



## FEDERAL ENERGY REGULATORY COMMISSION

April 6, 2023

The Honorable Cathy McMorris Rodgers  
Chair of Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Jeff Duncan  
Chair of Subcommittee on Energy, Climate, and Grid Security  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairs McMorris Rodgers and Duncan,

Thank you for the March 3, 2023 letter expressing your concern that the Commission's actions in its Notice of Proposed Rulemaking (NOPR) on *Applications for Permits to Site Interstate Electric Transmission Facilities*<sup>1</sup> “reach well beyond its statutory authority, which is primarily as an energy economic regulator, not a climate regulator.”<sup>2</sup>

In your letter, you comment that “[t]he NOPR appears to impose on applicants vague requirements on environmental justice and air quality” and that “[i]t is unclear where FERC was granted such authority to impose these requirements on applicants under the [Federal Power Act (FPA)] and the [Infrastructure Investment and Jobs Act (IIJA)].”<sup>3</sup> You also ask that my colleagues and I answer a series of questions about the statutory basis of the NOPR's requirements and whether the requirements are sufficiently clear to facilitate compliance.

I, too, have expressed concern that the NOPR “impos[es] pervasive, standardless environmental tests well beyond [FERC's] statutory authority”<sup>4</sup> and chose to concur with—rather than outright approve—the NOPR because it “is hard to reconcile [the NOPR], 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 [IIJA]—to facilitate, not inhibit, the siting of transmission

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<sup>1</sup> 181 FERC ¶ 61,205 (2022) (Danly & Christie, Comm'rs, concurring) (NOPR).

<sup>2</sup> Chairs McMorris Rodgers & Duncan March 3, 2023 Letter, Docket No. RM22-7-000, at 2 (Letter) (Accession No. 20230324-4005).

<sup>3</sup> *Id.*

<sup>4</sup> NOPR, 181 FERC ¶ 61,205 (Danly, Comm'r, concurring at P 1).



infrastructure.”<sup>5</sup> My hope has been that interested parties would take me up on my request to comment on whether the Commission has the authority to impose each requirement in the NOPR.<sup>6</sup> The deadline for comments has been extended to May 17, 2023.<sup>7</sup>

Below, please find my responses to your questions.

**1. What specific statutory authorities is the Commission relying upon in requiring an “Environmental Justice Public Engagement Plan” for project application under Section 216 of the FPA?**

The NOPR does not cite *any* specific statutory authority that directs or authorizes the Commission to require an Environmental Justice Public Engagement Plan (Plan) for project applications under FPA section 216.<sup>8</sup> Instead, the NOPR merely states that the Plan “would be consistent with” three Executive Orders.<sup>9</sup> Two of those Executive Orders—explicitly and by their plain terms—state that they are not binding on FERC as an independent agency,<sup>10</sup> and none of the three Executive Orders create a legal right of action.<sup>11</sup>

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<sup>5</sup> *Id.* (Danly, Comm’r, concurring at P 9).

<sup>6</sup> *Id.* (Danly, Comm’r, concurring at P 3) (“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.)” (citation omitted); *id.* (Danly, Comm’r, concurring at P 7) (“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.”); *id.* (Danly, Comm’r, concurring at P 8) (“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.”).

<sup>7</sup> FERC March 3, 2023 Notice of Extension of Time, Docket No. RM22-7-000 (Accession No. 20230303-3024).

<sup>8</sup> NOPR, 181 FERC ¶ 61,205 at PP 30-31.

<sup>9</sup> *Id.* P 30.

<sup>10</sup> Exec. Order 13985, 86 Fed. Reg. 7009, at § 11(c) (Jan. 20, 2021) (“Independent agencies are strongly encouraged to comply with the provisions of this order.”); Exec. Order 12898, 59 Fed. Reg. 7629, at § 6-604 (Feb. 11, 1994) (“Independent agencies are requested to comply with the provisions of this order.”).

