

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Parts 50 and 380**

[Docket No. RM22–7–000]

**Applications for Permits To Site Interstate Electric Transmission Facilities**

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission proposes to revise its existing 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.

**DATES:** Comments are due April 17, 2023.

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways. Electronic filing through <http://www.ferc.gov> is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by U.S. Postal Service mail or by hand (including courier) delivery.

- *Mail via U.S. Postal Service only:* Addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426.

- *For delivery via any other carrier (including courier):* Deliver to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures section of this document contains more detailed filing procedures.

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**SUPPLEMENTARY INFORMATION:**

**United States of America  
Federal Energy Regulatory Commission**

Applications for Permits To Site Interstate Electric Transmission Facilities Docket No. RM22–7–000

**Notice of Proposed Rulemaking  
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**181 FERC ¶ 61,205**

**United States of America**

**Federal Energy Regulatory Commission**

Before Commissioners: Richard Glick, Chairman; James P. Danly, Allison Clements, Mark C. Christie, and Willie L. Phillips.

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

**Notice of Proposed Rulemaking  
(Issued December 15, 2022)**

1. On November 15, 2021, the Infrastructure Investment and Jobs Act

(IIJA) became law.<sup>1</sup> The IIJA, among other things, amended section 216 of the Federal Power Act (FPA), which provides for Federal siting of electric transmission facilities under certain circumstances. The Federal Energy

<sup>1</sup>Public Law 117–58, sec. 40105, 135 Stat. 429 (2021).

Regulatory Commission (Commission) proposes to amend its regulations governing applications for permits to site electric transmission facilities to ensure consistency with the IJJA'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 August 8, 2005 enactment of the Energy Policy Act of 2005 (EPA 2005)<sup>2</sup> 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 permits DOE to designate certain transmission-constrained or congested geographic areas as national interest 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 EPA 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;<sup>3</sup> (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;<sup>4</sup> 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.<sup>5</sup>

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

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).<sup>7</sup> Federal and State-owned land was expressly excluded from the purview of section 216(e) and thus could not be acquired via eminent domain.<sup>8</sup>

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 is required to establish prompt and binding intermediate milestones and ultimate deadlines for all Federal reviews and authorizations required for a proposed electric transmission facility.<sup>9</sup> Under section 216(h)(5)(A), DOE, as lead agency, in consultation with other affected agencies, is required to prepare a single environmental review document 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), for the proposed transmission facilities in designated National Corridors for which an applicant has applied to the Commission for issuance of a permit under section 216(b).<sup>10</sup> 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.<sup>11</sup>

8. As discussed further below, the IJJA amended certain provisions of section 216 that pertain to the Commission's permitting authority.

### 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.<sup>12</sup> In addition, Order No. 689 adopted certain modifications to the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA) in part 380 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 State siting

<sup>10</sup> See DOE Delegation Order No. 00–004.00A.

<sup>11</sup> 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.

<sup>12</sup> *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) (Order No. 689 Final Rule), *reh'g denied*, 119 FERC ¶ 61,154 (2007) (Order No. 689 Rehearing Order).

<sup>5</sup> *Id.* 824p(b)(1)(C) (2018).

<sup>6</sup> 16 U.S.C. 824p(b)(2)–(6) (as amended by IJJA section 1221).

<sup>7</sup> *Id.* 824p(e)(1).

<sup>8</sup> *Id.*

<sup>9</sup> 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 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.

<sup>2</sup> Public Law 109–58, sec. 1221, 119 Stat. 594 (2005) (amended 2021).

<sup>3</sup> 16 U.S.C. 824p(b)(1)(A) (2018).

<sup>4</sup> *Id.* 824p(b)(1)(B) (2018).

application for more than one year.<sup>13</sup> 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.<sup>14</sup>

### 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*,<sup>15</sup> held that the Commission’s interpretation of “withheld approval” was contrary to the plain meaning of the statute, and that the Commission’s permitting authority does not apply when a State has affirmatively denied a permit application within the one-year deadline.<sup>16</sup> In addition, the Fourth Circuit vacated the Commission’s transmission-related amendments to its regulations implementing NEPA, finding that the Commission had failed to consult with the Council on Environmental Quality (CEQ) before adopting the revisions.<sup>17</sup>

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 DOE’s actions following the enactment of section 216.<sup>18</sup> In August 2006, DOE had issued a Congestion Study, which identified two critically congested areas in the Mid-Atlantic and Southern California.<sup>19</sup> Based on the results of the Congestion Study, in October 2007, DOE formally designated two National Corridors, the Mid-Atlantic and the Southwest Area Corridors.<sup>20</sup> The Ninth Circuit vacated DOE’s Congestion Study and 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.<sup>21</sup>

13. Since the Ninth Circuit decision in 2011, DOE has not designated any National Corridors, and the Commission has not received any applications for permits to site electric transmission facilities.

### D. IJA Amendments to FPA Section 216

14. On November 15, 2021, the IJA amended section 216 of the FPA. As relevant to the Commission’s permitting authority, the IJA 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 permitting 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 an 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.<sup>22</sup> This statutory amendment resolves the jurisdictional issue at the heart of *Piedmont* by giving the Commission permitting authority when a State has denied an application.<sup>23</sup>

15. Additionally, the IJA amended section 216(e), which grants a permit holder the right to acquire the necessary right-of-way by eminent domain.<sup>24</sup> As amended, section 216(e)(1) requires the Commission to determine, as a precondition to such 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.<sup>25</sup>

16. With respect to DOE’s authority, the IJA amended section 216(a)(2) to expand the circumstances under which DOE may designate a National Corridor. In addition to geographic areas currently experiencing transmission capacity constraints or congestion that adversely affects consumers, DOE may designate National Corridors in geographic areas expected to experience such constraints or congestion. The IJA also amended

section 216(a)(4) to expand the factors that DOE may consider in determining whether to designate a National Corridor.

## II. Discussion

### A. Commission Jurisdiction and State Siting Proceedings

17. Section 216(b)(1)(C) of the FPA addresses instances where a State commission or other State entity with authority to site transmission facilities has acted, or has failed to act, triggering the Commission’s jurisdiction. Below, the Commission proposes to revise § 50.6 of its regulations to reflect the IJA’s amendments to section 216(b)(1)(C) and announces a policy change with respect to the commencement of the Commission’s pre-filing process for cases where the Commission’s jurisdiction rests on section 216(b)(1)(C).

#### 1. IJA Amendments to FPA Section 216(b)(1)(C)

18. As discussed above, the IJA amended FPA section 216(b)(1)(C) by revising the statutory text 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 applicant’s request to site transmission facilities.<sup>26</sup> Therefore, the Commission proposes to revise § 50.6 of its regulations, which describes the information that is required in each application filed pursuant to our part 50 regulations. As relevant here, § 50.6(e) requires the applicant to demonstrate that its proposed project would satisfy the requirements of section 216(b)(1) through (6). To reflect the IJA’s amendments to section 216(b)(1)(C), the Commission proposes corresponding revisions to § 50.6(e)(3) to provide that the 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.

#### 2. Commencement of Pre-Filing

19. 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.<sup>27</sup> As explained in Order No. 689, the statute

<sup>13</sup> Order No. 689 Final Rule, 117 FERC ¶ 61,202 at PP 24–31; Order No. 689 Rehearing Order, 119 FERC ¶ 61,154 at PP 7–23.

<sup>14</sup> Order No. 689 Final Rule, 117 FERC ¶ 61,202 at P 26; Order No. 689 Rehearing Order, 119 FERC ¶ 61,154 at P 11.

<sup>15</sup> 558 F.3d 304 (4th Cir. 2009), cert. denied, 558 U.S. 1147 (2010) (*Piedmont*).

<sup>16</sup> *Id.* at 313.

<sup>17</sup> *Id.* at 319, 320.

<sup>18</sup> 631 F.3d 1072 (9th Cir. 2011) (*California Wilderness*).

<sup>19</sup> *Id.* at 1081 (citing National Electric Transmission Congestion Study, 71 FR 45047 (Aug. 8, 2006)).

<sup>20</sup> *Id.* at 1083 (citing National Electric Transmission Congestion Report, 72 FR 56992 (Oct. 5, 2007)).

<sup>21</sup> *Id.* at 1096, 1106.

<sup>22</sup> 16 U.S.C. 824p(b)(1)(C) (as amended by IJA section 1221).

<sup>23</sup> *Id.* 824p(b)(1)(C)(iii).

<sup>24</sup> *Id.* 824p(e)(1).

<sup>25</sup> *See id.*

<sup>26</sup> *See supra* P 14.

<sup>27</sup> Order No. 689 Final Rule, 117 FERC ¶ 61,202 at P 19.

