The Commission proposes a new Air Quality and Environmental Noise Resource Report that “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 the impacts.”¹³ The Commission also notes that it “intends to review and incorporate any updated guidance from CEQ and EPA in our future analyses, as appropriate.”¹⁴

In January, after the issuance of this Proposed Rule, the Council on Environmental Quality (“CEQ”) issued interim guidance for analyzing greenhouse gas (GHG) and climate change effects of proposed actions under the National Environmental Policy Act (NEPA).¹⁵ In this guidance, CEQ states that “the rule of reason and the concept of proportionality caution against providing an in-depth analysis of emissions regardless of the insignificance of the quantity of GHG emissions that the proposed action would cause. For example, some proposed

[Transmission-Corridors Notice-of-Intent-and-Request-for-Information.pdf](#)

¹³ Proposed Rule at P 67.

¹⁴ Proposed Rule at Footnote 30.

¹⁵ 88 FR 1196, January 9, 2023. (“CEQ Interim Guidance”)

actions may involve net GHG emission reductions or no net GHG increase, such as certain infrastructure or renewable energy projects.”¹⁶ As ACORE noted in our comments on CEQ’s interim guidance, this rule of reason should also be applied to transmission projects, especially higher voltage interregional lines, which are primarily being planned to deliver energy from new renewable resources to population centers.¹⁷

ACORE therefore recommends the Commission establish that this rule of reason also applies to emissions estimates in these air quality reports, avoiding the need for an in-depth analysis of those emissions.

III. CONCLUSION

ACORE greatly appreciates the opportunity to comment on this Proposed Rule and urges the Commission to move forward on a final rulemaking that maximizes the effectiveness of its transmission permitting authority, while ensuring full engagement of affected communities.

Respectfully submitted,

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¹⁶ CEQ Interim Guidance at 1202.

¹⁷ ACORE Comments on CEQ Interim Guidance (April 10, 2023).