<sup>11</sup> Exec. Order. 14008, 86 Fed. Reg. 7619, at § 301(c) (Jan. 27, 2021) (“This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers,



The Commission might ultimately attempt to rely upon FPA section 216(e), which directs the Commission to determine whether “the permit holder has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process.”<sup>12</sup> The NOPR does not state that developers must file a Plan to demonstrate they have made such good-faith efforts. In fact, the NOPR includes a separate proposal that a developer may demonstrate compliance with FPA section 216(e) by “compl[ying] with the provisions of the Applicant Code of Conduct in its engagement with landowners and other stakeholders” or by proposing “an alternative method to show good faith efforts” that “equal to or superior to the Applicant Code of Conduct.”<sup>13</sup> Nothing in the proposed Applicant Code of Conduct requires the applicant to file the Plan.

FERC might also attempt to bolster its legal authority to impose the NOPR’s requirements by citing the National Environmental Policy Act (NEPA).<sup>14</sup> The NOPR proposes to require that the Plan “describe the manner in which the applicant will reach out to environmental justice communities about potential mitigation.”<sup>15</sup> This seems to imply that the Commission has the authority to require mitigation plans. I have grave doubts that such a requirement would survive judicial scrutiny. As I stated in my concurrence to the NOPR, requiring mitigation runs directly contrary to judicial precedent holding that “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>16</sup> Even more critically, it is black letter law that NEPA is a procedural statute and cannot expand a federal agency’s jurisdiction.<sup>17</sup> The only way for the Commission to

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employees, or agents, or any other person.”); Exec. Order 13985, 86 Fed. Reg. 7009, at § 11(d) (“This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.”); Exec. Order 12898, 59 Fed. Reg. 7629, at § 6-609 (“This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.”).

<sup>12</sup> 16 U.S.C. § 824p(e)(1).

<sup>13</sup> NOPR, 181 FERC ¶ 61,205 at P 29.

<sup>14</sup> 42 U.S.C. § 4331 *et seq.*

<sup>15</sup> NOPR, 181 FERC ¶ 61,205 at P 31.

<sup>16</sup> NOPR, 181 FERC ¶ 61,205 (Danly, Comm’r, concurring at P 5) (quoting *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, 353 & n.16 (1989))).

<sup>17</sup> *Nat. Res. Def. Council, Inc. v. EPA*, 822 F.2d 104, 129 (D.C. Cir. 1987) (“NEPA, as a procedural device, does not work a broadening of the agency’s substantive powers. Whatever action



compel particular mitigation requirements is through our statutory conditioning authorities. FERC has the power under sections 3 and 7 of the Natural Gas Act (NGA)<sup>18</sup> (which cover liquefied natural gas (LNG) export facilities and natural gas pipelines, respectively) and under Part I of the FPA (which covers hydropower facilities)<sup>19</sup> to impose conditions on project authorizations. Congress has conferred no power in FPA section 216 to impose conditions on the construction or modification of transmission facilities. NEPA, as a procedural statute, cannot provide such authority.

There is an existing process required by the Council on Environmental Quality's (CEQ) regulations to facilitate the development of a record to support NEPA documents. Section 1501.9 of CEQ's regulations<sup>20</sup> require agencies to conduct "scoping" which is "an early and open process to

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the agency chooses to take must, of course, be within its province in the first instance.") (citations omitted); *Cape May Greene, Inc. v. Warren*, 698 F.2d 179, 188 (3d Cir. 1983) ("The National Environmental Policy Act does not expand the jurisdiction of an agency beyond that set forth in its organic statute . . ."); *Gage v. U.S. Atomic Energy Comm'n*, 479 F.2d 1214, 1220 n.19 (D.C. Cir. 1973) ("NEPA does not mandate action which goes beyond the agency's organic jurisdiction."); *see also Flint Ridge Dev. Co. v. Scenic Rivers Ass'n of Okla.*, 426 U.S. 776, 788 (1976) ("where a clear and unavoidable conflict in statutory authority exists, NEPA must give way").