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.<sup>28</sup> Thus, the Commission has recognized that our pre-filing process can occur at the same time as simultaneous State proceedings.<sup>29</sup>

20. Notwithstanding that the statute allows simultaneous State and Federal proceedings, the Commission in the preamble to Order No. 689 announced a policy that, in cases where its jurisdiction rests on section 216(b)(1)(C),<sup>30</sup> the pre-filing process would not commence until one year after the relevant State applications have been filed.<sup>31</sup> This approach, the Commission explained, would provide the States one full year to process an application without any intervening Federal proceedings, including both the pre-filing and application processes, after which time an applicant might seek to commence the Commission's pre-filing process.<sup>32</sup> 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 otherwise not in the public interest.<sup>33</sup>

21. We are now reconsidering that policy. To ensure that permit applicants receive as timely a decision as possible from the Commission, we propose to eliminate the one-year delay before the Commission's pre-filing process may commence. The purpose of the pre-filing process is to facilitate maximum participation from all stakeholders to provide them with an opportunity to present their views and recommendations with respect to the environmental impacts of the facilities early in the planning stages of the proposed facilities. In addition to gathering stakeholder input, during the pre-filing process Commission staff will work with the applicant to ensure the applicant has compiled the necessary information for a complete application under §§ 50.6 and 50.7,<sup>34</sup> and begin our coordination with other agencies as required under section 216(h).<sup>35</sup>

Therefore, to encourage the development of needed transmission infrastructure and to minimize the risk of delays, we propose to allow simultaneous processing of State applications and Commission pre-filing proceedings.

22. The Commission continues to recognize the primacy of the States' role in siting transmission infrastructure but, as discussed, believes that allowing for simultaneous processing could facilitate a more efficient process. In addition, we note that, the applicant could potentially collect information that is relevant to both State and Federal proceedings only once, avoiding the need to re-do or update analysis needed to meet Federal permit requirements. While states and other interested stakeholders are free to submit information in the pre-filing process, they are under no obligation to participate and will not waive any rights or otherwise be prejudiced if they choose not to do so. No rights are adjudicated in the pre-filing process, nor are findings of fact made. The pre-filing process is intended to facilitate the development of a complete application that can be acted upon expeditiously.

23. Though the statute does not limit when the Commission's pre-filing process may begin, the Commission intends to entertain requests to commence pre-filing, and may grant such requests, at any time after the relevant State applications have been filed. However, out of respect for State siting processes, the Commission proposes to provide an additional opportunity for State input before we determine that the pre-filing process is complete and that an application may be filed. Specifically, one year after the commencement of the Commission's pre-filing process, if a State has not made a determination on an application, we propose to provide a 90-day window for the State to provide comments on any aspect of the pre-filing process, including any information submitted by the applicant. We also seek 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. Eminent Domain Authority and Applicant Efforts To Engage With Landowners and Other Stakeholders*

24. As described above, the IJA amended FPA section 216(e)(1) to require the Commission to determine, as a precondition to receiving eminent domain authority, that the permit holder has made good faith efforts to engage with landowners and stakeholders early

in the permitting process.<sup>36</sup> Therefore, the Commission proposes to supplement the existing landowner and stakeholder participation provisions in part 50 of its regulations.

25. Section 50.4 of the regulations 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 notices early in both the pre-filing and application review processes. Specifically, under § 50.4(a), the Project Participation Plan must: (1) identify specific tools and actions to facilitate stakeholder communications and public information; (2) list locations throughout the project area where the applicant will provide copies of all project filings; and (3) explain how the applicant intends to respond to requests for information from the public and other entities. Under § 50.4(c), the project participation notices must provide a range of information on 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 what rights an affected landowner has at the Commission and in proceedings under the eminent domain rules of the relevant State.

26. To address the IJA's amendment to section 216(e)(1), we propose to supplement the regulatory requirements in § 50.4 by adding a new § 50.12. 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 in proposed § 50.12(a) includes particular recordkeeping and information-sharing requirements for engagement with affected landowners, as well as more general prohibitions against certain misconduct in such engagement. For example, an applicant that chooses to comply with the Applicant Code of Conduct set forth in proposed § 50.12(a) must: retain an affected landowner contact log; provide affected landowners with certain information about the project and the Commission; ensure communications with affected landowners are factually correct, devoid of misrepresentation, and respectful; obtain affected landowner permission to enter property and leave when asked; and, if applicable, provide an affected landowner with a copy of any appraisal

<sup>36</sup> 16 U.S.C. 824p(e)(1) (as amended by IJA section 1221).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> 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.

<sup>31</sup> *Id.* P 21.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> 16 U.S.C. 824p(h); DOE Delegation Order No. 00-004.00A.

prepared by, or on behalf of, the applicant for that landowner's property.

27. Under proposed § 50.12(b)(1), an applicant that chooses to show good faith by complying with the Applicant Code of Conduct must file, 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. Under proposed § 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.

28. We emphasize that voluntary 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). However, we believe 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. We propose 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 good faith efforts standard, including any specific commitments to record-keeping and information-sharing. The applicant must explain how its alternative method is equal to or superior to compliance with the Applicant Code of Conduct as a means to ensure the good faith efforts standard is met. The applicant should specifically explain, for each deviation from the Applicant Code of Conduct in its alternative method, its reasoning for not following that provision of the Applicant Code of Conduct and why the alternative method is an equal or better means to ensure the good faith standard is met notwithstanding that deviation.

29. An applicant bears the burden of demonstrating it has met the good faith efforts standard in a permit application proceeding. For an applicant that elects to rely on compliance with the Applicant Code of Conduct, the Commission will assess "good faith efforts" by evaluating whether evidence

in the record shows the applicant substantially complied with the provisions of the Applicant Code of Conduct in its engagement with landowners and other stakeholders. For an applicant that elects to rely on an alternative method to show good faith efforts, the Commission will first assess whether the applicant's alternative method is equal to or superior to the Applicant Code of Conduct as a means to ensure the good faith efforts standard is met. If so, the Commission will then assess "good faith efforts" by evaluating whether evidence in the record shows the applicant substantially complied with the commitments of its alternative method.

### C. Environmental Justice Public Engagement Plan

30. As described above, applicants are currently required by § 50.4(a) to develop and file a Project Participation Plan early in the pre-filing process. This requirement is intended to facilitate stakeholder communication and the dissemination of public information about the proposed project. Consistent with that goal, we believe that applicants should, early in the pre-filing process, meaningfully engage with potentially affected environmental justice communities. As discussed in this notice of proposed rulemaking (NOPR), the term "environmental justice community" includes disadvantaged communities that have been historically marginalized and overburdened by pollution.<sup>37</sup> The term also includes, but may not be limited to, minority populations, low-income populations, or indigenous peoples.<sup>38</sup> Applicants will identify potential environmental justice communities using the identification methods consistent with current Commission practice.<sup>39</sup> This engagement would be

<sup>37</sup> E.O. 14008, 86 FR 7619, § 219 (Jan. 27, 2021).

<sup>38</sup> See EPA, *EJ 2020 Glossary* (Aug. 18, 2022), <https://www.epa.gov/environmentaljustice/ej-2020-glossary>.

<sup>39</sup> To identify potential environmental justice communities, 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 percent; or (2) the aggregate minority population in the block group affected is 10 percent higher than the aggregate minority population percentage in the county. Environmental Protection Agency (EPA), *Promising Practices for EJ Methodologies in NEPA Reviews* (Mar. 2016) (*Promising Practices*), [https://www.epa.gov/sites/default/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf). The Commission intends to review and

consistent with: (1) Executive Order 12898, which directs Federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority and low-income populations (*i.e.*, environmental justice communities);<sup>40</sup> (2) Executive Order 14008, which directs agencies to develop "programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts;"<sup>41</sup> (3) Executive Order 13985, which requires Federal agencies to conduct Equity Assessments to identify and remove barriers to underserved communities and "to increase coordination, communication, and engagement with community-based organizations and civil rights organizations;"<sup>42</sup> and (4) the Environmental Protection Agency's (EPA) *Promising Practices* report.<sup>43</sup> This engagement would also be consistent with the Commission's Equity Action Plan adhering to Executive Order 13985, which promotes equitable processes and outcomes for underserved communities,

incorporate any updated guidance from CEQ and EPA in our future analyses, as appropriate. Using *Promising Practices'* low-income threshold criteria method, Commission staff currently identifies low-income populations 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. We recognize that CEQ and EPA are in the process of updating their guidance and recommendations regarding environmental justice. We expect applicants to utilize the latest guidance and data from CEQ, EPA, the Census Bureau, and other authoritative sources. The Commission intends to update our methods for identifying potential environmental justice communities following review of any updated environmental justice guidance and recommendations from CEQ and EPA, as appropriate.

<sup>40</sup> E.O. 12898, 59 FR 7629 (Feb. 16, 1994). Minority populations are those groups that include: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic. CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* at 25 (Dec. 1997) (CEQ's *Environmental Justice Guidance*), [https://www.energy.gov/sites/default/files/nepapub/nepa\\_documents/RedDont/G-CEQ-EJGuidance.pdf](https://www.energy.gov/sites/default/files/nepapub/nepa_documents/RedDont/G-CEQ-EJGuidance.pdf).

<sup>41</sup> E.O. 14008, 86 FR 7619 (Jan. 27, 2021).

<sup>42</sup> E.O. 13985, 86 FR 7009, 7010–11 (Jan. 25, 2021).

<sup>43</sup> EPA, *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](https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf) (*Promising Practices*). The report includes guiding principles aimed at, among other things, early and meaningful engagement with minority populations, low-income populations, and other interested individuals, communities, and organizations in the NEPA process.

including environmental justice communities, at the Commission.<sup>44</sup>

31. Therefore, the Commission proposes to require applicants to develop and file an Environmental Justice Public Engagement Plan as part of their Project Participation Plan under § 50.4(a)(4). The Environmental Justice Public Engagement Plan must describe the applicant's completed and planned outreach activities that are targeted to identified environmental justice communities. The plan must also 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. The plan should also describe the manner in which the applicant will reach out to environmental justice communities about potential mitigation.<sup>45</sup>

#### D. Other Proposed Revisions to 18 CFR Part 50

##### 1. Section 50.1—Definitions

32. Section 50.1 sets forth the definitions for part 50 of the Commission's regulations. The Commission proposes to add a definition for the term "Indian Tribe" for consistency with its regulations governing other types of energy infrastructure projects.<sup>46</sup> Specifically, the Commission proposes to define the term "Indian Tribe" as a Tribe that is recognized by treaty, by Federal statute, or by the U.S. Department of the Interior in its periodic publication of Tribal governments.<sup>47</sup> We also propose 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.<sup>48</sup> Specifically, the Commission proposes

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. We seek comment on the proposed definition of "environmental justice community" and whether the Commission should consider adopting an alternative definition, and, if so, why? The Commission also proposes to revise the definitions of: (1) "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 IJJA's amendments to section 216(a); (2) "permitting entity," for clarity and consistency with the statute; and (3) "stakeholder," for clarity and to ensure that environmental justice community members and other interested persons or organizations are covered by the definition.

33. Section 50.1 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. The Commission is not proposing to revise the definition of "affected landowners." Nevertheless, we seek comment on whether the Commission should revise the definition of "affected landowners" 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?

##### 2. Section 50.3—Filing and Formatting Requirements

34. Section 50.3 establishes the filing and formatting requirements for submissions in the Commission's pre-filing and application processes. The Commission proposes 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, applicants would only be required to make these submissions in electronic format.

##### 3. Section 50.4—Stakeholder Participation

###### i. Project Participation Plan

35. As described above, § 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 on 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. The Commission proposes to revise § 50.4(a)(1) to 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 proposes to require an applicant to develop and file an Environmental Justice Public Engagement Plan early in the pre-filing process, which would describe an applicant's outreach to environmental justice communities.<sup>49</sup>

###### ii. Project Notification Requirements

36. As described above, § 50.4(c) sets forth the project notification requirements for applicants. Section 50.4(c)(1) requires the applicant to distribute, by mail and newspaper publication, project participation notices within a specified time following notice that the pre-filing process has commenced and notice that 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. The Commission proposes to revise § 50.4(c)(1) for clarity and to ensure that applicants provide notice of the proposed project to all interested individuals and organizations. We seek comment on whether a quarter-mile limit is sufficient and, if not, what geographic distance should be used and why?

37. Section 50.4(c)(2)(i) describes the required contents of the pre-filing notice. For clarity and to avoid confusion, the Commission proposes organizational changes in the regulations to distinguish the

<sup>44</sup> FERC, Equity Action Plan (2022), <https://www.ferc.gov/equity>.

<sup>45</sup> We note that the 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* P 65.

<sup>46</sup> *See, e.g.*, 18 CFR 4.30(b)(10) (2021) (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).

<sup>47</sup> 25 CFR 83.6(a) (2021).

<sup>48</sup> *See supra* PP 30–31.

<sup>49</sup> *Supra* PP 30–31.

requirements that pertain to any pre-filing notice that is sent by mail or published in a newspaper (proposed § 50.4(c)(2)(i)) from the requirements that pertain only to any pre-filing notice that is sent by mail to an affected landowner (proposed § 50.4(c)(2)(ii)).

38. In addition to this reorganization, we propose to add a requirement that any pre-filing notice 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). We seek comment on a draft version of the Landowner Bill of Rights provided in the Appendix to this NOPR. The Commission believes that requiring the applicant to provide this information 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. We also propose to require that any pre-filing notice 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.

39. The Commission expects applicants to make a good faith effort to ensure that individuals and organizations entitled to receive project participation notices can comprehend the contents of such notices. Accordingly, applicants should consider the need for project participation notices in languages other than English as part of the Environmental Justice Public Engagement Plan described above. Additionally, we seek comment on what methods of notice beyond mail and newspaper publication might be utilized in order to effectively reach the largest number of stakeholders as possible.

#### 4. Section 50.5—Pre-Filing Procedures

40. 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. The Commission proposes 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)).

41. 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. The Commission proposes clarifications to § 50.5(e)(3) and (4) to ensure consistency with the project notification requirements in § 50.4(c). We also propose 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 section 216(b)(4).<sup>50</sup> Specifically, within 30 days of the notice commencing the pre-filing process, we propose to require an applicant to file a draft version of Exhibit H, *System analysis data*, required by § 50.7 (proposed § 50.5(e)(8)), showing how the proposed project will reduce capacity constraints and congestion on the transmission system. In addition to a draft version of Exhibit H, we also propose to require an applicant to file additional supporting information 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)).

#### 5. Section 50.6—General Content of Applications

42. Section 50.6 describes the information that must be provided as part of an application for a permit under FPA section 216. In § 50.6(c), the Commission proposes 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). We also propose 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.

43. Each application filed under part 50 of the Commission’s regulations must provide evidence demonstrating that one of the jurisdictional bases 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 IJA, the Commission

<sup>50</sup> 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.

proposes 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. While the statute, as amended by the IJA, does not define the term “interregional,” the Commission for the purposes of this NOPR proposes 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.<sup>51</sup> As discussed above, we also propose revisions to § 50.6(e)(3) to ensure that the regulatory text tracks the IJA’s amendments to section 216(b)(1)(C).<sup>52</sup>

#### 6. Section 50.7—Application Exhibits

44. 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. For consistency and clarity, the Commission proposes 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)).

45. The Commission also proposes revisions to § 50.7(h), which describes the requirements for Exhibit H—*System analysis data*. Specifically, we propose 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)). This information is necessary for 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).

<sup>51</sup> *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).

<sup>52</sup> *Supra* P 18.

### 7. Section 50.11—General Permit Conditions

46. Section 50.11 lists the general conditions that would apply to any permit issued under part 50 of the Commission's regulations. The Commission proposes clarifying edits to §§ 50.11(a) and (b). The proposed revision to § 50.11(b) is intended to foreclose a situation where an applicant would need to accept a permit in instances where rehearing has been denied by operation of law and the applicant has appealed, but the Commission intends to issue a future order before the record is filed with the court of appeals.

47. In addition, to balance our 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, we propose 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. This proposed addition, which mirrors a regulation that the Commission previously adopted in the natural gas context,<sup>53</sup> would ensure that construction of approved transmission facilities does not begin during 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.

### 8. Proposed Clarifying Revisions to 18 CFR Part 50

48. In addition to the proposed revisions discussed above, we propose minor, non-substantive edits throughout part 50 of our regulations. These proposed revisions are intended to clarify or streamline existing requirements, to correct grammatical errors and cross-references, and to maintain consistency.

#### E. Regulations Implementing NEPA

49. In Order No. 689, in addition to establishing the requirements for applications filed under FPA section

216, the Commission also adopted several amendments to its NEPA regulations. 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), § 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), § 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 (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).

50. The Commission also added a new section to its NEPA regulations, 18 CFR 380.16, which describes the specific environmental information that must be included in applications for permits to site transmission facilities under section 216. Section 380.16 currently requires each applicant to submit an environmental report that includes eleven resource reports, as follows.

51. Resource Report 1 requires the applicant to describe the project and proposed construction methods and requirements; submit topographic maps, aerial images and/or photographs showing the proposed project facilities; identify all authorizations and mitigation measures required to construct the proposed project; and provide the names and addresses of all affected landowners.<sup>54</sup>

52. Resource Report 2 requires the applicant to provide information necessary to determine the impact of the proposed project on water use and water quality and proposed mitigation measures.<sup>55</sup>

53. Resource Report 3 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.<sup>56</sup>

54. Resource Report 4 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 (NHPA).<sup>57</sup>

55. Resource Report 5 requires the applicant to describe the socioeconomic impact area and to identify and quantify the impacts of constructing and operating the proposed project on factors affecting towns and counties in the project vicinity.<sup>58</sup>

56. Resource Report 6 requires the applicant to describe geological resources and hazards in the project area that might be directly or indirectly affected by the proposed facility or may place the proposed facility at risk, the potential effects of those hazards on the facility, and the methods to reduce the effects or risks.<sup>59</sup>

57. Resource Report 7 requires the applicant to describe the soils that will be affected by the proposed project and measures proposed to minimize or avoid impacts.<sup>60</sup>

58. Resource Report 8 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.<sup>61</sup>

59. Resource Report 9 requires the applicant to describe alternatives to the project, including the "no action" alternative, and to compare the environmental impacts of such alternatives.<sup>62</sup>

60. Resource Report 10 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.<sup>63</sup>

61. Finally, Resource Report 11 requires the applicant to provide design and engineering data, including general design and engineering drawings of all major project structures, and a supporting design report.<sup>64</sup>

62. As explained above, the Fourth Circuit's 2009 *Piedmont* decision vacated Order No. 689's amendments to the Commission's NEPA regulations

<sup>57</sup> *Id.* 380.16(f).