<sup>18</sup> NGA section 3(e)(3)(A) states that "[t]he Commission may approve an application . . . with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate." 15 U.S.C. § 717b(e)(3)(A); *see also id.* § 717b(a) ("The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing . . ."). NGA section 7(e) states, "[t]he Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require." *Id.* § 717f(e).

<sup>19</sup> Among other powers, FPA section 10(a) authorizes the Commission to "require the modification of any [hydropower] project and of the plans and specifications of the project works before approval." 16 U.S.C. § 803(a)(1). *See also id.* § 798(c) ("Each [preliminary] permit shall set forth the conditions under which priority shall be maintained."); *id.* § 799 ("Each such license shall be conditioned upon acceptance by the licensee of all of the terms and conditions of this chapter and such further conditions, if any, as the Commission shall prescribe in conformity with this chapter, which said terms and conditions and the acceptance thereof shall be expressed in said license."); *id.* § 808(a)(1) ("the commission is authorized to issue a new license to the existing licensee upon such terms and conditions as may be authorized or required under the then existing laws and regulations, or to issue a new license under said terms and conditions to a new licensee"); *id.* § 823a(c) (" . . . the Commission . . . shall include in any [conduit] exemption . . . such terms and conditions as the Commission deems appropriate to insure that such facility continues to comply with the provisions of this section and terms and conditions included in any such exemption.").

<sup>20</sup> 40 C.F.R. § 1501.9



determine the scope of issues for analysis in an environmental impact statement”<sup>21</sup> and where “the lead agency shall invite the participation of . . . likely affected or interested persons.”<sup>22</sup> A court has only once remanded a Commission order regarding its environmental justice analysis and that was for the agency’s failure to explain “why it chose to analyze the projects’ impacts only on communities in census blocks within two miles of the project sites.”<sup>23</sup> Never has a court remanded a decision back to the Commission for failure to engage with impacted communities or for failure to support with substantial evidence its decisions regarding environmental justice questions.<sup>24</sup>

Another possible source that the Commission could rely upon is its administrative powers under FPA section 824p(c)(2)(B) to “issue rules specifying . . . the information to be contained in the application”<sup>25</sup> and FPA section 309 to prescribe such “regulations as it may find necessary or appropriate to carry out the provisions of this chapter.”<sup>26</sup> These provisions, however, are administrative and procedural. They do not provide substantive authority in themselves and are, therefore, limited. Their use must be “consistent with the authority delegated to it by Congress.”<sup>27</sup>

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<sup>21</sup> *Id.* § 1501.9(a).

<sup>22</sup> *Id.* § 1501.9(b).

<sup>23</sup> *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1330–31 (D.C. Cir. 2021). The courts have otherwise upheld the Commission’s analysis of impacts on environmental justice communities. *See Town of Weymouth v. FERC*, 2018 WL 6921213, at \*2 (D.C. Cir. Dec. 27, 2018); *Sierra Club v. FERC*, 867 F.3d 1357, 1368-71 (D.C. Cir. 2017).

<sup>24</sup> The requirement that agencies support each finding with substantial evidence is distinct from the requirement that agencies provide a rational connection between the facts found and the choice made. Substantial evidence means “more than a mere scintilla,” that is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Consol. Edison Co. of N.Y., Inc. v. NLRB*, 305 U.S. 197, 229 (1938). It is worth further noting that CEQ’s regulations implementing NEPA speak of the *agency’s* obligation to conduct scoping, they do not obligate the project applicant to undertake any particular type of outreach or community engagement.

<sup>25</sup> 16 U.S.C. § 824p(c)(2).

<sup>26</sup> 16 U.S.C. § 825h.