<sup>58</sup> *Id.* 380.16(g).

<sup>59</sup> *Id.* 380.16(h).

<sup>60</sup> *Id.* 380.16(i).

<sup>61</sup> *Id.* 380.16(j).

<sup>62</sup> *Id.* 380.16(k).

<sup>63</sup> *Id.* 380.16(l).

<sup>64</sup> *Id.* 380.16(m).

<sup>53</sup> See *Limiting Authorizations to Proceed with Construction Activities Pending Rehearing*, Order No. 871-B, 86 FR 26150 (May 13, 2021), 175 FERC ¶ 61,098, *order on reh'g*, Order No. 871-C, 86 FR 43077 (Aug. 6, 2021), 176 FERC ¶ 61,062 (2021).

<sup>54</sup> 18 CFR 380.16(c) (2021).

<sup>55</sup> *Id.* 380.16(d).

<sup>56</sup> *Id.* 380.16(e).

because the court found that the Commission had failed to consult with CEQ prior to issuing the revised regulations.<sup>65</sup> Notwithstanding the Fourth Circuit's vacatur, the NEPA amendments set forth in Order No. 689 are still reflected in 18 CFR part 380. We seek 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 will consult with CEQ on the proposed changes to its NEPA regulations described below as well as those originally implemented by Order No. 689.

### 1. Tribal Resources Resource Report

63. The Commission 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.<sup>66</sup> To 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.<sup>67</sup> 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;<sup>68</sup> provide available information on traditional cultural and religious properties;<sup>69</sup> and ensure that specific site or location information, disclosure of which will create a risk of harm, theft, or destruction or violate Federal law, is not disclosed.<sup>70</sup>

64. The Commission proposes to relocate the existing Tribal resource-related information requirements to a new, standalone resource report, Resource Report 6—*Tribal resources*, in proposed § 380.16(h). In addition to consolidating the existing requirements in a new resource report,<sup>71</sup> we also propose to require an applicant to identify potentially-affected Tribes (proposed § 380.16(h)(1)); describe the impacts of project construction,

operation, and maintenance on Tribes and Tribal interests, including impacts related to enumerated resource areas (proposed § 380.16(h)(2)); 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) (proposed § 380.16(h)(3)). The Commission believes this information is necessary to fully evaluate the effects of a proposed project in furtherance of the Commission's trust responsibility and our statutory obligations under the FPA and NEPA.

### 2. Environmental Justice Resource Report

65. In conducting NEPA reviews of proposed transmission facilities, the Commission intends to follow the instruction of Executive Orders 12898,<sup>72</sup> 14008,<sup>73</sup> and 13985,<sup>74</sup> as described above, and relevant CEQ guidance<sup>75</sup> and EPA's *Promising Practices* report<sup>76</sup> on assessing impacts on environmental justice communities under NEPA.<sup>77</sup> Section 380.16 does not currently require an applicant to submit information on the potential project impacts on environmental justice communities. Therefore, the Commission proposes to add a new resource report, Resource Report 7—

<sup>72</sup> E.O. 12898, 59 FR 7629 (Feb. 16, 1994). While the Commission is not one of the specified agencies in Executive Order 12898, the Commission nonetheless intends to address environmental justice in its analysis, in accordance with our governing regulations and statutory duties. 16 U.S.C. 824p(b)(3); 18 CFR 380.16(g) (2021) (requiring applicants to submit information about the socioeconomic impact area of a project for the Commission's consideration during NEPA review); see also FERC, *Guidance Manual for Environmental Report Preparation* at 4–76 to 4–82 (Feb. 2017), <https://www.ferc.gov/sites/default/files/2020-04/guidance-manual-volume-1.pdf> (providing guidance for preparing Resource Report 5—Socioeconomics, including addressing project effects on environmental justice communities, for applications filed under the Natural Gas Act).

<sup>73</sup> E.O. 14008, 86 FR 7619 (Jan. 27, 2021).

<sup>74</sup> E.O. 13985, 86 FR 7009 (Jan. 25, 2021).

<sup>75</sup> CEQ's *Environmental Justice Guidance*, [https://www.energy.gov/sites/default/files/nepapub/nepa\\_documents/RedDont/G-CEQ-EJGuidance.pdf](https://www.energy.gov/sites/default/files/nepapub/nepa_documents/RedDont/G-CEQ-EJGuidance.pdf). CEQ offers recommendations on how Federal agencies can provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.

<sup>76</sup> See generally *Promising Practices*, [https://www.epa.gov/sites/default/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf).

<sup>77</sup> NEPA requires the Commission before taking an action, to analyze, disclose, and take a “hard look” at the potential environmental impacts of that 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) (discussing the twin aims of NEPA).

*Environmental justice*, in proposed § 380.16(i). Specifically, the resource report would require the applicant to identify environmental justice communities within the project's area of potential impacts (proposed § 380.16(i)(1));<sup>78</sup> describe the impacts of project construction, operation, and maintenance on environmental justice communities, including whether any impacts would be disproportionately high and adverse (proposed § 380.16(i)(2)); discuss cumulative impacts on environmental justice communities, including whether any cumulative impacts would be disproportionately high and adverse (proposed § 380.16(i)(3)); 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 (proposed § 380.16(i)(4)).

66. The Commission also proposes a corresponding addition to § 380.2, which sets forth the definitions for the Commission's NEPA regulations. Specifically, the Commission proposes to define the term “environmental justice community” in proposed § 380.2(f). The proposed definition of the term “environmental justice community” is identical to the definition that the Commission proposes to add to § 50.1.<sup>79</sup>

67. Finally, while we recognize that EPA and CEQ are in the process of updating their guidance regarding environmental justice, we expect applicants to utilize the latest guidance and data from CEQ, EPA, the Census Bureau, and other authoritative sources. The Commission intends to review and incorporate any updated guidance from CEQ and EPA in our future analyses, as appropriate.

### 3. Air Quality and Environmental Noise Resource Report

68. Section 380.16(l)(7) requires applicants, as part of the existing *Reliability and safety* resource report, 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. Section 380.16 does not currently require information on proposed project

<sup>78</sup> As discussed, to identify environmental justice communities, Commission staff currently reviews U.S. Census Bureau population data for the applicable location and applies population thresholds provided by EPA and CEQ in their environmental justice recommendations and guidance. See *supra* at note 40.

<sup>79</sup> See *supra* P 32.

<sup>65</sup> See *supra* P 11.

<sup>66</sup> 18 CFR 2.1c (2021).

<sup>67</sup> See *id.* § 380.16(j)(5).

<sup>68</sup> *Id.* § 380.16(j)(5)(i).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* § 380.16(j)(5)(ii).

<sup>71</sup> See proposed §§ 380.16(h)(4)–(5).

emissions and the corresponding effects on air quality and the environment.

69. To fully evaluate the effects of a proposed project in furtherance of our obligations under NEPA,<sup>80</sup> the Commission believes additional information on emissions, air quality, and environmental noise is necessary. Therefore, the Commission proposes to add a new resource report, Resource Report 11—*Air quality and environmental noise*, in proposed § 380.16(m). Proposed Resource Report 11 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. Consistent with the Commission's requirements for natural gas compressor stations,<sup>81</sup> we also propose to establish a noise limit for proposed substations and appurtenant facilities at pre-existing noise-sensitive areas, such as schools, hospitals, or residences.

70. 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,<sup>82</sup> 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.

71. 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 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 ( $L_{dn}$ ) of 55 dBA at any pre-existing noise-sensitive area.<sup>83</sup> 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.

#### 4. Visual Resources

72. Section 380.16(j)(11) requires applicants, as part of the existing *Land use, recreation, and aesthetics* resource report, to describe the visual characteristics of the lands and waters affected by the 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.

73. The Commission believes that more specific information is needed to evaluate the effects of the proposed project facilities on visual resources. Above ground high-voltage transmission lines may cause substantial visual contrast and be a major focus for viewer attention. To assess visual impacts of infrastructure projects, including high-voltage transmission lines, Commission staff has, in some cases, used the Bureau of Land Management's Visual Resource Management methodology,<sup>84</sup> and other agencies have used the Federal Highway Administration's Visual Impact Assessment for Highway Projects.<sup>85</sup> The Commission seeks comment on whether

either of these tools, or any other tools, are appropriate for our analysis. Additionally, we believe that visual aids are necessary to support this evaluation. Therefore, in proposed § 380.16(l)(10), we propose to require the applicant to 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.

#### 5. Additional Proposed Revisions to 18 CFR 380.16

74. Because the Commission proposes to add to § 380.16 three new resource reports (*Tribal resources, Environmental justice and Air quality and environmental noise*), we propose to redesignate all resource reports after Resource Report 5—*Socioeconomics* as follows: Resource Report 6—*Tribal resources* (proposed § 380.16(h)); Resource Report 7—*Environmental justice* (proposed § 380.16(i)); Resource Report 8—*Geological resources* (proposed § 380.16(j)); Resource Report 9—*Soils* (proposed § 380.16(k)); Resource Report 10—*Land use, recreation, and aesthetics* (proposed § 380.16(l)); Resource Report 11—*Air quality and environmental noise* (proposed § 380.16(m)); Resource Report 12—*Alternatives* (proposed § 380.16(n)); Resource Report 13—*Reliability and safety* (proposed § 380.16(o)); and Resource Report 14—*Design and engineering* (proposed § 380.16(p)).

75. In addition to the proposed addition of three new resource reports and the proposed changes to the visual resources requirements described above, the Commission proposes revisions throughout § 380.16. We discuss the main substantive revisions below.

76. In § 380.16(b)(3), we propose 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.<sup>86</sup>

77. In § 380.16(c)(2), we propose to revise Resource Report 1—*General project description* to more clearly identify the types of facilities that must be depicted on the topographic maps and aerial images or photo-based alignment sheets. We also propose to add requirements to describe any proposed horizontal directional drilling and pile driving that may be necessary (§ 380.16(c)(3)), indicate the days of the week and times of the day during which construction activities would occur, and

<sup>80</sup> As noted above, 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. at 97.

<sup>81</sup> 18 CFR 380.12(k)(4)(v)(A) (2021).

<sup>82</sup> 42 U.S.C. 7401 *et seq.*

<sup>83</sup> 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.

<sup>84</sup> See, e.g., Final Environmental Impact Statement for the Swan Lake North Pumped Storage Project (P-13318-003).

<sup>85</sup> 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>.

<sup>86</sup> 40 CFR 1508.1(g)(3) (2021).

describe any proposed nighttime construction activities (§ 380.16(c)(4)).

78. In § 380.16(d)(6), the Commission proposes to add a requirement that Resource Report 2—*Water use and quality* describe the impact of proposed land clearing and vegetation management practices on water resources. In § 380.16(e), the Commission proposes to clarify that Resource Report 3—*Fish, wildlife, and vegetation* must describe potential impacts on interior forest (§ 380.16(e)(3)), as well as the impact of proposed land clearing and vegetation management practices on fish, wildlife, and vegetation (§ 380.16(e)(4)).

79. In § 380.16(k)(4), the Commission proposes to add a requirement that Resource Report 9—*Soils* describe any proposed mitigation measures intended to reduce the potential for adverse impacts to soils or agricultural productivity.

80. In § 380.16(l)(4), the Commission proposes to add a requirement that Resource Report 10—*Land use, recreation, and aesthetics* identify the area of direct effect of the proposed facilities on interior forest. The Commission also proposes 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 Resource Report 1 (§ 380.16(l)(5)); and (3) require copies of any consultation with the Federal Aviation Administration (§ 380.16(l)(5)(iii)).

81. In § 380.16(o)(3), the Commission proposes to add a requirement that Resource Report 13—*Reliability and safety* include a discussion of any proposed measures intended to ensure that the facilities proposed by the applicant would be resilient against future climate change impacts. We also propose 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 accordance with applicable North American Electric Reliability Corporation reliability standards (§ 380.16(o)(4)). Finally, given the addition of new Resource Report 11—*Air quality and environmental noise*, the Commission proposes to eliminate from the *Reliability and safety* resource report the now redundant requirement that the applicant must

indicate the noise level generated by the transmission line.

82. For all of the proposed revisions discussed above, we seek comment on, as appropriate, whether the Commission has authority to impose such changes and, if it does, whether it should impose such changes. We also propose minor, non-substantive edits throughout § 380.16. These proposed revisions are intended to clarify or streamline existing requirements, to correct grammatical errors and cross-references, and to maintain consistency.

#### 6. Proposed Revisions to 18 CFR 380.13 and 380.14

83. Finally, the Commission also proposes to amend §§ 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. We believe the prior omission of such cross-references to be an oversight. Section 380.14 also contains a proposed revision to correct the legal citation for section 106 of the NHPA,<sup>87</sup> following the act's recodification in title 54 of the U.S. Code.

### III. Information Collection Statement

84. The Paperwork Reduction Act<sup>88</sup> 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 contemplated by proposed rules.<sup>89</sup> 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 penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

85. *Public Reporting Burden*: In this NOPR, the Commission proposes to revise its regulations governing applications for permits to site transmission facilities under section 216 of the FPA. This proposed rule would modify certain reporting and recordkeeping requirements included in FERC-729 (OMB Control No. 1902-0239).<sup>90</sup>

86. The proposed 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 Commission also proposes revisions 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 proposed revisions have information collection implications. For example, the Commission proposes to require 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 include compliance updates as part of the monthly status reports required during the pre-filing process;<sup>91</sup>
- provide additional congestion and system analysis information during the pre-filing process and as part of the application;
- develop and file an environmental justice public engagement plan describing completed and planned targeted outreach efforts during the pre-filing process and after an application has been submitted;
- 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 proposed revisions would represent an increase in information collection requirements and burden for FERC-729.

87. The Commission recognizes that some of the estimates for the information collection activities proposed in this NOPR are novel. Therefore, the Commission seeks comments on the burden and costs

<sup>87</sup> 54 U.S.C. 306108.

<sup>88</sup> 44 U.S.C. 3501-3521.

<sup>89</sup> See 5 CFR 1320.11 (2021).

<sup>90</sup> FERC-729 includes the reporting and recordkeeping requirements for "Electric Transmission Facilities."

<sup>91</sup> These requirements would only apply to applicants who elect to comply with the Applicant Code of Conduct set forth in proposed § 50.12.

associated with the requirements contained in this NOPR.

88. The estimated burden and cost for the requirements contained in this NOPR follow.

ANNUAL CHANGES PROPOSED BY THE NOPR IN DOCKET NO. RM22-7-000

	Number of respondents	Number of responses <sup>92</sup> per respondent	Total number of responses	Average burden hours & cost per response <sup>93</sup>	Total annual burden hours & total annual cost
	(1)	(2)	(1) × (2) = (3)	(4)	(3) × (4) = 5
<b>Current FERC 729 Collection</b>					
FERC-729 .....	1	1	1	9,600 hrs.; \$873,600 .....	9,600 hrs.; \$873,600.
<b>Proposed Revisions in RM22-7-000</b>					
Applicant Code of Conduct <sup>94</sup> .	<sup>95</sup> 1	1	1	136 hrs; \$12,376 .....	136 hrs.; \$12,376.
Environmental Justice Public Engagement Plan.	1	1	1	24 hrs.; \$2,184 .....	24 hrs.; \$2,184.
Congestion and System Analysis Data <sup>96</sup> .	1	1	1	160 hrs.; \$14,560 .....	160 hrs.; \$14,560.
Other Updates to 18 CFR pt. 50 <sup>97</sup> .	1	1	1	28 hrs.; \$2,548 .....	28 hrs.; \$2,548.
Resource Report: Tribal Resources.	1	1	1	40 hrs.; \$3,640 .....	40 hrs.; \$3,640.
Resource Report: Environmental Justice.	1	1	1	80 hrs.; \$7,280 .....	80 hrs.; \$7,280.
Resource Report: Air Quality & Environmental Noise.	1	1	1	296 hrs.; \$26,936 .....	296 hrs.; \$26,936.
Information on Visual Impacts.	1	1	1	100 hrs.; \$9,100 .....	100 hrs.; \$9,100.
Other Updates to 18 CFR pt. 380 <sup>98</sup> .	1	1	1	148 hrs.; \$13,468 .....	148 hrs.; \$13,468.
Total .....	.....	.....	11	.....	1,012 hrs.; \$92,092.

89. *Titles:* FERC-729—*Electric Transmission Facilities.*

90. *Action:* Revisions to information collection FERC-729.

91. *OMB Control Nos.:* 1902-0238 (FERC-729).

92. *Respondents:* Entities proposing to construct electric transmission facilities pursuant to the Commission’s authority under section 216 of the FPA.

93. *Frequency of Information:* Ongoing.

94. *Necessity of Information:* The new information collection requirements are necessary for the Commission to carry out its responsibilities under the FPA, as amended 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 proposed 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.

95. *Internal Review:* The Commission has reviewed the proposed 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.

96. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director], by email to

<sup>92</sup> We consider the filing of an application, including the mandatory pre-filing information, to be a “response.”

<sup>93</sup> The estimates for cost per response are derived using the following formula: Average Burden Hours per Response \* \$91 per Hour = Average Cost per Response. The hourly cost figure is the FY2022 FERC average annual salary plus benefits (\$188,992/year or \$91/hour). Commission staff estimates that industry costs for salary plus benefits are similar to Commission costs.

<sup>94</sup> Notwithstanding that compliance with the Applicant Code of Conduct is voluntary, we are providing the estimated burden hours associated with such compliance.

<sup>95</sup> After implementation of this proposed rule, we estimate one application for a permit to site electric transmission facilities will be filed per year.

<sup>96</sup> This category covers the proposed 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.*

<sup>97</sup> This category covers additional proposed 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 and including additional material in the project notifications mailed to affected landowners) as well as a reduction in burden

associated with eliminating the requirement that an applicant provide seven paper copies of an application, exhibits, and other submittals.

<sup>98</sup> This category covers a variety of non-substantial proposed updates to § 380.16 of the Commission’s regulations that, if adopted, would require an applicant to develop and submit additional information as part of the following resource reports: *General project description; Water use and quality; Fish, wildlife, and vegetation; Soils; Land use, recreation, and aesthetics; and Reliability and safety.*

[DataClearance@ferc.gov](mailto:DataClearance@ferc.gov) or by phone (202) 502-8663.

97. 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](mailto:oira_submission@omb.eop.gov). Comments submitted to OMB should refer to FERC-729 (OMB Control No. 1902-0238).

#### IV. Environmental Analysis

98. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant effect on the human environment.<sup>99</sup> 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.<sup>100</sup> Because the actions proposed herein fall within this categorical exclusion, preparation of an Environmental Assessment or an Environmental Impact Statement is not required.

#### V. Regulatory Flexibility Act

99. The Regulatory Flexibility Act of 1980 (RFA)<sup>101</sup> generally requires a description and analysis of proposed 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 a proposed rule and minimize any significant economic impact on a substantial number of small entities.<sup>102</sup> In lieu of preparing a regulatory flexibility analysis, an agency may certify that a proposed rule will not have a significant economic impact on a substantial number of small entities.<sup>103</sup>

100. The Small Business Administration's (SBA) Office of Size Standards develops the numerical

definition of a small business.<sup>104</sup> The SBA size standard for electric utilities is based on the number of employees, including affiliates.<sup>105</sup> Under SBA's size standards, a transmission owner covered under the category of Electric Bulk Power Transmission and Control (NAICS code 221121)<sup>106</sup> is small if, including its affiliates, it employs 500 or fewer people.<sup>107</sup>

101. 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.<sup>108</sup> 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.<sup>109</sup> Though the SBA 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.

102. Accordingly, pursuant to section 605(b) of the RFA, the Commission certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

#### VI. Comment Procedures

103. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due April 17, 2023.

<sup>104</sup> 13 CFR 121.101 (2021).

<sup>105</sup> *Id.* 121.201.

<sup>106</sup> 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/>.

<sup>107</sup> 13 CFR 121.201 (Sector 22—Utilities).

<sup>108</sup> Order No. 689 Final Rule, 117 FERC ¶ 61,202 at P 73.

<sup>109</sup> *Id.*

Comments must refer to Docket No. RM22-7-000 and must include the commenter's name; the organization they represent, if applicable; and their address in their comments. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

104. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software must be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

105. Commenters that are not able to file comments electronically may file an original of their comment by U.S. Postal Service mail or by courier or other delivery services. For submission sent via U.S. Postal Service only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by U.S. Postal Service should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

#### VII. Document Availability

106. 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>). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

107. 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.

108. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202)

<sup>99</sup> *Reqs. 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).

<sup>100</sup> 18 CFR 380.4(a)(2)(ii) (2021).

<sup>101</sup> 5 U.S.C. 601-612.

<sup>102</sup> *Id.* 603(c).

<sup>103</sup> *Id.* 605(b).

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. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

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.

By direction of the Commission. Commissioner Danly is concurring with a separate statement attached. Commissioner Christie is concurring with separate statement attached. (S E A L)

Issued December 15, 2022.

Debbie-Anne A. Reese, Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend 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 continues to read as follows:

Authority: 16 U.S.C. 824p; DOE Delegation Order No. 00-004.00A.

■ 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 disadvantaged 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 governments 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 Tribal government; 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 paragraph (a)(4); and

■ c. Revise the first sentence of paragraph (c)(1) introductory text and revise paragraphs (c)(1)(ii) and (c)(2) 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 non-English speaking groups or linguistically isolated communities. This plan must also describe how the applicant will conduct outreach to environmental justice communities about any potential mitigation.

\* \* \* \* \*

(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, Tribal, and Federal governments and agencies involved in the project; 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. \* \* \*

\* \* \* \* \*

(ii) By twice publishing a notice of the pre-filing request and application filings, in a daily, weekly, and/or Tribal newspaper of general circulation in each county in which the project is located, no later than 14 days after the date that a docket number is assigned for the pre-filing process or to the application.

(2) Contents of participation notice. (i) Any pre-filing request notification sent by mail or published in a newspaper 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.
(C) A description of the applicant and a description of the proposed project, its location...
(D) Contact information for the applicant...
(E) Information on how to get a copy of the pre-filing information...
(F) A copy of the Director's notification of commencement...
(G) Information explaining the pre-filing and application processes...
(H) Information explaining that the Commission's pre-filing and application processes are separate...

(i) In addition to the requirements of paragraph (c)(2)(i) of this section, any pre-filing request 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...
(B) The most recent edition of the document entitled "Landowner Bill of Rights in Federal Energy Regulatory Commission Electric Transmission Proceedings..."
(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 this notice has not yet been identified when the notices 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 notice.

- 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), and the first sentence of paragraph (c)(5);
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)(9) and (10), respectively;
h. Add new paragraphs (e)(7) and (8); 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 contacting stakeholders, agency and Tribal consultations, 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.

(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.

(i) The notification will designate the third-party contractor, if applicable, and

(e) (3) 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) Full report(s) of the System Impact Study for the proposed project;
(ii) For each transmission planning region that would be crossed by the proposed project, the most recent Regional Transmission Plan; and
(iii) Expert witness testimony and other relevant information submitted with the State siting application(s), where applicable.

(8) Within 30 days, file a draft Exhibit H—System analysis data required in § 50.7.

(10) 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 applicant’s entire system and 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 “permittee” 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/(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/(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 in its communications with affected landowners during the permitting process is one way to demonstrate to the Commission that such good faith efforts have been made.

(a) *Applicant code of conduct.* To promote good faith engagement with affected landowners, applicants committing to comply with the Applicant Code of Conduct must:

(1) For the duration of the pre-filing and application review process, develop and retain 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 request notification required by § 50.4(c)(1)(i) and (ii), provide to each affected landowner, prior to, during, or immediately after 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, 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, at the beginning of any discussion with an affected landowner, and provides the representative’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.

(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 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 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)(10):

(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)(10), 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.

(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 record-keeping, information-sharing, or other conduct;

(iii) An explanation of how the alternative method is equal to or superior to 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 disadvantaged 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 adding, in its place, a parenthetical reference to “54 U.S.C. 306108”; and

■ b. Add the “or § 380.16(f), as applicable” directly after the reference to “380.12(f)”.

■ 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 paragraph (e)(3), the first two sentences of paragraph (e)(4), the first and third sentences of paragraph (e)(5), and paragraphs (e)(6) through (8);

■ d. Revise paragraphs (f)(1)(i), (iii), (iv), and (v), (f)(2) introductory text, and the first sentence of paragraph (f)(4);

■ e. Revise the first sentence of paragraph (g) introductory text and paragraphs (g)(3) and (6);

■ f. Redesignate paragraphs (k) through (m) as paragraphs (n) through (p);

■ g. Redesignate paragraphs (h) through (j) as paragraphs (j) through (l);

■ h. Add new paragraphs (h) and (i);

■ i. Revise the heading and the second sentence of newly redesignated paragraph (j) introductory text and revise newly redesignated paragraph (j)(3);

■ j. Revise the newly redesignated paragraph (k) heading and paragraphs (k) introductory text and (k)(2) and (3);

■ k. Add paragraph (k)(4);

■ l. Revise newly redesignated paragraph (l);

■ m. Add new paragraph (m);

■ n. 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);

■ o. 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

■ p. 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) \* \* \*

(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.

(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, 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) Describe proposed, site-specific mitigation measures to minimize impacts on fisheries, wildlife, and vegetation.

(8) 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, fisheries, and vegetation, and the applicant's response to the recommendations.

(f) \* \* \*

(1) \* \* \*

(i) Documentation of the applicant's initial cultural resource consultations, including consultations with Native Americans 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. \* \* \*

\* \* \* \* \*

(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 Indian traditional cultural and religious properties, whether on or off of any Indian reservation.