<sup>27</sup> *Verso Corp. v. FERC*, 898 F.3d 1, 7 (D.C. Cir. 2018) (quoting *Xcel Energy Servs. Inc. v. FERC*, 815 F.3d 947, 952 (D.C. Cir. 2016)); *see id.* at 10 (“Section 309 accordingly permits FERC to advance remedies not expressly provided by the FPA, as long as they are consistent with the Act.”) (emphasis added) (citing *TNA Merch. Projects, Inc. v. FERC*, 857 F.3d 354, 359 (D.C. Cir. 2017) (citing *Niagara Mohawk Power Corp. v. Fed. Power Comm’n*, 379 F.2d 153, 158 (D.C. Cir. 1967))).



**2. *What specific statutory authorities is the Commission relying upon in requiring project developers to estimate emissions of electric transmission facilities under Section 216 of the FPA?***

The NOPR states that “additional information on emissions [and] air quality . . . is necessary” “[t]o fully evaluate the effects of a proposed project in furtherance of our obligations under NEPA.”<sup>28</sup> However, FERC’s obligation to analyze emissions under NEPA is limited by binding Supreme Court precedent. In *Department of Transportation v. Public Citizen*, the Supreme Court held that “NEPA requires ‘a reasonably close causal relationship’ between the environmental effect and the alleged cause” akin to the “familiar doctrine of proximate cause from tort law.”<sup>29</sup> Put differently, the emissions that must be considered under NEPA are limited to those that the Commission has the legal power to prevent.

In addition, while CEQ’s regulations permit agencies to consider voluntary mitigation proposed by an applicant to support a finding of no significant impact, NEPA does not give agencies the authority to require mitigation.<sup>30</sup> Likewise, FPA section 216 does not include an authority for the Commission to impose conditions on the construction and modification of transmission facilities.

**3. *Does the Commission plan to issue specific guidelines for the “Environmental Justice Public Engagement Plan” required for project applicants? If so, when?***

The Chairman generally controls the Commission’s agenda and I am therefore unable to state whether or when the Commission might issue specific guidelines.<sup>31</sup> In his response to your letter, Chairman Phillips states that the Commission will “consider[] . . . whether additional guidance is necessary.”<sup>32</sup> Also, on March 29, Chairman Phillips convened a day-long, multi-panel

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<sup>28</sup> NOPR, 181 FERC ¶ 61,205 at P 69.

<sup>29</sup> 541 U.S. 752, 767 (2004) (citation omitted).

<sup>30</sup> 40 C.F.R. § 1508.1(s) (“While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation.”).

<sup>31</sup> See also 18 C.F.R. § 3c.2(b) (“The nature and time of any proposed action by the Commission are confidential and shall not be divulged to anyone outside the Commission. The Secretary of the Commission has the exclusive responsibility and authority for authorizing the initial public release of information concerning Commission proceedings.”).

<sup>32</sup> Chairman Phillips March 17, 2023 Letter Responding to Chairs McMorris Rodgers & Duncan, Docket No. RM22-17-000, at 3 (Accession No. 20230324-4005).



“Roundtable on Environmental Justice and Equity in Infrastructure,”<sup>33</sup> a clear indication that the matter is under active consideration at the Commission. For your convenience, the agenda is attached to this letter.

Though I cannot predict the timing of future Commission action, I would like to take a moment to offer a few thoughts on the ambiguities in the requirement for developers to include an “Environmental Justice Public Engagement Plan” in their applications. The NOPR includes many ambiguities with which transmission developers will likely have no idea how to comply.<sup>34</sup>

The Commission has issued specific guidance for required plans under other statutes. For instance, in the context of jurisdictional natural gas infrastructure, the Commission has issued specific guidance for its required *Upland Erosion Control, Revegetation, and Maintenance Plan*;<sup>35</sup> *Wetland and Waterbody Construction and Mitigation Procedures*;<sup>36</sup> and *Guidance for Horizontal Directional Drill Monitoring, Inadvertent Return Response, and Contingency Plans (HDD Plan Guidance)*.<sup>37</sup> The regulated community of natural gas infrastructure developers and the public have been invited to comment on these guidance documents.<sup>38</sup>

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<sup>33</sup> FERC, Roundtable on Environmental Justice & Equity in Infrastructure Permitting, Docket No. AD23-5-000 (Mar. 29, 2023), <https://www.ferc.gov/news-events/events/roundtable-environmental-justice-and-equity-infrastructure-permitting>.