(5) Ensure that information made available under this section 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.

(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 granular 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 disproportionately high 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 disproportionately high 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 trenching 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 (1)(5) 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.

(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 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 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 (Ldn) of 55 dBA at any pre-existing noise-sensitive area.

(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 appendix will not appear in the Code of Federal Regulations.

**Appendix**

**Draft Version: 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 email 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](http://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 by email ([OPP@ferc.gov](mailto: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.

#### United States of America

#### Federal Energy Regulatory Commission

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

(Issued December 15, 2022)

DANLY, Commissioner, *concurring*:

1. I concur with the issuance of this Notice of Proposed Rulemaking (NOPR) because it is not my habit to oppose any but the most infirm proposed rules. Today's issuance purports to be the first step in discharging the Commission's obligations under Infrastructure Investment and Jobs Act,<sup>1</sup> which, among other things, included amendments to certain provisions of section 216 of the Federal Power Act<sup>2</sup> (FPA) to clarify Federal "backstop" siting of electric transmission facilities in limited circumstances when states fail to act on certain transmission proposals. The NOPR itself, however, largely appears to be an exercise to extend various environmental reviews typically seen in natural gas project proceedings—a regime in which the majority of the Commission has been imposing pervasive, standardless environmental tests well beyond our statutory authority.

2. I agree that our "backstop" siting authority is limited under the Commission's governing statutes. I disagree that the limited "backstop" siting authority that the Commission has been granted also confers extensive powers as an environmental and social regulator. Regardless, the statute certainly did not extend our obligations beyond the requirements we have always observed in order to discharge our duties under the National Environmental Policy Act (NEPA).

3. In going far beyond that which is required by the Infrastructure Investment and Jobs Act, this NOPR instead appears to represent the majority's "environmental justice" wish list. Accordingly, I specifically solicit citations to the provisions in section 216, as amended—or any other statutory basis—to support each revision proposed in the NOPR (such citations are often omitted in the NOPR itself).<sup>3</sup> Once statutory authority is certain, commenters should further provide legal analysis and evidence whether the proposed rule constitutes good policy, such as, for example, whether it will be beneficial in determining whether to site electric transmission projects when the states have not done so, or whether the rule will tend to ensure almost nothing is ever sited.

4. For example, we propose to "require [electric transmission project] applicants to

<sup>1</sup> Public Law 117-58, § 40105, 135 Stat. 429.

<sup>2</sup> 16 U.S.C. 824p (2018).

<sup>3</sup> As amended by the Infrastructure Investment and Jobs Act, FPA section 216(a)(4)(G) provides that in determining whether to designate a national interest electric transmission corridor the Secretary of Energy "may consider" whether the designation "avoids and minimizes, to the maximum extent practicable, and offsets to the extent appropriate and practicable, sensitive environmental areas and cultural heritage sites." 16 U.S.C. 824p(a)(4), 824p(a)(4)(G)(ii). As amended, FPA section 216(e)(1) provides that a permit holder may acquire rights-of-way by the exercise of eminent domain if, among other things, "in the determination of the Commission, the permit holder has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process." *Id.* § 824p(e)(1). It is stretching these amendments to FPA section 216 beyond their breaking point to use them to justify the scope of environmental review the Commission now proposes in the NOPR.

develop and file an Environmental Justice Public Engagement Plan as part of their Project Participation Plan under § 50.4(a)(4)."<sup>4</sup> The Commission does not cite any statute that requires or even permits us to require this Environmental Justice Public Engagement Plan, instead citing Executive Orders, at least one of which the majority acknowledges does not bind the Commission.<sup>5</sup> The Commission further "proposes 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."<sup>6</sup> What does it mean to be "overburdened by pollution?" Is this a concept that the Commission—a Federal energy rate regulator—is authorized and equipped to define or establish? Will the regulated community of transmission developers have any idea how to comply with such ambiguities? Is there anything about being "overburdened" in the Infrastructure Investment and Jobs Act?

5. The Commission also seeks to decree that the Environmental Justice Public Engagement Plan must "describe the manner in which the applicant will reach out to environmental justice communities about potential mitigation,"<sup>7</sup> or, in other words, include a mitigation plan, even though "NEPA not only does not require agencies to discuss any particular mitigation plans that they might put in place, it does not require agencies—or third parties—to effect any."<sup>8</sup> Commenters should tell us how the Commission can impose such a requirement when the Supreme Court and the D.C. Circuit have ruled otherwise.

6. By way of further example, as part of its NEPA review, the Commission proposes to require applicants to submit "Resource Report 10" on "Air quality and environmental noise."<sup>9</sup> "Proposed Resource Report 10 would require the applicant to estimate emissions from the proposed project . . . and describe proposed measures to mitigate the impacts."<sup>10</sup> "Specifically, the

<sup>4</sup> *Applications for Permits to Site Interstate Elec. Transmission Facilities*, 181 FERC ¶ 61,205 at P 31 (2022) (NOPR); *see also* 18 CFR 50.4(a).

<sup>5</sup> NOPR, 181 FERC ¶ 61,205 at PP 30, 65, n.72. The Commission also proposes to require a new "Environmental Justice Report" as part of its regulations implementing NEPA. *See id.* PP 65-67. Again, I would like to know where the Commission gets this authority. We also "expect applicants to utilize the latest guidance and data from [the Council on Environmental Quality], [the Environmental Protection Agency], the Census Bureau, and other authoritative sources." *Id.* P 67. Does the "latest" guidance and data include anything issued after pre-filing but before permitting? What about the day after permitting? What about during the pendency of a rehearing request? And who or what are "other authoritative sources?"

<sup>6</sup> *Id.* P 32 (emphasis added).

<sup>7</sup> *Id.* P 31.

<sup>8</sup> *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 206 (D.C. Cir. 1991) (*citing Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 333 & n.16 (1989)).

<sup>9</sup> NOPR, 181 FERC ¶ 61,205 at P 69.

<sup>10</sup> *Id.*

applicant must provide the reasonably foreseeable emissions from construction, operation, and maintenance of the project facilities . . . and describe any proposed mitigation measures to control emissions.”<sup>11</sup> Someone better propose some standards because these proposals sound much more like aspirational goals than clear rules that a developer could figure out how to comply with. What are “foreseeable emissions” from “maintenance,” for example? If a transmission line falls in a storm, is a transmission developer supposed to predict “reasonably foreseeable” emissions from the truck the utility line worker uses to drive out to the site? If the line worker uses a rechargeable ratchet to loosen a bolt, is the transmission developer supposed to predict the “reasonably foreseeable” emissions from electric generation required to recharge the battery? And, again, by what authority do we propose to require a mitigation plan over directly contrary judicial precedent?<sup>12</sup>

7. As another example, the Commission proposes 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.”<sup>13</sup> Though in a different context and sounding in a different statute, the majority imposed a similar policy, including the issuance of stays, for natural gas projects, over my dissent.<sup>14</sup> I solicit comment whether we have this authority, and if so, whether it is sound policy to exercise it as part of our limited “backstop” siting jurisdiction.

8. I have similar questions to those raised here about nearly every aspect of the NOPR.<sup>15</sup> The powers that Congress has granted the Commission are narrow, as has been acknowledged, but they are profound and, depending upon how the Commission implements those authorities, can have a lasting effect on the development of the transmission system. Accordingly, I invite comments from every interested party on my questions and any other aspect of the proposed rules so that the Commission will have a full record as it considers whether to promulgate these or related rules.

9. It is hard to reconcile today’s proposed rule, adorned as it is by burdensome, unnecessary requirements, with what appears, at the merest glance, to have been the purpose of Congress when passing the Infrastructure Investment and Jobs Act—to facilitate, not inhibit, the siting of transmission infrastructure.

<sup>11</sup> *Id.* P 70.

<sup>12</sup> See *supra* P 5 n.8.

<sup>13</sup> NOPR, 181 FERC ¶ 61,205 at P 47.

<sup>14</sup> See *Limiting Authorizations to Proceed with Constr. Activities Pending Rehearing*, Order No. 871-B, 175 FERC ¶ 61,098 (Danly, Comm’r, dissenting), *order on reh’g*, 176 FERC ¶ 61,062 (2021) (Danly, Comm’r, dissenting).

<sup>15</sup> For example, I question whether we are complying with the purpose of the act to engage in parallel activity with the states during the pendency of the states’ review of transmission project proposals, a subject that Commissioner Christie has thoroughly canvassed in his separate statement to this order.

For these reasons, I respectfully concur.  
James P. Danly,  
Commissioner.

## United States of America

### Federal Energy Regulatory Commission

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

(Issued December 15, 2022)

CHRISTIE, Commissioner, *concurring*:

1. Updating the Commission’s existing regulations and practices governing the Commission’s exercise of its transmission siting backstop authority is required by a statutory change adopted last year by Congress.<sup>1</sup> While, of course, we must implement the change made by Congress, a simple update to our existing regulation would have been sufficient. This order,<sup>2</sup> however, goes beyond merely implementing the required conforming changes to our existing regulation. So while I concur with putting these amendments out for comment, I look forward to reviewing the comments on this proposal, particularly from organizations representing State regulators.

2. Some relevant history: States have historically had sole authority for permitting and siting transmission lines (two very separate functions), and for good reasons. Every power line, from the small ones below 100 kV to the huge 765 kV lines, visible for many miles around, comes with its own unique set of facts and local concerns. One of those concerns—let us not forget—is the *cost*, and that cost will be paid, in some portion, by consumers in the *situs* state, through FERC formula rates. So, whenever the day comes when FERC orders a line built after a State has found it was not needed or found the cost was not reasonable and prudent, FERC will not only be choosing a route that was rejected by State regulators, but FERC will be ordering the State’s consumers to pay for the project, under applicable cost allocation rules. And even if the proposed project ends up being litigated for years before any steel is in the ground—a virtual certainty for a controversial project that was rejected by State regulators but imposed by FERC—consumers will likely be paying through formula rates for years for pre-construction costs, which can be substantial.<sup>3</sup>

<sup>1</sup> The Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, 40105, 135 Stat. 429 (2021), amended section 216 of the Federal Power Act (FPA) in certain respects. Most notably, it explicitly allows the Commission to grant transmission siting authority even when a State has denied an application within one year. 16 U.S.C. 824p(b)(1)(C) (as amended by IIJA section 1221).

<sup>2</sup> *Applications for Permits to Site Interstate Electric Transmission Facilities*, 181 FERC ¶ 61,205 (2022) (Backstop Siting NOPR).

<sup>3</sup> For example, the Potomac-Appalachian Transmission Highline (PATH) Project—which was abandoned, and never even completed—spawned several years of litigation and imposed many millions of dollars in costs (including return on equity) to ratepayers. See *Newman v. FERC*, 27 F.4th 690 (D.C. Cir. 2022) (noting that PATH sought recovery through rates of over \$121 million in abandonment costs alone, charges that were litigated over several years).

3. State regulators are much better prepared to deal with that myriad of local concerns, including concerns over routing and costs, than FERC. Furthermore, State processes are far more convenient and user-friendly than processes at FERC, if for no other reason than geographic proximity. So, waiting one full year to allow a State to “go first” and make its decision makes sense for a lot of reasons. One obvious reason is that if the line is truly needed, the State regulators will in all likelihood approve it, and no FERC staff time and resources will need to be expended at all. The whole mantra that goes “the states are blocking needed transmission all over the country!” is simply a political and special-interest narrative. The steadily mounting increases over the past decade in transmission rate base nationally,<sup>4</sup> with concomitant skyrocketing increases in transmission costs to consumers, blows up the narrative that states are systemically blocking needed transmission lines. Contrary to the narrative, states need *more* authority to scrutinize transmission projects for need and prudence of cost, not less, to protect consumers.

4. This proposed regulation changes the practice this Commission adopted in 2006 of holding off on *all* processes here for a year, to one in which pre-filing processes will begin, potentially concurrent with the initiation of State proceedings.<sup>5</sup> That change is not required by last year’s congressional action. It is an act of discretion.

5. Some more history: The Energy Policy Act of 2005<sup>6</sup> altered the traditional arrangement of State authority by creating FPA section 216, which provided this Commission with supplemental or “backstop” siting authority in certain narrow circumstances. This authority was limited, not plenary: As discussed in greater detail in the order, EPA 2005 explicitly authorized the Commission to exercise transmission siting authority in DOE-designated “national-interest” transmission corridors when a State application had been rendered futile because the State lacks authority to act, the applicant lacks standing to obtain authority from the State, the State attaches conditions rendering the project infeasible, or the State fails to act within one year.<sup>7</sup>

6. In Order No. 689, the Commission implemented this new FPA section 216 authority.<sup>8</sup> In doing so, it construed that

<sup>4</sup> See, e.g., *RRA Regulatory Focus An Overview of Transmission Ratemaking in the U.S.—2021 Update*, S&P Global Market Intelligence, Sept. 16, 2021 (“Growth in aggregate transmission rate base, 2012–2020” chart at page 3, showing increase from \$57.8 billion to \$131.7 billion); see also Jim O’Reilly, *PJM, AEP transcos drive 9.17% YOY [year-over-year] increase in US transmission rate base*, S&P Capital IQ Pro, November 1, 2022 (“Transmission rate base among a group of 76 utilities in the U.S. maintained year-over-year growth above 9% for the third consecutive year. . . .”) (emphasis added).

<sup>5</sup> Backstop Siting NOPR, 181 FERC ¶ 61,205 at PP 21–23.

<sup>6</sup> Public Law 109-58, 1221, 119 Stat. 594 (2005) (amended 2021) (EPA 2005).

<sup>7</sup> See Backstop Siting NOPR, 181 FERC ¶ 61,205 at PP 2–7.

<sup>8</sup> *Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities*,

authority expansively in two respects. First, it construed the statute as vesting siting authority in the Commission even when a State acts within a year to deny an application. Second, it construed the statute as “permit[ting] parallel Commission-State processes.”<sup>9</sup> But these expansive constructions were promptly curbed: the first, by the Fourth Circuit Court of Appeals; the second, by the Commission itself.

7. As for the first, the Fourth Circuit correctly found in *Piedmont* that Congress had not, in fact, authorized the Commission to grant an application that had been timely denied by a State.<sup>10</sup> In direct response to the Fourth Circuit’s opinion, last year Congress expanded the Commission’s FPA section 216 a notch further, by empowering the Commission essentially to exercise a veto over a State’s timely decision to deny a transmission siting application. In other words, in the IJA, Congress sought to (and did) overturn the key holding in *Piedmont*.

8. As for the second, the Commission wisely decided that “that States which have authority to approve the siting of facilities should have one full year to consider a siting application without there being any

overlapping Commission process,” and therefore found that, “in cases where our jurisdiction rests on FPA section 216(b)(1)(C), the pre-filing process should not commence until one year after the relevant State applications have been filed.”<sup>11</sup> This policy was not set in stone, of course—the Commission noted that it would “reconsider the issue” if in the future it turned out “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.”<sup>12</sup>

9. This was sound policy in 2006, and I am not convinced that the intervening years have taught us 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.”<sup>13</sup> Nor did Congress, in the IJA, do anything to suggest that commencement of the Commission’s pre-filing process should be accelerated—although of course it could have.

10. Nonetheless, I support this order, in its current form, because I believe that the proposal to allow states a 90-day comment period following a year of pre-filing processes may afford adequate protection for the states and their processes, provided that the Commission’s pre-filing process does not begin before the relevant State processes have been commenced. This order actually invites comment on whether FERC’s pre-filing processes should be allowed to commence prior to the initiation of State proceedings.<sup>14</sup>

I would not even have raised that prospect. I ask states in particular to review closely and comment on these provisions. There are also other examples of this order going beyond where it needed to go.<sup>15</sup>

11. To be clear, I have no concern with informal communications between applicants and Commission staff before the states have had a year to act. Nor do I have any concern with allowing an initial consultation or other preparatory work during this one-year period. But as discussed above, I believe strongly that the states should have an opportunity to complete their processes without any impediment or distraction from Commission proceedings.

12. I support revising the Commission’s Regulations to reflect the modest expansion of its authority worked on FPA section 216 by the IJA, and I am inclined to believe that the 90-day comment period afforded to states at the close of a year’s worth of pre-filing may adequately protect a State’s interests. To that extent, I support putting this order out for comment and I look forward to the comments the Commission will receive.

For these reasons, I concur.

Mark C. Christie,  
Commissioner.

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**BILLING CODE 6717–01–P**

Order No. 689, FERC Stats. & Regs. ¶ 31,234 (2006) (Order No. 689), *reh’g denied*, 119 FERC ¶ 61,154 (2007).

<sup>9</sup> *Id.* P 20; *see also id.* P 19 (same). I won’t opine on whether this construction is correct or not—though seemingly reasonable, it doesn’t seem to be rooted in anything more than an inference from the fact that the Commission may act if the State has failed to do so within a year—but I will observe that it is not compelled by citations to the statutory text or legislative history.

<sup>10</sup> *Piedmont Envtl. Council v. FERC*, 558 F.3d 304 (4th Cir. 2009) (*Piedmont*), *cert. denied*, 558 U.S. 1147 (2010).

<sup>11</sup> Order No. 689, FERC Stats. & Regs. ¶ 31,234 at P 21 (footnote omitted).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Backstop Siting NOPR, 181 FERC ¶ 61,205 at P 23.

<sup>15</sup> For example, the order proposes a new regulatory definition of “environmental justice community.” *Id.* P 32. This concept has been in flux since it was created and it continues to evolve; nothing in the IJA’s amendments to FPA section 216 either explicitly or implicitly requires the Commission to adopt any such definition at all herein.