<sup>34</sup> NOPR, 181 FERC ¶ 61,205 (Danly, Comm’r, concurring at P 4) (“Will the regulated community of transmission developers have any idea how to comply with such ambiguities?”).

<sup>35</sup> FERC, *Upland Erosion Control, Revegetation, and Maintenance Plan* (May 2013), <https://www.ferc.gov/sites/default/files/2020-04/upland-erosion-control-revegetation-maintenance-plan.pdf>.

<sup>36</sup> FERC, *Wetland and Waterbody Construction and Mitigation Procedures* (May 2013), <https://www.ferc.gov/sites/default/files/2020-04/wetland-waterbody-construction-mitigation-procedures.pdf>.

<sup>37</sup> FERC, *Guidance for Horizontal Directional Drill Monitoring, Inadvertent Return Response, and Contingency Plans* (Oct. 2019), <https://www.ferc.gov/natural-gas/environmental-overview/guidance-horizontal-directional-drill-monitoring-inadvertent-return-response-and-contingency-plans>.

<sup>38</sup> See, e.g., FERC, Notice of Intent to Update the Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures and Request for Comments, Docket No. AD23-6-000 (Mar. 10, 2023) (Accession No. 20230310-3004). The Commission requested comment on the *HDD Plan Guidance* on October 26, 2018, in Docket No. AD19-6-000. FERC, Notice of Availability of Draft Guidance for Horizontal Directional Drill Monitoring, Inadvertent Return Response, and Contingency Plans, Docket No. AD19-6-000 (Oct. 26, 2018) (Accession No. 20181026-3003).



Commission staff has also issued *Suggested Best Practices for Industry Outreach Programs to Stakeholders* “present[ing] . . . best practices and . . . tools [staff] believe[s] can be used to effectively engage stakeholders in the application process for siting, construction, and operation of interstate natural gas facilities and LNG terminals.”<sup>39</sup> In a press release, the Commission described the “manual” as being for “reference use only” and that “it does not constitute a new regulation that is required of FERC-regulated companies.”<sup>40</sup> As this caveat suggests, though the Commission can suggest best practices for industry to follow, this does not mean the Commission has the authority to require regulated industries to follow them.

**4. *The NOPR proposes that project applicants must engage with environmental justice communities in the pre-filing process. Such communities include those that have been “overburdened by pollution.” Has the Commission defined this term with specific parameters for project developers in order to facilitate the timely issuance of permits?***

The Commission proposes to define “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>41</sup> As you suggest, it is not clear what this means.

The NOPR does not explain how to determine whether a population is “overburdened by pollution” or how to assess those burdens. The NOPR does not give principles or indices by which to assess whether a population has been marginalized. It also does not define how long a population must have been marginalized for it to be considered “historical,” or whether that marginalization must continue to the present day or whether that marginalization must have occurred within the United States. For instance, would the Commission consider a local population of Afghan asylees—a population hailing from Central Asia—who have resided in Texas for twenty years to be “historically marginalized”? And by including the phrase “but not limited to,” the NOPR suggests that there are populations that have been “historically marginalized and overburdened by pollution” beyond “minority populations, low-income populations, or indigenous peoples.”<sup>42</sup> Put simply, the NOPR provides no definitions of and offers no guidance for how to identify the populations specified.

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<sup>39</sup> FERC, *Suggested Best Practices for Industry Outreach Programs to Stakeholders*, at 6 (July 2015), <https://www.ferc.gov/sites/default/files/2020-04/stakeholder-brochure.pdf>.

<sup>40</sup> FERC, *Guidance Outlines Best Stakeholder Outreach Practices* (July 28, 2015), <https://staging.ferc.gov/news-events/news/ferc-guidance-outlines-best-stakeholder-outreach-practices>.

<sup>41</sup> NOPR, 181 FERC ¶ 61,205 at P 32.

<sup>42</sup> *Id.*





The timely issuance of permits requires, in part, that the Commission receive complete applications that meet agency requirements. This task becomes difficult, and proceedings will inevitably take longer and cost considerably more money, when industry must guess what terms like “overburdened by pollution” may mean to the Commission when their applications are ultimately adjudicated. Applicants must either over-estimate the Commission’s requirements or risk further delay or rejection after having already incurred significant sunk costs.<sup>43</sup>

**5. *Is it your opinion that these requirements will help facilitate the timely issuance of permits under Section 216 of the FPA? Please explain.***

In my view, the NOPR’s requirements will not help expedite the permitting of transmission facilities.<sup>44</sup> The imposition of the NOPR’s unnecessary and unintelligible requirements will prolong the time that developers must take to prepare applications. And because developers will likely be initially unsuccessful at deciphering the NOPR’s compliance requirements, one should expect the issuance of data requests which will further prolong the application review. Ambiguity empowers the Commission to act arbitrarily as it announces vague standards by which it will be able to impose inconsistent requirements on an application-by-application basis. Uncertainty and inconsistency will chill investment and make the rational allocation of capital even more difficult. This will slow the very development that Congress sought to encourage when passing the statute.

For instance, what will happen if the Commission finds that a developer has not shown in its Environmental Justice Public Engagement Plan that it “meaningfully engage[d] with potentially affected environmental justice communities” “early in the pre-filing process”?<sup>45</sup> Will that developer have to go back to the pre-filing process? Even if the applicant commits to the code of conduct, will the Commission necessarily find that “the permit holder has made good faith efforts to engage with landowners and other stakeholders early in the applicable permitting process”? Should the

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<sup>43</sup> Regulated entities raised similar concerns regarding the ambiguity of the GHG mitigation required by the Interim GHG Policy Statement. *See* Commissioner Danly, Responses to Questions for Record Submitted by the U.S. Senate Committee on Energy and Natural Resources, at 56-57 (Apr. 13, 2022), <https://www.ferc.gov/news-events/news/questions-record-submitted-honorable-james-p-danly> (“It should be noted that several pipeline project developers and trade associations have filed rehearing requests and comments stating they have no idea what mitigation efforts will be necessary.”).

<sup>44</sup> I acknowledge that in the NOPR, the Commission “proposes to amend its regulations governing applications for permits to site electric transmission facilities” in part “to incorporate other updates and clarifications to provide for the efficient and timely review of permit applications.” NOPR, 181 FERC ¶ 61,205 at P 1.

<sup>45</sup> NOPR, 181 FERC ¶ 61,205 at P 30.



Commission find otherwise, will that mean that the project developer will be unable to “acquire the right-of-way by the exercise of the right of eminent domain”?<sup>46</sup>

And while FPA section 216(h)(4)(B)(i) requires that “all permit decisions and related environmental reviews . . . shall be completed . . . within one year,” that timeline does not begin until “an application has been submitted with such data as the Secretary considers necessary.”<sup>47</sup> As long as the agency has discretion to determine when the clock starts, the promise of a statutorily-imposed time limit may ultimately prove illusory.

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Thank you for the opportunity to share my thoughts on the NOPR and on the scope of the Commission’s statutory authority. If I can be of any further assistance with these issues or any other Commission matter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "James P. Danly". The signature is written in a cursive, flowing style.

James P. Danly  
Commissioner

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<sup>46</sup> 16 U.S.C. § 824p(e)(1).

<sup>47</sup> *Id.* § 824p(h)(4)(B).